

**NEW ISSUES  
BOOK ENTRY ONLY**

**RATING: S&P “BBB-”  
SEE “BOND RATING”**

*In the opinion of Winston & Strawn LLP, Bond Counsel, based on existing statutes, regulations, rulings and court decisions, interest on the Series 2013A Bonds is not includable in gross income for federal income tax purposes and is not includable in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, New York, assuming compliance with certain covenants and the accuracy of certain representations. In the further opinion of Bond Counsel, interest on the Series 2013A Bonds is not an “item of tax preference” for purposes of the federal alternative minimum tax on individuals and corporations; however, interest on the Series 2013A Bonds is includable in the calculation of adjusted current earnings for purposes of calculating the alternative minimum tax imposed on corporations (but not individuals). In the opinion of Bond Counsel, interest on the Series 2013B Bonds is included in gross income for federal income tax purposes and is included in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, New York. See “TAX MATTERS” in this Official Statement.*



**BRONX CHARTER  
SCHOOL FOR EXCELLENCE**  
EXPECTING EXCELLENCE FROM OUR CHILDREN

**BUILD NYC RESOURCE CORPORATION**  
**Revenue Bonds**  
**(Bronx Charter School for Excellence Project)**  
**\$23,310,000 Tax-Exempt Series 2013A**  
**\$690,000 Taxable Series 2013B**

**Dated: Date of Issuance**

**Due: April 1, as shown on the inside front cover**

The above-referenced (i) Tax-Exempt Revenue Bonds, Series 2013A (Bronx Charter School for Excellence Project) (the “Series 2013A Bonds”), and (ii) Taxable Revenue Bonds, Series 2013B (Bronx Charter School for Excellence Project) (the “Series 2013B Bonds”), are special limited revenue obligations of Build NYC Resource Corporation (the “Issuer”) payable exclusively from the trust estate as described in this Official Statement. The Series 2013A Bonds and the Series 2013B Bonds are referred to herein collectively as the “Series 2013 Bonds”. Undefined capitalized terms on this cover are defined in the text hereof or in APPENDIX F of this Official Statement.

**The Series 2013 Bonds are special limited revenue obligations of the Issuer, payable as to principal, redemption price and interest, from and secured by (i) certain unconditional payments to be made pursuant to the Loan Agreement (the “Loan Agreement”), dated as of April 1, 2013, between Bronx Charter School for Excellence, a New York nonprofit education corporation (the “Institution”) and the Issuer, (ii) a pledge of certain funds and accounts established under the Indenture, and (iii) a mortgage on the Project. Neither the State of New York (the “State”) nor any political subdivision thereof, including The City of New York (the “City”), shall be obligated to pay the principal or redemption price of, or the interest on, the Series 2013 Bonds. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, including the City, is pledged to the payment of the Series 2013 Bonds. The Series 2013 Bonds will not be payable out of any funds of the Issuer other than those pledged therefor pursuant to an Indenture of Trust, dated as of April 1, 2013 (the “Indenture”), between the Issuer and U.S. Bank National Association, New York, New York, as trustee (the “Trustee”). The Series 2013 Bonds will not give rise to a pecuniary liability or charge against the credit or taxing powers of the State or any political subdivision thereof, including the City. No recourse will be had for the payment of the principal of, or the interest on, the Series 2013 Bonds against any member, officer, director, employee or agent of the Issuer. The Issuer has no taxing power.**

The Series 2013 Bonds will be issued by the Issuer pursuant to the Indenture. The Series 2013 Bonds will be payable from (i) amounts held for the payments thereof by the Trustee under the Indenture; and (ii) Loan Payments to be made by the Institution, under the Loan Agreement. The Loan Agreement requires the Institution to make Loan Payments in amounts sufficient to pay debt service on the Series 2013 Bonds, plus certain other payments. The Series 2013 Bonds will be additionally secured by a Mortgage, a Pledge Agreement and a pledge of certain funds and accounts held under the Indenture, including a Debt Service Reserve Fund. On the date of issuance of the Series 2013 Bonds, a deposit to the 2013 CSFP Subaccount of the Debt Service Reserve Fund in the amount of \$1,540,000 will be fully funded pursuant to a deposit made by the Charter School Financing Partnership, LLC (“CSFP”) under the terms of a Debt Service Reserve Fund Agreement and the remainder of the Debt Service Reserve Fund Requirement for the Series 2013 Bonds will be funded to the 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund from proceeds of the Series 2013 Bonds.

Proceeds derived from the sale of the Series 2013 Bonds will be used by the Institution for the purposes of funding: (i) the acquisition of an approximately 12,500 square foot parcel of land and an existing building thereon (the “Existing Building”) located at 1960 Benedict Avenue, Bronx, New York and an approximately 5,000 square foot adjacent, vacant parcel (Block 3930, Lots 38 and 33) (collectively, the “Land”); (ii) the renovation of the Existing Building, construction of a new 7-story building, equipping and/or furnishing both buildings, and certain ancillary property thereto, resulting in a combined approximately 50,000 square foot facility consisting of one or more buildings and ancillary facilities on the Land (clauses (i) and (ii) are collectively, the “Facility”); (iii) capitalized interest on the Series 2013 Bonds for a period of time; (iv) a deposit to the 2013 Non-CSFP Subaccount in the Debt Service Reserve Fund which, along with amounts in the 2013 CSFP Subaccount provided by CSFP, equals the Debt Service Reserve Fund Requirement for the Series 2013 Bonds; and (v) costs of issuance of the Series 2013 Bonds. Interest on the Series 2013 Bonds will be payable on October 1 and April 1 of each year, commencing October 1, 2013.

The Series 2013 Bonds will be issued as fully registered bonds in the denomination of \$5,000 or any integral multiple of \$5,000 in excess thereof in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York (“DTC”). Purchases of the Series 2013 Bonds will be made in book-entry form only. Purchasers of beneficial interests will not receive physical certificates. The Series 2013 Bonds are subject to optional and mandatory redemption as described in this Official Statement. An investment in the Series 2013 Bonds is subject to certain risks. Investors must read the entire Official Statement, including the Appendices hereto, to obtain information essential to the making of an informed decision.

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SEE THE INSIDE FRONT COVER FOR THE MATURITY SCHEDULES FOR THE SERIES 2013 BONDS

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The Series 2013 Bonds are offered, subject to prior sale, when, as and if accepted by Piper Jaffray & Co. (the “Underwriter”) and subject to an opinion as to the validity of the Series 2013 Bonds and the tax-exempt status of the Series 2013A Bonds by Winston & Strawn LLP, New York, New York, Bond Counsel; the approval of certain legal matters for the Issuer by its Vice President for Legal Affairs, for the Institution by its special counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York, for CSFP by its counsel, Perkins Coie LLP, Chicago, Illinois, for the Trustee by its special counsel, Carter Ledyard & Milburn LLP, New York, New York, and for the Underwriter by its counsel, Kennedy & Graven, Chartered, Minneapolis, Minnesota, and certain other conditions. It is expected that delivery of the Series 2013 Bonds will be made on or about April 24, 2013 through the facilities of DTC.

**PiperJaffray®**

*This Official Statement is dated April 16, 2013*

## MATURITY SCHEDULE

**\$23,310,000**

**Build NYC Resource Corporation  
Tax-Exempt Revenue Bonds, Series 2013A  
(Bronx Charter School for Excellence Project)**

<b>Maturity Date (April 1)</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>	<b>Price</b>	<b>CUSIP*</b>
2018	\$380,000	3.00%	2.26%	103.437%	12008E BL9
2019	485,000	4.00	2.45	108.513	12008E BM7
2020	505,000	4.00	2.66	108.434	12008E BN5
2021	525,000	4.00	2.87	107.967	12008E BP0
2022	545,000	4.00	3.05	107.380	12008E BQ8
2023	570,000	4.00	3.22	106.585	12008E BR6

\$7,495,000 5.00% Series 2013A Term Bonds due April 1, 2033

Price of 108.13% to Yield 4.00%\*\*

CUSIP: 12008E BS4\*

\$12,805,000 5.50% Series 2013A Term Bonds due April 1, 2043

Price of 110.042% to Yield 4.25%\*\*

CUSIP: 12008E BT2\*

**\$690,000**

**Build NYC Resource Corporation  
Taxable Revenue Bonds, Series 2013B  
(Bronx Charter School for Excellence Project)**

\$690,000 5.00% Series 2013B Term Bonds due April 1, 2018

Price of 100%

CUSIP: 12008E BU9\*

\* Copyright, American Bankers Association. CUSIP data is provided by Standard & Poor's, CUSIP Service Bureau, a Standard & Poor's Financial Services, LLC business. The CUSIP numbers listed above are being provided solely for the convenience of Bondholders only at the time of issuance of the Series 2013 Bonds and neither the Issuer, the Underwriter nor the Institution makes any representation with respect to such numbers or undertakes any responsibility for their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2013 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such Series 2013 Bonds.

\*\* Priced to the optional redemption date of April 1, 2023.

For a schedule of the mandatory sinking fund payments with respect to each maturity of the Series 2013 Bonds, see "THE SERIES 2013 BONDS - Redemption of Series 2013 Bonds - Mandatory Sinking Fund Installment Redemption" in this Official Statement.

## RENDERING OF THE PROJECT



The Existing Building is shown as the middle portion of the rendering above as the maroon portion of the Facility and the New Addition portions of the Facility are shown in gray on both sides of the Existing Building.

**Issuer**

Build NYC Resource Corporation

**Issuer's Counsel**

Vice President of Legal Affairs, Build NYC Resource Corporation

**Bond Counsel**

Winston & Strawn LLP  
New York, New York

**Institution Trustees**

Joyce Frost, Chair  
Stacey Lauren, Vice Chair  
Deirdre Flynn, Treasurer  
Kimberly Hartman, Secretary  
Andra B. Ehrenkranz, Board Member  
William Geist, Board Member  
Frank Iacono, Board Member  
Kathy Lathen, Board Member  
Michael Lewis, Board Member  
Rosemary Milliman, Board Member  
Mardi Schechter, Board Member  
Chris Schoberl, Board Member  
Michael Stern, Board Member  
Jouli Yohannes, Board Member, ex officio

**Institution Officials**

Charlene Reid, Head of School  
Jose Rivera, Director of Finance and Operations  
Aleisha Burgos, Principal, Elementary School  
Kevin Fischer, Dean of Students Elementary School  
Charlton Clarke, Dean of Students Middle School

**Institution's Special Counsel**

Orrick, Herrington & Sutcliffe LLP  
New York, New York

**2013 CSFP Subaccount Provider**

Charter School Financing Partnership, LLC  
Boston, Massachusetts

**Counsel to CSFP**

Perkins Coie LLP  
Chicago, Illinois

**Underwriter**

Piper Jaffray & Co.  
Minneapolis, Minnesota

**Underwriter's Counsel**

Kennedy & Graven, Chartered  
Minneapolis, Minnesota

**Trustee and Paying Agent**

U.S. Bank National Association  
New York, New York

**Special Counsel to the Trustee**

Carter Ledyard & Milburn LLP  
New York, New York

No person has been authorized by the Issuer, the Underwriter, or the Institution to give any information regarding the Series 2013 Bonds, the Institution, the Project, the offering contained herein and related matters or to make any representations other than those contained in this Official Statement and if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy in any state in which it is unlawful for any person to make such offer or solicitation. The information contained in this Official Statement has been furnished by or on behalf of the Issuer and the Institution and other sources which are believed to be reliable. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the parties referred to above since the date hereof.

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

Neither the Issuer nor any of its members, agents, employees or representatives has reviewed this Official Statement or investigated the statements or representations contained herein, except for those statements relating to the Issuer set forth under the captions "THE ISSUER" and "ABSENCE OF MATERIAL LITIGATION - The Issuer." Except with respect to the information contained under such captions, neither the Issuer nor any of its members, agents, employees or representatives makes any representation as to the completeness, sufficiency and truthfulness of the statements set forth in this Official Statement. Members of the governing body of the Issuer and any other person executing the Series 2013 Bonds are not subject to personal liability by reason of the issuance of the Series 2013 Bonds. Other than the information under the caption "THE ISSUER" and "ABSENCE OF MATERIAL LITIGATION - The Issuer" the Issuer assumes no responsibility for this Official Statement and has not reviewed or undertaken to verify any information contained herein.

The Trustee has not participated in the preparation of this Official Statement or any other disclosure documents relating to the Series 2013 Bonds. Except for information under the heading "THE TRUSTEE," the Trustee has or assumes no responsibility as to the accuracy or completeness of any information contained in this Official Statement or any other such disclosure documents.

References in this Official Statement to New York law, the Series 2013 Bonds, the Indenture, the Loan Agreement, the Custody Agreement, the Pledge Agreement, the Debt Service Reserve Fund Agreement, the Mortgage, the Continuing Disclosure Agreement, and other documents do not purport to be complete. Potential investors should refer to such statutes and documents for full and complete details of their provisions. Copies of such documents are on file with the Trustee and the Institution.

The Underwriter is a registered broker/dealer and a member of FINRA and SIPC. Nondeposit investment products offered by the Underwriter are not FDIC insured, are subject to investment risk, including loss of principal, and are not guaranteed by a bank unless otherwise specified. The Underwriter and its affiliates may also act as an investment advisor to issuers whose securities may be sold to a purchaser of the Series 2013 Bonds.

The Board of Trustees of the State University of New York (the "Authorizer") has not participated in the preparation of this Official Statement or any other disclosure documents relating to the Series 2013 Bonds. The Authorizer does not assume any responsibility as to the accuracy or

completeness of any information contained in this Official Statement or any other such disclosure documents.

THE SERIES 2013 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE SERIES 2013 BONDS IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF LAWS OF THE STATES IN WHICH SERIES 2013 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE SERIES 2013 BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

#### **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

THIS OFFICIAL STATEMENT, INCLUDING THE APPENDICES HERETO, CONTAINS STATEMENTS WHICH SHOULD BE CONSIDERED “FORWARD-LOOKING STATEMENTS,” MEANING THEY REFER TO POSSIBLE FUTURE EVENTS OR CONDITIONS. SUCH STATEMENTS ARE GENERALLY IDENTIFIABLE BY THE WORDS SUCH AS “PLAN,” “EXPECT,” “ESTIMATE,” “BUDGET,” OR SIMILAR WORDS. THE EXAMINED FINANCIAL FORECAST CONTAINED IN APPENDIX C ATTACHED TO THIS OFFICIAL STATEMENT IS NOT A HISTORICAL STATEMENT OF FINANCIAL PERFORMANCE BUT IS A FORWARD LOOKING PROJECTION OF FUTURE, PROJECTED FINANCIAL PERFORMANCE. THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS OR IN THE EXAMINED FINANCIAL FORECAST INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES, AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE, OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS OR IN THE EXAMINED FINANCIAL FORECAST. THE INSTITUTION DOES NOT EXPECT OR INTEND TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS OR TO THE EXAMINED FINANCIAL FORECAST IF OR WHEN ITS EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS OR FORECASTS ARE BASED, OCCUR.

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## SUMMARY INFORMATION

The following is a summary of certain information contained in this Official Statement. The summary is not comprehensive or complete and is qualified in its entirety by reference to the complete Official Statement (including the Appendices hereto). This Official Statement speaks only as of the date shown herein, and the information herein is subject to change. Undefined capitalized terms used below are defined in APPENDIX F hereto or elsewhere in this Official Statement.

- Issuer**.....Build NYC Resource Corporation (the “Issuer”) is a not-for-profit local development corporation created pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York, and is authorized by the Act to issue the Series 2013 Bonds. See “THE ISSUER” in this Official Statement.
- Series 2013 Bonds** .....The Issuer is issuing its (i) Tax-Exempt Revenue Bonds, Series 2013A (Bronx Charter School for Excellence Project) (the “Series 2013A Bonds”), in the original aggregate principal amount of \$23,310,000, and (ii) Taxable Revenue Bonds, Series 2013B (Bronx Charter School for Excellence Project) (the “Series 2013B Bonds” and together with the Series 2013A Bonds, the “Series 2013 Bonds”), in the original aggregate principal amount of \$690,000, pursuant to an Indenture of Trust, dated as of April 1, 2013 (the “Indenture”), between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”). See “THE SERIES 2013 BONDS” in this Official Statement.
- Use of Proceeds** .....The Issuer will loan the proceeds derived from the sale of the Series 2013 Bonds to Bronx Charter School for Excellence, a New York nonprofit education corporation (the “Institution”), pursuant to the terms of a Loan Agreement, dated as of April 1, 2013 (the “Loan Agreement”), by and between the Issuer and the Institution. Proceeds of the Series 2013 Bonds will be used by the Institution for the purposes of funding: (i) the acquisition of an approximately 12,500 square foot parcel of land and an existing building thereon (the “Existing Building”) located at 1960 Benedict Avenue, Bronx, New York and an approximately 5,000 square foot adjacent, vacant parcel (Block 3930, Lots 38 and 33) (collectively, the “Land”); (ii) the renovation of the Existing Building, construction of a new 7-story building, equipping and/or furnishing both buildings, and certain ancillary property thereto, resulting in a combined approximately 50,000 square foot facility consisting of one or more buildings and ancillary facilities on the Land (clauses (i) and (ii) are collectively, the “Facility”); (iii) capitalized interest on the Series 2013 Bonds for a period of time; (iv) a deposit to the 2013 Non-CSFP Subaccount in the Debt Service Reserve Fund which, along with amounts in the 2013 CSFP Subaccount provided by CSFP, equals the Debt Service Reserve Fund Requirement for the Series 2013 Bonds; and (v) costs of issuance of the Series 2013 Bonds. See “THE PROJECT AND PLAN OF FINANCE,” “SOURCES AND USES OF FUNDS” and “APPENDIX A - BRONX CHARTER SCHOOL FOR EXCELLENCE” in this Official Statement.
- Institution**.....The Institution is a New York nonprofit education corporation incorporated for the purpose of operating a charter school for students in grades K-8. The Institution is a New York public charter school organized under Article 56 of the New York Education Law, as amended (the “Charter Schools Act”). On April 29, 2003, the Board of Regents of the University of the State of New York, for and on behalf of the State Education Department, granted a charter to the Institution (the proposed form of which was agreed to by the Institution and the Board of Trustees of the State University of New York (“SUNY” or the “Authorizer”) on February 25, 2003) for a term of five years and incorporated the Institution by issuing a certificate of incorporation known as a provisional charter. The charter was subsequently renewed and revised and is currently in effect through December 14, 2014 (as so renewed and revised, the “Charter”). See “THE INSTITUTION” and “APPENDIX A - BRONX CHARTER SCHOOL FOR EXCELLENCE” in this Official Statement. See also “CHARTER SCHOOL FUNDING

IN THE STATE OF NEW YORK” and “APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW” in this Official Statement.

**Security for**

**the Series 2013 Bonds**..... The Series 2013 Bonds will be secured by and payable from an assignment and pledge of (i) all money held under the Indenture, including the Deposit (as defined herein) by the Charter School Financing Partnership, LLC (“CSFP”) to the 2013 CSFP Subaccount of the Debt Reserve Fund in the amount of \$1,540,000 (but excluding funds in the Rebate Fund and the funds in the CSFP Fund), (ii) the interest of the Issuer in the Loan Agreement (except for the Issuer’s Reserved Rights), and (iii) Loan Payments due from the Institution. The Series 2013 Bonds will also be secured under the terms of the Mortgage and Security Agreement, dated as of April 1, 2013, from the Institution to the Issuer and Trustee, as assigned by the Issuer to the Trustee under the terms of an Assignment of Mortgage and Security Agreement, dated as of April 1, 2013 (collectively, the “Mortgage”). Pursuant to the terms of a Custody Agreement, dated as of April 1, 2013 (the “Custody Agreement”), between the Institution, the Trustee, and U.S. Bank National Association, as custodian (the “Custodian”), the Institution has covenanted to pay or cause to be paid directly to the Custodian all payments of Education Aid received by the Institution. Although the Charter Schools Act prohibits the Institution from pledging or assigning Education Aid in connection with the construction, acquisition, reconstruction, rehabilitation, or improvement of a school facility, the Custodian (subject to the terms of the Custody Agreement) will promptly transfer to the Trustee the amounts required under the terms of the Custody Agreement.

Pursuant to a Pledge and Security Agreement, dated as of April 1, 2013 (the “Pledge Agreement”), between the Institution and the Trustee, the Institution will pledge to the Trustee, for the benefit of the holders of the Series 2013 Bonds, (i) all Pledged Revenues, (ii) all claims and causes of action arising from or related to the Pledged Revenues, and (iii) all proceeds relating to clauses (i) and (ii). For purposes of the Pledge Agreement, Pledged Revenues means all accounts, investment property, payment intangibles, general intangibles, monies, receipts, earnings (inclusive of any investment income), revenues, rentals, income, insurance proceeds, fees, gifts, donations, contributions, charges and other moneys received or receivable by or on behalf of the Institution, including, but without limiting the generality of the foregoing, (i) fees and charges of the Institution including fees or charges derived from the ownership or operation of the Facility, and all rights to receive any of the above, whether in the form of accounts, payment intangibles, contract rights, general intangibles or other rights, and the proceeds of such rights, whether now owned or held or hereafter coming into existence; and (ii) gifts, grants, bequests, donations and contributions heretofore or hereafter made to the Institution; provided, however, that, there shall be expressly excluded from “Pledged Revenues” (w) monies set aside as required by the Charter, (x) Education Aid, and (y) Restricted Gifts. Notwithstanding the foregoing, “Pledged Revenues” shall include all income, distributions, dividends, earnings and revenues derived from Restricted Gifts (unless otherwise prohibited by the terms of a Restricted Gift). See “SECURITY FOR THE SERIES 2013 BONDS” in this Official Statement.

Pursuant to a Debt Service Reserve Fund Agreement (2013 CSFP Subaccount), dated as of April 1, 2013 (the “Debt Service Reserve Fund Agreement”), between CSFP, the Issuer and the Institution, CSFP will: (i) deposit an amount (the “Deposit”) equal to \$1,540,000 in the 2013 CSFP Subaccount of the Debt Service Reserve Fund created under the Indenture and held by the Trustee, and (ii) grant a first security interest in CSFP’s interest in the 2013 CSFP Subaccount of the Debt Service Reserve Fund to the Issuer and the Trustee. The 2013 CSFP Subaccount of the Debt Service Reserve Fund funded by the Deposit from CSFP is pledged solely to the Series 2013 Bonds. The Debt Service Reserve Fund Requirement is for each Series of Bonds issued under the

Indenture. For the Series 2013 Bonds, the Debt Service Reserve Requirement is an amount equal to \$1,694,850. The Debt Service Reserve Requirement for the Series 2013 Bonds will be satisfied by the Deposit (\$1,540,000) in the 2013 CSFP Subaccount of the Debt Service Reserve Fund plus a portion of the proceeds of the Series 2013 Bonds to be deposited in the 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund (\$154,850). See “SECURITY FOR THE SERIES 2013 BONDS” and “APPENDIX H - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST” in this Official Statement.

**Special, Limited**

**Obligations** ..... THE SERIES 2013 BONDS ARE SPECIAL LIMITED REVENUE OBLIGATIONS OF THE ISSUER, PAYABLE AS TO PRINCIPAL, REDEMPTION PRICE AND INTEREST, SOLELY FROM THE TRUST ESTATE AND CERTAIN FUNDS AND ACCOUNTS ESTABLISHED UNDER THE INDENTURE. NEITHER THE STATE OF NEW YORK NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2013 BONDS. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK, IS PLEDGED TO SUCH PAYMENT OF THE SERIES 2013 BONDS. THE SERIES 2013 BONDS WILL NOT BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE SERIES 2013 BONDS WILL NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE CREDIT OR TAXING POWERS OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK. NO RECOURSE WILL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2013 BONDS AGAINST ANY MEMBER, OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

**Risk Factors** ..... Purchase of the Series 2013 Bonds involves a degree of risk. A prospective purchaser of the Series 2013 Bonds is advised to read this entire Official Statement including the Appendices attached hereto in their entirety, particularly the section entitled “RISK FACTORS” herein, for a discussion of certain risk factors, which should be considered in connection with an investment in the Series 2013 Bonds.

**Optional Redemption** ..... The Series 2013A Bonds are subject to optional redemption, in whole or in part, at the option of the Issuer at the request of the Institution on April 1, 2023 or any Business Day thereafter, at a redemption price equal to the principal amount of the Series 2013A Bonds to be redeemed plus accrued interest to the redemption date. The Series 2013B Bonds are not subject to optional redemption. See “THE SERIES 2013 BONDS - Redemption of Series 2013 Bonds - *General Optional Redemption*” in this Official Statement.

**Mandatory Redemption** ..... Certain maturities of the Series 2013 Bonds are also subject to mandatory sinking fund redemption as set forth in this Official Statement. See “THE SERIES 2013 BONDS - Redemption of Series 2013 Bonds” in this Official Statement.

## **Extraordinary**

**Mandatory Redemption.** Under certain circumstances the Series 2013 Bonds are also subject to redemption at a redemption price equal to the principal amount, plus accrued interest upon the occurrence of certain events of damage, destruction or condemnation. The Series 2013 Bonds are also subject to mandatory redemption upon the Issuer's determination of (i) failure to operate the Facility for the Approved Project Operations, (ii) material violation of material legal requirements, false representation or (iii) failure to maintain liability insurance. See "THE SERIES 2013 BONDS - Redemption of Series 2013 Bonds" in this Official Statement.

## **Exchange and**

**Transfer**..... While the Series 2013 Bonds remain in book-entry only form, transfer of ownership by Beneficial Owners may be made as described in "THE SERIES 2013 BONDS" and "APPENDIX K - BOOK-ENTRY ONLY SYSTEM" in this Official Statement.

**Payment**..... Interest accrues on the Series 2013 Bonds at the rates set forth on the inside front cover of this Official Statement from their date of issuance and is payable on April 1 and October 1 of each year, commencing October 1, 2013 (each an "Interest Payment Date"), by check or draft mailed on such dates to the persons who were the registered owners of the Series 2013 Bonds at his or her address as it last appears on registration records kept by the Trustee as of the close of business on the first day of the month of the applicable Interest Payment Date. Provided, however, that any registered owner of \$1,000,000 or more aggregate principal amount of Series 2013 Bonds outstanding may receive payment of interest by wire transfer upon proper instruction to the Trustee as provided in the Indenture. The Series 2013 Bonds mature as set forth on the inside front cover of this Official Statement and the principal of the Series 2013 Bonds is payable as described under the heading "THE SERIES 2013 BONDS - Interest; Maturity; Payment" and "THE SERIES 2013 BONDS - Redemption of Series 2013 Bonds - *Mandatory Sinking Fund Installment Redemption*" in this Official Statement. Principal and premium, if any, on the Series 2013 Bonds will be payable at the designated corporate trust office of the Trustee.

**Form**..... The Series 2013 Bonds will be registered under a book-entry system in the name of The Depository Trust Company ("DTC") or its nominees. The Series 2013 Bonds will be issued in denominations of \$5,000 or any integral multiples of \$5,000 in excess thereof ("Authorized Denominations").

**Tax Status**..... In the opinion of Winston & Strawn LLP, Bond Counsel, based on existing statutes, regulations, rulings and court decisions, interest on the Series 2013A Bonds is not includable in gross income for federal income tax purposes and is not includable in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, New York, assuming compliance with certain covenants and the accuracy of certain representations. In the further opinion of Bond Counsel, interest on the Series 2013A Bonds is not an "item of tax preference" for purposes of the federal alternative minimum tax on individuals and corporations; however, interest on the Series 2013A Bonds is includable in the calculation of adjusted current earnings for purposes of calculating the alternative minimum tax imposed on corporations (but not individuals). In the opinion of Bond Counsel, interest on the Series 2013B Bonds is included in gross income for federal income tax purposes and is included in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, New York. See "TAX MATTERS" and "APPENDIX I - FORM OF BOND COUNSEL OPINION" in this Official Statement.

## **Continuing Disclosure**

**Agreement**..... Pursuant to the requirements of Securities and Exchange Commission Rule 15c2-12 (17 CFR Part 240, § 240.15c2-12) (the "Rule"), the Institution has agreed for the benefit of

the Registered Owners and Beneficial Owners of the Series 2013 Bonds to provide certain financial information, other operating data and notices of material events. See “CONTINUING DISCLOSURE,” and “APPENDIX J - FORM OF CONTINUING DISCLOSURE AGREEMENT” in this Official Statement.

**Rating** ..... Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, has assigned a rating of “BBB-” to the Series 2013 Bonds. See “BOND RATING” in this Official Statement.

**Delivery Information** ..... The Series 2013 Bonds are offered when, as, and if issued by the Issuer and accepted by the Underwriter, subject to prior sale and the approving legal opinion of Bond Counsel and certain other conditions. It is expected that delivery of the Series 2013 Bonds will be made on or about April 24, 2013 through the facilities of DTC in New York, New York, against payment therefor.

**Agents and Advisors** ..... Winston & Strawn LLP, New York, New York, is acting as Bond Counsel. Certain legal matters will be passed upon for the Institution by its special counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York. Certain legal matters will be passed upon for CSFP by its counsel Perkins Coie, LLP, Chicago, Illinois, for the Trustee by its special counsel, Carter Ledyard & Milburn LLP, New York, New York and for the Underwriter by its counsel, Kennedy & Graven, Chartered, Minneapolis, Minnesota. Piper Jaffray & Co., Minneapolis, Minnesota will serve as the Underwriter for the Series 2013 Bonds. See “UNDERWRITING” in this Official Statement. U.S. Bank National Association, New York, New York, will serve as the Trustee for the Series 2013 Bonds. Certain fees that are payable with respect to the Series 2013 Bonds to various counsel, the Underwriter and the Trustee are contingent upon the issuance and delivery of the Series 2013 Bonds.

**Additional Information** ..... The summaries of or references to constitutional provisions, statutes, resolutions, agreements, contracts, financial statements, reports, publications and other documents or compilations of data or information set forth in this Official Statement do not purport to be complete statements of the provisions of the items summarized or referred to and are qualified in their entirety by the actual provisions of such items, copies of which are either publicly available or available upon request and the payment of a reasonable copying, mailing and handling charge from the Institution, 1960 Benedict Avenue, Bronx, New York 10462, (212) 828-7301 or the Trustee, U.S. Bank National Association, 100 Wall Street, Suite 1600, New York, New York 10005, Attention: Corporate Trust Services.

**Audited Financial Statements** ..... The combined audited financial statements of the Institution and Friends of Bronx Charter School for Excellence (“Friends of BCSE” and together with the Institution, the “Organization”) for the fiscal year ended June 30, 2012 are included in this Official Statement as APPENDIX D. These are the most recent audited financial statements available for the Organization. The combined financial statements in APPENDIX D were audited by McGladrey LLP. See “COMBINED AUDITED FINANCIAL STATEMENTS OF THE ORGANIZATION” and “APPENDIX D - COMBINED AUDITED FINANCIAL STATEMENTS OF THE ORGANIZATION FOR THE FISCAL YEAR ENDED JUNE 30, 2012 (INCLUDING JUNE 30, 2011 COMPARATIVE INFORMATION)” in this Official Statement.

**Unaudited Interim**

**Financial Information** ... The unaudited financial information for the seven-month period ended January 31, 2013 is contained in APPENDIX E. The interim financial information contained in APPENDIX E has been prepared by the Institution and has not been audited, reviewed or examined by any independent accounting firm. *McGladrey LLP has not performed any procedures relating to the Institution's unaudited interim financial information. See "APPENDIX E - UNAUDITED INTERIM FINANCIAL INFORMATION OF THE INSTITUTION FOR THE SEVEN-MONTH PERIOD ENDED JANUARY 31, 2013" in this Official Statement.*

**Examined Financial**

**Forecast** ..... The Examined Financial Forecast (the "Forecast") prepared by Croskey Lanni, P.C., attached hereto in APPENDIX C is a projection of the future financial performance of the Institution based upon certain assumptions made by the Institution and contained therein. No assurance can be given that the Institution will attain the projected future financial results set forth in the Forecast. The Forecast is for the six fiscal years of the Institution ending June 30, 2013 through June 30, 2018. The Forecast relates to the projected operations of the Institution and does not include any information regarding Friends of BCSE. The Forecast has not been revised to reflect the final pricing of the Series 2013 Bonds. *McGladrey LLP has not performed any procedures relating to the Forecast.* Based upon assumptions set forth in the Forecast, set forth below is selected projected data from the Forecast for the stated fiscal years:

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Available Cash</b>					
Change in net assets	\$ (580,576)	\$ (134,632)	\$ 558,697	\$ 542,704	\$ 624,544
Depreciation and amortization	764,981	764,981	764,981	764,981	764,981
Interest on bonds	1,170,959	1,247,175	1,247,175	1,239,175	1,216,925
Capitalized interest	429,583	-	-	-	-
Capital expenditures	<u>(30,000)</u>	<u>(30,000)</u>	<u>(30,000)</u>	<u>(30,000)</u>	<u>(30,000)</u>
Total Available Cash	1,754,947	1,847,524	2,540,853	2,516,860	2,576,450
<b>Debt Service</b>					
Interest	1,170,959	1,247,175	1,247,175	1,239,175	1,216,925
Principal	<u>-</u>	<u>-</u>	<u>160,000</u>	<u>445,000</u>	<u>470,000</u>
Total Debt Service	<u>\$1,170,959</u>	<u>\$1,247,175</u>	<u>\$1,407,175</u>	<u>\$1,684,175</u>	<u>\$1,686,925</u>
<b>Debt Service Coverage Ratio</b>	1.50	1.48	1.81	1.49	1.53
<b>Days Cash on Hand</b>	127.9	135.7	177.4	200.7	225.7

## OFFICIAL STATEMENT

**\$23,310,000**

**Build NYC Resource Corporation  
Tax-Exempt Revenue Bonds, Series 2013A  
(Bronx Charter School for Excellence Project)**

**\$690,000**

**Build NYC Resource Corporation  
Taxable Revenue Bonds, Series 2013B  
(Bronx Charter School for Excellence Project)**

## INTRODUCTORY STATEMENT

The following is a brief introduction as to certain matters discussed elsewhere in this Official Statement and is qualified in its entirety as to such matters by such discussion and the text of the actual documents described or referenced. Any capitalized term not required to be capitalized is used with the meaning assigned in APPENDIX F or in the Indenture, the Loan Agreement or other document with respect to which the term is used. Definitions contained in the text hereof are for ease of reference only and are qualified in their entirety by the definitions in APPENDIX F or the documents with respect to which such terms relate. The Appendices to this Official Statement are an integral part of this Official Statement and each potential investor should review the Appendices in their entirety.

### General

Build NYC Resource Corporation, a not-for-profit local development corporation created pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York (the “Issuer”), will issue its (i) Tax-Exempt Revenue Bonds, Series 2013A (Bronx Charter School for Excellence Project) (the “Series 2013A Bonds”), in the original aggregate principal amount of \$23,310,000, and (ii) Taxable Revenue Bonds, Series 2013B (Bronx Charter School for Excellence Project) (the “Series 2013B Bonds” and together with the Series 2013A Bonds, the “Series 2013 Bonds”), in the original aggregate principal amount of \$690,000, pursuant to an Indenture of Trust, dated as of April 1, 2013 (the “Indenture”), between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”). Pursuant to a Loan Agreement, dated as of April 1, 2013 (the “Loan Agreement”), between the Issuer and Bronx Charter School for Excellence, a New York nonprofit education corporation (the “Institution”), proceeds derived from the sale of the Series 2013 Bonds will fund a loan (the “Loan”) to the Institution. See “APPENDIX G - SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT” in this Official Statement.

Proceeds of the Loan will be used by the Institution for the purposes of funding: (i) the acquisition of an approximately 12,500 square foot parcel of land and an existing building thereon (the “Existing Building”) located at 1960 Benedict Avenue, Bronx, New York and an approximately 5,000 square foot adjacent, vacant parcel (Block 3930, Lots 38 and 33) (collectively, the “Land”); (ii) the renovation of the Existing Building, construction of a new 7-story building, equipping and/or furnishing both buildings, and certain ancillary property thereto, resulting in a combined approximately 50,000 square foot facility consisting of one or more buildings and ancillary facilities on the Land (clauses (i) and (ii) are collectively, the “Facility”); (iii) capitalized interest on the Series 2013 Bonds for a period of time; (iv) a deposit to the 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund which, along with amounts in the 2013 CSFP Subaccount, equals the Debt Service Reserve Fund Requirement for the Series 2013 Bonds; and (v) costs of issuance of the Series 2013 Bonds. On the date of issuance of the Series 2013 Bonds, a deposit to the 2013 CSFP Subaccount of the Debt Service Reserve Fund in the amount of \$1,540,000 will be funded pursuant to a deposit made by the Charter School Financing Partnership, LLC (“CSFP”) under the terms of a Debt Service Reserve Fund Agreement (2013 CSFP Subaccount), dated as of April 1, 2013, between CSFP, the Issuer, and the Institution. The remaining portion of the Debt

Service Reserve Requirement for the Series 2013 Bonds will be funded to the 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund from proceeds of the Series 2013 Bonds as more fully described in this Official Statement. See “THE CHARTER SCHOOL FINANCING PARTNERSHIP, LLC,” “SOURCES AND USES OF FUNDS,” “THE PROJECT AND PLAN OF FINANCE,” “SECURITY FOR THE SERIES 2013 BONDS,” and “APPENDIX A - BRONX CHARTER SCHOOL FOR EXCELLENCE” in this Official Statement.

### **Loan of Series 2013 Bond Proceeds; Mortgage and Other Security**

Proceeds of the Series 2013 Bonds will be loaned by the Issuer to the Institution pursuant to the Loan Agreement and the Series 2013 Bonds will be payable primarily from and secured by a pledge of payments to be made by the Institution under the Loan Agreement (the “Loan Payments”), which, if fully and promptly paid, will be sufficient to pay when due the scheduled principal of and interest on the Series 2013 Bonds and any Additional Bonds (collectively, the “Bonds”). The Series 2013 Bonds will be secured by (i) the Mortgage and Security Agreement, dated as of April 1, 2013 (the “Mortgage”), to be executed by the Institution in favor of the Issuer and Trustee, as beneficiaries, and assigned by the Issuer to the Trustee, and (ii) certain money deposited in funds established under the Indenture, including the Debt Service Reserve Fund. Pursuant to the Loan Agreement, the Institution will make certain representations and covenants related to maintaining the exclusion from gross income for federal income tax purposes of interest on the Series 2013A Bonds. See “APPENDIX G - SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT” and “APPENDIX H - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST” in this Official Statement.

Pursuant to the terms of a Custody Agreement, dated as of April 1, 2013 (the “Custody Agreement”), between the Institution, the Trustee, and U.S. Bank National Association, as custodian (the “Custodian”), the Institution has covenanted to pay or cause to be paid directly to the Custodian all payments of Education Aid received by the Institution. Although the Charter Schools Act prohibits the Institution from pledging or assigning Education Aid in connection with the construction, acquisition, reconstruction, rehabilitation, or improvement of a school facility, the Custodian (subject to the terms of the Custody Agreement) will promptly transfer to the Trustee the amounts required under the terms of the Custody Agreement. Pursuant to a Pledge and Security Agreement, dated as of April 1, 2013 (the “Pledge Agreement”), between the Institution and the Trustee, the Institution will pledge to the Trustee, for the benefit of the holders of the Series 2013 Bonds, (i) all Pledged Revenues, (ii) all claims and causes of action arising from or related to the Pledged Revenues, and (iii) all proceeds relating to clauses (i) and (ii). Pursuant to the Indenture, the Issuer will pledge to the Trustee, for the benefit of the holders of the Series 2013 Bonds, all of its interest in the Loan Agreement (other than the Issuer’s Reserved Rights) to secure payment of the principal of, premium, if any, and interest on the Series 2013 Bonds. Pursuant to the Mortgage, the payment of the principal of, premium, if any, and interest on the Series 2013 Bonds will be secured by a security interest in the Facility, subject to certain “Permitted Encumbrances” described in the Mortgage. The obligation of the Institution to make Loan Payments under the Loan Agreement is an absolute and unconditional obligation of the Institution; provided, however, that the ability of the Institution to generate additional revenues is limited in the event that the Education Aid payments are not sufficient for such purpose. See “SECURITY FOR THE SERIES 2013 BONDS” in this Official Statement.

### **2013 CSFP Subaccount of the Debt Service Reserve Fund**

On the date of issuance of the Series 2013 Bonds, pursuant to the Debt Service Reserve Fund Agreement, CSFP will: (i) deposit an amount (the “Deposit”) equal to \$1,540,000 in the 2013 CSFP Subaccount of the Debt Service Reserve Fund created under the Indenture and held by the Trustee and

(ii) grant a first security interest in CSFP's interest in the 2013 CSFP Subaccount of the Debt Service Reserve Fund to the Issuer and the Trustee. Once the Deposit by CSFP is made into the 2013 CSFP Subaccount of the Debt Service Reserve Fund the Deposit will be part of the Trust Estate governed by the Indenture. Amounts in the 2013 CSFP Subaccount of the Debt Service Reserve Fund will secure the Series 2013 Bonds (excluding funds in the CSFP Fund and may be used by the Trustee to pay principal of and interest on the Series 2013 Bonds in the event sums in the Bond Fund are insufficient for such purpose. The Debt Service Reserve Fund Requirement is for each Series of Bonds issued under the Indenture. For the Series 2013 Bonds, the Debt Service Reserve Fund Requirement is an amount equal to \$1,694,850. The Debt Service Reserve Requirement for the Series 2013 Bonds will be satisfied by the Deposit (\$1,540,000) in the 2013 CSFP Subaccount of the Debt Service Reserve Fund plus a portion of proceeds of the Series 2013 Bonds to be deposited in the 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund (\$154,850). See "THE CHARTER SCHOOL FINANCING PARTNERSHIP, LLC – 2013 CSFP Subaccount Debt Service Reserve Fund Deposit," and "APPENDIX H - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST" in this Official Statement.

### **Special Covenants of the Institution**

The Loan Agreement places certain restrictions on the incurrence of indebtedness by the Institution. See "SECURITY FOR THE SERIES 2013 BONDS" in this Official Statement. The Institution has agreed in the Loan Agreement and the Continuing Disclosure Agreement to provide certain periodic financial reports to the Trustee and also to comply with certain financial covenants. See "SECURITY FOR THE SERIES 2013 BONDS – The Loan Agreement" in this Official Statement.

### **Bondholders' Risks**

Certain risks associated with an investment in the Series 2013 Bonds are discussed under "RISK FACTORS" in this Official Statement.

### **Miscellaneous**

This Official Statement (including the Appendices hereto) contains descriptions of, among other matters, the Indenture, the Loan Agreement, the Mortgage, the Custody Agreement, the Continuing Disclosure Agreement, the Issuer, the Project, the Facility, the Institution, and the Series 2013 Bonds. Such descriptions and information do not purport to be comprehensive or definitive. All references to documents described herein are qualified in their entirety by reference to such documents, copies of which are available for inspection at the designated corporate trust office of the Trustee.

## **THE ISSUER**

The Issuer, created in 2011, is a not-for-profit local development corporation organized pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York (the "State") at the direction of the Mayor of The City of New York (the "City"). The Issuer is not an agency of State or City government and is not subject to administrative direction by any department, commission, board or agency of the State or of the City. The Issuer is authorized by the Not-For-Profit Corporation Law of the State and the Issuer's Certificate of Incorporation to promote community and economic development, and the creation of jobs in the non-profit and profit sectors for residents of the City by developing and providing programs for not-for-profit institutions, manufacturing and industrial businesses and other entities to access low interest tax-exempt and non-tax-exempt financing for their eligible projects.

The Issuer has offered and plans to offer other obligations from time to time to finance projects for other not-for-profit institutions and, under certain circumstances, manufacturing and industrial businesses, with respect to facilities located in the City. Such obligations have been and will be issued pursuant to and secured by instruments separate and apart from the Indenture.

The Issuer has not prepared or assisted in the preparation of this Official Statement, except for statements under the sections captioned “THE ISSUER” and “ABSENCE OF MATERIAL LITIGATION - The Issuer” and, except as aforesaid, the Issuer is not responsible for any statements made in this Official Statement. Except for the execution and delivery of documents required to effect the issuance of the Series 2013 Bonds, the Issuer has not otherwise assisted in the public offer, sale or distribution of the Series 2013 Bonds. Accordingly, except as aforesaid, the Issuer disclaims responsibility for the disclosures set forth in this Official Statement or otherwise made in connection with the offer, sale and distribution of the Series 2013 Bonds.

The Series 2013 Bonds are special limited revenue obligations of the Issuer payable solely from the payments made by the Institution under the Loan Agreement and the Promissory Note and from the Trust Estate as described in the Indenture. Neither the Issuer nor its directors or officers are personally liable with respect to the Series 2013 Bonds. Accordingly, no financial information with respect to the Issuer or its directors or officers has been included in this Official Statement.

## **THE INSTITUTION**

The Institution is a nonprofit education corporation incorporated under Article 56 of the New York Education Law and operates pursuant to a charter initially approved by the Board of Trustees of the State University of New York (“SUNY” or the “Authorizer”). On April 29, 2003, the Board of Regents of the University of the State of New York, for and on behalf of the State Education Department, granted the charter to the Institution. The charter was initially valid for a term of five years. The charter was subsequently renewed and revised and is currently in effect through December 14, 2014 (as so renewed and revised, the “Charter”). The Charter provides for the education of students in grades K-8.

The Institution is an organization described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”) which is exempt from federal income taxation under Section 501(a) of the Code (except with respect to “unrelated business taxable income” within the meaning of Section 512(a) of the Code) and (b) which is not a “private foundation” as defined in Section 509(a) of the Code. The Institution operates as a New York non-profit education corporation and as such is governed by the law applicable to such entities and its Charter and bylaws. The Institution’s bylaws provide that the Institution is managed and controlled by a Board of Trustees. For more information with respect to the Institution, its history and operations see “APPENDIX A - BRONX CHARTER SCHOOL FOR EXCELLENCE” in this Official Statement.

The Authorizer has not participated in the preparation of this Official Statement or any other disclosure documents relating to the Series 2013 Bonds. The Authorizer does not assume any responsibility as to the accuracy or completeness of any information contained in this Official Statement or any other such disclosure documents.

## **CHARTER SCHOOL FINANCING PARTNERSHIP, LLC**

### **General**

The Charter School Financing Partnership, LLC, a Delaware limited liability company (“CSFP”), was formed by a consortium of six national nonprofit corporations to assist charter schools in connection with accessing the capital markets to finance new school facilities. The six national nonprofit corporations that comprise the consortium of CSFP all have extensive experience providing loans to charter schools such as the Institution. The six national nonprofit corporations that comprise the consortium are: (i) Community Reinvestment Fund; (ii) NCB Capital Impact; (iii) the Low Income Investment Fund; (iv) the Reinvestment Fund; (v) Raza Development Fund; and (vi) the Housing Partnership Network. CSFP has been determined to be a 501(c)(3) organization by the Internal Revenue Service. The Institution is receiving certain financial assistance described below from CSFP in the form of a Deposit and pledge in the amount of \$1,540,000 into the 2013 CSFP Subaccount of the Debt Service Reserve Fund to secure the Series 2013 Bonds. The Deposit is pledged solely to the Series 2013 Bonds under the terms of the Indenture and the Debt Service Reserve Fund Agreement.

### **2013 CSFP Subaccount Debt Service Reserve Fund Deposit**

CSFP will enter into the Debt Service Reserve Fund Agreement pursuant to which CSFP will make the Deposit (in the amount of \$1,540,000) to the 2013 CSFP Subaccount of the Debt Service Reserve Fund from funds derived from a portion of the money available to it under a grant from the United States Department of Education. The Deposit will be pledged by CSFP to the Trustee for the benefit of the Bondholders of the Series 2013 Bonds. The Deposit will be available as described elsewhere herein, and after use of the amount deposited in the 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund, to pay principal and interest on the Series 2013 Bonds in the event of a shortfall caused by nonpayment by the Institution. Pursuant to the terms of the Debt Service Reserve Fund Agreement, CSFP retains full control over the investment of the Deposit in Permitted Investments (as defined in the Debt Service Reserve Fund Agreement) in the 2013 CSFP Subaccount of the Debt Service Reserve Fund and CSFP is entitled to all earnings realized from such investments in the 2013 CSFP Subaccount of the Debt Service Reserve Fund and amounts held under the CSFP Fund.

## **THE PROJECT AND PLAN OF FINANCE**

The “Project” consists of (i) the acquisition of the Existing Building located on the Land; and (ii) renovation, construction, and equipping of the Facility. The Existing Building was originally constructed in 1957 and was used as a police precinct for many years. The Institution began occupying the Existing Building in 2005. The renovated portion of the Facility will serve the Institution’s kindergarten through eighth grade students. The new addition to the Facility (the “New Addition”) includes the construction of classrooms, a full cooking kitchen/cafeteria, gymnasium, computer and science labs and additional outdoor space.

Pursuant to an Agreement of Sale, dated as of March 5, 2013 (the “Purchase Agreement”), between Sobert Realty Corp. (the “Seller”) and the Institution, the Institution will purchase the Existing Building and the Land from the Seller for a purchase price of \$7,321,474. The Friends of the Bronx Charter School for Excellence Inc., previously known as Parkchester Progressive Educational Initiative, Inc. (“Friends of BCSE”) has been leasing the Existing Building from the Seller and the Institution has been subleasing the Existing Building from Friends of BCSE since 2005. The Institution anticipates that

it will obtain all necessary planning board, zoning board and related approvals and permits for the construction, renovation and equipping of the Project prior to the issuance of the Series 2013 Bonds.

The Institution has engaged Cutsogeorge Tooman & Allen Architects, P.C. to provide architectural services with respect to the Project. Cutsogeorge Tooman & Allen Architects, P.C. is based in New York, New York and has over 25 years of experience in design, restoration and rehabilitation of large buildings. The Institution has entered into a construction management agreement (the "Construction Contract") with Pinnacle Contractors of NY, Inc. (the "Construction Manager"). The Construction Manager is based in New York, New York and has more than 15 years of experience in construction management. The fixed stipulated and guaranteed maximum price for the construction of the Project set forth in the Construction Contract is \$14,869,314, subject to change orders. The Construction Contract provides for liquidated damages in the amount of \$1,500 per calendar day, with a maximum of \$50,000 in the aggregate, in the event that substantial completion of the Project is not achieved by mid-summer 2014, subject to certain extensions set forth in the Construction Contract. The Institution anticipates that the Construction Manager will complete punch-list items during July and August 2014 and the Project will be completed in time for full occupancy by the Institution in time for the start of the 2014-2015 school year. The Construction Contract does not cover the furniture, fixtures, and equipment to be purchased by BCSE from proceeds of the Series 2013 Bonds.

Additional information about the Project is located in "APPENDIX A - BRONX CHARTER SCHOOL FOR EXCELLENCE" in this Official Statement.

Proceeds of the Series 2013 Bonds and the Loan derived therefrom will be utilized by the Institution for the purposes funding: (i) the acquisition of the Existing Building and the Land; (ii) the renovation, construction, and equipping of the Facility; (iii) capitalized interest on the Series 2013 Bonds for a period of time; (iv) a deposit to the 2013 Non-CSFP Subaccount in the Debt Service Reserve Fund which, along with amounts in the 2013 CSFP Subaccount, equals the Debt Service Reserve Fund Requirement for the Series 2013 Bonds; and (v) costs of issuance of the Series 2013 Bonds. On the date of issuance of the Series 2013 Bonds, pursuant to the Debt Service Reserve Fund Agreement, CSFP will: (i) make the Deposit (in the amount of \$1,540,000) in the 2013 CSFP Subaccount of the Debt Service Reserve Fund created under the Indenture and held by the Trustee and (ii) grant a first security interest in CSFP's interest in the 2013 CSFP Subaccount of the Debt Service Reserve Fund to the Issuer and the Trustee. See "SECURITY FOR THE SERIES 2013 BONDS," "SOURCES AND USES OF FUNDS," and "APPENDIX A - BRONX CHARTER SCHOOL FOR EXCELLENCE" in this Official Statement.

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## SOURCES AND USES OF FUNDS

Following are the estimated sources and uses for funds (excluding investment income) associated with the Project and the issuance of the Series 2013 Bonds:

### Sources of Funds

Series 2013A Bond Proceeds	\$23,310,000.00
Series 2013B Bond Proceeds	690,000.00
Original Issue Premium	2,111,744.20
CSFP Debt Service Reserve Fund Contribution	<u>1,540,000.00</u>

### Total Sources of Funds

\$27,651,744.20

### Uses of Funds

Acquisition of the Existing Building and Land	\$ 7,454,969.00
Construction of the New Addition and Project Costs	16,772,826.71
Capitalized Interest	422,001.23
Deposit to the 2013 CSFP Subaccount of the Debt Service Reserve Fund	1,540,000.00
Deposit to the 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund	154,850.00
Costs of Issuance and Real Estate Closing Costs*	<u>1,307,097.26</u>

### Total Uses of Funds

\$27,651,744.20

\* Includes Underwriter's compensation, legal fees and expenses, printing, appraisal fees, Rating Agency fees, Trustee fees, Issuer fees, accountant fees, real estate costs and other expenses associated with the issuance of the Series 2013 Bonds.

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## DEBT SERVICE SCHEDULE

The table below sets forth the amounts required to be paid with respect to the Series 2013 Bonds, assuming no prepayments or redemption prior to maturity. All amounts shown in the table below are gross debt service prior to the application of any earnings on amounts deposited in funds and accounts established under the Indenture. Interest on the Series 2013 Bonds will be paid on April 1 and October 1 of each year, commencing October 1, 2013. Principal of the Series 2013 Bonds will be paid on April 1 of each year, commencing (i) April 1, 2018 for the Series 2013A Bonds and (ii) April 1, 2016 for the Series 2013B Bonds.

Year Ending April 1	Series 2013A Bonds		Series 2013B Bonds		Total Debt Service
	Principal Amount	Interest Amount	Principal Amount	Interest Amount	
2014	-	\$1,119,237.85	-	\$32,295.83	\$1,151,533.68
2015	-	1,195,625.00	-	34,500.00	1,230,125.00
2016	-	1,195,625.00	\$155,000.00	34,500.00	1,385,125.00
2017	-	1,195,625.00	445,000.00	26,750.00	1,667,375.00
2018	\$380,000.00	1,195,625.00	90,000.00	4,500.00	1,670,125.00
2019	485,000.00	1,184,225.00	-	-	1,669,225.00
2020	505,000.00	1,164,825.00	-	-	1,669,825.00
2021	525,000.00	1,144,625.00	-	-	1,669,625.00
2022	545,000.00	1,123,625.00	-	-	1,668,625.00
2023	570,000.00	1,101,825.00	-	-	1,671,825.00
2024	590,000.00	1,079,025.00	-	-	1,669,025.00
2025	620,000.00	1,049,525.00	-	-	1,669,525.00
2026	655,000.00	1,018,525.00	-	-	1,673,525.00
2027	690,000.00	985,775.00	-	-	1,675,775.00
2028	725,000.00	951,275.00	-	-	1,676,275.00
2029	760,000.00	915,025.00	-	-	1,675,025.00
2030	800,000.00	877,025.00	-	-	1,677,025.00
2031	840,000.00	837,025.00	-	-	1,677,025.00
2032	885,000.00	795,025.00	-	-	1,680,025.00
2033	930,000.00	750,775.00	-	-	1,680,775.00
2034	975,000.00	704,275.00	-	-	1,679,275.00
2035	1,030,000.00	650,650.00	-	-	1,680,650.00
2036	1,090,000.00	594,000.00	-	-	1,684,000.00
2037	1,150,000.00	534,050.00	-	-	1,684,050.00
2038	1,215,000.00	470,800.00	-	-	1,685,800.00
2039	1,285,000.00	403,975.00	-	-	1,688,975.00
2040	1,355,000.00	333,300.00	-	-	1,688,300.00
2041	1,435,000.00	258,775.00	-	-	1,693,775.00
2042	1,515,000.00	179,850.00	-	-	1,694,850.00
2043	1,755,000.00	96,525.00	-	-	1,851,525.00
<b>Totals</b>	<b>\$23,310,000.00</b>	<b>\$25,106,062.85</b>	<b>\$690,000.00</b>	<b>\$132,545.83</b>	<b>\$49,238,608.68</b>

## **CHARTER SCHOOL FUNDING IN THE STATE OF NEW YORK**

This section provides a brief overview of New York’s current system for funding charter schools. Prospective purchasers of the Series 2013 Bonds should note that the overview contained below and the summary of relevant New York code provisions noted by cross-reference are provided for the convenience of prospective purchasers but are not and do not purport to be comprehensive. Potential purchasers should note that the law applicable to charter schools in New York has developed over time and is subject to further changes in the future. See “RISK FACTORS - Changes in Law; Annual Appropriation; Inadequate State Education Aid Payments” in this Official Statement.

### **General**

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

### **Charter School Basic Tuition**

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

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

### **Adjusted Average Daily Attendance**

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

### **Enrollment Index**

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

### **Additional Aidable Pupil Units**

Additional Aidable Pupil Units is the sum of: (i) the attendance of summer session pupils multiplied by 12%, and (ii) the "Weighted Pupils With Special Educational Needs." Weighted Pupils With Special Educational Needs is calculated by multiplying pupils with special educational needs by 25%, with the result rounded to the next whole number.

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

In addition to the Charter School Basic Tuition, school districts are required to pay directly to charter schools any federal or state aid attributable to a student with a disability attending the charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. See "APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW - Financing of Charter Schools" in this Official Statement.

State aid attributable to a student with a disability attending a charter school is calculated as the sum of: (i) "Excess Cost Aid" payable to a public school district pursuant to the New York Education Law based on the resident weighted enrollment in the charter school of pupils with disabilities receiving special services or programs provided directly or indirectly by the charter school in the current school year; and (ii) any apportionment payable to such public school district pursuant to the New York Education Law that is based on the cost of special services or programs provided directly or indirectly by the charter school to such pupil in the current school year. Excess Cost Aid is calculated as the product

of: (i) excess cost aid per pupil calculated pursuant to the New York Education Law; (ii) the proportion of the weighting attributable to the student's level of service provided directly or indirectly by the charter school pursuant to the New York Education Law; and (iii) the student's enrollment in such charter school in the current school year. See "APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW - Public School District Payments to Charter Schools" in this Official Statement.

Federal aid attributable to a student with a disability attending a charter school and receiving special education services or programs provided directly or indirectly by the charter school is calculated as follows:

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

(ii) for the second year of operation of the charter school and thereafter, the allocation that would be attributable to the charter school pursuant to 20 U.S.C. 1411 and 1419 for a pupil who is identified as a student with a disability, who is included in a report to the Commissioner of pupils so identified as of December 1st of the Base Year, or for such other pupil count as specified by the federal government.

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

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

The Charter School Basic Tuition is set annually in June. School districts (in the case of the Institution, the New York City Department of Education on behalf of the New York City School District) are required to pay no later than the first business day of July, September, November, January, March and May the appropriate payment amounts as specified in the New York Education Law relating to the Charter School Basic Tuition. The payments are made in equal installments, adjusted for any supplemental payments due or overpayments to be recovered for the prior school year. See "APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW - Financial Obligations of Charter Schools, Public School Districts and Education Department" in this Official Statement.

## **THE SERIES 2013 BONDS**

### **Interest; Maturity; Payment**

The Series 2013A Bonds will be issued in the original aggregate principal amount of \$23,310,000 and the Series 2013B Bonds will be issued in the original aggregate principal amount of \$690,000. The Series 2013 Bonds will bear interest as set forth on the inside front cover hereof. Interest on the Series

2013 Bonds will be payable semi-annually on April 1 and October 1 (each an “Interest Payment Date”) of each year, commencing on October 1, 2013. Interest on the Series 2013 Bonds will be calculated on the basis of a 360-day year with twelve months of thirty days.

The Series 2013 Bonds will be issued in the form of fully registered bonds without coupons in minimum denominations of \$5,000 or any integral multiple of \$5,000 in excess thereof (each an “Authorized Denomination”). The principal of, interest on, and premium, if any, on the Series 2013 Bonds will be payable when due by wire of the Trustee to The Depository Trust Company, New York, New York (“DTC”), which will in turn remit such principal, interest and premium, if any, to Participants, which Participants will in turn remit such principal, interest and premium, if any, to the Beneficial Owners of the Series 2013 Bonds as described in this Official Statement. See “APPENDIX K - BOOK-ENTRY ONLY SYSTEM” in this Official Statement.

In the event the Series 2013 Bonds are not registered in the name of Cede & Co., as nominee of DTC, or another eligible depository as described below, the principal of and premium, if any, on each Series 2013 Bond will be payable only at the designated corporate trust office of the Trustee, as described in the Indenture. Payment of interest on the Series 2013 Bonds will be paid by check or draft mailed on each Interest Payment Date by the Trustee to the registered owners of record appearing on the registration books kept by the Trustee as of the applicable Regular Record Date preceding each Interest Payment Date, or upon written request, as provided in the Indenture, of any registered owner of at least \$1,000,000 in aggregate principal amount of Series 2013 Bonds Outstanding, by electronic wire transfer on each Interest Payment Date to the account at the address designated by such registered owner to the Trustee in writing at least five (5) Business Days prior to the Interest Payment Date, but no later than the Regular Record Date for any interest payment.

The registered owner of any Series 2013 Bond will be the person or persons in whose name or names a Series 2013 Bond is registered on the registration books kept for that purpose by the Trustee in accordance with the terms of the Indenture.

Interest on any Series 2013 Bond that is due and payable but not paid on the date due (“Defaulted Interest”) shall cease to be payable to the owner of such Series 2013 Bond on the relevant regular Record Date and shall be payable to the owner in whose name such Series 2013 Bond is registered at the close of business on a special record date (the “Special Record Date”) for the payment of such Defaulted Interest, which Special Record Date shall be fixed as provided in the Indenture.

### **Redemption of Series 2013 Bonds**

*General Optional Redemption.* The Series 2013B Bonds shall not be subject to optional redemption prior to maturity. The Series 2013A Bonds are subject to optional redemption, on or after April 1, 2023 or any Business Day thereafter, at a redemption price equal to the principal amount of the Series 2013A Bonds to be redeemed plus accrued interest to the redemption date, in whole or in part (but if in part in integral multiples of \$5,000 and in the minimum principal amount of \$5,000) at the option of the Issuer (which option shall be exercised only upon the giving of notice by the Institution of its intention to prepay loan payments due under the Loan Agreement).

The Series 2013B Bonds shall not be subject to optional redemption prior to maturity.

*Mandatory Sinking Fund Installment Redemption.* Series 2013A Bonds maturing on April 1, 2033 and 2043 are subject to mandatory sinking fund redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to one hundred percent (100%) of the principal amount

thereof, together with accrued interest to the date of redemption, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in the Indenture.

***Series 2013A Term Bonds Maturing April 1, 2033***

<b><u>Redemption Date (April 1)</u></b>	<b><u>Principal Amount</u></b>
2024	\$590,000
2025	620,000
2026	655,000
2027	690,000
2028	725,000
2029	760,000
2030	800,000
2031	840,000
2032	885,000
2033*	930,000

*\*Stated Maturity.*

***Series 2013A Term Bonds Maturing April 1, 2043***

<b><u>Redemption Date (April 1)</u></b>	<b><u>Principal Amount</u></b>
2034	\$ 975,000
2035	1,030,000
2036	1,090,000
2037	1,150,000
2038	1,215,000
2039	1,285,000
2040	1,355,000
2041	1,435,000
2042	1,515,000
2043*	1,755,000

*\*Stated Maturity.*

Series 2013B Bonds maturing on April 1, 2018 are subject to mandatory sinking fund redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the date of redemption, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in the Indenture.

***Series 2013B Term Bonds Maturing April 1, 2018***

<u>Redemption Date (April 1)</u>	<u>Principal Amount</u>
2016	\$155,000
2017	445,000
2018*	90,000

\*Stated Maturity.

*Extraordinary Optional Redemption from Insurance and Condemnation Proceeds.* The Series 2013 Bonds are subject to redemption prior to their stated maturity, at the option of the Issuer (which option will be exercised as directed by the Institution) as a whole or in part on any date from moneys required to be transferred from the Renewal Fund to the Redemption Account of the Bond Fund, following the Institution's notice to the Trustee of the occurrence of a Loss Event in accordance with the terms of the Indenture, at a redemption price equal to the principal amount thereof together with interest accrued thereon to the date fixed for redemption, without premium.

*Mandatory Redemption upon Failure to Operate the Facility for the Approved Project Operations, Material Violation of Material Legal Requirements, False Representation or Failure to Maintain Liability Insurance.* The Series 2013 Bonds are subject to mandatory redemption prior to maturity, at the option of the Issuer, as a whole only, in the event (i) the Issuer shall determine that (w) the Institution is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not for the Approved Project Operations, (x) the Institution, any Principal of the Institution or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Institution has committed a material violation of a material Legal Requirement, (y) any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, or (ii) the Institution shall fail to obtain or maintain the liability insurance with respect to the Facility required under the Loan Agreement, and, in the case of clause (i) or (ii) above, the Institution shall fail to cure any such default or failure within the applicable time periods set forth in the Loan Agreement following the receipt by the Institution of written notice of such default or failure from the Issuer and a demand by the Issuer on the Institution to cure the same. Any such redemption shall be made upon notice or waiver of notice to the Bondholders as provided in this Indenture, at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Series 2013 Bonds, together with interest accrued thereon to the date of redemption.

SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE SERIES 2013 BONDS, ALL PAYMENTS OF PRINCIPAL OR REDEMPTION PRICE OF, SINKING FUND INSTALLMENTS FOR, AND INTEREST ON THE SERIES 2013 BONDS WILL BE MADE DIRECTLY TO DTC. DISBURSEMENT OF SUCH PAYMENTS TO DIRECT PARTICIPANTS WILL BE THE RESPONSIBILITY OF DTC, AND DISBURSEMENT OF SUCH PAYMENTS TO BENEFICIAL OWNERS WILL BE THE RESPONSIBILITY OF THE DIRECT PARTICIPANTS AND INDIRECT PARTICIPANTS. SEE "APPENDIX K - BOOK-ENTRY ONLY SYSTEM" IN THIS OFFICIAL STATEMENT.

*Notice of Redemption.* When redemption of any Series 2013 Bonds is requested or required pursuant to the Indenture, notice of redemption of any Series 2013 Bonds will be given by the Trustee in the name of the Issuer. Notice of any redemption of Series 2013 Bonds will be mailed by first class mail

postage prepaid, not less than thirty (30) nor more than sixty (60) days prior to the redemption date to the respective holders thereof at the last addresses appearing on the Series 2013 Bond registration books, but any defect in such notice shall not affect the validity of the proceedings for the redemption of such Series of Series 2013 Bonds with respect to which proper mailing was effected and notice of such redemption will be sent to at least two (2) of the national information services that disseminate redemption notices. Each notice of redemption will contain all of the following information: (a) the date of mailing of such notice; (b) the name of the Series 2013 Bonds and the date of the original issue of such Series 2013 Bonds; (c) the redemption date; (d) the Redemption Price; (e) the dates of maturity of the Series 2013 Bonds to be redeemed; (f) (if less than all of the Series 2013 Bonds of any maturity are to be redeemed) the distinctive numbers of the Series 2013 Bonds of each maturity to be redeemed; (g) (in the case of Series 2013 Bonds redeemed in part only) the interest rates and the respective portions of the principal amount of the Series 2013 Bonds of each maturity to be redeemed; (h) the CUSIP number, if any, and Series 2013 Bond numbers of each maturity of Series 2013 Bonds; (i) the place or places where amounts due upon redemption will be payable including the name, address and telephone number of a contract person at the Trustee; and (j) notice that further interest on such Series 2013 Bonds, if any, will not accrue from and after the designated redemption date.

*Effect of Notice.* Any notice mailed as provided in the Indenture shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice. If any Series 2013 Bond shall not be presented for payment of the Redemption Price within sixty (60) days of the redemption date, the Trustee shall mail a second notice of redemption to such Holder by first class mail, postage prepaid. Any amounts held by the Trustee due to non-presentment of Series 2013 Bonds for payments on or after any redemption date shall be retained by the Trustee for a period of at least one year after the final maturity date of such Series 2013 Bonds.

If notice of redemption shall have been given in the manner provided in the Indenture and as described above, the Series 2013 Bonds called for redemption shall become due and payable on the redemption date, provided, however, that with respect to any optional redemption of the Series 2013 Bonds, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2013 Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem the Series 2013 Bonds. In the event that such notice of optional redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. If a notice of optional redemption shall be unconditional, or if the conditions of a conditional notice of optional redemption shall have been satisfied, then upon presentation and surrender of the Series 2013 Bonds so called for redemption at the place or places of payment, such Series 2013 Bonds shall be redeemed.

So long as DTC is effecting book entry transfers of the Series 2013 Bonds, the Trustee shall provide the notices specified above only to DTC. It is expected that DTC shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of DTC or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Series 2013 Bond (having been mailed notice from the Trustee, DTC, a Participant or otherwise) to notify the Beneficial Owner of the Series 2013 Bond so affected, shall not affect the validity of the redemption of such Series 2013 Bond.

*Funds for Redemption.* Notice having been given in the manner provided in the Indenture and as described above, the Series 2013 Bonds or portions thereof so called for redemption shall become due and

payable on the redemption dates so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date. If, on the redemption date, moneys for the redemption of all the Series 2013 Bonds or portions thereof to be redeemed, together with interest to the redemption date, shall be held by the Paying Agent so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date, (i) interest on the Series 2013 Bonds or portions thereof so called for redemption shall cease to accrue and become payable, (ii) the Series 2013 Bonds or portions thereof so called for redemption shall cease to be entitled to any lien, benefit or security under the Indenture, and (iii) the Holders of the Series 2013 Bonds or portions thereof so called for redemption shall have no rights in respect thereof, except to receive payment of the Redemption Price together with interest accrued to the redemption date. If said moneys shall not be so available on the redemption date, such Series 2013 Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

*Selection of Series 2013 Bonds for Redemption.* In the event of redemption of less than all the Outstanding Bonds of the same series and maturity, the particular Series 2013 Bonds or portions thereof to be redeemed shall be selected by the Trustee in such manner as the Trustee in its discretion may deem fair, except that (i) the Series 2013 Bonds to be redeemed from Sinking Fund Installments shall be redeemed by lot, and (ii) to the extent practicable, the Trustee shall select the Series 2013 Bonds for redemption such that no Series 2013 Bond shall be of a denomination of less than the Authorized Denomination for such Series 2013 Bonds. In the event of redemption of less than all the Outstanding Series 2013 Bonds of the same series stated to mature on different dates, the principal amount of such Series 2013 Bonds to be redeemed shall be applied to such maturity or maturities of the Outstanding Series 2013 Bonds (and within a maturity to such mandatory Sinking Fund Installments) as the Institution shall direct in writing, and by lot within a maturity or, with respect to the Tax-Exempt Bonds, in such other order or such other selection of maturity as in the opinion of Nationally Recognized Bond Counsel is necessary to preserve the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes. The portion of the Series 2013 Bonds to be redeemed in part shall be in the principal amount of the minimum Authorized Denomination thereof or some integral multiple thereof and, in selecting Series 2013 Bonds for redemption, the Trustee shall treat each such Series 2013 Bond as representing that number of Series 2013 Bonds which is obtained by dividing the principal amount of such registered Series 2013 Bond by the minimum Authorized Denomination thereof (referred to below as a "unit") then issuable rounded down to the integral multiple of such minimum Authorized Denomination. If it is determined that one or more, but not all, of the units of principal amount represented by any such Series 2013 Bond is to be called for redemption, then, upon notice of intention to redeem such unit or units, the Holder of such Series 2013 Bond shall forthwith surrender such Series 2013 Bond to the Trustee for (a) payment to such Holder of the Redemption Price of the unit or units of principal amount called for redemption and (b) delivery to such Holder of a new Series 2013 Bond or Series 2013 Bonds in the aggregate unpaid principal amount of the unredeemed balance of the principal amount of such Series 2013 Bond. New Series 2013 Bonds and maturity representing the unredeemed balance of the principal amount of such Series 2013 Bond shall be issued to the registered Holder thereof, without charge therefor. If the Holder of any such Series 2013 Bond of a denomination greater than a unit shall fail to present such Series 2013 Bond to the Trustee for payment and exchange as aforesaid, such Series 2013 Bond shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the unit or units of principal amount called for redemption (and to that extent only).

## **SECURITY FOR THE SERIES 2013 BONDS**

### **Special Limited Revenue Obligations**

THE SERIES 2013 BONDS ARE SPECIAL LIMITED REVENUE OBLIGATIONS OF THE ISSUER, PAYABLE AS TO PRINCIPAL, REDEMPTION PRICE AND INTEREST, SOLELY FROM THE TRUST ESTATE AND CERTAIN FUNDS AND ACCOUNTS ESTABLISHED UNDER THE INDENTURE. NEITHER THE STATE OF NEW YORK NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2013 BONDS. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK, IS PLEDGED TO SUCH PAYMENT OF THE SERIES 2013 BONDS. THE SERIES 2013 BONDS WILL NOT BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE SERIES 2013 BONDS WILL NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE CREDIT OR TAXING POWERS OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK. NO RECOURSE WILL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2013 BONDS AGAINST ANY MEMBER, OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

### **Pledged Revenues**

Pledged Revenues are defined in the Pledge Agreement as all accounts, investment property, payment intangibles, general intangibles, monies, receipts, earnings (inclusive of any investment income), revenues, rentals, income, insurance proceeds, fees, gifts, donations, contributions, charges and other moneys received or receivable by or on behalf of the Institution, including, but without limiting the generality of the foregoing, (i) fees and charges of the Institution including fees or charges derived from the ownership or operation of the Facility, and all rights to receive any of the above, whether in the form of accounts, payment intangibles, contract rights, general intangibles or other rights, and the proceeds of such rights, whether now owned or held or hereafter coming into existence; and (ii) gifts, grants, bequests, donations and contributions heretofore or hereafter made to the Institution; provided, however, that, there shall be expressly excluded from “Pledged Revenues” (w) monies set aside as required by the Charter, (x) Education Aid, and (y) Restricted Gifts. Notwithstanding the foregoing, “Pledged Revenues” shall include all income, distributions, dividends, earnings and revenues derived from Restricted Gifts (unless otherwise prohibited by the terms of a Restricted Gift). Under State law, Education Aid cannot be pledged by the Institution to the Series 2013 Bonds.

### **The Custody Agreement**

*Generally.* Pursuant to the Custody Agreement, the Institution has covenanted to pay or cause to be paid directly to the Custodian all payments of Education Aid received by the Institution in connection with the operation of the Facility.

The Charter Schools Act of the New York Education Law prohibits a charter school from pledging or assigning Education Aid in connection with the construction, acquisition, reconstruction, rehabilitation or improvement of a school facility. The Custody Agreement provides that the Custodian shall act as an agent of the Institution and requires that, upon receipt of any such payments, the Custodian shall immediately transfer to the Trustee the amount of monies described in the then-applicable Custody

Agreement Notice, along with any deficiency in amounts described in prior Custody Agreement Notices, which Custody Agreement Notices shall certify the amounts necessary to pay debt service on the Series 2013 Bonds and amounts required to be deposited in the Debt Service Reserve Fund. Under the Custody Agreement, the Institution is required to timely notify the State Commissioner of Education of any failure of the New York City Department of Education, on behalf of the New York City School District to make required Education Aid payments, and is required to cause the State Comptroller to pay any Education Aid payments payable by the State Comptroller to the Custodian. Notwithstanding the foregoing, in the event that such Education Aid payments are paid by the State Comptroller to the Institution, as opposed to the Custodian, the Institution shall immediately transfer such amounts to the Custodian to be applied in accordance with the provisions of the Custody Agreement. Although the Institution is entering into the Custody Agreement, such amounts held by the Custodian that are derived from Education Aid are not Pledged Revenues under the Pledge Agreement and are not pledged by the Institution to the payment of the Series 2013 Bonds because Education Aid cannot be pledged under State law.

As discussed below, the Institution will make loan payments under the Loan Agreement on the 15th day of each January, March, May, July, September, and November, commencing May 15, 2013 (each a “Loan Payment Date”).

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

(i) The Institution directs the Custodian to establish an account called Bronx Charter School for Excellence Custody Account (the “Custody Account”) for the deposit of moneys received pursuant to the Custody Agreement.

(ii) The Custodian is required to immediately deposit all moneys received pursuant to the Custody Agreement into the Custody Account.

(iii) Upon receipt and deposit of any moneys pursuant to the Custody Agreement, the Custodian is required to immediately transfer to the Trustee the total amount of money described in the then applicable Custody Agreement Notices, along with any deficiency in amounts described in prior Custody Agreement Notices, which are required to include any amounts necessary to fund deficiencies in the Bond Fund, the Debt Service Reserve Fund, and the Repair and Replacement Reserve Fund to the extent necessary, along with all other amounts previously transferred with respect thereto to fully fund the requirements described therein (the “Current Funding Amount”).

(iv) In the event that the Institution has incurred Additional Indebtedness satisfying the requirements of the Loan Agreement, the Custodian is required to, in addition to the payments required to be made to the Trustee in respect of the Bonds, transfer to the issuer of, or the trustee for, any such Additional Bonds, as the case may be, any amounts due and payable with respect to such Additional Bonds. The Custody Agreement provides that, in the event that the Custodian is required to transfer moneys held by it to two or more recipients (excluding the Institution) and the aggregate amount then on deposit in the Custody Account is not sufficient to pay such recipients in full, the Custodian is required to transfer the available amount to such recipients on a pro rata basis.

(v) The Custodian is required to transfer moneys, if any, remaining credited to the Custody Account after the completion of all transfers described in the then applicable Custody Agreement Notice to the Institution automatically, unless the Custodian receives the written instructions from the Institution to the contrary.

(vi) The Custodian is required to immediately notify the Trustee and the Institution of any failure to receive payment of Education Aid within one Business Day of an Education Aid payment date or, with respect to any payment of federally funded other education aid, within one Business Day of the date such payment is due.

*Flow of Funds under the Custody Agreement.* Under the Custody Agreement, the Trustee must prepare a Custody Agreement Notice, with respect to each Education Aid payment date, through and including the calendar day preceding each subsequent Education Aid payment date (each an “Education Aid Funding Period”), certifying the respective aggregate amounts to be transferred by the Custodian to the Trustee during the applicable Education Aid Funding Period with respect to each of the following:

(i) for deposit to the Bond Fund and the Interest Account and Principal Account therein, as of each Loan Payment Date, commencing May 15, 2013, an amount equal to one-third (1/3) of the amount of interest which will become due and payable on the Series 2013 Bonds on the next succeeding Interest Payment Date (after taking into account capitalized interest or any other amounts on deposit in the Interest Account of the Bond Fund, and as shall be available to pay interest on the Series 2013 Bonds on such next succeeding Interest Payment Date) and an amount equal to one-sixth (1/6) of the amount of the principal of the Bonds Outstanding becoming due (other than by reason of mandatory Sinking Fund Installments) within the next succeeding thirteen (13) month period;

(ii) for deposit to the Bond Fund and the Sinking Fund Installment Account therein, as of each Loan Payment Date, commencing May 15, 2015, with respect to Sinking Fund Installment payments due on the Series 2013 Bonds, an amount equal to one-sixth (1/6) of the amount of the Sinking Fund Installment on the Series 2013 Bonds first becoming due within the next succeeding thirteen (13) month period (or, if the first Sinking Fund Installment payment date following the Closing Date shall be on a date sooner than thirteen (13) calendar months following the Closing Date, then, with respect to such first Sinking Fund Installment, an amount equal to the quotient obtained by dividing such Sinking Fund Installment by the number of Loan Payment Dates between the Closing Date and such first Sinking Fund Installment payment date), and thereafter for each Sinking Fund Installment payment date commencing on that Loan Payment Date as shall precede such Sinking Fund Installment payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-sixth (1/6) of the amount of the Sinking Fund Installment of the Initial Bonds Outstanding becoming due within such next succeeding thirteen (13) month period, provided that in any event the aggregate amount so paid with respect to Sinking Fund Installments on the Initial Bonds on or before the Loan Payment Date immediately preceding a Sinking Fund Installment payment date of the Initial Bonds shall be an amount sufficient to pay the Sinking Fund Installment of the Initial Bonds Outstanding becoming due on such next succeeding Sinking Fund Installment payment date;

(iii) on each redemption date, with respect to the Redemption Price (other than by Sinking Fund Installments) due and payable on the Series 2013 Bonds, whether as an optional or a mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Series 2013 Bonds being redeemed on such redemption date; and

(iv) in the event that a withdrawal has been made from the Debt Service Reserve Fund which results in a deficiency in the amount required to be on deposit to the credit of the Debt Service Reserve Fund, the Trustee shall include in the Custody Agreement Notice such amount as shall be necessary to replenish such withdrawal from the Debt Service Reserve Fund over a six-month period payable on the same dates as Loan Payments, each such payment to be in an amount equal to one-third (1/3) of the

amount of the deficiency, commencing immediately succeeding the date of receipt by the Institution from the Trustee of notice of such deficiency in the Debt Service Reserve Fund;

(v) to the Rebate Fund any amounts required under the Indenture to be rebated to the Federal government pursuant to the Indenture of the Tax Certificate;

(vi) as required by the Indenture, an amount equal to the Issuer's Annual Administrative fee due, if any;

(vii) as required by the Indenture, an amount equal to the annual Trustee fee due, if any;

(viii) to the CSFP Fee Account of the CSFP Fund to fund the pro-rata requirement for an annual CSFP servicing fee of 0.15% per annum (calculated on the Outstanding balance of the Series 2013 Bonds);

(ix) commencing on the Loan Payment Date following the Completion Date, the Repair and Replacement Reserve Fund Deposit to be deposited in the Repair and Replacement Reserve Fund under the Indenture; and

(x) upon receipt by the Institution of notice from the Trustee pursuant to the Indenture that the amount on deposit in the Repair and Replacement Reserve Fund shall be less than the Repair and Replacement Reserve Fund Requirement, the Institution shall pay to the Trustee for deposit in the Repair and Replacement Reserve Fund on the first day of the month immediately following the receipt by the Institution of notice of such deficiency, and on the first day of the month for each of the three (3) succeeding years, or over such longer time period as shall be consented to in writing by the Majority Holders, an amount equal to one eighteenth (1/18) of such deficiency in the Repair and Replacement Reserve Fund.

## **The Loan Agreement**

Under the Loan Agreement, the Issuer agrees to issue the Series 2013 Bonds and to lend the proceeds thereof to the Institution to finance the Project, and the Institution is obligated unconditionally to repay the loan in amounts sufficient, together with available funds held under the Indenture, to provide for the timely payment of the principal of, premium, if any, and interest on the Series 2013 Bonds when due (whether by maturity, mandatory sinking fund redemption or acceleration) and to perform certain other obligations set forth therein. Among other things, the Institution will covenant not to grant any liens (other than the lien effected by the Loan Agreement and Permitted Encumbrances) on all or any portion of the Facility or the Pledged Revenues. The obligation of the Institution to make Loan Payments under the Loan Agreement sufficient to pay the Series 2013 Bonds is an absolute and unconditional obligation of the Institution; provided, however, that the ability of the Institution to generate additional revenues is limited in the event Education Aid payments are insufficient. Under the Loan Agreement, the Loan Payment Dates are the 15th day of each January, March, May, July, September, and November unless the payment dates for Education Aid are changed by the State.

Pursuant to the terms of the Loan Agreement, the Mortgage, and certain financing statements, the Institution will (a) grant to the Issuer a Mortgage on the Facility, subject to Permitted Encumbrances; and (b) grant to the Trustee a security interest, with respect to the Pledged Revenues governed by the Uniform Commercial Code and to the extent permitted by law, in the Pledged Revenues received by the Trustee. The liens and security interests created by the Indenture, the Loan Agreement and the Mortgage are for the equal and ratable benefit of the Series 2013 Bonds. The Loan Agreement and the Mortgage contain the general liability insurance and construction insurance requirements for the Institution. See "RISK

FACTORS” in this Official Statement for a discussion of certain limitations on the enforceability of the security for the Series 2013 Bonds. See “APPENDIX G - SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT” in this Official Statement.

***Additional Indebtedness.*** The Loan Agreement imposes certain restrictions on the Institution’s actions for the benefit of the Issuer, the Trustee, and the Beneficial Owners of the Series 2013 Bonds. The Loan Agreement provides that the Institution is required to make designated payments to the Trustee for deposit into the Bond Fund in amounts sufficient to pay the principal of and interest on the Series 2013 Bonds when due.

***Short-Term Indebtedness.*** The Institution may incur Short-Term Indebtedness in an amount that does not exceed the lesser of (i) five percent (5%) of the Revenue of the Institution for the most recently completed fiscal year, or (ii) \$500,000. Any Short-Term Indebtedness incurred by the Institution must be subordinate to the lien of the Bondholders and may not be secured by any security interest in or lien against the Facility.

***Long-Term Indebtedness.*** Pursuant to the Loan Agreement, the Institution may incur Long-Term Indebtedness upon the satisfaction of certain requirements, including furnishing to the Trustee: (1) (i) an opinion or report of an independent certified public accountant to the effect that the Net Income Available for Debt Service for the Fiscal Year immediately preceding the date on which such Long-Term Indebtedness is to be incurred for which audited financial statements are available, plus Eliminated Expenses, totals at least 100% of maximum Principal and Interest Requirements on Long-Term Indebtedness (including such requirements for the proposed Long-Term Indebtedness but excluding such requirements for any Indebtedness to be refinanced thereby) payable in any Fiscal Year, and (ii) a certificate of the chief financial officer of the School, verified by an Independent Consultant, to the effect that Net Income Available for Debt Service for the next Fiscal Year beginning after the Fiscal Year in which any improvements being financed by such proposed Long-Term Indebtedness are to be placed in service, or, if no improvements are to be financed thereby, beginning with the first Fiscal Year after the Fiscal Year in which the proposed Long-Term Indebtedness is to be incurred, will be at least 125% of the maximum Principal and Interest Requirements on Long-Term Indebtedness (including such requirements for the proposed Long-Term Indebtedness but excluding such requirements for any then outstanding Long-Term Indebtedness or Bonds to be refinanced by the proposed Long-Term Indebtedness) for each Fiscal Year beginning with the second Fiscal Year after the Fiscal Year in which any improvements being financed by such proposed Long-Term Indebtedness are to be placed in service, or, if no improvements are to be financed thereby, beginning with the first Fiscal Year after the Fiscal Year in which the proposed Long-Term Indebtedness is to be incurred, but before the final stated maturity of all then Outstanding Bonds; or (2) the prior written consent of the Majority Bondholder to the incurrence of such Long-Term Indebtedness. The Institution may only incur Long-Term Indebtedness if the incurrence of such Long-Term Indebtedness will not cause the Rating Agency to lower or withdraw its rating on Outstanding Bonds.

Notwithstanding the requirements of the prior paragraph, the Institution may incur Long-Term Indebtedness: (A) if and to the extent necessary to provide additional funds for completing payment of the cost of any improvements or alterations for which any Long-Term Indebtedness shall have been incurred; or (B) for refinancing the principal amount of any outstanding Long-Term Indebtedness provided the Principal and Interest Requirements on Long-Term Indebtedness (including such requirements for the proposed Long-Term Indebtedness but excluding such requirements for the Long-Term Indebtedness to be refinanced thereby) for each Fiscal Year after the Fiscal Year in which the proposed Long-Term Indebtedness is to be incurred but before the final Stated Maturity of all then Outstanding Bonds will not

exceed the amount of Principal and Interest Requirements on Long-Term Indebtedness that would have been available for each such Fiscal Year had such proposed Long-Term Indebtedness not been incurred.

*Purchase Money Indebtedness.* The Institution may also incur Long-Term Indebtedness without regard to the limitations set forth in the Indenture and the Loan Agreement if: (i) such Long-Term Indebtedness is secured solely by a security interest in personal property financed with such Long-Term Indebtedness; (ii) the aggregate payments required to be made by the Institution in each Fiscal Year with respect to all Long-Term Indebtedness incurred as such purchase money indebtedness does not exceed five percent (5%) of the Gross Revenues of the Institution, as defined in the most recent audited financial statements of the Institution, determined as of the date such Long-Term Indebtedness is to be incurred; (iii) such Long-Term Indebtedness amortizes over a period of not more than sixty (60) months; and (iv) the Institution certifies that the incurrence of such Long-Term Indebtedness will not cause it to be in violation of the Operating Covenants of the Institution.

*Various Operating Covenants of the Institution.* The Loan Agreement also contains other financial requirements and covenants that the Institution must comply with in the future.

*Operating Fund Balance Covenant.* Pursuant to the terms of the Loan Agreement, the Institution covenants and agrees to maintain an unrestricted Cash on Hand in its operation fund equal to or greater than thirty (30) Days Cash on Hand on June 30 of each year commencing June 30, 2013. “Days Cash on Hand” means (a) Cash on Hand of the Institution, as shown on the financial statements for each Fiscal Year divided by (b) the quotient of Operating Expenses, as shown on the financial statements for such Fiscal Year, divided by 365.

The Cash on Hand required above will be tested on June 30 of each year, commencing June 30, 2013. The Institution will provide the Trustee with a Certification no later than the earlier of (i) December 1 or (ii) two weeks after the Board of Trustees of the Institution approves and receives the Institution’s audit for each Fiscal Year that the operating fund balance required above has been met. Amounts on deposit in such operating fund may be used to pay Operating Expenses or may be used for any other lawful purpose. The foregoing is subject to the qualification that if applicable state or federal laws or regulations, or the rules and regulations of agencies having jurisdiction, shall not permit the Institution to maintain such level of Cash on Hand, then the Institution shall, in conformity with the then prevailing laws, rules or regulations, maintain its Cash on Hand equal to the maximum permissible level.

If the Cash on Hand for any testing date is less than thirty (30) Days Cash on Hand, then, upon the written direction of a majority of the Beneficial Owners, the Institution will promptly employ an Independent Consultant to review and analyze the operations and administration of the Institution, inspect the Facility, and submit to the Institution and Trustee written reports, and make such recommendations as to the operation and administration of the Institution as such Independent Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The Institution agrees to consider any recommendations by the Independent Consultant and, to the fullest extent practicable, to adopt and carry out such recommendations. So long as the Institution is otherwise in full compliance with its obligations under the Loan Agreement, including following, to the fullest extent practicable, the recommendations of the Independent Consultant, it shall not constitute an Event of Default if the Cash on Hand for any testing date is less than thirty (30) Days Cash on Hand.

*Days Cash on Hand and Debt Service Coverage Ratio Covenants.* In addition to the operating reserve balance covenant discussed above, the Institution shall also comply with either of the following covenants: (i) maintain sixty (60) Days Cash on Hand on June 30 of each year commencing June 30, 2015 and Net Income Available for Debt Service in each Fiscal Year, commencing with the Fiscal Year ending

June 30, 2015, that will be at least 100% of the Principal and Interest Requirements on Long-Term Indebtedness during such Fiscal Year; or (ii) if the Institution maintains less than sixty (60) Days Cash on Hand, then the Institution will maintain a Net Income Available for Debt Service in each Fiscal Year, commencing with the Fiscal Year ending June 30, 2015, that will be at least 110% of the Principal and Interest Requirements on Long-Term Indebtedness during such Fiscal Year.

If the Institution is maintaining sixty (60) Days Cash on Hand on June 30 of each year commencing June 30, 2015, then the Institution will budget and set expenses and will operate its Facility, subject to applicable requirements or restrictions imposed by law, such that the Institution's Net Income Available for Debt Service in each Fiscal Year, commencing with the Fiscal Year ending June 30, 2015, will be at least 100% of the Principal and Interest Requirements on Long-Term Indebtedness during such Fiscal Year. If the Institution is meeting the operating reserve balance covenant discussed above, but the Institution has not maintained or does not budget that the Institution will maintain sixty (60) Days Cash on Hand for the next Fiscal Year, then the Institution will budget and set expenses and will operate its Facility, subject to applicable requirements or restrictions imposed by law, such that the Institution's Net Income Available for Debt Service in each Fiscal Year, commencing with the Fiscal Year ending June 30, 2015, will be at least 110% of the Principal and Interest Requirements on Long-Term Indebtedness during such Fiscal Year.

If (i) the Institution does not maintain thirty (30) Days Cash on Hand and the Net Income Available for Debt Service for any Fiscal Year ending on or after June 30, 2015, is less than 110% of the Principal and Interest Requirements on Long-Term Indebtedness during such Fiscal Year, or (ii) the Institution is maintaining sixty (60) Days Cash on Hand on June 30 of each year commencing June 30, 2015, but, the Net Income Available for Debt Service for any Fiscal Year ending on or after June 30, 2015, is less than 100% of the Principal and Interest Requirements on Long-Term Indebtedness during such Fiscal Year, then, upon the written direction of the Majority Bondholder, the Institution will promptly employ an Independent Consultant to review and analyze the operations and administration of the Institution, inspect the Facility, and submit to the Institution and Trustee written reports, and make such recommendations as to the operation and administration of the Institution as such Independent Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The Institution agrees to consider any recommendations by the Independent Consultant and, to the fullest extent practicable, to adopt and carry out such recommendations. Such Independent Consultant shall be acceptable to the Trustee.

So long as the Institution is otherwise in full compliance with its obligations under the Loan Agreement, including following, to the fullest extent practicable, the recommendations of the Independent Consultant, it shall not constitute an Event of Default if the Net Income Available for Debt Service for any Fiscal Year ending on or after June 30, 2015, is less than 110% of the Principal and Interest Requirements on Long-Term Indebtedness for such Fiscal Year (as evidenced by the Institution's audited financial statements for such Fiscal Year).

Notwithstanding the immediately preceding paragraph, regardless of whether the Institution has retained an Independent Consultant, if at the end of the Fiscal Year 2015 or any subsequent Fiscal Year, the Net Income Available for Debt Service as of the end of such Fiscal Year is less than 100% of the Principal and Interest Requirements on Long-Term Indebtedness for such Fiscal Year (as evidenced by the Institution's audited financial statements for such Fiscal Year), then a Majority Bondholder may either (y) direct the Trustee to declare an Event of Default or (z) direct the Trustee to exercise one or more of the remedies permitted under the Loan Agreement and the Indenture. In the absence of Majority Bondholder direction, the Trustee may take the action described in clauses (y) and (z) of the preceding sentence.

## The Indenture

The Series 2013 Bonds are to be issued pursuant to the Indenture and will be equally and ratably secured thereby and by an assignment of certain of the Issuer's rights under the Loan Agreement. The Indenture provides that all Series 2013 Bonds issued thereunder shall be special limited revenue obligations of the Issuer, payable solely from and secured solely by the Trust Estate, including certain payments made by the Institution under the Loan Agreement and the Funds (other than the Rebate Fund and the funds in the CSFP Fund) established under the Indenture. As security for its obligations under the Indenture, the Issuer will assign to the Trustee certain payments of the Institution received or receivable by the Issuer pursuant to the Loan Agreement, and its rights and interests in all Funds (other than the Rebate Fund and the CSFP Fund) held by the Trustee under the Indenture and all income derived from the investment of such funds. The Trustee will have a Mortgage lien on the Facility, and is also entitled to the benefit of a covenant by the Institution not to further encumber the Facility other than for certain Permitted Encumbrances. See "APPENDIX H - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST" in this Official Statement.

Under the Indenture, there shall be deposited in the Bond Fund as and when received, all Loan Payments and other amounts required to be paid by the Institution to the Trustee and all other money deposited into the Bond Fund pursuant to the Loan Agreement or the Indenture.

*Flow of Funds.* All funds received by the Trustee pursuant to the Loan Agreement and the Custody Agreement shall be applied in the following priority:

*First*, to the Interest Account, the Principal Account, the Sinking Fund Installment Account and the Redemption Account, respectively;

*Second*, to the applicable account of the Debt Service Reserve Fund to replenish any deficiencies therein;

*Third*, to the Rebate Fund to pay any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Certificate;

*Fourth*, an amount equal to the Issuer's Annual Administrative fee due, if any;

*Fifth*, an amount equal to the annual Trustee fee due, if any;

*Sixth*, to the CSFP Fee Account of the CSFP Fund to fund the pro-rata requirement for an annual CSFP servicing fee of 0.15% per annum (calculated on the Outstanding balance of the Series 2013 Bonds);

*Seventh*, an amount equal to the Repair and Replacement Reserve Fund Deposit or the monthly amount required in connection with the replenishment of any deficiency in the Repair and Replacement Reserve Fund; and

*Eighth*, to the Institution to be used for any authorized purposes under the Loan Agreement and Indenture.

## **Acceleration**

Upon the occurrence of certain events, payment of the principal of and accrued interest on the Series 2013 Bonds may be accelerated under the Indenture. See “RISK FACTORS”; “APPENDIX G - SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT – Events of Default” and “- Remedies on Default”; and “APPENDIX H - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST - Events of Default; Acceleration of Due Date” and “- Enforcement of Remedies” in this Official Statement.

## **2013 CSFP Subaccount and 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund**

On the date of issuance of the Series 2013 Bonds, CSFP shall fund the Deposit (\$1,540,000) in the 2013 CSFP Subaccount of the Debt Service Reserve Fund created under the Indenture and held by the Trustee to secure the Series 2013 Bonds. Thereafter, investment income on amounts in the 2013 CSFP Subaccount of the Debt Service Reserve Fund shall be paid to CSFP. The remainder of the Debt Service Reserve Fund Requirement for the Series 2013 Bonds will be funded to the 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund from the proceeds of the Series 2013 Bonds.

Amounts in the 2013 CSFP Subaccount of the Debt Service Reserve Fund may be used by the Trustee (after amounts in the 2013 Non-CSFP Account of the Debt Service Reserve Fund are used) to pay principal and interest on the Series 2013 Bonds in the event money provided in the Bond Fund are insufficient for such purpose. Amounts in the Debt Service Reserve Fund are valued semi-annually as provided in the Indenture. The Institution is required to cure any deficiency in the Debt Service Reserve Fund that occurs as a result of a change in valuation by the next Education Aid payment date. If the value of the cash and the Permitted Investments in the Debt Service Reserve Fund falls below the Debt Series Reserve Fund Requirement as of such valuation date, the Trustee is required to transfer available amounts from the Revenue Fund until the amount therein is equal to the Debt Service Reserve Fund Requirement. If amounts in the 2013 CSFP Subaccount of the Debt Service Reserve Fund are in excess of \$1,540,000, such excess amount will be paid to CSFP. See “APPENDIX H - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST” in this Official Statement.

## **Mortgage**

Pursuant to the Mortgage, to be executed by the Institution in favor of the Issuer and Trustee, as beneficiaries, and assigned by the Issuer to the Trustee, the payment of the principal of, premium, if any, and interest on the Series 2013 Bonds will be secured by a security interest in the Facility, subject to certain Permitted Encumbrances described in the Mortgage. Under the Mortgage, the Institution also will grant a security interest in all leases and rents with respect to the Facility. The Mortgage also contains the property and casualty insurance requirements for the Facility.

## **Defeasance**

Upon certain terms and conditions specified in the Indenture, including provision for the payment of such Bonds, the Series 2013 Bonds or portions thereof will be deemed to be paid and the security provided in the Indenture and the Mortgage may be discharged prior to maturity or redemption of the Series 2013 Bonds. In that case, the Series 2013 Bonds will be secured solely by the cash and securities deposited with the Trustee for such purpose. See “APPENDIX H - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST” in this Official Statement.

## **RISK FACTORS**

No person should purchase any Series 2013 Bonds without carefully reviewing the following information, which summarizes some, but not all, factors that should be carefully considered before such purchase.

### **Nature of Special, Limited Obligations**

THE SERIES 2013 BONDS ARE SPECIAL LIMITED REVENUE OBLIGATIONS OF THE ISSUER, PAYABLE AS TO PRINCIPAL, REDEMPTION PRICE AND INTEREST, SOLELY FROM THE TRUST ESTATE AND CERTAIN FUNDS AND ACCOUNTS ESTABLISHED UNDER THE INDENTURE. NEITHER THE STATE OF NEW YORK NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2013 BONDS. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK, IS PLEDGED TO SUCH PAYMENT OF THE SERIES 2013 BONDS. THE SERIES 2013 BONDS WILL NOT BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE SERIES 2013 BONDS WILL NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE CREDIT OR TAXING POWERS OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK. NO RECOURSE WILL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2013 BONDS AGAINST ANY MEMBER, OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

### **Dependence on Institution's Ability to Pay Loan Payments**

Payment of principal of, premium, if any, and interest on, the Series 2013 Bonds is intended to be made from Loan Payments made by the Institution under the Loan Agreement, except to the extent payment is intended to be made from other amounts held under the Indenture such as Series 2013 Bond proceeds or investment earnings. The ability of the Institution to make Loan Payments will depend on the Institution's ability to generate revenues sufficient to pay the Loan Payments from the operation of the Facility, which is largely dependent on enrollment and the resulting Education Aid payments. See "APPENDIX A - BRONX CHARTER SCHOOL FOR EXCELLENCE" and "APPENDIX C - EXAMINED FINANCIAL FORECAST" in this Official Statement. The Institution's general revenues are a combination of state payments provided under several State and federal programs, including the Education Aid payments.

Future revenues and expenditures of the Institution will be subject to conditions in the future which cannot be determined. Prior revenues and expenditures of the Institution are no guaranty as to future revenues and expenditures of the Institution. Any event that would cause a delay, reduction or elimination of Education Aid would have a material adverse effect on the ability of the Institution to make payments under the Loan Agreement representing debt service on the Series 2013 Bonds.

### **No Taxing Authority; Dependence on Education Aid Payments**

The Institution does not possess any taxing authority and is substantially dependent upon the State to continue to provide funding for public charter schools. The obligation of the State under the Charter and State law to fund the Institution is conditioned upon the availability of funds appropriated or

allocated for the payment of such obligation. In the event the State were to withhold the payment of money from the Institution for any reason, even a reason that is ultimately determined to be invalid or unlawful, it is likely that the Institution would be forced to cease operations.

### **Failure of New York City Department of Education to Make Education Aid Payments to the Institution**

The regulations adopted by the New York State Commissioner of Education (the “Commissioner”) provide that a charter school shall notify the Commissioner in the event that a school district (the New York City Department of Education on behalf of the New York City School District with respect to the Institution) fails to make a required bi-monthly payment of Education Aid to a charter schools such as the Institution. Such notice shall be given subsequent to the date a bi-monthly payment is due, but in no event later than May 31 of the school year in which such payments are due. Upon receipt of such notice, the Commissioner must certify to the State Comptroller (the “Comptroller”) the amount of the unpaid obligation of the school district, which said amount shall be deducted from any Education Aid payment due to such school district (the New York City Department of Education on behalf of the New York City School District with respect to the Institution) and instead will be paid directly by the Comptroller to the Institution. There can be no assurance of the timing of receipt of any such amounts so paid by the Comptroller.

### **Delay in or Termination or Reduction of Education Aid**

Even though New York State is obligated under its Constitution to provide for the maintenance and support of a system of free common schools, it is not obligated either to continue to authorize the operation of charter schools or to continue its current system of Education Aid. Any change in the Act or in the provisions of the New York State Education Law relating to the appropriation of Education Aid or failure by the State Legislature to appropriate funds sufficient to fund the operation of charter schools could have a material adverse effect on the ability of the Institution to make the loan payments required under the Loan Agreement.

Although State law prescribes a detailed process applicable to the adoption by the State of its annual budget, the annual budgetary process has resulted in recent years in the adoption of annual budgets later, and in some instances substantially later, than April 1, which is the start of the State’s fiscal year. No assurance can be given as to the date of adoption of future annual budgets or as to the availability of funds for public education purposes while the annual budget is pending. In addition, the State has had well publicized budget issues and deficits and such State budgetary pressures could continue and cause revisions to the funding of charter schools in the State.

### **Examined Financial Forecast**

The examined financial forecast (the “Forecast”) attached hereto in “APPENDIX C - EXAMINED FINANCIAL FORECAST” prepared by the Institution and examined by Croskey Lanni, P.C., Rochester, Michigan, for the six years ending June 30, 2013 through June 30, 2018, is based upon assumptions made by the Institution. The Forecast has not been updated to reflect the final pricing of the Series 2013 Bonds. No assurance can be given that the results described in the Forecast will be achieved. The Institution does not intend to issue an updated Forecast and, accordingly, there are risks inherent in using the Forecast in the future as it becomes outdated. The Forecast is only for fiscal years ending June 30, 2013 through June 30, 2018 and does not cover the entire period during which the Series 2013 Bonds may be outstanding. See “THE EXAMINED FINANCIAL FORECAST” in this Official Statement.

No guaranty can be made that the Forecast will correspond with the results actually achieved in the future by the Institution because there is no assurance that actual events will correspond with the assumptions made by the Institution. Actual operating results of the Institution may be affected by many factors, including, but not limited to, increased costs, changes in demographic trends, and local and general economic conditions. The Forecast relates to the projected operations of the Institution and does not include any information regarding Friends of BCSE. The Forecast, which appears in “APPENDIX C - EXAMINED FINANCIAL FORECAST” in this Official Statement, should be read in its entirety.

*McGladrey LLP has not performed any procedures relating to the Institution’s Forecast.*

### **Termination or Revocation of Charter**

Pursuant to its terms, the Charter is for a five-year term unless it is terminated by either the Institution’s Board of Trustees or the Board of Regents for the grounds set forth in the Charter or the Charter Schools Act. For more information regarding conditions under which the Charter may be revoked, the revocation procedure, and other information regarding the Charter and the Charter Schools Act, see “CHARTER SCHOOL FUNDING IN THE STATE OF NEW YORK,” “APPENDIX A - BRONX CHARTER SCHOOL FOR EXCELLENCE - Charter,” “APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW” in this Official Statement.

While the Institution believes that it is in good standing with the Authorizer and is in material compliance with the Charter, no assurance can be given that the Institution will be able to maintain such good standing in the future. In addition, even though the Institution does not anticipate any non-renewal or revocation of its Charter, there can be no assurance that the Authorizer will not revoke the Charter in the future.

### **Limitation of Pledge**

The Institution may not legally assign or pledge any interest in public education aid payable to the Institution pursuant to the Act to secure its obligations under the Loan Agreement and with respect to the Series 2013 Bonds. At closing, the Institution shall give an irrevocable direction to the Custodian to apply Education Aid received by the Institution or the Custodian as directed by the Trustee to make deposits in the Bond Fund sufficient to make Loan Payments to become due and to make deposits in the Debt Service Reserve Fund, and to pay the balance remaining to, or upon the order of, the Institution.

### **Factors Associated with Education**

There are a number of factors affecting schools in general, including the Institution, that could have an adverse effect on the Institution’s financial position and its ability to make the payments required under the Loan Agreement. These factors include, but are not limited to (i) the ability to attract a sufficient number of students; (ii) future legislation and regulations affecting charter schools and the educational system in general; (iii) increasing costs of compliance with federal or State regulatory laws or regulations, including, without limitation, laws or regulations concerning environmental quality, work safety and accommodating persons with disabilities; (iv) increased costs of attracting and retaining or a decreased availability of a sufficient number of teachers, including as related to any unionization of the Institution’s work force with consequent impact on wage scales and operating costs of the Institution; (v) cost and availability of insurance for charter schools in the State; and (vi) changes in existing statutes pertaining to the powers of the Institution and legislation or regulations which may affect program funding. The Institution cannot assess or predict the ultimate effect of these factors on its operations or the financial results of operations.

## **Competition for Students**

The Institution will be competing for students primarily within the geographic area of New York City Community School District No. 11 (the “11<sup>th</sup> District”) and other surrounding districts, and with other public schools and charter schools within the Bronx, New York. The 11<sup>th</sup> District serves approximately 38,336 students. Currently, there are five (5) public schools within approximately a mile and a half of the Institution. There are currently ten (10) other charter schools located within seven (7) miles of the Institution, nine (9) of which have over-lapping grades with the Institution. In the view of the Institution, these schools are representative of the schools with which the Institution competes for students. In addition to charter schools and public schools in the 11<sup>th</sup> District, there are three private schools within 8 miles of the Institution. See “APPENDIX A - BRONX CHARTER SCHOOL FOR EXCELLENCE - Service Area” and “- Competing Schools” in this Official Statement. No assurance can be given that the Institution will attract and retain the number of students that are needed to produce the Pledged Revenues that are necessary to pay the principal of and interest on the Series 2013 Bonds, or that additional schools will not be created in or near the Institution’s service area.

## **Foreclosure Delays and Deficiency**

Should Loan Payments be insufficient to pay the principal of and interest on the Series 2013 Bonds, the Trustee may seek to foreclose on or sell the Facility securing the Series 2013 Bonds. However, no assurance can be given that the value of the Facility at the time of such foreclosure or sale would be sufficient to meet all remaining principal and interest payments on the Series 2013 Bonds. In addition, the time necessary to institute and complete such proceedings could substantially delay receipt of funds from a foreclosure or sale. There could also be delays in regaining possession of the Facility from the Institution in the event of any default or dispute under the Loan Agreement. Further, the facilities owned by the Institution are composed of special-purpose facilities which are not suitable for industrial or commercial use; consequently, it may be difficult to find a buyer or lessee for such facilities if it was necessary for the Institution to raise funds by selling any of its assets in order to repay its indebtedness.

## **Effect of Federal Bankruptcy Laws on Security for the Series 2013 Bonds**

Bankruptcy proceedings and equity principles may delay or otherwise adversely affect the enforcement of Bondholders’ rights in the property granted as security for the Series 2013 Bonds. Furthermore, if the security for the Series 2013 Bonds is inadequate for payment in full of the Series 2013 Bonds, bankruptcy proceedings and equity principles may also limit any attempt by the Trustee to seek payment from other property of the Institution, if any. See “ENFORCEABILITY OF OBLIGATIONS” in this Official Statement. Also, federal bankruptcy law permits adoption of a reorganization plan, even though it has not been accepted by the holders of a majority in the aggregate principal amount of the Series 2013 Bonds, if the Bondholders are provided with the benefit of their original lien or the “indubitable equivalent.” In addition, if the bankruptcy court concludes that the Bondholders have “adequate protection,” it may (i) substitute other security subject to the lien of the Bondholders, and (ii) subordinate the lien of the Bondholders (a) to claims by persons supplying goods and services to the Institution after bankruptcy and (b) to the administrative expenses of the bankruptcy proceeding. The bankruptcy court may also have the power to invalidate certain provisions of the Mortgage that make bankruptcy and related proceedings by the Institution an event of default thereunder.

## **Key Personnel**

The Institution's creation, curriculum, educational philosophy, and day-to-day operations reflect the vision and commitment of the individuals who serve on the Institution's Board of Trustees and as the Institution's administrators (the "Key Personnel"). The loss of any Key Personnel could adversely affect the Institution's operations, its ability to attract and retain students and ultimately its financial results. For more information regarding the Institution's Key Personnel, see "APPENDIX A - BRONX CHARTER SCHOOL FOR EXCELLENCE - Governance and Administration" in this Official Statement.

## **Self-Management by the Institution**

The Institution does not contract with outside professionals, such as a professional charter school management company, for the management and operation of the Institution. As a general rule, charter school management companies assist charter schools in their crucial management functions including: recruiting and evaluating staff; human resources and payroll; budgeting and fiscal management and reporting; and other administrative functions. In the absence of a professional management company, such duties are done by Institution administrators and staff.

## **Additional Indebtedness**

The Institution may incur various forms of Indebtedness in compliance with the provisions of the Loan Agreement, including Additional Bonds issued under the Indenture. No assurance can be given that the Institution will not incur additional Indebtedness in the future. See "SECURITY FOR THE SERIES 2013 BONDS – The Loan Agreement" above in this Official Statement.

## **Forward-Looking Statements**

This Official Statement contains certain statements that are "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical facts included in this Official Statement, including without limitation statements that use terminology such as "estimate," "plan," "budget," "expect," "intend," "anticipate," "believe," "may," "will," "continue," and similar expressions, are forward-looking statements. These forward-looking statements include, among other things, the discussions related to the Institution's operations and expectations regarding student enrollment, future operations, revenues, capital resources, and expenditures for capital projects. Although the Institution believes that the assumptions upon which the forward-looking statements contained in this Official Statement are based are reasonable, any of the assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions also could be incorrect. All phases of the operations of the Institution involve risks and uncertainties, many of which are outside the control of the Institution and any one of which, or a combination of which, could materially affect the results of the Institution's operations and whether the forward-looking statements ultimately prove to be correct. Factors that could cause actual results to differ from those expected include, but are not limited to, general economic conditions such as inflation and interest rates, both nationally and in New York where the Facility is located; the willingness of the State to fund charter school operations at present or increased levels; competitive conditions within the Institution's market, including the acceptance of the education services offered by the Institution; lower enrollments than projected; unanticipated expenses; the capabilities of the Institution's management; changes in government regulation of the education industry; future claims for accidents at the Facility and the extent of insurance coverage for such claims; and other risks discussed in this Official Statement. THE EXAMINED FINANCIAL FORECAST CONTAINED IN APPENDIX C ATTACHED TO THIS OFFICIAL STATEMENT IS NOT A HISTORICAL

## STATEMENT OF FINANCIAL PERFORMANCE OF THE INSTITUTION, BUT IS A FORWARD LOOKING FORECAST OF FUTURE, PROJECTED FINANCIAL PERFORMANCE OF THE INSTITUTION.

No representation or assurance can be given that the Institution will realize revenues in amounts sufficient to make the required payments under the Loan Agreement. No market study or demand analysis has been prepared for the Institution to analyze the existing or future demand for the Institution's charter school educational services. The realization of future Revenues is dependent upon, among other things, the matters described in the foregoing paragraphs and future changes in economic and other conditions that are unpredictable and cannot be determined at this time. The Underwriter makes no representation as to the accuracy of the projections contained herein or as to the assumptions on which the projections are based.

### **Property Tax Exemption**

Under present State law and rulings, property used for charter school purposes is exempt from property taxes levied by political subdivisions of the State so long as such property is used for the exempt purpose of the Institution. Therefore, even though the Existing Building is used for charter school purposes, it is not currently exempt from property taxes because the Seller does not qualify for such exemption. The Institution is required to pay such property taxes under the Lease. For 2013, the Institution will be required to pay a pro-rated portion of the property taxes through the date of issuance of the Series 2013 Bonds. After acquiring the Land, the Institution must file an application for exemption from real property taxes based on the fact that it is a charitable organization using the property in connection with its charitable purposes. Assuming such exemption is granted, such property tax exemption will be retroactive to the date the Institution acquired the Land. Therefore, it is anticipated that from and after the date of acquisition of the Land, the Institution will be exempt from property taxes with respect to the Land. Nevertheless, such laws, regulations and rulings are subject to change, and no assurance can be given that any future change in exempt status would not have a material adverse effect on the Institution. If the Institution is required to pay property taxes with respect to the Facility in the future, it would have a negative impact on the cashflow of the Institution. The Institution has assumed for purposes of the Forecast that the Institution will be exempt from property taxes with respect to the Facility.

### **Tax-Exempt Status of the Institution**

The Institution is a public charter school and a New York nonprofit education corporation. The Institution is determined by the Internal Revenue Service to be an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Under present federal law, regulations and rulings, the income and revenue of nonprofit, 501(c)(3) qualified exempt organizations are exempt from federal income tax, except for any unrelated business income as defined in the Code, and their revenues are exempt from the State sales tax except for certain services. If the Institution fails to meet the requirements necessary to preserve its status as a nonprofit education corporation and a tax-exempt charitable organization under Section 501(c)(3) of the Code, the Institution could experience expenses which are greater than those projected in "APPENDIX C - EXAMINED FINANCIAL FORECAST" and revenues which are lower than those projected in "APPENDIX C - EXAMINED FINANCIAL FORECAST", which would adversely affect the Institution's ability in the future to pay the amount due under the Loan Agreement with respect to Series 2013 Bonds. In addition, if the Institution were to lose its status as nonprofit education corporation and a tax-exempt organization, the tax-exempt status of the Series 2013 Bonds would also be adversely affected. The Institution has covenanted in the Loan Agreement that it will not take any actions or fail to take any actions, the result of which would

adversely affect the Institution's status as a nonprofit corporation and its future status as a tax-exempt charitable organization under Section 501(c)(3) of the Code.

### **IRS Compliance Program**

The Internal Revenue Service has an active program of conducting examinations of tax-exempt bonds through its Tax-Exempt and Government Entities Division (the "TE/GE Division"). In recent years, the number of Internal Revenue Service tax-exempt bond examinations has increased, and public statements made by individual Internal Revenue Service officials indicate that the number of Internal Revenue Service examinations of tax-exempt bonds may further increase in the future. Bond Counsel will render an opinion with respect to the tax-exempt status of interest on the Series 2013A Bonds, as described under the caption "TAX MATTERS" in this Official Statement. However, the Institution has not sought and is not expected to seek a ruling from the Internal Revenue Service with respect to the tax-exempt status of the Series 2013A Bonds. No assurance can be given that the Internal Revenue Service will not examine the Series 2013A Bonds. If the Internal Revenue Service examines the Series 2013A Bonds, such examination may have an adverse impact on the marketability and price of the Series 2013A Bonds. See "TAX MATTERS" in this Official Statement.

### **Tax-Exempt Status of the Series 2013A Bonds**

The tax-exempt status of the interest on the Series 2013A Bonds is conditioned upon the Institution complying with the requirements of the Code and applicable Treasury Regulations as they relate to the Series 2013A Bonds. Failure of the Institution to comply with the terms and conditions of the Loan Agreement, the Indenture and other documents as described herein may result in the loss of the tax-exempt status of the interest or premium on the Series 2013A Bonds retroactive to the date of issuance of the Series 2013A Bonds. Holders of Series 2013A Bonds will not receive any additional interest to compensate them for federal income taxes, interest and penalties which may be assessed with respect to such interest; nor will the Series 2013A Bonds be subject to mandatory redemption in the event of the loss of the tax-exemption of interest on such bonds. If interest on the Series 2013A Bonds should become includable in gross income for purposes of federal income taxation, the market for and value of the Series 2013A Bonds would be adversely affected. See "TAX MATTERS" in this Official Statement.

### **Changes in Law; Annual Appropriation; Inadequate Education Aid Payments**

Future changes to the Charter Schools Act by the State Legislature could be adverse to the financial interests of the Institution and could adversely affect the security for the Series 2013 Bonds. There can be no assurance given that the State Legislature will not in the future amend the Charter Schools Act in a manner which is adverse to the interests of the registered owners of the Series 2013 Bonds.

Like many states, lawsuits are occasionally filed in New York challenging the State's system of funding public schools. The outcome of any such public school funding cases in the State in the future cannot be known.

New York may experience downturns in its economy and tax revenues in the future. The provisions of the Charter Schools Act are subject to amendment by the State Legislature, including the reduction of State funding, which could adversely affect the Institution. STATE BUDGET CONSIDERATIONS MAY ALSO ADVERSELY AFFECT APPROPRIATIONS FOR CHARTER SCHOOL FUNDING.

## **Construction Risks**

Construction, installation and equipping of any facility is subject to the risks of cost overruns and delays due to a variety of factors including, among other things, site difficulties, labor strife, delays in and shortages of materials, weather conditions, fire and casualty. Any delay in completion of the Project could materially adversely affect the timely receipt of revenues by the Institution. In certain cases of excused delay, the Construction Manager may also be entitled to additional compensation.

The Project is expected to be completed by the beginning of the 2014-2015 school year. Whether the Project will be completed on schedule depends upon a large number of factors, many of which may be beyond the control of the Institution or the Contractor. These include, but are not limited to, adverse weather, strikes, delays in the delivery of or shortages of materials, delays in the issuance of required building permits, environmental restrictions or similar unknown or unforeseeable contingencies. Although construction work will be inspected periodically, there can be no assurance that the Project will conform to construction specifications or state or local regulations. The occurrence of any of the foregoing could result in increases in construction costs or considerable delays in, or complete impossibility of, completion of the Project, resulting in a failure to achieve anticipated operating results.

## **Mortgage**

Security for the Series 2013 Bonds includes a lien on the Facility evidenced by the Mortgage in favor of the Issuer, and assigned to the Trustee. Attempts to exercise remedies under the Mortgage may be met with protracted litigation and/or bankruptcy proceedings, which proceedings cause delays. See “ENFORCEABILITY OF OBLIGATIONS” in this Official Statement. Thus, there can be no assurance that upon the occurrence of an Event of Default, the Trustee will be able to obtain possession of the Facility and generate revenue therefrom in a timely fashion. Because of the special nature, location, regulatory restrictions and other factors relating to the Facility, there can be no assurance that proceeds derived from the sale of the Facility upon default and the exercise of remedies under the Mortgage would be sufficient to pay all amounts due in respect of the Series 2013 Bonds. Furthermore, the Mortgage may contain several Permitted Encumbrances as described in the Mortgage.

## **Damage or Destruction**

The Loan Agreement requires that the Facility be insured against certain risks. There can be no assurance that the amount of insurance required to be obtained with respect to the Facility will be adequate or that the cause of any damage or destruction to the Facility will be as a result of a risk which is insured. Further, there can be no assurance of the ongoing creditworthiness of the insurance companies from which the Institution obtains insurance policies. The Institution believes that the risks associated with its properties and its operations are adequately provided for through the insurance policies it maintains. The Institution will provide property insurance on the Facility through a standard commercial insurance policy.

## **Environmental Risks**

The Facility is subject to various federal, State and local laws and regulations relating to human health and safety and the environment. In general, these laws and regulations could require the owner of the Facility to implement mitigation to reduce the environmental impacts of the Facility or to remediate adverse environmental conditions on or relating to the Facility, regardless of whether arising from preexisting conditions or arising because of the activities conducted in connection with the ownership and

operation of the Facility. Moreover, these laws and regulations can and often do change through legislative, judicial, or regulatory activities.

### **Environmental Regulations and Permitting**

Federal, state, and local environmental and health and safety laws, regulations, and standards regulate the Facility. Conditions or mitigation as required by these laws and regulations can be imposed either through permitting or by audit, any of which could result in increased costs to the Institution. While the Institution believes that it is in material compliance with applicable environmental laws for the Facility, there is no assurance that the Institution, either under construction or in operation as currently contemplated, is now or will always be in compliance with these regulations or be able to obtain all required construction or operating permits. In addition, the costs incurred by the Institution with respect to compliance with human health and safety and environmental laws and regulations could adversely affect its financial condition and its ability to own and operate the Facility.

### **Hazardous Materials**

Hazardous materials laws, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, can and will impose joint and several liability, without regard to fault, for investigation and clean-up costs on persons who have disposed of or released hazardous substances into the environment and on current and former owners and operators of real property (and to any beneficiary of a Mortgage on the Land, particularly following any sale or foreclosure proceeding). The Institution may also be liable for such claims contractually, as the Institution indemnified the Seller for any and all claims related to hazardous materials as part of the Institution's acquisition of the Land. The Land is less than one-half of an acre. As part of its diligence for the acquisition of the Land, the Institution commissioned a Phase I Environmental Site Assessment (the "Phase I") for the Property. The Phase I, dated March 7, 2013 was conducted by Environmental Building Solutions, Inc., New York, New York and concluded that no recognized environmental conditions were found on the Land. Even though the Phase I did not show any evidence of recognized environmental conditions for the Facility, claims for material costs associated with hazardous materials may arise during the term of the Series 2013 Bonds and could adversely affect the Institution's financial condition and its ability to own and operate the Facility. Furthermore, any such claims could result in the imposition of use limitations, such as restrictive covenants, that could impair the ability of the Institution to operate the Facility.

### **No As-Built Appraisal**

No as-built appraisal has been commissioned in connection with the issuance of the Series 2013 Bonds and the Project. In the event of a foreclosure of the Mortgage, the value of the Facility in such event cannot be determined and may be substantially less than the cost of the acquisition, renovation and equipping of the Facility and no assurance that the value received for the Facility will be sufficient to pay the principal of and interest due on the Series 2013 Bonds.

### **Maintenance of Credit Rating**

Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business (the "Rating Agency") has assigned a rating of "BBB-" to the Series 2013 Bonds. Certain information was supplied by the Institution to the Rating Agency to be considered in evaluating the Series 2013 Bonds, including information regarding State and federal funding sources and the operations of the Institution, which are subject to change. See "BOND RATING" in this Official Statement. Such rating expresses

only the views of the Rating Agency. There is no assurance that such rating will continue for any given period of time or will not be revised or withdrawn entirely by the Rating Agency if, in its judgment, circumstances so warrant. Any such downward revision in or withdrawal of such rating may have an adverse effect on the market price of the Series 2013 Bonds. See “BOND RATING” in this Official Statement.

### **Enforcement of Remedies**

The remedies available to the Trustee or the registered owners of the Series 2013 Bonds upon an Event of Default under the Indenture or the Loan Agreement are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, the remedies provided in the Indenture and the Loan Agreement may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2013 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by the valid exercise of the sovereign powers of the State and the constitutional powers of the United States of America, bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

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

The Institution will enter into the Continuing Disclosure Agreement pursuant to Rule 15c2-12, promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Rule”). Failure by the Institution to comply with the Continuing Disclosure Agreement and the Rule may adversely affect the liquidity of the Series 2013 Bonds and their market price in the secondary market. See “APPENDIX J - FORM OF CONTINUING DISCLOSURE AGREEMENT” in this Official Statement.

### **Private School Vouchers**

Various proposals offering private school vouchers to families to assist with the cost of private schools have been considered by the State Legislature and will likely be introduced again in the future.

### **Redemption Prior to Maturity**

The Series 2013 Bonds are subject to redemption at the option of the Institution and in the event of certain occurrences. See “THE SERIES 2013 BONDS - Redemption of Series 2013 Bonds” in this Official Statement.

### **Summary**

The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Series 2013 Bonds. In order for potential investors to identify risk factors and make an informed decision, potential investors should be thoroughly familiar with this entire Official Statement including the appendices hereto.

## **COMBINED AUDITED FINANCIAL STATEMENTS OF THE ORGANIZATION**

The combined audited financial statements of the Institution and Friends of BCSE (collectively, the “Organization”) as of and for the fiscal year ended June 30, 2012 (the “Audited Financial

Statements”), are included in APPENDIX D to this Official Statement. The Audited Financial Statements were audited by McGladrey LLP, independent auditors, as stated in their report thereon. See “APPENDIX D - COMBINED AUDITED FINANCIAL STATEMENTS OF THE ORGANIZATION FOR THE FISCAL YEAR ENDED JUNE 30, 2012 (INCLUDING JUNE 30, 2011 COMPARATIVE INFORMATION)” in this Official Statement.

The summarized comparative information for 2011 was derived from the Organization’s 2011 audited combined financial statements, not included in this Official Statement.

## **UNAUDITED INTERIM FINANCIAL INFORMATION OF THE INSTITUTION**

APPENDIX E to this Official Statement contains the unaudited statement of financial position and statement of activities of the Institution for the seven-month period ended January 31, 2013. The unaudited financial information contained in APPENDIX E has not been reviewed, audited, or examined by any independent accounting firm. *McGladrey LLP has not performed any procedures relating to the Institution’s unaudited interim financial information.* See “APPENDIX E - UNAUDITED INTERIM FINANCIAL INFORMATION OF THE INSTITUTION FOR THE SEVEN-MONTH PERIOD ENDED JANUARY 31, 2013” in this Official Statement.

## **THE EXAMINED FINANCIAL FORECAST**

The examined financial forecast (the “Forecast”) attached hereto in “APPENDIX C - EXAMINED FINANCIAL FORECAST” prepared by the Institution and examined by Croskey Lanni, P.C., certified public accountants, Rochester, Michigan, for the six years ending June 30, 2013 through June 30, 2018, is based upon assumptions made by the Institution. No assurance can be given that the results described in the Forecast will be achieved. The Forecast is based on assumptions made by management of the Institution as to, among other things, future utilization levels, future costs and future revenues. The Forecast relates to the projected operations of the Institution and does not include any information regarding Friends of BCSE. **The Forecast should be read in its entirety.**

The Forecast is based on various assumptions that represent only the beliefs of the Institution’s management as to the most probable future events and are subject to material uncertainties. No assurances can be given that the Institution will, in fact, be able to generate sufficient revenue and attain the utilization levels as stated in the Forecast, and variations from the Forecast for each of such matters should be expected to occur. Accordingly, the operations and financial condition of the Institution in the future will inevitably vary from those set forth in the Forecast, and such variance may be material and adverse. The Forecast has not been revised to reflect the final pricing of the Series 2013 Bonds. See “RISK FACTORS - Examined Financial Forecast” in this Official Statement.

The Institution has not assumed any responsibility to update the Forecast or to provide any financial forecast or projections in the future. The Underwriter and the Institution have made no independent inquiry as to the assumptions on which the Forecast is based and assume no responsibility therefor.

*McGladrey LLP has not performed any procedures relating to the Forecast.*

## **TAX MATTERS**

### **The Series 2013A Bonds**

The Internal Revenue Code of 1986, as amended (the “Code”), establishes certain requirements that must be met at and subsequent to the issuance and delivery of the Series 2013A Bonds for interest on the Series 2013A Bonds to be and remain not includable in gross income of the owners thereof under Section 103 of the Code. Included among the continuing requirements of the Code are the maintenance of the status of the Institution as organizations described in Section 501(c)(3) of the Code, certain restrictions and prohibitions on the use of bond proceeds and the use of the Facility, restrictions on the investment of such proceeds and other amounts, and the rebate to the United States of certain earnings in respect of investments. Failure to comply with these continuing requirements may cause the interest on the Series 2013A Bonds to be includable in gross income for federal income tax purposes (and to be includable in taxable income for purposes of New York State, New York City and City of Yonkers personal income taxes) retroactively to the date of their issuance irrespective of the date on which such noncompliance occurs. In the Indenture, the Loan Agreement, the Tax Certificate of the Issuer and the Institution, and accompanying documents, exhibits, and certificates, the Issuer and the Institution have covenanted to comply with certain procedures, and they have made certain representations and certifications, designed to assure compliance with the requirements of the Code.

In addition, Bond Counsel has relied, among other things, on the opinion of Orrick, Herrington & Sutcliffe LLP, special counsel to the Institution, regarding the current qualification of the Institution as an organization described in Section 501(c)(3) of the Code and the use contemplated by the Institution of the Facility as substantially related to the charitable purposes of the Institution under Section 513 of the Code. Neither Bond Counsel nor special counsel to the Institution can give or has given any opinion or assurance about the future activities of the Institution, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof, or the resulting changes in the enforcement thereof by the Internal Revenue Service (the “IRS”). Failure of the Institution to be organized and operated in accordance with the IRS’ requirements for the maintenance of its status as an organization described in Section 501(c)(3) of the Code or to operate the Facility in a manner that is substantially related to their charitable purposes under Section 513 of the Code may result in interest payable with respect to the Series 2013A Bonds being included in federal gross income and in New York State, New York City and City of Yonkers taxable income, possibly from the date of original issuance of the Series 2013A Bonds.

In the opinion of Winston & Strawn LLP, New York, New York, Bond Counsel, assuming continuing compliance by the Issuer and the Institution (and their successors) with the covenants, and the accuracy of the representations discussed above, under existing statutes, regulations, rulings and court decisions, the interest on the Series 2013A Bonds is not includable in gross income for federal income tax purposes. Bond Counsel is of the further opinion that interest on the Series 2013A Bonds is not an “item of tax preference” for purposes of the federal alternative minimum tax on individuals and corporations; however, interest on the Series 2013A Bonds is includable in the calculation of adjusted current earnings of corporations for purposes of calculating the alternative minimum tax on corporations.

The opinion of Bond Counsel is based on current legal authority and covers certain matters not directly addressed by such authority. It represents Bond Counsel’s legal judgment as to exclusion of interest on the Series 2013A Bonds from gross income for federal income tax purposes but is not a guaranty of that conclusion. The opinion is not binding on the IRS or any court. Further, Bond Counsel cannot give, and has not given, any opinion or assurance about the future activities of the Issuer or the Institution or about the effect of future changes in the Code, applicable regulations, the interpretation thereof or the enforcement thereof by the IRS.

The Series 2013A Bonds have been initially offered to the public at prices in excess of their principal amounts and such excess will constitute bond premium in the case of each such maturity of the Series 2013A Bonds sold at its initial offering price (the “Premium Bonds”). An initial purchaser (other than a purchaser who holds such Premium Bonds as inventory, stock in trade or for sale to customers in the ordinary course of business) with an initial adjusted basis in a Premium Bond in excess of its principal amount will have amortizable bond premium that is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of such Premium Bond based on the purchaser’s yield to maturity (or, in the case of Premium Bonds callable prior to their maturity, over the period to the call date, based on the purchaser’s yield to the call date and giving effect to any call premium). For purposes of determining gain or loss on the sale or other disposition of a Premium Bond, an initial purchaser is required to decrease such purchaser’s adjusted basis in such Premium Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning Premium Bonds. Owners of Premium Bonds are advised that they should consult with their own advisors with respect to the federal, state and local tax consequences of owning Premium Bonds.

Based on Bond Counsel’s opinion that interest on the Series 2013A Bonds is not includable in gross income for federal income tax purposes (and subject to the assumptions in such opinion as discussed above), interest on such bonds is not subject to the additional 3.8% tax on net investment income added to the Code by the Health Care and Education Reconciliation Act of 2010.

Certain requirements and procedures contained or referred to in the Indenture, the Loan Agreement, the Tax Certificate of the Issuer and the Institution and other relevant documents may be changed and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of nationally-recognized bond counsel. Winston & Strawn LLP expresses no opinion as to the effect on the exclusion from gross income for federal tax purposes, and as to the effect on the non-inclusion in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, New York, of interest on the Series 2013A Bonds of any such change occurring, or such action or other action taken or not taken, after the date of issuance of the Series 2013A Bonds, upon the advice or approval of bond counsel other than Winston & Strawn LLP.

Prospective purchasers of the Series 2013A Bonds should be aware that ownership of, accrual or receipt of interest on, or disposition of, tax-exempt obligations may have collateral federal income tax consequences for certain taxpayers, including financial institutions, certain S corporations, United States branches of foreign corporations, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, taxpayers eligible for the earned income credit, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations. The foregoing is not intended as an exhaustive list of potential tax consequences. Prospective purchasers should consult their tax advisors as to any possible collateral tax consequences in respect of the Series 2013A Bonds. Bond Counsel expresses no opinion regarding any such collateral tax consequences.

In the opinion of Bond Counsel, assuming continuing compliance by the Issuer and the Institution (and their successors) with the requirements of the Code that must be met in order for interest on the Series 2013A Bonds to be not includable in gross income for federal income tax purposes, interest on the Series 2013A Bonds (including any accrued original issue discount) is also not includable in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, under existing statutes and regulations.

Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the Series 2013A Bonds may adversely affect the value of, or the tax status of interest on, the Series 2013A Bonds. No assurance can be given that any future legislation, including amendments to the Code or the State income tax laws, will not cause interest on the Series 2013A Bonds to be subject, directly or indirectly, to federal or State or local income taxation, or otherwise prevent Bondholders from realizing the full current benefit of the tax status of such interest. For example, the President sent to Congress on April 10, 2013 a budget for the federal government for the Fiscal Year 2014 which contains a proposal (the “Proposal”) to limit the tax rate at which individual taxpayers in rate brackets higher than the 28 percent rate bracket could use itemized deductions and other preferences, including interest on tax-exempt bonds, to reduce their tax liability to a maximum rate of 28%. Also, on March 14, 2013, the Senate Budget Committee passed a budget for Fiscal Year 2014 calling for limits on “tax expenditures” through various methods, including, among possible approaches, limiting the rate at which itemized deductions and certain other tax preferences can reduce a taxpayer’s tax liability and a limit on the value of preferences based on a percentage of a taxpayer’s income or a specific dollar cap on the amount of allowable deductions. It is not possible to predict whether or in what form, any of the foregoing proposals (or other proposals which may adversely affect the value of, or the tax status of, interest on municipal bonds, including the Series 2013A Bonds) will be introduced as bills into Congress or adopted as legislation. Prospective purchasers of the Series 2013A Bonds should consult their own tax advisers regarding any pending or proposed federal or State tax legislation. Further, no assurance can be given that the introduction or enactment of any such future legislation, or any action of the IRS, including but not limited to regulation, ruling, or selection of the Series 2013A Bonds for audit, or the course or result of any IRS examination of the Series 2013A Bonds, or obligations which present similar tax issues, will not affect the market price of the Series 2013A Bonds.

Information reporting requirements apply to interest paid on tax-exempt obligations, including the Series 2013A Bonds. In general, such requirements are satisfied if the interest recipient completes, and provides the payor with, a Form W-9, “Request for Taxpayer Identification Number and Certification,” or unless the recipient is one of a limited class of exempt recipients, including corporations. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to “backup withholding,” which means that the payor of interest is required to deduct and withhold a tax from the payment, calculated in the manner set forth in the Code. If an owner purchasing a Series 2013A Bond through a brokerage account has executed a Form W-9 in connection with the establishment of such account, as generally can be expected, no backup withholding should occur. In any event, backup withholding does not affect the excludability of the interest on the Series 2013A Bonds from gross income for federal income tax purposes. Any amounts withheld pursuant to backup withholding would be allowed as a refund or a credit against the owner’s federal income tax once the required information is furnished to the IRS.

Bond Counsel’s engagement with respect to the Series 2013A Bonds ends with the issuance of the Series 2013A Bonds, and, unless separately engaged, Bond Counsel is not obligated to defend the Issuer, the Institution or the beneficial owners of the Series 2013A Bonds regarding the tax status of interest on the Series 2013A Bonds in the event of an audit by the IRS. The IRS has a program to audit tax-exempt obligations to determine whether the interest thereon is includible in gross income for federal income tax purposes. If the IRS does audit the Series 2013A Bonds, under current procedures parties other than the Issuer, the Institution and their appointed counsel, including the beneficial owners of the Series 2013A Bonds, would have little, if any, right to participate in the audit process. Moreover, because achieving judicial review in connection with any audit of tax-exempt bonds is difficult, obtaining an independent judicial review of IRS positions with which the Issuer or the Institution legitimately disagrees, may not be practical. Any action of the IRS, including but not limited to selection of the Series 2013A Bonds for audit, or the course or result of such audit, or an audit of other obligations presenting

similar tax issues, may affect the market prices for, or the marketability of, the Series 2013A Bonds, and may cause the Issuer, the Institution and the beneficial owners of the Series 2013A Bonds to incur significant expense.

### **The Series 2013B Bonds**

**The advice set forth in this section was not intended or written by Bond Counsel to be used and cannot be used by an owner of the Series 2013B Bonds for the purpose of avoiding penalties that may be imposed on the owner of the Series 2013B Bonds. The advice set forth herein is written to support the promotion or marketing of the Series 2013B Bonds. Each owner of the Series 2013B Bonds should seek advice based on its particular circumstances from an independent tax advisor.**

In the opinion of Bond Counsel, interest on the Series 2013B Bonds is included in the gross income of the owners thereof for federal income tax purposes and is included in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, New York. Bond Counsel expresses no opinion regarding any other federal or state income tax consequences relating to the ownership of, accrual or receipt of interest on, or disposition of the Series 2013B Bonds. Owners of the Series 2013B Bonds should consult their tax advisors with respect to their particular circumstances.

The following is a summary of certain anticipated United States federal income tax consequences that may be relevant to purchasers of the Series 2013B Bonds. The summary is based upon the provisions of the Internal Revenue Code of 1986, as amended, the regulations promulgated thereunder and the judicial and administrative rulings and decisions now in effect, all of which are subject to change. The summary generally addresses Series 2013B Bonds which are purchased in the initial offering at the initial offering price and then held as capital assets and does not purport to address all aspects of federal income taxation that may affect particular investors in light of their individual circumstances or certain types of investors subject to special treatment under the federal income tax laws. Potential purchasers of the Series 2013B Bonds should consult their own tax advisors in determining the federal, state or local tax consequences to them of the purchase, holding and disposition of the Series 2013B Bonds.

The Series 2013B Bonds will be treated, for federal income tax purposes, as a debt instrument. Accordingly, interest will be included in the income of the holder as it is paid (or, if the holder is an accrual method taxpayer, as it is accrued) as interest.

Holders of the Series 2013B Bonds that allocate a basis in the Series 2013B Bonds that is greater than the principal amount of the Series 2013B Bonds should consult their own tax advisors with respect to whether or not they should elect to amortize such premium under Section 171 of the Code.

If a holder purchases the Series 2013B Bonds for an amount that is less than the principal amount of the Series 2013B Bonds, and such difference is not considered de minimis, then such discount will represent original issue discount. The original issue discount on a Series 2013B Bond will accrue periodically over the term of such Bond. The amount of the original issue discount that so accrues will be treated as if it were a payment of interest that is taxable for federal income tax purposes. The accrual of original issue discount will increase the owner's tax basis in the Series 2013B Bond for purposes of determining gain or loss on the subsequent sale, exchange, or redemption of such Bond.

Unless a nonrecognition provision of the Code applies, the sale, exchange, redemption or other disposition of a Series 2013B Bond (including a defeasance of a Series 2013B Bond resulting in the reissuance thereof), will be a taxable event for federal income tax purposes. In such event, in general, a

holder of a Series 2013B Bond will recognize gain or loss equal to the difference between (i) the amount of cash plus the fair market value of property received (except to the extent attributable to accrued but unpaid interest on the Series 2013B Bond which will be taxable as interest income to the extent not previously included in income) and (ii) the holder's adjusted tax basis in the Series 2013B Bond (generally, the purchase price paid by the holder for the Series 2013B Bond). Any such gain or loss generally will be long-term capital gain or loss, provided the Series 2013B Bond has been held for more than one year at the time of the disposition, subject to some specific provisions that provide for different treatment. The deductibility of capital losses is subject to limitations.

The Health Care and Education Reconciliation Act of 2010 amended the Code to provide for an additional 3.8% tax on the net investment income (which includes interest, original issue discount and gains from a disposition of a Series 2013B Bond) of certain individuals, trust and estates, for taxable years beginning after December 31, 2012. Prospective investors in the Series 2013B Bonds should consult their tax advisors regarding the possible applicability of this tax to an investment in the Series 2013B Bonds.

Distributions on the Series 2013B Bonds to a non-U.S. holder that has no connection with the United States other than holding its Series 2013B Bond generally will be made free of withholding tax, as long as that holder has complied with certain tax identification and certification requirements.

Payments on the Series 2013B Bonds may, under certain circumstances, be subject to backup withholding at the rate of provided by the Code. Backup withholding generally applies to payments if (a) the payee fails to furnish the payor with its taxpayer identification number ("TIN"); (b) the payee furnishes the payor with an incorrect TIN; (c) the Treasury Department notifies the payor that the payee failed to report properly payments as required by the Code; or (d) the payee, under certain circumstances, fails to provide the payor with a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that the payee is not subject to backup withholding. Backup withholding will not apply, however, with respect to payments made to certain payees, including payments to certain exempt recipients (such as certain exempt organizations) and to certain foreign persons. Investors should consult their independent tax advisors as to their qualifications for exemption from backup withholding and the procedure for obtaining exemption.

## **ENFORCEABILITY OF OBLIGATIONS**

On the date of delivery of the Series 2013 Bonds, Winston & Strawn LLP, New York, New York, Bond Counsel, will deliver its opinion, dated the date of delivery, that the Series 2013 Bonds, the Loan Agreement and the Indenture are valid and legally binding obligations on the Issuer. Orrick, Herrington & Sutcliffe LLP, New York, New York, as special counsel to the Institution, will deliver its opinion that the various documents to which the Institution is a party are valid and legally binding agreements of the Institution, each enforceable in accordance with its respective terms. Carter Ledyard & Milburn LLP, as special counsel for the Trustee, will deliver its opinion that the various documents to which the Trustee is a party are valid and legally binding agreements of the Trustee, each enforceable in accordance with its respective terms. The foregoing opinions will be generally qualified to the extent that the enforceability of the respective instruments may be limited by laws, decisions and equitable principles affecting remedies and by bankruptcy or insolvency or other laws, decisions and equitable principles affecting creditors' rights generally.

While the Series 2013 Bonds are secured or payable pursuant to the Indenture, the Loan Agreement, and the Mortgage, the practical realization of payment from any security will depend upon

the exercise of various remedies specified in the respective instruments. These and other remedies are dependent in many respects upon judicial action, which is subject to discretion and delay. Accordingly, the remedies specified in the above documents may not be readily available or may be limited.

## **LEGAL MATTERS**

Certain legal matters incident to the issuance and sale of the Series 2013 Bonds and with regard to the tax-exempt status of interest on the Series 2013A Bonds under existing laws are subject to the legal opinion of Winston & Strawn LLP, New York, New York, as Bond Counsel. Certain legal matters will be passed upon for the Issuer by its Vice President for Legal Affairs, for the Institution by its special counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York, for CSFP by Perkins Coie, LLP, Chicago, Illinois, and for the Trustee by its special counsel Carter Ledyard & Milburn LLP, New York, New York. Kennedy & Graven, Chartered, Minneapolis, Minnesota, represents the Underwriter in this transaction.

The Institution may be subject to civil liability and may not be able to claim sovereign immunity for actions founded upon various federal laws. Examples of such civil liability include, but are not limited to, suits filed pursuant to 42 U.S.C. Section 1983 alleging the deprivation of federal constitutional or statutory rights of an individual. In addition, the Institution may be enjoined from engaging in anti-competitive practices which violate the antitrust laws.

## **CONTINUING DISCLOSURE**

The Rule imposes continuing disclosure obligations on the issuers of certain state and municipal securities to permit participating underwriters to offer and sell the issuer's securities. In order to comply with the requirements of the Rule, the Institution has entered into a Continuing Disclosure Agreement, dated as of April 1, 2013, between the Institution and the Trustee, as dissemination agent. See "APPENDIX J - FORM OF CONTINUING DISCLOSURE AGREEMENT" in this Official Statement.

## **BOND RATING**

The Rating Agency has assigned its municipal bond rating of "BBB-" to the Series 2013 Bonds. Such rating expresses only the views of the Rating Agency. Any explanation of the significance of such rating may only be obtained from the Rating Agency. The Institution furnished to the Rating Agency certain information and material concerning the Series 2013 Bonds and the Institution. Generally, rating agencies base their ratings on such information and materials and on investigations, studies and assumptions made by the rating agencies themselves. There is no assurance that the credit rating mentioned above will remain in effect for any given period of time or that the rating might not be lowered or withdrawn entirely by the Rating Agency, if, in the judgment of the Rating Agency, circumstances so warrant. The Underwriter has undertaken no responsibility either to bring to the attention of the Bondholders of the Series 2013 Bonds any proposed change in or withdrawal of any rating or to oppose any such proposed revision or withdrawal. Any such downward change in or withdrawal of any rating might have an adverse effect on the market price or marketability of the Series 2013 Bonds.

## **RELATIONSHIPS AMONG THE PARTIES**

In connection with the issuance of the Series 2013 Bonds, the Issuer, the Institution and the Underwriter are being represented by the attorneys or law firms identified above under the heading “LEGAL MATTERS.” In other transactions not related to the Series 2013 Bonds, each of these attorneys or law firms may have acted as bond counsel or represented the Issuer, the Institution, or the Underwriter or their affiliates, in capacities different from those described under “LEGAL MATTERS,” and there will be no limitations imposed as a result of the issuance of the Series 2013 Bonds on the ability of any of these firms or attorneys to act as bond counsel or represent any of these parties in any future transactions. Potential purchasers of the Series 2013 Bonds should not assume that the Issuer, the Institution, and the Underwriter or their respective counsel or Bond Counsel have not previously engaged in or will not after the issuance of the Series 2013 Bonds engage in, other transactions with each other or with any affiliates of any of them, and no assurances can be given that there are or will be no past or future relationship or transactions between or among any of these parties or these attorneys or law firms.

## **ABSENCE OF MATERIAL LITIGATION**

### **The Issuer**

There is no pending litigation of which the Issuer has notice restraining or enjoining the issuance or delivery of the Series 2013 Bonds or questioning or affecting the validity of the Series 2013 Bonds or the proceedings and authority under which the Series 2013 Bonds are to be issued or the validity or enforceability of the Indenture, the Loan Agreement and the Mortgage. Neither the creation, organization or existence of the Issuer, nor the title of the present directors or other officials of the Issuer to their respective offices, is, to the best knowledge of the Issuer, being contested.

### **The Institution**

No material litigation, investigations or proceedings are now pending or, to the best knowledge of the Institution, are any threatened against the Institution which would have a materially adverse effect on the financial condition or operations of the Institution or in any manner challenge or adversely affect the corporate existence or power of the Institution to enter into and carry out the transactions described in or contemplated by, or the execution, delivery, validity or performance by the Institution under the Loan Agreement, the Mortgage, the Custody Agreement, the Continuing Disclosure Agreement, the Credit Enhancement Agreement or the Bond Purchase Agreement, as appropriate.

A petition has been brought in the Supreme Court of the State of New York, Bronx County commencing a proceeding against the Institution, the Department of Education of New York City and the City of New York seeking pre-litigation discovery and leave to file a late Notice of Claim with the Department of Education of New York City and the City of New York in connection with personal injuries allegedly suffered by a student of the Institution on the Institution’s premises. The Institution has notified its insurer and expects to receive full coverage from its insurer for any resulting liability.

## **UNDERWRITING**

The Series 2013 Bonds will be purchased by Piper Jaffray & Co., Minneapolis, Minnesota (the “Underwriter”). The Underwriter has agreed to purchase the Series 2013A Bonds for a purchase price of \$25,013,819.20, which amount represents the principal amount of the Series 2013A Bonds

(\$23,310,000.00), less the Underwriter's discount of \$407,925.00, plus original issue premium of \$2,111,744.20. The Underwriter has agreed to purchase the Series 2013B Bonds for a purchase price of \$677,925.00, which amount represents the principal amount of the Series 2013B Bonds (\$690,000.00), less the Underwriter's discount of \$12,075.00. The Underwriter is purchasing the Series 2013 Bonds pursuant to the terms of a Bond Purchase Agreement (the "Bond Purchase Agreement") between the Issuer, the Institution, and the Underwriter. The Bond Purchase Agreement also provides that the Institution will pay miscellaneous out-of-pocket expenses of the Underwriter. The Bond Purchase Agreement provides that the Underwriter will purchase all Series 2013 Bonds if any are purchased, and that the obligation to make such purchase is subject to certain terms and conditions set forth in the Bond Purchase Agreement, the approval of certain legal matters by counsel, and certain other conditions. Expenses associated with the issuance of the Series 2013 Bonds are being paid by the Institution from proceeds of the Series 2013 Bonds. The right of the Underwriter to receive compensation in connection with the Series 2013 Bonds is contingent upon the actual sale and delivery of the Series 2013 Bonds. The initial offering prices set forth on the inside front cover hereof may be changed from time to time by the Underwriter. The Underwriter reserves the right to join with dealers and other investment banking firms in offering the Series 2013 Bonds to the public. The Institution has agreed under the Bond Purchase Agreement to indemnify the Underwriter and the Issuer against certain liabilities, including certain liabilities under federal and state securities laws.

The Underwriter and Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation, entered into an agreement (the "Distribution Agreement") which enables Pershing LLC to distribute certain new issue municipal securities underwritten by or allocated to the Underwriter, including the Series 2013 Bonds. Under the Distribution Agreement, the Underwriter will share with Pershing LLC a portion of the fee or commission paid to the Underwriter.

## **THE TRUSTEE**

The Issuer has appointed U.S. Bank National Association to serve as Trustee. The Trustee is a national banking association organized and existing under the laws of the United States of America, having all of the powers of a bank, including fiduciary powers, and is a member of the Federal Deposit Insurance Corporation and the Federal Reserve System. The Trustee is to carry out those duties assignable to it under the Indenture. Except for the contents of this section, the Trustee has not reviewed or participated in the preparation of this Official Statement and assumes no responsibility for the nature, contents, accuracy, fairness or completeness of the information set forth in this Official Statement or for the recitals contained in the Indenture or the Series 2013 Bonds, or for the validity, sufficiency, or legal effect of any of such documents.

Furthermore, the Trustee has no oversight responsibility, and is not accountable, for the use or application by the Issuer of any of the Series 2013 Bonds authenticated or delivered pursuant to the Indenture or for the use or application of the proceeds of such Series 2013 Bonds by the Institution. The Trustee has not evaluated the risks, benefits, or propriety of any investment in the Series 2013 Bonds and makes no representation, and has reached no conclusions, regarding the value or condition of any assets or revenues pledged or assigned as security for the Series 2013 Bonds, or the investment quality of the Series 2013 Bonds, about all of which the Trustee expresses no opinion and expressly disclaims the expertise to evaluate.

The mailing address of the Trustee is U.S. Bank National Association, 100 Wall Street, Suite 1600, New York, New York 10005, Attention: Corporate Trust Services. Additional information about

the Trustee may be found at its website at <http://www.usbank.com/corporatetrust>. The U.S. Bank website is not incorporated into this Official Statement by such reference and is not a part hereof.

## **MISCELLANEOUS**

The foregoing does not purport to be comprehensive or definitive, and all references to any document herein are qualified in their entirety by reference to each such document. All references to the Series 2013 Bonds are qualified in their entirety by reference to the forms thereof and the information with respect thereto included in the aforesaid documents. Copies of these documents are available for inspection during the period of the offering at the offices of the Underwriter in Minneapolis, Minnesota and thereafter at the principal corporate trust office of the Trustee. In addition to certain information provided herein, all information contained in Appendices A, B, C, D, and E, along with information regarding the Forecast and projected debt service coverage under the caption "SUMMARY INFORMATION," has been provided by the Institution or been derived from information provided by the Institution. The Underwriter makes no representations or warranties as to the accuracy or completeness of the information in any of the Appendices.

### **No Registration of the Series 2013 Bonds**

Registration or qualification of the offer and sale of the Series 2013 Bonds (as distinguished from registration of the ownership of the Series 2013 Bonds) is not required under the federal Securities Act of 1933, as amended. THE INSTITUTION ASSUMES NO RESPONSIBILITY FOR QUALIFICATION OR REGISTRATION OF THE SERIES 2013 BONDS FOR SALE UNDER THE SECURITIES LAWS OF ANY JURISDICTION IN WHICH THE SERIES 2013 BONDS MAY BE SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED.

### **Official Statement Certification**

The Institution and the Issuer have authorized and approved the use and distribution of this Official Statement, although the Issuer has not reviewed or approved any matters herein and assumes no responsibility for the accuracy or completeness of the information herein except for the information under the caption "THE ISSUER" and "ABSENCE OF MATERIAL LITIGATION - The Issuer" in this Official Statement.

The preparation of this Official Statement and its distribution has been authorized by the Institution. This Official Statement is not to be construed as an agreement or contract between the Institution and any purchaser, owner or holder of any Series 2013 Bond.

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**APPENDIX A**

**BRONX CHARTER SCHOOL FOR EXCELLENCE**

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## APPENDIX A

### BRONX CHARTER SCHOOL FOR EXCELLENCE

#### General

Bronx Charter School for Excellence (“BCSE” or the “Borrower”) is a charter school for students in kindergarten through eighth grades. Incorporated in the State of New York (the “State”) in 2003, BCSE is organized pursuant to Article 56 of New York Education Law as a non-profit education corporation. BCSE received a 501(c)(3) determination letter on November 3, 2003 from the Internal Revenue Service.

On February 25, 2003, the applicant for BCSE and the Board of Trustees of the State University of New York (“SUNY”) entered into a proposed charter agreement (the “Proposed Charter”) to establish and operate BCSE. On April 29, 2003 (the “Effective Date”), the Board of Regents of the State of New York for and on behalf of the State Education Department (the “Board of Regents”) granted the Proposed Charter (as granted, the “Charter”) and incorporated BCSE by issuing a certificate of incorporation known as a provisional charter. The Charter was initially valid for a term of five years from the Effective Date. In 2007, SUNY granted BCSE a Charter extension through July 31, 2008 to align the Charter term with the school year and to allow BCSE to apply for a planning year renewal so that BCSE would have five full years of operating data to support its five-year renewal application. In 2008, SUNY and the Board of Regents granted such planning year renewal and in 2009, SUNY approved BCSE’s application for a full five-year renewal term. On December 15, 2009, the Board of Regents issued the renewed Charter for a term up through and including December 14, 2014. For more information see “Charter” herein.

BCSE’s students reside primarily within the boundaries of New York City Community School District 11 (the “11th District”) in the Parkchester section of the Bronx, New York. After an initial planning year, BCSE began operations at the start of the 2004-05 school year at 1508 Webster Avenue in the Bronx, New York with 100 students in kindergarten and first grade. An additional grade level was added each subsequent school year such that by the 2008-09 school year, 300 students were enrolled in grades K-5. At the start of the 2006-07 school year, BCSE moved its elementary school to its current location in the 11th District. In 2010, SUNY authorized BCSE to revise its Charter to add sixth grade in the 2010-11 school year, seventh grade in the 2011-12 school year and eighth grade in the 2012-13 school year. As of December 31, 2012, 519 students were enrolled in grades K-8. Due to anticipated increases in the number of classes per grade, BCSE is projecting enrollment of 554 students for the 2013-14 school year. The number of students at BCSE who currently qualify for free and reduced price lunch is 79%.

SUNY has not participated in the preparation of this Official Statement or any other disclosure documents relating to the Series 2013 Bonds. SUNY does not assume any responsibility as to the accuracy or completeness of any information contained in this Official Statement or any other such disclosure documents.

#### Mission and Educational Philosophy

BCSE’s mission, vision and philosophy stem from one simple word: “Believe”. BCSE believes that every child has the ability to succeed regardless of their economic circumstances or ethnic background; that education is about creating scholars for life and that great education is about the quality of learning. BCSE is committed to its community and to sharing what it has learned with others.

Mission Statement. BCSE has adopted the following Mission Statement:

***“The mission of the Bronx Charter School for Excellence is to prepare young people from New York City to compete for admission to and succeed in top public, private and parochial high schools by cultivating their intellectual, artistic, social, emotional and ethical development. The school will accomplish this by offering a challenging and rigorous academic curriculum, which at the earliest grades will have an eye towards college preparation. We will achieve this in a supportive and caring environment that at all times has high expectations of our students.”***

Vision and Educational Philosophy. BCSE was formed to provide kindergarten through eighth grade education to the children in the Parkchester section of the Bronx and its surrounding neighborhoods. BCSE's academic program stresses high standards for all children within a professional school culture. BCSE's goal is to create students who are excited about learning and who are competent readers, writers and communicators. Elements of BCSE's academic program include:

- high academic standards
- a broad liberal arts-education
- a “back-to-basics” educational approach (i.e., phonics-based reading curriculum in the early grades that includes direct instruction)
- longer school day
- performance-based compensation for staff
- clearly articulated behavior standards for students
- school uniforms for students
- a commitment to academic performance accountability through internal and external standardized assessments and student portfolio reviews
- a commitment to financial accountability
- active parent involvement

## **The Project**

BCSE currently subleases an approximately 12,500 square foot parcel of land including a brick building located at 1960 Benedict Avenue, Bronx, New York, as well as an approximately 5,000 square foot adjacent empty lot (Block 3930, Lots 38 and 33) (together, the “Property”). The existing building houses its elementary school (kindergarten through fourth grade) and contains 11 classrooms, an art room, a music room, a cafeteria, three administrative offices, a nursing station, a teacher's lounge, a dance studio and a resource room. In addition, BCSE leases a former Catholic school facility from The Church of Our Lady of Solace. Such facility is an approximately 12,000 square foot building located at 1804 Holland Avenue, Bronx, New York in the Morris Park neighborhood (the “Morris Park Facility”) and it currently accommodates BCSE's middle school (fifth through eighth grades). The lease term for the Morris Park Facility ends July 31, 2014. BCSE is currently negotiating an extension of this lease until July 31, 2015.

BCSE and Sobert Realty Corp. (the “Seller”) entered into an Agreement of Sale dated as of March 5, 2013 for BCSE to purchase the Property for a price of \$7,321,474.00. BCSE will utilize a portion of the proceeds of the Series 2013 Bonds to finance the costs of acquiring the Property. BCSE will also utilize approximately \$14,900,000 of the proceeds of the Series 2013 Bonds to finance the costs of construction of a seven-story building on the empty lot and certain renovations to the existing building so as to create an approximately 50,000 square foot facility to accommodate grades K-8. The new facility will include state of the art amenities such as a full cooking kitchen/cafeteria, gymnasium, computer and science labs and additional outdoor space (collectively, the “Project”). BCSE expects the Project to be completed and students to be using the new facility by the beginning of the 2014-15 school year. See “THE PROJECT AND PLAN OF FINANCE” and “RISK FACTORS-Construction Risks” herein for further description of the Project.

At the start of the current 2012-13 school year, BCSE began implementing a strategic decision to increase the number of classes per grade from two to three by enrolling an additional kindergarten class with the intent of moving that class up each year. Once the Project is complete, the renovated facility will be able to accommodate those three new classes, and will also accommodate an additional third and fourth grade class. As a result, at the start of the 2014-15 school year, BCSE expects to have three full classrooms for each of grades K-4 with approximately 28 students per class. At the start of the 2015-16 school year, BCSE intends to bring in a new sixth grade class of an additional 28 students resulting in 3 full classrooms for each of grades K-6. In New York City, many public middle schools begin in the sixth grade resulting in a large source of demand for sixth grade vacancies. Once those classes progress through the eighth grade, BCSE expects to reach its full capacity of 756 students at the start of the 2017-18 school year.

## Governance and Administration

**The Board.** BCSE is governed by a Board of Trustees (the “Board”). Under BCSE’s Bylaws, the Board consists of not less than 5 nor more than 25 trustees. Currently, there are 13 trustees who are elected to three-year terms. The President of BCSE’s Parent Association serves as an ex-officio member of the Board. The Board holds regularly scheduled board meetings, typically five times a year. Under the terms of BCSE’s Charter and Bylaws, the Board has the power and authority to remove any Trustee for cause upon notice.

The individuals who currently serve as trustees and officers of the Board listed as follows:

**Joyce Frost, Board Chair.** Joyce Frost is the Founding Board Chair of BCSE. She also serves as Secretary, and formerly Treasurer, of the Board of Directors of New York Cares, the 2009 winner of the New York Times Nonprofit Excellence Awards. Ms. Frost is a financial professional and partner of Riverside Risk Advisors LLC, a derivatives advisory firm. Prior to starting Riverside, Ms. Frost held senior level positions at investment banking firms including Morgan Stanley, Chase and Sumitomo Capital Markets. Ms. Frost holds an MBA in Finance from the University of Chicago and a BA in Finance from Indiana University Kelly School of Business. Ms. Frost also serves on the Board of The Friends of the Bronx Charter School for Excellence, Inc., previously known as Parkchester Progressive Educational Initiative, Inc. (“Friends of BCSE”). See “Appendix A – Friends of Bronx Charter School of Excellence” herein for further information about Friends of BCSE.

**Stacey Lauren, Vice Chair.** Stacey Lauren is a private tutor focused on executive functioning skills for middle and high school students and joined the Board in 2010. She assists with academic support for the history, science, and English curricula and teaches mathematic skills, reading strategies and general academic knowledge to elementary students. She also guides ISEE test preparation and tutors students at New York City private schools. Ms. Lauren previously spent ten years in marketing at Pfizer Pharmaceuticals. Ms. Lauren holds a BS in communications and political science from Northwestern University, an MBA from Harvard Business School and an MA in Elementary Education from Teachers College, Columbia University. Ms. Lauren serves on the Education and Accountability Committee of the Board.

**Deirdre Flynn, Treasurer.** Deirdre Flynn joined the Board in 2006 and currently serves as the Chair of the Board of Friends of BCSE. Ms. Flynn is an independent consultant who specializes in managing finance and operations of growth companies and not-for-profits. Previously, Ms. Flynn served as the Senior Director of Finance and Operations for New York Cares, where she oversaw the organization’s finance, information technology, human resource and administrative functions. Ms. Flynn began her career at Morgan Stanley, where she worked in both the investment banking division and for Morgan Stanley Venture Partners. Ms. Flynn holds an MBA from The Wharton School and a BA from Williams College.

**Kimberly Hartman, Secretary.** Kimberly Hartman is founder of KH Designs, an interior design firm in New York City and joined the Board in 2006. Prior to design, Ms. Hartman was Vice President of Human Resources and Facilities for Trust Company of the West. She also serves on the Board of Writopia Lab, Inc., Temple Emanu-El’s Mitzvah Board and UJA Manhattan Women’s Philanthropy Board. Ms. Hartman earned a BA at Tufts University and an MBA in Finance from the Leonard Stern School of Business at NYU. Ms. Hartman focuses on BCSE’s development and marketing efforts as well as literacy programs with the students.

**Andra Ehrenkranz, Trustee.** Andra Ehrenkranz is on the Executive Committee of the Board and leads BCSE’s development and marketing efforts. Ms. Ehrenkranz is the Group Vice President of Consumer Insights and Strategy for Macy’s. Previously, Ms. Ehrenkranz was employed at Ann Taylor as Senior Vice President, Strategic Planning where she oversaw long-term strategic planning and research and launched the company’s internet website business. Ms. Ehrenkranz also sits on the NBCU Women’s Advisory Panel. Ms. Ehrenkranz graduated magna cum laude with honors from Brown University with a BA in International Relations and has a joint degree from the Joseph H. Lauder Institute at the Wharton School with an MBA in Multinational Marketing and MA in International Studies. Ms. Ehrenkranz joined the Board in 2008.

**William Geist, Trustee.** Willie Geist is a host of NBC’s “Today” show, a co-host of MSNBC’s “Morning Joe”, and a frequent contributor to NBC News programs, including “Nightly News” and “Rock Center with Brian

Williams.” Mr. Geist is also the author of two books, including the 2010 New York Times bestseller “American Freak Show”, and holds a BA in Political Science from Vanderbilt University. Mr. Geist joined the Board in 2011 and focuses on development and strategic marketing efforts.

**Frank Iacono, Trustee.** Frank Iacono serves on the Finance Committee of the Board. Mr. Iacono is the founder and manager of South Haven Financial LLC, a financial advisory firm, was formerly a Managing Director at Morgan Stanley and the CEO of Cournot Capital, Inc. He has also held senior level positions at Lehman Brothers and Chase. Mr. Iacono earned his JD, cum laude, at Harvard Law School, and his BS in Applied Mathematics, summa cum laude, at Yale University. Mr. Iacono joined the Board in 2008.

**Kathy Lathen, Trustee.** Kathy Lathen is a licensed real estate professional with Heddings Property Group in New York City. Prior to real estate, Ms. Lathen spent her professional career as a healthcare executive at MD Anderson Cancer Center in Houston, TX and the Mount Sinai Medical Center in NYC. Ms. Lathen holds an MBA from the University of Michigan and a BS in Public Health from Indiana University. Ms. Lathen focuses on BCSE’s development and marketing efforts and works with BCSE’s administration on student outplacement. Ms. Lathen joined the Board in 2010.

**Michael Lewis, Trustee.** Michael Lewis is Senior Managing Director, Insights, Teach for America. Mr. Lewis leads Teach for America’s consumer insights team. Prior to joining Teach for America, Mr. Lewis started his career in marketing research in the consumer packaged goods industry at Procter & Gamble and has also worked at Kraft Foods, Nestle and PepsiCo. Mr. Lewis graduated from Wesleyan University. Mr. Lewis is a member of the Board’s Development and Marketing Committee, and also serves as Trustee of the Haverford School and the Stratus Foundation. Mr. Lewis joined the Board in 2011.

**Rosemary Milliman, Ph.D., Trustee.** Rosemary Milliman joined the Board in 2006 and chairs the Education and Accountability Committee of the Board. Before becoming an administrator, Dr. Milliman began her career in early childhood education in Minnesota. She taught kindergarten and first grade before becoming a resource teacher in Middle and Upper School in St. Paul, MN. In 1984, Dr. Milliman was hired as Principal of the Lower School at the Bergen School in New Jersey. Dr. Milliman currently is the Principal, Lower School at Trinity School in New York City; she was appointed to the position in 1989. Dr. Milliman holds a BS in Elementary Education with Early Childhood certification from the University of Minnesota, a Master’s degree in Special Education K-12 from the University of St. Thomas and a Ph.D. in Educational Policy and Administration from the University of Minnesota.

**Mardi Schecter, Trustee.** Mardi Schecter is an attorney and a founding partner of the law firm of Younkins & Schecter LLP, a full service commercial real estate law firm representing institutional and entrepreneurial clients. Ms. Schecter received her undergraduate BA degree from the Honors School at the University of Michigan and her JD Law degree from The Stanford University School of Law. Ms. Schecter was appointed to the Real Estate panel of the Dormitory Authority of the State of New York and to non-bond legal counsel panels of each of the following State agencies: New York State Housing Finance Agency, State of New York Mortgage Finance Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency, Tobacco Settlement Financing Corporation and New York State Housing Trust Fund Corporation. She has also served on the Committee on Real Property Law of the Association of the Bar of the City of New York. Ms. Schecter was previously associated with Kramer, Levin, Nessen, Kamin & Frankel and with Battle Fowler (now known as Paul Hastings), where she practiced in the real estate departments and then served as Vice President and Counsel for First Winthrop Corporation prior to Younkins & Schecter LLP’s establishment. Ms. Schecter joined the Board in 2012.

**Christopher Schoberl, Ph.D., Trustee.** Christopher Schoberl was appointed in 2009 to the position of Principal, Middle School, at Trinity School in New York City. He has also served in leadership positions at the Fay School and Foxcroft Schools and was founding Head of School of Benjamin Franklin Classical Charter School in Boston, MA. Dr. Schoberl earned his BA at Rutgers University and a Master’s and Ph.D. from Teacher’s College, Columbia University. Dr. Schoberl joined the Board in 2010.

**Michael Stern, Trustee.** Michael Stern joined the Board in 2004 and served as Vice-Chair until 2011. Mr. Stern is a member of the Finance Committee and serves on the Board of Friends of BCSE. Mr. Stern is the

President of The Big Wood Foundation, a 501(c)(3) corporation with an emphasis on children's health and education. He is currently President of Five Angels, LLC, a private investment company. His other charitable involvements are as Chairman of Friends Without A Border, which operates a children's hospital in Cambodia; a member of the Board of Dartmouth Partners in Community Service and President of Youth Employment Summer (in affiliation with the Children's Aid Society). He also founded the "Graduate Achievement Program", was a member of the Advisory Board of the Department of Social Services of the Human Resources Administration of NYC, was a member of The Board of the Foundation for the Fashion Institute of Technology (F.I.T.) and was Chairman of the Corporate Advisory Council of Children's Aid Society. Mr. Stern earned his Bachelor's degree from Dartmouth College, his MBA from the Amos Tuck School and his JD from NYU School of Law.

***Jouli Yohannes, Parent Association, ex officio.*** Jouli Yohannes is currently serving the first of a two-year term as president of BCSE's Parent Association. Ms. Yohannes is Programming Leader at Battery Park City Parks Conservancy and earned her BS in Health Management at Howard University. Ms. Yohannes has two children attending BCSE.

Administration. BCSE employs the following key administrators: Head of School, Principal, Director of Finance and Operations, Elementary School Dean of Students, Middle School Dean of Students, Academic Dean, two High School Placement Counselors and Operations Manager.

The individuals who currently hold administrative positions are as follows:

***Charlene Reid, Head of School.*** Charlene Reid started her career in education 16 years ago as a teacher leader in South Los Angeles after earning a BA in Political Science and an Ed.M in Elementary Education from the University of California, Los Angeles (UCLA). Ms. Reid also earned an M.Ed in Educational Leadership from Columbia University, Teachers College before becoming an assistant principal and principal in the Bronx and Harlem. In 2007, Ms. Reid started as the Principal and Head of School at BCSE. Ms. Reid was a 2011 Cahn Fellow at Columbia University, Teachers College. Ms. Reid is currently an educational leadership doctoral student at the University of Pennsylvania. Her research interests include addressing the creativity gap and parent advocacy in urban school settings.

***Aleisha Rodriguez Burgos, Principal-Elementary School.*** Aleisha Rodriguez Burgos serves as the Principal at the BCSE Elementary School. Mrs. Burgos first joined BCSE as a Special Education Coordinator and Learning Specialist in 2007. Her education includes a BA in Special Education (K-12) from Ball State University's Teachers College (2000), graduate training at Harvard Graduate School of Education (2006), and an MS in School Building Leadership from Mercy College (2009). She is an Ally alumna for The Cahn Fellows Program for Distinguished New York City Principals at Teachers College, Columbia University. Prior to joining BCSE, Ms. Burgos served as an Individualized Education Program teacher at P.S. 194 in Harlem, NY (2004-2007) and a special education teacher for both elementary and high school students in Gary, IN (2000-2004). Ms. Burgos has been serving BCSE as an academic leader since 2009.

***Jose Rivera, Director of Finance & Operations.*** Jose Rivera has over 35 years experience in accounting and finance areas. Mr. Rivera received his BBA from Iona College, New Rochelle, New York. He started his financial career as a Division Controller for a metals manufacturer and later worked for Price Waterhouse in New York City as an in-house Controller. Mr. Rivera began working for non-profits in the late 1980s. In the not-for-profit sector, Mr. Rivera has worked for organizations dealing with troubled and high risk teens, shelters, food pantries, transitional and permanent housing, domestic violence, and those suffering with HIV and AIDS. Mr. Rivera joined BCSE in 2010.

***Kevin Fischer, Dean of Students, Elementary School.*** Kevin Fischer graduated from Irvington High School and then attended Marist College in Poughkeepsie, New York. Mr. Fischer graduated in 2007 from Marist with a Bachelor's Degree in Psychology and Special Education. Mr. Fisher continued his education at Manhattanville College where he received his Master's Degree in Physical Education grades K through 12 in 2011. Mr. Fischer is dually certified in general and special education grades 1 through 6. Mr. Fisher was hired as a fourth grade teacher at BCSE in 2007 and taught fourth grade for three years before becoming the Science teacher in 2010. Mr. Fisher also has coached the boys' basketball team for the past four years at BCSE. While pursuing his Master's

Degree, Mr. Fisher was also accepted into the Emerging Leaders Fellowship (ELF) in 2010 through the New York City Charter Center. Mr. Fisher graduated from the ELF program in May 2011. He became Dean of Students at the elementary school of BCSE in September 2011. Mr. Fisher plans to continue his education by pursuing his Master's Degree in Administration.

***Charlton Clarke, Dean of Students, Middle School.*** Charlton Clarke joined the BCSE staff in 2006 as the physical education teacher, and was promoted to Dean of Students at the middle school in 2012. Mr. Clarke is a graduate of St. Raymond's HS of the Bronx. Mr. Clarke went on to play basketball at the University of Massachusetts Amherst, where he subsequently earned a BA degree in Sports Management & Business of Science. He coaches basketball after school and spearheads after school programs at BCSE. Mr. Clarke is currently pursuing his Master's degree in Early Childhood Education/ Special Education at Mercy College.

***Tanya Ghans, Academic Dean.*** Tanya Ghans has more than 10 years of professional experience in the education field as a teacher and teacher leader. Ms. Ghans earned her Master's in Education from Teachers College at Columbia University and her BA from Rutgers College. Tanya is currently the Academic Dean at BCSE Middle School. Ms. Ghans joined BCSE in 2007.

***Kristine Rivera, High School Placement.*** Prior to joining BCSE in 2011, Kristine Rivera served as the first Executive Director of Cents Ability providing free financial literacy workshops to NYC/NJ high school students. Ms. Rivera received a Bachelor of Arts from Colgate University with a double concentration in Philosophy and Latin American Studies. As a National Urban Fellow, she earned a Master of Public Administration from CUNY Baruch School of Public Affairs and served as the Interim Acting Executive Director of an early childhood education center in Brownsville, Brooklyn. Previously, Ms. Rivera used her experience as the Director of Comp2Kids to develop strategic partnerships to further the mission of a volunteer led organization and advance the financial literacy movement in the NYC metropolitan area. Ms. Rivera was hired at BCSE to design and launch the High School Placement and Alumni Services Department.

***LaToya Laury, High School Placement.*** LaToya Laury has been in the education field for five years and joined BCSE in 2011. Ms. Laury graduated from the University of Pennsylvania with a BA in Health and Societies and then began her career at A Better Chance, a non-profit organization that works with families to place students into independent day and boarding schools. Ms. Laury joined BCSE to further her mission to bring the benefits of the independent day school community to families in the Bronx as a High School Placement Director. As an alumna of A Better Chance, Ms. Laury brings her personal experience to her work and makes a special connection with BCSE students' families to guide them through the high school admissions process.

***Monica Rios, Operations Manager.*** Monica Rios began working at BCSE as an Office Assistant in November 2006. Ms. Rios then became the Office Coordinator, Office Manager and has been the Operations Manager since 2009. As Operations Manager, Ms. Rios' primary responsibilities include BCSE's lottery and admissions process, compliance reporting, student transportation and processing free and reduced lunch applications. In addition, Ms. Rios assists in Human Resources and administration of Employee Benefits. Ms. Rios is a graduate of the State University of New York College at Oswego and has a Bachelor's Degree in Business Administration.

**Teachers and Staff.** Each classroom at BCSE has a lead teacher who is supported by an educational associate. BCSE currently employs 37 full-time teachers and 12 full-time educational associates. All teachers employed by BCSE are certified and meet State requirements for public education instructors, while all educational associates employed by BCSE either are certified by the State or are currently working towards certification. Each class has a maximum of 28 students per class and BCSE's current student-teacher ratio is approximately 11:1. The following table shows the level of experience for teachers and educational associates for the last five school years.

### BCSE Teacher and Educational Associate Experience

	2012-2013	2011-2012	2010-2011	2009-2010	2008-2009
Beginners	9	12	8	7	3
1-5 Years Experience	33	29	22	22	19
6-10 Years Experience	7	4	1	0	1
Over 10 Years Experience	0	0	1	0	1
Total Teachers and Educational Associates	49	45	32	29	24
Student – Teacher Ratio	11:1	10:1	12:1	11:1	12:1

In the 2011-12 school year, 3 teachers and 1 educational associate voluntarily departed, while in the 2010-11 school year, 4 teachers voluntarily departed. The following table shows teacher and educational associate turnover rates for the last five school years.

### BCSE Teacher and Educational Associate Turnover Rate

	2011-2012	2010-2011	2009-2010	2008-2009	2007-2008
Less than Five Years Experience	10%	24%	0%	17%	13%
Total	10%	24%	11%	17%	17%

Additionally, BCSE currently employs 5 professional support staff to further enhance classroom instruction. BCSE also employs 3 office assistants and 2 custodians. BCSE currently employs a total of 63 individuals in administrative, teaching and staff positions. BCSE has not entered into any collective bargaining agreements.

**Volunteers.** BCSE actively encourages the parents of its students to participate in all aspects of a student's education. Parents volunteer at BCSE on a regular basis in a wide variety of activities, including walk-a-thons, field trips, advocacy with State representatives and fundraising efforts. Additionally, Board members volunteer from time to time to conduct presentations for students on topics such as higher education and career development.

### **Charter**

**General.** New York Education Law, specifically Article 56, the New York Charter Schools Act of 1998, as amended (the "Act"), provides for the creation of public charter schools to provide educational opportunities for students, teachers, parents, and community members, and to establish and maintain schools that operate independently of existing schools and school districts in order to: (i) improve student learning and achievement; (ii) increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are at-risk of academic failure; (iii) encourage the use of different and innovative teaching methods; (iv) create new professional opportunities for teachers, school administrators and other school personnel; (v) provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and (vi) provide schools with a method to change from rule-based to performance-based accountability systems by holding charter schools accountable for meeting measurable student achievement results.

SUNY, jointly with the Board of Regents, is required to provide oversight sufficient to ensure that each charter school that SUNY has authorized is in compliance with applicable law and the terms of its charter. The SUNY Charter Schools Institute was created by SUNY to administer its responsibilities under the Act, including the review of applications, assisting in the development of charter school accountability plans, and considering charters for renewal. The SUNY Charter Schools Institute, together with the Board of Regents, oversees compliance through the monitoring plans contained in each school's charter as well as through other methods designed to ensure accountability while still respecting a school's autonomy. Among other roles, the SUNY Charter Schools

Institute recommends for charter approval only those schools that have a high likelihood of significantly improving student achievement, especially for students at risk of academic failure; provides ongoing oversight of schools that centers on schools' progress in improving student achievement, while also reviewing schools' organizational and fiscal performance.

BCSE operates pursuant to the Charter authorized by SUNY and approved by the Board of Regents. The Charter governs such matters as BCSE's authority to operate, student performance, financial management, governance and operations. Pursuant to the Act, the term of a charter cannot exceed five years and therefore must be renewed periodically. On April 29, 2003, the Board of Regents granted the Charter (the proposed form of which was agreed to by BCSE and SUNY on February 25, 2003) for a term of five years and incorporated BCSE by issuing a certificate of incorporation known as a provisional charter. Prior to beginning operations at the start of the 2004-05 school year, BCSE used 2003-04 as a planning year. In 2007, SUNY extended the Charter through July 31, 2008 to align the Charter term with the school year and to allow BCSE to apply for what is known as a one-year short-term planning year renewal so that BCSE would have five full years of operating data to support its five-year renewal application. The one-year short-term planning year renewal was approved and the Charter extended through July 31, 2009. In 2009, SUNY approved BCSE's five-year renewal application and the Board of Regents subsequently issued the renewed Charter for a term up through and including December 14, 2014. The Charter was revised in 2010 to allow BCSE to offer grades 6-8. The Borrower intends to take the necessary steps to ensure that the Charter will be renewed by SUNY and the Board of Regents pursuant to applicable law in a timely fashion to ensure uninterrupted operation of BCSE through the end of the 2014-15 school year and beyond.

Throughout BCSE's current five-year charter term, SUNY requires annual accountability plan progress reports (each, an "Annual Report") to ensure that BCSE is in compliance with the terms of the Charter. An Annual Report is submitted at the end of every school year and provides information about BCSE's academic and fiscal standing, as well as operational information (i.e., student and teacher retention, percentage of special education students, testing data, etc.). This information is analyzed by representatives from the SUNY Charter Schools Institute. Additionally, representatives from the SUNY Charter Schools Institute, on behalf of SUNY, conduct regular compliance visits at BCSE at least once every charter term.

Charter Renewal. Under the terms of the Act, charters may be renewed, upon application for renewal, for a term of up to five years. In connection with charter renewal, the Act requires applicants such as BCSE to submit:

- (i) A report of progress in achieving the educational objectives set forth in the charter.
- (ii) A detailed financial statement that discloses the cost of administration, instruction and other spending categories for the charter school that will allow a comparison of such costs to other schools, both public and private.
- (iii) Copies of each of the annual reports of the charter school required by the Charter and the Act, including charter school report cards and certified financial statements.
- (iv) Indications of parent and student satisfaction.

In the case of BCSE, the Charter also requires that a renewal application contain such other material and information as is required by SUNY.

The Act requires that charter renewal applications be submitted to the charter entity, which in the case of BCSE is SUNY, no later than six months prior to the expiration of a charter; provided, however, that the charter entity may waive the deadline for good cause shown. BCSE's Charter provides that no later than the first of August in the year prior to expiration of the Charter, BCSE may provide SUNY with an application to renew the Charter. BCSE's Charter states that if SUNY does not approve a renewal application, SUNY and BCSE shall fulfill their respective obligations through the full term of the Charter. BCSE expects to file its five-year charter renewal application by August 1, 2013.

Charter Revocation. A charter may be terminated by the charter entity or the Board of Regents upon any of the following statutory grounds:

- (i) If the charter school's outcome on student assessment measures adopted by the Board of Regents falls below the level that would allow the Commissioner of Education to revoke the registration of another public school, and student achievement on such measures has not shown improvement over the preceding three school years;
- (ii) Serious violations of law;
- (iii) Material and substantial violation of the charter, including fiscal mismanagement; or
- (iv) If the New York Public Employment Relations Board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of subdivision one of § 209-A of the New York Civil Service Law involving interference with or discrimination against employee rights under Article 14 of the New York Civil Service Law.

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

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

In addition, the charter entity or the Board of Regents may place a charter school falling within the provisions of (i) through (iv) above on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in summary revocation of the school's charter.

### **Curriculum and Extracurricular Activities**

English Language Arts. BCSE utilizes an English Language Arts ("ELA") curriculum that is aligned to the Common Core State standards for kindergarten through eighth grades. The elementary school reading program is intended to provide students the foundation needed to become proficient readers. The reading program components are intended to provide skills and knowledge to understand how phonemes are connected to print; to develop the ability to decode words and the ability to read fluently; to develop the background knowledge and vocabulary to foster comprehension; to develop active strategies to construct meaning from print; and to develop and maintain a motivation to read. The program also includes an assessment component that provides appropriate measures for screening, progress monitoring and achievement outcome. To prepare students for the middle school English program, there are novel study units and guided reading groups that push students to read books that are above their instructional reading level with teacher support.

The reading program also includes daily small reading groups for struggling readers and enrichment activities for students who are proficient and advanced readers. BCSE attempts to teach and assist all students through a reading intervention program. Classes get support from Learning Specialists to help identify students who need additional assistance and support in the areas of phonemic awareness, phonics and fluency. Supplemental instructional materials are provided to support an intervention program to meet the needs of identified students. An extra block of reading intervention utilizing the *Wilson Foundation's* program is given to these students. Students who receive early intervention are to be monitored on a weekly basis for short-term goal improvement. There are also enrichment activities for students who are above grade level. There are also activities that integrate other subjects with reading instruction, such as social studies and science.

The middle school ELA curriculum consists of a combination of anthology and novel reading combined with *Writers' Workshop*. Ninety minutes are allocated for ELA each day, with a minimum of 50 minutes devoted to

reading. A published program is used in concert with award-winning novels. The anthology of literature used is directly aligned with Common Core State standards to help ensure accurate content delivery and support for the State ELA assessment given in each grade. A wide variety of genres, word study/vocabulary enrichment, differentiated material and connections to the *Writers' Workshop* allow for balanced instruction. In addition, each unit begins with essential questions that are designed to usher students from knowledge and understanding to synthesis and evaluation. The award winning novels are directly tied to broader concepts and themes taught in other disciplines. A minimum of 4 novels are taught each year.

The middle school *Writers' Workshop* builds upon the writing that students produced in the elementary years. Narrative, informational and poetic writing are developed through the writing process to create substantive pieces. However, there is an added emphasis on functional writings due to their prevalence in the academic world. To meet these needs, *Writers' Workshop* is taught for a minimum of 30 minutes each day, of which at least one period per week focuses on explicit grammar, usage or mechanics instruction.

The middle school classes get support from the Leadership team and Learning Specialist to identify students who need intervention and support in the areas of vocabulary development, reading comprehension and higher-order thinking. Supplemental instructional materials are given to support such intervention programs. The few upper grade students who still need support with phonics and fluency receive an extra reading block to support their improvement in these areas. Students who are performing above grade level in ELA also have opportunities to participate in self-guided, self-selected independent performance-based projects that are facilitated by members of the ELA staff.

**Mathematics.** BCSE implements a mathematics curriculum that is aligned to the Common Core State standards. The balanced mathematics program, *Everyday Mathematics*, is intended to enable students to learn more mathematical content and become lifelong mathematical thinkers. The curriculum is grounded in conceptual understanding, procedural fluency and problem solving. All grades are expected to not only know content, but all the appropriate processes of mathematics. The curriculum includes linking past experiences to new concepts; sharing ideas through discussion; solving problems that relate to everyday situations; cooperative learning through partner and small group activities; developing concept readiness through hands-on activities and explorations; increasing “fact power” through games; solving problems using multiple strategies; using mathematics in daily classroom routines; and providing a variety of assessment opportunities. The assessment program in mathematics includes unit-based tests that check progress for concept mastery and review of past content.

Middle school students continue to work with a Common Core State standards-aligned mathematics curriculum that reflects the logical and sequential nature of mathematics. The goal in using this curriculum is to simultaneously develop conceptual understanding, computational fluency and problem-solving skills.

BCSE’s intention is that many students will be able to complete algebra by the end of eighth grade. In order to achieve this, students will be required to master the core building blocks of algebra by sixth grade. These core building blocks include: (i) fluency with whole numbers; (ii) fluency with fractions; and (iii) fluency with certain aspects of geometry and measurement.

Differentiated classroom instruction, flexible grouping and immediate intervention for students who are not mastering math standards give students the individual instruction they need to succeed in math. Additionally, advanced sections and groups are created to enrich the math experience of students who are above grade level.

**Other Subject Areas.** BCSE’s mission states that it will cultivate the students’ intellectual, artistic, social, emotional and ethical development. The liberal arts approach includes science, social studies, visual and performing arts, physical education and health for all grades.

**Science.** BCSE’s science curriculum is based on the Common Core State standards focus on three major strands: (i) the physical environment, (ii) earth and space, and (iii) the living environment integrated with mathematics and technology. The science program has an inquiry-based approach to learning. It also provides students with opportunities to build connections that link science to technology and societal impacts. The content is

designed to provide the foundational skills and knowledge that students need to ultimately become scientifically literate citizens of the 21st century.

*Social Studies.* BCSE maintains an approach for its social studies program to be Common Core State standards-based, rigorous and teacher developed. Moreover, BCSE upholds its belief for the social studies program to have minimal use of standardized textbooks and more of an instructional program that builds core knowledge. The intent is to build a civic understanding and disposition toward democratic values and the social, economic and political institutions of an increasingly complex society. Instructional materials used in the study of social studies and history includes: (a) documents and letters about American and world history; (b) field trips to expand the learning beyond the walls of the classroom; (c) documentaries to add realism to the topic of study; (d) art to illustrate historical events and figures, and (e) writing elements to expound upon content. Trade books are used in the upper grades to extend the literacy program.

*Visual and Performing Arts.* BCSE believes that through the study of the arts all students have an opportunity to express themselves differently than what they would in their core classes. The visual arts classes, music and dance allow students to learn skills of cooperation, perspective, appreciation and interpretation. Each grade level has a unit of study that is usually connected to an integrated theme in their other subjects.

*Physical Education and Health.* BCSE's physical education and health program was created to combat poor eating habits and incidents of obesity in the student population. The program includes a balanced physical education program for all students while exposing the students to lessons on proper hygiene and healthy food choices.

*Spanish.* The fifth through eighth grade students are enrolled in a Spanish course that is relevant to their developmental level. The curriculum is cognizant of the different needs of our students who are native Spanish speakers.

High School, College and Career Preparation. From the earliest grades, the entire student body of BCSE is exposed to college and careers through fairs, guest speakers and presentations. At the middle school level, the Department of High School Placement and Alumni Services provides a roadmap for students to explore high school (including independent day, boarding, public and parochial schools) and college options, as well as future career opportunities. Since the creation of the department in October 2011, students have visited multiple high schools in the New York area and two in Pennsylvania. The students have also visited Syracuse University, Colgate University, Swarthmore College and the University of Pennsylvania.

Two high school placement counselors at BCSE's middle school work strategically to prepare and support students through the high school application process. Beginning in the 2011-12 school year, counselors began working across grade levels meeting with each grade at least once per week. Preparation in grades 5 and 6 focused on organizational skills and test taking strategies. Seventh graders have classes with counselors twice a week, which rotated with their specialized classes. These high school prep classes focused on building vocabulary, strengthening mathematics skills and logical reasoning using Kaplan study materials, as well as developing "elevator pitches" and proper introduction protocol. With the start of the 2012-13 school year, the eighth grade cohorts reviewed special high school exams and timelines, completed applications and did mock interviews with BCSE Board members in preparation for entrance interviews for independent day and boarding schools.

BCSE's first eighth grade class will graduate at the end of the 2012-13 school year. The students have applied to public schools, Catholic schools and independent day and boarding schools. Students have been accepted at Academy of Mt. St. Ursula, All Hallows, Cardinal Hayes, Cardinal Spellman, Cathedral, Monsignor Scanlan, Mt. St. Michael's, Preston, Rudolph Steiner School, St. Aquinas, St. Catherine's Academy, St. Raymond's Academy for Boys, and St. Raymond's Academy for Girls.

Additionally, BCSE guides and supports students as they engage in competitive enrichment programs such as TEAK, Harlem Educational Activities Fund (HEAF), DREAM, Oliver Scholars, Prep 9, and Breakthrough New York.

Extracurricular Activities. BCSE incorporates a variety of extracurricular activities throughout the school year. Since its inception, BCSE has partnered with the Alvin Ailey Dance Company to offer students in-school jazz and tap lessons and culminates with an annual dance recital at the Alvin Ailey dance studios. Chess, track and field, basketball, food and nutrition, art workshops and a drama club are also offered. In addition, computer labs are available to all students.

### **Academic Achievement Indicators**

Assessments. BCSE has created a system for gathering assessment and evaluation data and uses it to improve instructional effectiveness and student learning. BCSE has refined its collection of data, data analysis and instructional implications to address staff members' ability to modify instruction and develop expertise in monitoring student learning while increasing the ability to inform all stakeholders of the students' academic achievement.

BCSE uses each of the following student assessment measures to align its curriculum with Common Core State standards and to inform program design and instructional decisions: (i) annual national Iowa Testing Basic Skills ("ITBS") and State ELA and Mathematics Tests; (ii) a Developmental Reading Assessment-2 ("DRA-2") three times a year; (iii) unit tests and student portfolio authentic self-assessments every 4-6 weeks; (iv) weekly quizzes and locally developed assessments; and (v) daily informal teacher assessments to check basic understanding. Additionally, writing assessments take place every 2-6 weeks with benchmark assessments three times a year. Commercially developed assessments also are utilized. BCSE evaluates and reports results of the ITBS, DRA-2, State ELA and Mathematics Tests and student portfolio assessments under the Accountability Plan.

State Testing Performance. The following is a summary of student performance at BCSE for the past five school years in ELA, mathematics and science. Performance on State assessments is reported in terms of mean scores and percentages of tested students scoring at or above Level 2, 3 and 4. Level 3 is the "meets proficiency" standard which means students demonstrate an understanding of the subject and the knowledge and skills expected at their grade level. When compared to the performance of all students in the State and all students in the 11th District, a significantly greater percentage of BCSE students consistently scores at or above Level 3.

#### **Percentage of students that scored at or above Level 3 in English Language Arts**

	2007-08			2008-09			2009-10			2010-11			2011-12		
	BCSE	State	11th District	BCSE	State	11th District	BCSE	State	11th District	BCSE	State	11th District	BCSE	State	11th District
Grade 3	82	70	58	98	76	66	79	55	40	85	56	41	98	56	40
Grade 4	91	71	57	78	77	67	67	57	36	95	57	44	89	59	46
Grade 5	N/A	78	66	98	82	72	89	52	41	92	54	44	82	58	46
Grade 6	N/A	67	48	N/A	81	66	N/A	54	33	92	56	37	92	56	38
Grade 7	N/A	70	53	N/A	80	64	N/A	50	28	N/A	48	28	74	52	36

Source: New York State Education Department and New York City Department of Education

**Percentage of students that scored at or above  
Level 3 in Mathematics**

	2007-08			2008-09			2009-10			2010-11			2011-12		
	BCSE	State	11th District	BCSE	State	11th District	BCSE	State	11th District	BCSE	State	11th District	BCSE	State	11th District
Grade 3	96	90	86	98	93	90	88	59	47	99	60	44	98	61	46
Grade 4	100	84	79	96	87	82	85	64	53	95	67	57	98	69	60
Grade 5	N/A	83	78	100	88	85	96	65	55	92	66	58	91	67	58
Grade 6	N/A	79	64	N/A	83	70	N/A	61	42	98	63	45	92	65	51
Grade 7	N/A	79	59	N/A	87	73	N/A	62	39	N/A	65	45	96	65	48

Source: New York State Education Department and New York City Department of Education

**Percentage of students that scored at or above  
Level 3 in Science**

	2007-08			2008-09			2009-10			2010-11			2011-12		
	BCSE	State	11th District	BCSE	State	11th District	BCSE	State	11th District	BCSE	State	11th District	BCSE	State*	11th District*
Grade 4	100	85	76	100	77	81	100	88	83	100	88	82	100	-	-

Source: New York State Education Department and New York City Department of Education

\* Data not yet available.

The following are average BCSE and 11th District student performance scores for the past five school years.

**Average Student Performance Scores: BCSE and 11th District**

School Year	Average Score: English Language Arts		Average Score: Mathematics	
	BCSE	11th District	BCSE	11th District
2007-08	86.5	57.5	98.0	82.5
2008-09	88.0	68.3	97.0	85.6
2009-10	73.0	39.0	86.5	51.6
2010-11	90.0	44.5	97.0	51.0
2011-12	93.7	- *	98.2	- *

Source: New York State Education Department and New York City Department of Education

\* Data not yet available.

**Awards and Recognition**

Blue Ribbon Award. In 2012, BCSE was named one of 269 schools in the United States to receive the National Blue Ribbon Schools Award, which is the U.S. Department of Education's highest honor for K-12 public, private and charter schools across the country. Following nearly a ten-month selection process, BCSE met an extensive set of criteria evaluating the school's performance over a span of five years. BCSE is one of only three charter schools, out of a total 206 charter schools in the state of New York, to win the honor in 2012.

New York State School Report Cards. The State Education Department publishes an annual Accountability and Overview Report for each public school in the State entitled New York State School Report Card (the "New York State School Report Card"). The New York State School Report Cards for BCSE for each of the school years 2008-09, 2009-10, and 2010-11 indicate that pursuant to the federal No Child Left Behind Act,

BCSE meets annual yearly progress requirements (“AYP”) for ELA, math and science performance. In addition, the New York State School Report Cards for BCSE indicate that BCSE has been designated “Good Standing”, which indicates the school has not been designated as “Improvement”, “Corrective Action”, or “Restructuring” (each reflecting a greater degree of failure to meet AYP).

**NYC School Progress Reports.** The New York City Department of Education publishes an annual School Progress Report for each school in New York City (the “NYC School Progress Report”). BCSE has received an overall grade of “A” on its NYC School Progress Report for each of the last four years. The NYC School Progress Report evaluates schools on student progress, student performance (based on State ELA and Mathematics test scores), school environment (including attendance and results of parent, teacher and student surveys) and an extra credit category based upon exceptional gains with students with disabilities, English Language Learners and students with the lowest proficiency citywide.

## **Enrollment**

The following table shows actual BCSE student enrollment numbers by grade level for the current and four prior school years. In anticipation of completion of the Project, an additional kindergarten class was enrolled at the start of the 2012-13 school year.

### **Historical Enrollment by Grade Level**

Grade	2008-09	2009-2010	2010-2011	2011-2012	2012-2013
K	51	55	56	56	84
1	52	55	56	56	56
2	51	55	55	56	56
3	50	52	56	56	56
4	50	52	55	58	56
5	44	51	52	56	56
6	0	0	52	50	56
7	0	0	0	50	50
8	0	0	0	0	49
Total Enrollment	298	320	382	438	519

The following table shows projected BCSE student enrollment numbers by grade level for the five upcoming school years.

### **Projected Enrollment by Grade Level**

Grade	2013-14	2014-15	2015-16	2016-17	2017-18
K	84	84	84	84	84
1	84	84	84	84	84
2	56	84	84	84	84
3	56	84	84	84	84
4	56	84	84	84	84
5	56	56	84	84	84
6	56	56	84	84	84
7	56	56	56	84	84
8	50	56	56	56	84
Total Enrollment	554	644	700	728	756

## Student Retention

Listed below is the historical enrollment retention for the current and prior seven years. During the 2008-09 school year, graduating fifth grade students were placed into local middle school programs outside of BCSE due to BCSE's space constraints, resulting in a decreased retention rate. In addition, during the 2006-07 school year, BCSE relocated its facility from District 9 to its current location in District 11 resulting in decreased retention rates mainly due to transportation difficulties for many students' families.

### Retention Rate by School Year

School Year	Percent Retention from Previous School Year
2005-2006	95.1%
2006-2007	85.5%
2007-2008	85.4%
2008-2009	86.9%
2009-2010	96.0%
2010-2011	95.0%
2011-2012	94.0%
2012-2013	95.9%

## Lottery Admission Process

Under the Act, admission into charter schools is determined by a lottery process. BCSE's annual application submission process begins in mid-January and continues through April 1. Applications may be submitted electronically or in hard copy. Downloadable applications are available in English, Spanish and Bengali. The online application may also be translated into other languages. The lottery takes place in late April to early May. For the 2012-13 school year, there were a total of 2,760 applications for grades K-8; however, there were only 69 openings for new students. Applicants who have siblings already attending BCSE and those residing in the 11th District are given preference for vacancies on a first-come, first-served basis. Once the list of sibling applicants and 11th District applicants has been exhausted, any remaining spaces are filled through the lottery process.

## Wait List

BCSE is currently enrolled at its desired capacity for the 2012-13 school year, with 519 students enrolled as of September 1, 2012. The application wait list as of that date totaled 2,691. Listed below are the 2012-13 waitlist by grade and historical waitlist information:

### Current 2012-13 Waitlist

Grade	Waitlisted Students	Available Openings
K	891	57
1	389	2
2	287	3
3	217	1
4	205	1
5	229	1
6	310	1
7	109	3
8	54	0
Total	2,691	69

### Historical Waitlist Information

School Year	Waitlisted Students
2004-05	0
2005-06	0
2006-07	0
2007-08	275
2008-09	337
2009-10	864
2010-11	1008
2011-12	1521

BCSE does not have a defined cut-off date to accept additional students. Vacancies are generally filled immediately from the wait list according to the lottery process; however, BCSE takes into consideration the timing of the acceptance of new students during the school year as it may affect the potential success of said students.

### Service Area

BCSE is located in New York City, Bronx County. The New York City borough of the Bronx is coextensive with Bronx County. According to U.S. Census data, Bronx County had a population of 1,385,108 in 2010. BCSE's students all reside in Bronx County.

The Bronx is the only New York City borough that is located primarily on the mainland. The borough has a land area of 42 square miles (109 km), making it the fourth-largest in land area of the five boroughs, the fourth most populated, and the third-highest in density of population.

The Bronx contains one of the five poorest Congressional Districts in the U.S., the 16th, but it also includes the affluent and middle to upper class Riverdale, Schuylerville and Country Club neighborhoods. Parkchester is a residential neighborhood geographically located in the south central Bronx, New York City. In the 2010-11, 2011-12 and 2012-13 school years, 72.8%, 77% and 79%, respectively, of BCSE students qualified for the Federal free and reduced price lunch program, as compared to 79% of 11th District students in the 2010-11\* school year. 8.5% of current BCSE students are English language learners, as compared to 10% of 11th District students in the 2010-11\* school year.

The following table shows racial demographic information for the students enrolled at BCSE as of September 1, 2012, which is the most current available data. For comparison, the racial demographics of Bronx County and the State, as presented in the U.S. Department of Commerce's 2010 Census, are also included.

### BCSE, Bronx County and State Racial Demographics

Race	BCSE	Bronx County	State
African American	48.6 %	30.25%	15.90%
Asian	15.0	3.40	7.30
Hispanic	36.4	53.60	17.60
White	0.0	10.90	55.60
Other	0.0	1.90	3.60

Source: U.S. Census, 2010

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\* 11th District data for the 2011-12 and 2012-13 school years is not yet available.

## Competing Schools

The schools listed below are representative of the public, private and charter schools which compete with BCSE for students. This list is current as of November 27, 2012 and is not all-inclusive. BCSE is not aware of any plans for the opening of additional schools in its service area; however, other charter schools, public schools or private schools may be created in or near BCSE.

### Public Schools

School	Address	Distance (miles)	Grades Offered	Enrollment
PS 304 Middle School 101 Edward R. Byrne	2750 Lafayette Avenue	1.56	PK-5	540
PS 69	560 Theriot Avenue	1.53	6-8	457
PS 83	950 Rhineland Avenue	1.21	PK-5	602
PS 108	1166 Neill Avenue	1.04	K-8	1674
		1.47	K-5	580

### Charter Schools

School	New York City Community School District	Distance (miles)	Grades Offered	Authorizer
Icahn Charter School 1	9	3.1	K-8	SUNY
South Bronx Classical Charter School	12	2.2	K-5	NYC Chancellor
Grand Concourse Academy Charter School	9	4.1	K-5	SUNY
KIPP Academy Charter School	7	6.7	K-12	NYC Chancellor
Green Dot New York Charter School	7	3.4	9-12	NYC Chancellor
South Bronx CS for International Cultures/Arts	12	5.3	K-5	NYC Chancellor
Family Life Academy Charter School	9	3.7	K-8	SUNY
Bronx Charter School for Better Learning	11	6.1	K-5	SUNY
Hyde Leadership Charter School	8	3.0	K-12	NYC Chancellor
Bronx Global Learning Institute for Girls				
Charter School	7	6.5	K-5	NYC Chancellor

## Budgeting of Funds and Reports

The Director of Finance and Operations, in consultation with the Head of School, develops the annual budget beginning in early March. After reviewing the plans for the upcoming school year and fundraising goals, a final budget is drafted. The Finance Committee reviews the draft and recommends it to the Board who approves the annual budget by June 30 of the preceding fiscal year. Adjustments to budget categories during the year are approved by the Board.

The Director of Finance and Operations prepares monthly balance sheets and statements of activity. These statements are prepared on a cash basis and give a detailed reporting of asset, liability, revenue and expense categories, as well as comparisons between monthly and year-to-date actual vs. budget data. These statements do

not fully conform to generally accepted accounting principles (e.g. non-cash expenditures like deferred rent and depreciation are not reported). The Director of Finance and Operations and the Finance Committee of the Board compare year-to-date revenues and expenditures to the budget and review significant variations on a periodic basis. The full Board reviews the financials at each Board meeting.

### **Annual Financial Audit**

BCSE is required to have an annual audit conducted by an outside firm. Financial audits are conducted in accordance with generally accepted auditing standards. Upon completion, audits are reviewed by the Director of Finance and Operations, the Head of School and the Finance Committee, before being submitted to the full Board for review. BCSE and Friends of BCSE, while separate organizations, have combined financial reports. McGladrey LLP has been BCSE's auditor since 2008.

The combined audited financial statements of BCSE and Friends of BCSE (collectively, the "Organization") are included in "APPENDIX B - COMBINED AUDITED FINANCIAL STATEMENTS OF THE ORGANIZATION FOR THE FISCAL YEAR ENDED JUNE 30, 2012 (INCLUDING JUNE 30, 2011 COMPARATIVE INFORMATION)."

### **Friends of Bronx Charter School for Excellence**

Friends of BCSE, a not-for-profit corporation organized under the New York Not-For-Profit Corporation Law, originally was established to provide technical and financial assistance in the improvement of educational opportunities for school-aged children in the Parkchester area of the Bronx. To date, Friends of BCSE has held fundraisers to help support BCSE's facilities and programs. Prospectively, Friends of BCSE plans to continue to support BCSE's programs and also to facilitate and oversee collaboration efforts between BCSE and other public, private, parochial and charter schools.

BCSE and Friends of BCSE share certain resources, such as the school's management team (e.g., the Head of School and the Director of Finance and Operations), accounting and auditing personnel and office equipment. The costs of those resources are appropriately apportioned to each entity. The Director of Finance and Operations works with the Finance Committee to determine reasonable allocations based on how much of each resource is used by each entity. For example, allocations of BCSE personnel expenses are based on how much time and effort the individuals spend on each entity, and allocations of professional service fees are based on the service providers' assessments of how much work they performed on behalf of each entity.

Friends of BCSE has a separate Board of Directors consisting of 8 individuals, three of whom overlap with BCSE's Board of Trustees, namely Joyce Frost, Deirdre Flynn and Michael Stern. Other Board members include I Ching ("Grace") Chao, Christopher Hall, Steven Kirschenbaum, Robert Lester, and Joseph Shipley.

Friends of BCSE's goal is to make access to an excellent education a top priority for all students in the Bronx and other areas of New York. Historically, successful charter schools have addressed their desire to scale by opening and replicating existing charter schools under Charter Management Organizations ("CMOs"). Replication presents challenges including facilities, leadership and programmatic success and can be distracting to the flagship school leaders. For example, in respect to facilities, since the State does not provide facilities funding to charter schools, new (or replicating) New York City charter schools typically find excess capacity within existing New York City Department of Education public schools. This co-sharing of facilities tends to be controversial in the current political environment and presents uncertainties with respect to future rent payments and administration goals. Private facilities can also be challenging since existing vacant educational facilities are rare and it can be expensive and time consuming to renovate more conventional commercial space. The largest difference between BCSE/Friends of BCSE and a typical CMO is its approach to scale. Friends of BCSE has coined the term "Replication by Collaboration", and the Board of Friends of BCSE and management team are presently in the process of designing programs to collaborate and assist other public district, private and charter schools to help them achieve success in their educational programming. Friends of BCSE plans to offer its expertise in school turnaround, improvement and transformation; leadership, teacher and board development; financial and operational technical assistance; fundraising advisory; and parent engagement strategies. BCSE in its completed facility will

serve as a model/lab school for the collaboration effort as BCSE's stand alone success speaks for itself. While traditional CMOs attempt to manage several schools, Friends of BCSE's model will allow a client school to retain its autonomy while implementing proven best practices.

### **Investment Policy**

BCSE has an investment policy that has been adopted by the Board. All investment decisions with respect to BCSE's funds are determined by the Finance Committee, which reviews fund allocations periodically. Cash and short-term investments (which may not have maturities longer than 6 months) must be held at or invested with financial institutions or funds rated no less than A1 or P1 by S&P and Moody's, respectively. Currently, all of BCSE's funds are held in checking and savings accounts at JPMorgan Chase Bank, NA, with the exception of approximately \$27,000 held in a Charles Schwab & Co., Inc. brokerage account. The funds in the brokerage account are intended as a reserve to defray potential liquidation costs if BCSE dissolves. Part of this reserve is required by the Charter, but not required by law.

### **Commitments/Obligations**

On January 7, 2005, Friends of BCSE entered into a 30-year operating lease agreement with the Seller for the Property. On July 1, 2005, Friends of BCSE entered into a sub-lease agreement with BCSE, whereby BCSE assumed all obligations pertaining to the Friends of BCSE lease agreement. As an inducement for Friends of BCSE to enter into this lease agreement, BCSE funded \$1,547,149 in leasehold improvements made to convert the leased space for use as an educational facility. This lease will be terminated upon the issuance of the Series 2013 Bonds and the purchase of the Property by BCSE.

In addition, BCSE entered into a four-year operating lease agreement not cancelable for three years with The Church of Our Lady of Solace for the Morris Park Facility located at 1804 Holland Avenue, Bronx, New York in August 2010. The Morris Park Facility is used to operate classes for students in grades five through eight. The operating lease provides a renovation credit in the amount of \$78,173 for costs incurred by BCSE to renovate the interior and exterior of the building. The renovation credit is being amortized against the base rent on a monthly basis during the term of the lease. The lease expires by its terms on July 31, 2014, although BCSE is currently negotiating an extension of the lease until July 31, 2015.

### **Other Property Owned by BCSE**

BCSE currently owns the building and land located at 2000 Benedict Avenue, Bronx, New York which was formerly a synagogue ("2000 Benedict"). 2000 Benedict is not part of the mortgaged property for the Series 2013 Bonds and no student instruction takes place at or is planned for that site.

### **Fundraising and Contributions**

BCSE and Friends of BCSE receive donations in support of their missions from a variety of individuals, corporations, and foundations. The combined donations for both entities totaled \$567,208 in fiscal year 2008-2009, \$129,220 in fiscal year 2009-10, \$139,936 in fiscal year 2010-11 and \$170,709 in fiscal year 2011-12. These amounts are inclusive of special event revenues. Since December 2012, BCSE and Friends of BCSE have received over \$620,000 in donations and committed pledges and will continue to identify potential new sources for contributions, including foundations, corporations, individuals, parents and students. While BCSE intends to continue its fundraising efforts, annual expenditures are not budgeted in reliance on the expectation of such donations and it cannot assure that future contributions will be at current or historical levels.

### **Performance Based Compensation Plan**

BCSE is a partner in the federally-funded Teacher Incentive Fund (TIF-3) initiative known as the Partnership for Innovation in Compensation for Charter Schools (PICCS). In addition to their salaries, BCSE staff members will receive incentives described in the BCSE's Performance Based Compensation Plan (PBCP). The PBCP is based on results that go beyond what would be expected if an employee simply did the bare minimum

required by his/her job—it is meant to differentiate rewards based on staff member behavior and related student outcomes. The PBCP grant totaled \$400,000 over a five-year period.

### **Employee Benefit Plan**

BCSE does not have a defined pension plan but maintains a deferred compensation plan qualified under Section 403(b) of the Code. BCSE matches up to 5% of each employee's annual compensation not to exceed the employee's annual salary deferral amount. BCSE may also elect to make additional contributions to the plan on a discretionary basis. For the years ended June 30, 2012 and 2011, employer matching contributions in connection with this plan amount to approximately \$80,000 and \$62,000, respectively, net of forfeitures.

### **Insurance**

BCSE maintains the following insurance coverage: (a) Commercial Package (including property and liability); (b) Directors and Officers Liability; (c) Disability; and (d) Workers Compensation. BCSE contributes to the State unemployment insurance fund in accordance with applicable law. Per the terms of the lease with the Seller, BCSE is also responsible for reimbursing the Seller for its liability insurance. BCSE will maintain appropriate insurance coverage during construction of the Project.

BCSE purchases comprehensive insurance coverage in the traditional categories of workers' compensation, property, and general liability, as well as in other categories, such as educators' legal liability. Coverage levels are maintained at industry standards.

### **No Litigation**

No material action, suit proceeding, or investigation at law or in equity, before or by any court, any governmental agency, or any public board or body against BCSE is pending. There is presently no material litigation pending or, to the best of its officers' knowledge, overtly threatened against BCSE.

A petition has been brought in the Supreme Court of the State of New York, Bronx County commencing a proceeding against BCSE, the Department of Education of New York City and the City of New York seeking pre-litigation discovery and leave to file a late Notice of Claim with the Department of Education of New York City and the City of New York in connection with personal injuries allegedly suffered by a BCSE student on BCSE premises. BCSE has notified its insurer and expects to receive full coverage from its insurer for any resulting liability.

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**APPENDIX B**

**SUMMARY OF CERTAIN PROVISIONS  
OF NEW YORK EDUCATION LAW**

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## **APPENDIX B**

### **SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW**

The following summarizes certain provisions of the New York Charter Schools Act of 1998, Article 5E of the New York Education Law, as amended (the “Act”). The following provides a summary only, and is only for informational purposes. Potential investors should refer to and independently evaluate applicable provisions of the Act in their entirety, with assistance from counsel as necessary, for a complete understanding of their terms. Further, potential investors should note that the provisions summarized below are subject to change, and this summary only pertains to certain aspects of currently existing law. See “RISK FACTORS – Changes in Law; Annual Appropriation; Inadequate State Education Aid Payments” in this Official Statement.

#### **Purpose**

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

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

#### **Eligible Applicants; Applications; Submission**

An application to establish a charter school may be submitted by teachers, parents, school administrators, community residents or any combination thereof. Such application may be filed in conjunction with a college, university, museum, educational institution, not-for-profit corporation exempt from taxation under 501(c)(3) of the Internal Revenue Code or for-profit business or corporate entity authorized to do business in New York state. Provided however, for-profit business or corporate entities shall not be eligible to submit an application to establish a charter school pursuant to § 2852(9-a) (a request for proposals process) of the Act, or operate or manage a charter school for a charter issued pursuant to § 2852 (9-a) (a request for proposals process) of the Act. For charter schools established in conjunction with a for-profit business or corporate entity, the charter shall specify the extent of the entity’s participation in the management and operation of the school.

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

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

(a) The board of education of a school district eligible for an apportionment of aid under § 3602(4) (apportionment of public moneys to school districts employing eight or more teachers) of the New York Education Law;

(b) The Board of Trustees of the State University of New York; or

(c) The Board of Regents.

The Board of Regents shall be the only entity authorized to issue a charter pursuant to the Act. Notwithstanding any provision of this section to the contrary, an application for the conversion of an existing public school to a charter school shall be submitted to, and may only be approved by, the charter entity set forth in paragraph (a) of this section. Notwithstanding any law, rule or regulation to the contrary, any such § 2852(9-a) application for conversion shall be consistent with this section but shall not be subject to the process pursuant to the Act, and the charter entity shall require that the parents or guardians of a majority of the students then enrolled in the existing public school vote in favor of converting the school to a charter school.

### **Charter Renewal**

Charters may be renewed, upon application, for a term of up to five (5) years in accordance with the provisions of the Act for the issuance of such charters pursuant to § 2852 of the Act.

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

### **Charter School Organization**

(a) Upon the approval of a charter by the Board of Regents, the Board of Regents shall incorporate the charter school as an education corporation for a term not to exceed five (5) years, provided however in the case of charters issued pursuant to § 2852(9-a) of the Act the Board of Regents shall incorporate the charter school as an education corporation for a term not to exceed five (5) years in which instruction is provided to pupils plus the period commencing with the effective date of the charter and ending with the opening of the school for instruction. Such certificate of incorporation shall not modify or limit any terms of the charter approved by the Board of Regents. Upon approval of an application to renew a charter, the Board of Regents shall extend the certificate of incorporation for a term not to exceed five (5) years. Upon termination or nonrenewal of the charter of a charter school pursuant to § 2855 of the Act, the certificate of incorporation of the charter school shall be revoked by the Board of Regents pursuant to § 219 (change of charter), provided that compliance with the notice and hearing requirements of the Act shall be deemed to satisfy the notice and hearing requirements of § 219. It shall be the duty of the trustees of the charter school to obtain federal tax-exempt status no later than one year following approval of a charter school by the Board of Regents. For purposes of the Act, "certificate of incorporation" shall mean the provisional charter issued by the Board of Regents to form the charter school as an educational corporation pursuant to §§ 216 (charters) and 217 (provisional charters) of the New York Education Law.

(b) An education corporation organized to operate a charter school shall have all corporate powers necessary and desirable for carrying out a charter school program in accordance with the provisions of the Act, other applicable laws and regulations and the terms of the charter, including all of the powers of an education corporation formed to operate an elementary or secondary school and those powers granted under the provisions of the not-for-profit corporation law that are made applicable to charter schools by § 216(a) (applicability of not-for-profit corporation law) of the New York Education Law. The powers of the trustees of the charter school shall include those powers specified in § 226 (powers of trustees of institutions) of the New York Education Law.

(b-1) An education corporation operating a charter school shall be authorized to operate more than one school or house any grade at more than one site, provided that a charter must be issued for each such additional school or site in accordance with the requirements for the issuance of a charter pursuant to the Act and that each such additional school or site shall count as a charter issued pursuant to § 2852(9) of the Act; and provided further that:

- (i) a charter school may operate in more than one building at a single site; and
- (ii) a charter school which provides instruction to its students at different locations for a portion of their school day shall be deemed to be operating at a single site.
- (c) A charter school shall be deemed an independent and autonomous public school, except as otherwise provided in the Act. The charter entity and the Board of Regents shall be deemed to be the public agents authorized to supervise and oversee the charter school.
- (d) The powers granted to a charter school under the Act constitute the performance of essential public purposes and governmental purposes of this state. A charter school shall be exempt to the same extent as other public schools from all taxation, fees, assessments or special ad valorem levies on its earnings and its property, including property leased by the charter school. Instruments of conveyance to or from a charter school and any bonds or notes issued by a charter school, together with the income therefrom, shall at all times be exempt from taxation.
- (e) A charter school shall not have the power to levy taxes or to acquire property by eminent domain.
- (f) The Board of Trustees of the charter school shall have final authority for policy and operational decisions of the school. Nothing herein shall prohibit the Board of Trustees of a charter school from delegating decision-making authority to officers and employees of the school in accordance with the provisions of the charter.
- (g) Notwithstanding any provision of law to the contrary, no civil liability shall attach to any charter entity, the Board of Regents, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school. Neither the local school district, the charter entity nor the state shall be liable for the debts or financial obligations of a charter school or any person or corporate entity who operates a charter school.

#### **Public and Private Assistance to Charter Schools**

Until June 30, 2015:

For purposes of §§ 701 (power to designate text-books; purchase and loan of text-books; purchase of supplies), 711 (aid for purchase of school library materials), 751 (aid for computer software purchases) and 912 (health and welfare services to all children) of the New York Education Law, a charter school shall be deemed a nonpublic school in the school district within which the charter school is located. Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider. Where the charter school arranges to have the school district of residence provide such special education programs or services, such school district shall provide services in the same manner as it serves students with disabilities in other public schools in the school district, including the provision of supplementary and related services on site to the same extent to which it has a policy or practice of providing such services on the site of such other public schools.

Effective June 30, 2015:

(a) For purposes of §§ 701 (power to designate text-books; purchase and loan of text-books; purchase of supplies), 711 (aid for purchase of school library materials), 751 (aid for computer software purchases) and 912 (health and welfare services to all children) of the New York Education Law, a charter school shall be deemed a nonpublic school in the school district within which the charter school is located. Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider.

(b) For purposes of § 3635 (transportation) of the New York Education Law, a charter school shall be deemed a nonpublic school. The charter and application therefor shall set forth the manner in which students ineligible for transportation pursuant to § 3635 of the New York Education Law shall be transported to and from school. Any supplemental transportation provided by a charter school shall comply with all transportation safety laws and regulations applicable to other public schools. A school district may enter into a contract for the provision of supplemental transportation services to a charter school, and any such services shall be provided by the school district at cost.

(c) A charter school may contract with a school district or the governing body of a public college or university for the use of a school building and grounds, the operation and maintenance thereof. Any such contract shall provide such services or facilities at cost.

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

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

### **Applicability of Other Laws**

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

(b) A charter school shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in the Act. A charter school shall be exempt from all other state and local laws, rules, regulations or policies governing public or private schools, boards of education and school districts, including those relating to school personnel and students, except as specifically provided in the school's charter or in the Act. Nothing in this section shall affect the requirements of compulsory education of minors established by §§ 3201-3208 (compulsory education and school census) of the New York Education Law.

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

(d) A charter school shall design its educational programs to meet or exceed the student performance standards adopted by the Board of Regents and the student performance standards contained in the charter. Students attending charter school shall be required to take Regents examinations to the same extent such examinations are required of other public school students.

(e) A charter school shall be subject to the provisions of the New York Freedom of Information Law and New York Open Meetings Law.

(f) A charter school shall be subject to the provisions of §§ 800 (definitions), 801 (conflicts of interest prohibited), 802 (exceptions), 803 (disclosure of interest), 804 (contracts void), 804(a) (certain interests prohibited), 805 (violations), 805(a) (certain action prohibited), 805(b) (solemnization of marriages) and 806 (code of ethics) of the General Municipal Law to the same extent such sections apply to school districts.

### **Admission; Enrollment; Students**

(a) A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees; provided that a charter school may require the payment

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

(b) Any child who is qualified under the laws of this state for admission to a public school is qualified for admission to a charter school. Applications for admission to a charter school shall be submitted on a uniform application form created by the department and shall be made available by a charter school in languages predominately spoken in the community in which such charter school is located. The school shall enroll each eligible student who submits a timely application by the first day of April each year, unless the number of applications exceeds the capacity of the grade level or building. In such cases, students shall be accepted from among applicants by a random selection process, provided, however, that an enrollment preference shall be provided to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school district in which the charter school is located, and siblings of pupils already enrolled in the charter school. The Commissioner shall establish regulations to require that the random selection process conducted pursuant to this paragraph be performed in a transparent and equitable manner and to require that the time and place of the random selection process be publicized in a manner consistent with the requirements of §104 of the Public Officers Law and be open to the public. For purposes of this paragraph and paragraph (a) above, the school district in which the charter school is located shall mean, for the city school district of the city of New York, the community district in which the charter school is located.

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

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

### **Causes for Revocation or Termination**

The charter entity, or the Board of Regents, may terminate a charter upon any of the following grounds:

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

(b) Serious violations of law;

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

(d) When the public employment relations board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of § 209-a(i) (improper employer practices) of the Civil Service Law involving interference with or discrimination against employee rights under Article 14 (Public Employees' Fair Employment Act) of the Civil Service Law; or

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

Notice of intent to revoke a charter shall be provided to the Board of Trustees of a charter school at least thirty (30) days prior to the effective date of the proposed revocation. Such notice shall include a statement of reasons for the proposed revocation. The charter school shall be allowed at least thirty (30) days to correct the problems associated with the proposed revocation. Prior to revocation of the charter, a charter school shall be provided an opportunity to be heard, consistent with the requirements of due process. Upon the termination of a charter, the charter school shall proceed with dissolution pursuant to the procedures of the charter and direction of the charter entity and the Board of Regents.

In addition to the provisions of the paragraph above, the charter entity or the Board of Regents may place a charter school falling within the provisions of subdivision (a) through (e) on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in summary revocation of the school's charter.

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

The regulatory power of the Board of Regents and the Commissioner shall not extend to charter schools except as otherwise specifically provided in the Act.

### **Review and Assessment**

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

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

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

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

(d) efforts taken by the charter school in the existing school year, and a plan for efforts to be taken in the succeeding school year, to meet or exceed enrollment and retention targets set by the Board of Regents or the Board of Trustees of the State University of New York, as applicable, of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program established pursuant to § 2852(4)(e) of the Act.

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

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

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

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

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

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

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

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

### **Financing of Charter Schools**

Until June 30, 2015:

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

(i) for school years prior to the 2009-2010 school year and for school years following the 2012-2013 school year, an amount equal to 100% of the amount calculated pursuant to §3602(1)(f) of the New York Education Law for the school district for the year prior to the Base Year increased by the percentage change in the State Total Approved Operating Expense calculated pursuant to §3602(1)(t) of the New York Education Law from two years prior to the Base Year to the Base Year;

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

(iii) for the 2010-2011 through 2012-2013 school years, the Charter School Basic Tuition shall be the basic tuition computed for the 2010-2011 school year pursuant to the provisions of subparagraph (i) above.

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

(c) Notwithstanding any other provision of this section to the contrary, payment of the federal aid attributable to a student with a disability attending a charter school shall be made in accordance with the requirements of section 8065-a of Title 20 of the United States code and sections 76.785-76.799 and 300.209 of Title 34 of the code of federal regulations.

Effective June 30, 2015:

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

(i) for school years prior to the 2009-2010 school year and for school years following the 2012-2013 school year, an amount equal to 100% of the amount calculated pursuant §3602(1)(f) of the New York Education Law for the school district for the year prior to the Base Year increased by the percentage change in the State Total Approved Operating Expense calculated pursuant to §3602(1)(t) of the New York Education Law from two years prior to the Base Year to the Base Year;

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

(iii) for the 2010-2011 through 2012-2013 school years, the Charter School Basic Tuition shall be the basic tuition computed for the 2010-2011 school year pursuant to the provisions of subparagraph (i) above.

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

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

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

### **Charter School Basic Tuition**

The following summarize certain provisions of New York Education Law concerning charter school funding.

As referenced in the section above entitled “Financing of Charter Schools”, “expense per pupil” shall mean approved operating expense for the year prior to the Base Year divided by the sum, computed using year prior to the Base Year pupil counts, of the Total Aidable Pupil Units plus Weighted Pupils With Disabilities. Expense per pupil for each borough in the New York City School District shall be the expense per pupil of the entire city school district.

“Base Year” shall mean the school year immediately preceding the current year.

“Weighted Pupils With Disabilities” shall be computed as follows:

(a) “Pupils with disabilities” shall mean pupils of school age who are identified as students with disabilities pursuant to Article 89 (Children with Handicapping Conditions) of the New York Education Law and the regulations of the Commissioner and who receive special education services or attend special education programs which meet criteria established by the Commissioner, operated by a school district eligible for total foundation aid pursuant to this section or by a board of cooperative educational services, whether or not the school district is a component of such board.

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

(i) for placement for 60% or more of the school day in a special class, or home or hospital instruction for a period of more than 60 days, or special services or programs for more than 60% of the school day, the special services weighting shall be 170%;

(ii) for placement for 20% or more of the school week in a resource room or special services or programs including related services required for 20% or more of the school week, or in the case of pupils in grades seven through twelve or a multi-level middle school program as defined by the Commissioner or in the case of pupils in grades four through six in an elementary school operating on a period basis, the equivalent of five periods per week, but not less than the equivalent of 180 minutes in a resource room or in other special services or programs including related services, or for at least two hours per week of direct or indirect consultant teacher services, in accordance with regulations of the Commissioner adopted for such purpose, the special services weighting shall be 90%.

Computation of total Aidable Pupil Units. A district’s Total Aidable Pupil Units shall be the sum of the district’s adjusted average daily attendance computed pursuant to this section for the year prior to the Base Year

multiplied by the enrollment index computed pursuant to this section for the Base Year plus the additional Aidable Pupil Units computed for the year prior to the Base Year under paragraph c below.

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

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

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

(3) In any instance where a pupil is a resident of another state or an Indian pupil is a resident of any portion of a reservation located wholly or partly within the borders of the state pursuant to § 401(4) (duties of Commissioner regarding Indian children) of the New York Education Law or a pupil is living on federally owned land or property, such pupil's attendance shall be counted as part of the weighted average daily attendance of the school district in which such pupil is enrolled.

(4) Resident weighted average daily attendance for purposes of determining the aid ratio of a school district for any school year shall be the weighted average daily attendance for the school year immediately preceding the Base Year, less the weighted average daily attendance of nonresident pupils attending public schools in the district for such school year, plus the weighted average daily attendance of pupils resident in the district but attending public schools in another district or state plus the weighted average daily attendance of pupils resident in the district but attending full-time a school operated by a board of cooperative educational services or a county vocational education and extension board for such school year. The attendance of nonresident pupils attending public school in the district and resident pupils attending such schools outside of the district shall be determined by applying to the number of such pupils registered during the school year in each case the ratio of aggregate days attendance to the possible aggregate days attendance of all pupils in attendance in the district. Indian pupils of a reservation attending public school, or pupils living on the United States military reservation at West Point attending public school, shall be deemed to be resident pupils of the district providing such school, for purposes of this paragraph. Where a school district has entered into a contract with the state university pursuant to § 355(2) (powers and duties of trustees - administrative and fiscal functions) of the New York Education Law under which the school district makes payments in the nature of tuition for the education of certain children residing in the district, such children for whom such tuition payments are made shall be deemed to be resident pupils of such district for the purposes of this paragraph.

(5) Notwithstanding the provisions of paragraph four of this section, when a school district shall experience an increase in resident weighted average daily attendance during the current year because of the closing in whole, or in part, of a non-public school or a campus school, or a school previously operated by the United States government on the United States military reservation at West Point, the Commissioner, in computing any aid ratio of such district, shall permit the use of such additional resident weighted average daily attendance for aid ratio purposes during the current year and the next succeeding year, provided that such additional resident weighted average daily attendance attributable to such closing, or part thereof, shall be in excess of 100 students; provided, however, that such district which qualifies for an increase in total wealth pupil units pursuant to the New York Education Law, shall use the increase in

resident weighted average daily attendance, even if such increase in resident weighted average daily attendance is less than one hundred.

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

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

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

(3) In any instance where a pupil is a resident of another state or an Indian pupil is a resident of any portion of a reservation located wholly or partly within the borders of the state pursuant to § 4101(4) (duties of Commissioner regarding Indian children) of the New York Education Law or a pupil is living on federally owned land or property, such pupil's attendance shall be counted as part of the adjusted average daily attendance of the school district in which such pupil is enrolled.

(c) Computation of additional Aidable Pupil Units. The additional Aidable Pupil Units used to compute total Aidable Pupil Units pursuant to paragraph e of this section shall be the sum of the attendance of summer session pupils multiplied by 12% and the weighted pupils with special educational needs. Nothing contained in this paragraph shall be construed to result in the inclusion of the attendance of summer session pupils in the computation of weighted or adjusted average daily attendance pursuant to this section.

"Enrollment index" shall be computed by dividing the public school enrollment for the current year by public school enrollment for the Base Year, both as defined in the New York Education Law, with the result carried to three places without rounding.

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

"Public school district enrollment" shall mean the sum of: (1) the number of children on a regular enrollment register of a public school district on such date; (2) the number of children eligible to receive home instruction in the school district on such date; (3) the number of children for whom equivalent attendance must be computed pursuant to this Section on such date; (4) the number of children with disabilities who are residents of such district who are registered on such date to attend programs under the provisions of paragraph c of § 4401(2) (children with handicapping conditions definitions) of this chapter; (5) the number of children eligible to receive educational services on such date but not claimed for aid pursuant to § 3202(7) (public schools free to resident pupils; tuition from nonresident pupils) of the New York Education Law; and (6) the number of children registered on such date to attend programs (i) pursuant to § 355(2) (powers and duties of trustees - administrative and fiscal functions) of the New York Education Law or (ii) pursuant to an agreement between the New York City School District and Hunter College pursuant to § 6216 of the New York Education Law.

"Equivalent attendance" shall mean the quotient of the total number of student hours of instruction in programs in a public school of a school district or a board of cooperative educational services leading to a high

school diploma or a high school equivalency diploma as defined in regulations of the Commissioner for pupils under the age of 21 not on a regular day school register of the district, divided by 1,000.

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

- (1) any balances and transfers;
- (2) any payments for transportation of pupils to and from school during the regular school year inclusive of capital outlays and debt service therefor;
- (2-a) a portion of any payments for transportation of pupils to and from district operated summer school programs pursuant to § 3622-a(6) (aidable regular transportation) of the New York Education Law, inclusive of capital outlays and debt service therefor, equal to the product of such expenditures multiplied by the quotient of the total apportionment after the proration, if any, required by such subdivision 6 of the New York Education Law divided by the total apportionment prior to such proration;
- (3) any payments for capital outlay and debt service for school building purposes, provided, however, that in the case of a school district which has entered into a contract with state university pursuant to § 355(2)(o) (conduct of research and experiments) of the New York Education Law, under which the school district makes payment to state university on account of capital outlay relating to certain children residing in such school district, such payments shall not be so excluded;
- (4) any payments for cafeteria or school lunch programs;
- (5) any proceeds of short term borrowings in the general fund and any payments from the proceeds of the sale of obligations in the capital fund;
- (6) any cash receipts which reduce the cost of an item when applied against the expenditure therefor, except gifts, donations and earned interest and any refunds made;
- (7) any payments made to boards of cooperative educational services for purposes or programs for which an apportionment is paid pursuant to other sections of this chapter, except that payments attributable to eligible pupils with disabilities and ineligible pupils residing in noncomponent districts shall be included in operating expense;
- (8) any tuition payments made to other school districts inclusive of payments made to a central high school district by one of its component school districts;
- (9) any apportionment or payment received from the state for experimental or special programs paid under provisions other than those found in this section and other than any apportionments or payments received from the state by the city school district of the city of Yonkers for the purpose of funding an educational improvement program pursuant to a court order and other than any other state grants in aid identified by the Commissioner for general use as specified by the board of education pursuant to § 1718(20) (limitation upon expenditures) of the New York Education Law;

(10) any funds received from the federal government except the federal share of Medicaid subject to the provisions of § 3600 (9-a) (moneys apportioned, when and how payable commencing July 1, 2007) of the New York Education Law and except Impact Aid funds received pursuant to Public Law 81-874 or §§ 2 and 6 or any law superseding such law in any such district which received aid pursuant to both such sections; provided further, however, that there shall be excluded from such federal funds or other apportionments any payments from such funds already deducted pursuant to this paragraph;

(11) any payments made for which an apportionment is disallowed pursuant to regulations of the Commissioner;

(12) any expenditures made for accounting, tabulation, or computer equipment, in excess of \$10,000 unless such expenditures shall have been specifically approved by the Commissioner;

(13) any rentals received pursuant to the provisions of § 403-a (leasing of school property) of the New York Education Law;

(14) any rentals or other annual payments received pursuant to the provisions of § 403-b (Leasing of school buildings and facilities) of this chapter;

(15) any expenditures made for persons 21 years of age or over attending employment preparation education programs pursuant to subdivision 11 of this section;

(16) any tuition payments made pursuant to a contract under the provisions of § 4401(2)(e) through (i) and (I) ("special services or programs" definition) of this chapter or any tuition payments on behalf of pupils attending a state school under paragraph d of such subdivision;

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

(18) any payments to the Commissioner of taxation and finance pursuant to Article 23 (Metropolitan Commuter Transportation Mobility Tax) of the tax law.

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

The following summarizes certain provisions of the New York Codes, Rules and Regulations concerning charter schools.

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

For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

### **Financial Obligations of Charter Schools, Public School Districts and Education Department**

#### **Charter school obligations:**

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

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

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

#### **Public school district of residence obligations:**

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

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

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

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

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

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

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

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

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

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

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

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

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

Department obligations:

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

(b) In the event of the failure of a school district to fulfill the financial obligation required by § 2956 of the New York Education Law equal to the amounts calculated pursuant to this section, upon notification by the charter school, the Commissioner shall certify the amounts of the unpaid obligations to the comptroller to be deducted from State aid due the school district and paid to the applicable charter schools.

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**APPENDIX C**

**EXAMINED FINANCIAL FORECAST**

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# Bronx Charter School for Excellence

Bronx, New York

Forecasted Financial Statements

June 30, 2013 Through 2018

CROSKEY LANNI, PC  
CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS ADVISORS

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Summary of significant forecast assumptions	6 - 12



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## INDEPENDENT ACCOUNTANT'S EXAMINATION REPORT

### To the Board of Directors of Bronx Charter School for Excellence

We have examined the accompanying forecasted statements of financial position, statements of activities and changes in net assets, and cash flows of Bronx Charter School for Excellence as of June 30, 2013 through 2018, and for the years then ending. Bronx Charter School for Excellence's management is responsible for the forecast. Our responsibility is to express an opinion on the forecast based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included such procedures as we considered necessary to evaluate both the assumptions used by management and the preparation and presentation of the forecast. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the accompanying forecast is presented in conformity with guidelines for presentation of a forecast established by the American Institute of Certified Public Accountants, and the underlying assumptions provide a reasonable basis for management's forecast. However, there will usually be differences between the forecasted and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We have no responsibility to update this report for events and circumstances occurring after the date of this report.

Croskey Lanni, PC

April 1, 2013  
Rochester, Michigan

# BRONX CHARTER SCHOOL FOR EXCELLENCE

## STATEMENTS OF FORECASTED FINANCIAL POSITION See Independent Accountant's Examination Report

### ASSETS

	June 30,					
	2013	2014	2015	2016	2017	2018
<b>Current Assets</b>						
Cash and cash equivalents - unrestricted	\$ 2,280,558	\$ 2,874,251	\$ 3,484,596	\$ 4,628,570	\$ 5,471,860	\$ 6,372,308
Cash and cash equivalents - restricted for debt service	16,943,540	177,030	177,030	177,030	177,030	177,030
Grants and other receivables	306,098	315,281	324,739	334,481	344,515	354,850
Prepaid expenses and other assets	222,173	228,838	235,703	242,774	250,057	257,559
Total current assets	19,752,369	3,595,400	4,222,068	5,382,855	6,243,462	7,161,747
<b>Property, Furniture, Equipment, and Intangibles</b>						
At cost, less accumulated depreciation amortization	11,590,321	27,135,778	26,344,308	25,552,838	24,761,368	23,969,898
Total assets	<u>\$ 31,342,690</u>	<u>\$ 30,731,178</u>	<u>\$ 30,566,376</u>	<u>\$ 30,935,693</u>	<u>\$ 31,004,830</u>	<u>\$ 31,131,645</u>

### LIABILITIES AND NET ASSETS

<b>Current Liabilities</b>						
Accounts payable and other accrued expenses	\$ 851,757	\$ 877,310	\$ 903,629	\$ 930,738	\$ 958,660	\$ 987,420
Long-term debt - current portion	-	-	160,000	445,000	470,000	490,000
Total current liabilities	851,757	877,310	1,063,629	1,375,738	1,428,660	1,477,420
<b>Long-Term Debt - Long-Term Portion (Net of Premium)</b>	25,685,268	25,628,779	25,412,290	24,910,801	24,384,312	23,837,823
<b>Net Assets</b>						
Unrestricted	1,957,072	2,541,060	3,141,409	4,275,087	5,107,772	5,997,297
Invested in capital assets, net of related debt	(14,094,947)	1,506,999	772,018	197,037	(92,944)	(357,925)
Restricted for debt service and construction	16,943,540	177,030	177,030	177,030	177,030	177,030
Total net assets	4,805,665	4,225,089	4,090,457	4,649,154	5,191,858	5,816,402
Total liabilities and net assets	<u>\$ 31,342,690</u>	<u>\$ 30,731,178</u>	<u>\$ 30,566,376</u>	<u>\$ 30,935,693</u>	<u>\$ 31,004,830</u>	<u>\$ 31,131,645</u>

See notes to financial statements, which includes significant forecast assumptions and accounting policies

# BRONX CHARTER SCHOOL FOR EXCELLENCE

## STATEMENTS OF FORECASTED ACTIVITIES AND CHANGES IN NET ASSETS

See Independent Accountant's Examination Report

	For The Years Ending June 30,					
	2013	2014	2015	2016	2017	2018
<b>Operating Revenues</b>						
State and local operating funds	\$ 7,550,337	\$ 8,059,511	\$ 9,649,883	\$ 10,489,003	\$ 10,908,563	\$ 11,328,123
Government grants and contracts	335,173	324,190	337,515	335,813	321,736	334,111
Other programs and donations	3,481,884	57,806	69,213	77,489	83,006	88,784
Total operating revenues	11,367,394	8,441,507	10,056,611	10,902,305	11,313,305	11,751,018
<b>Operating Expenses</b>						
Leadership / support personnel	955,801	1,063,400	1,095,302	1,128,161	1,162,006	1,196,866
Classroom instruction	1,919,202	2,060,049	2,408,851	2,673,116	2,848,310	3,029,759
Instructional support services	892,627	919,965	1,003,084	1,033,657	1,064,667	1,096,607
Administration	461,444	505,805	534,179	557,155	576,777	597,031
Substitutes	30,000	31,000	34,000	35,000	36,000	37,000
Employee benefits and taxes	910,395	984,652	1,049,272	1,139,332	1,210,351	1,251,584
Pupil expenses	304,317	334,585	400,608	448,507	480,441	513,887
Administrative expenses	508,388	512,831	546,510	544,822	568,315	587,570
Facility expenses	446,752	487,304	920,729	734,052	781,968	795,322
Total operating expenses	6,428,926	6,899,591	7,992,535	8,293,802	8,728,835	9,105,626
<b>Other Expenses</b>						
Occupancy	678,389	148,902	148,902	-	-	-
Bond related fees	-	37,650	37,650	37,650	37,610	38,942
Interest (net of premium amortization)	(9,414)	1,114,470	1,190,686	1,190,686	1,182,686	1,160,436
Depreciation and amortization	245,000	821,470	821,470	821,470	821,470	821,470
Total other revenues and expenses	913,975	2,122,492	2,198,708	2,049,806	2,041,766	2,020,848
<b>Change in Net Assets</b>	4,024,493	(580,576)	(134,632)	558,697	542,704	624,544
<b>Net Assets - Beginning</b>	781,172	4,805,665	4,225,089	4,090,457	4,649,154	5,191,858
<b>Net Assets - Ending</b>	\$ 4,805,665	\$ 4,225,089	\$ 4,090,457	\$ 4,649,154	\$ 5,191,858	\$ 5,816,402

See notes to financial statements, which includes significant forecast assumptions and accounting policies

## BRONX CHARTER SCHOOL FOR EXCELLENCE

### STATEMENTS OF FORECASTED CASH FLOWS See Independent Accountant's Examination Report

	For The Years Ending June 30,					
	2013	2014	2015	2016	2017	2018
<b>Cash Flows from Operating Activities</b>						
Receipts from local, state, and federal sources	\$ 11,358,479	\$ 8,432,324	\$ 10,047,153	\$ 10,892,563	\$ 11,303,271	\$ 11,740,683
Payments to employees, contractors, and vendors	(10,453,984)	(7,067,255)	(8,159,633)	(8,311,414)	(8,745,806)	(9,123,310)
Interest paid	-	(1,170,959)	(1,247,175)	(1,247,175)	(1,239,175)	(1,216,925)
Net cash provided by operating activities	904,495	194,110	640,345	1,333,974	1,318,290	1,400,448
<b>Cash Flows from Investing Activities</b>						
Construction of facilities and equipment purchases	(7,484,969)	(16,366,927)	(30,000)	(30,000)	(30,000)	(30,000)
Capitalized bond issuance costs	(1,296,173)	-	-	-	-	-
Net cash used in investing activities	(8,781,142)	(16,366,927)	(30,000)	(30,000)	(30,000)	(30,000)
<b>Cash Flows from Financing Activities</b>						
Principal payments on long-term debt	-	-	-	(160,000)	(445,000)	(470,000)
Proceeds from issuance of debt and related premium	25,694,682	-	-	-	-	-
Net cash provided by (used in) financing activities	25,694,682	-	-	(160,000)	(445,000)	(470,000)
<b>Net Increase (Decrease) in Cash and Cash Equivalents</b>	17,818,035	(16,172,817)	610,345	1,143,974	843,290	900,448
<b>Cash and Cash Equivalents - Beginning</b>	1,406,063	19,224,098	3,051,281	3,661,626	4,805,600	5,648,890
<b>Cash and Cash Equivalents - Ending</b>	<u>\$ 19,224,098</u>	<u>\$ 3,051,281</u>	<u>\$ 3,661,626</u>	<u>\$ 4,805,600</u>	<u>\$ 5,648,890</u>	<u>\$ 6,549,338</u>

See notes to financial statements, which includes significant forecast assumptions and accounting policies

## BRONX CHARTER SCHOOL FOR EXCELLENCE

### STATEMENTS OF FORECASTED CASH FLOWS - Continued See Independent Accountant's Examination Report

	For The Years Ending June 30,					
	2013	2014	2015	2016	2017	2018
<b>Reconciliation of Change in Net Assets to Net Cash Provided by Operating Activities</b>						
Changes in net assets	\$ 4,024,493	\$ (580,576)	\$ (134,632)	\$ 558,697	\$ 542,704	\$ 624,544
<b>Adjustments to Reconcile Change in Net Assets to Net Cash Provided by Operating Activities</b>						
Depreciation and amortization	245,000	821,470	821,470	821,470	821,470	821,470
Amortization of bond premium	(9,414)	(56,489)	(56,489)	(56,489)	(56,489)	(56,489)
Changes in assets and liabilities						
Increase in accounts receivable	(8,915)	(9,183)	(9,458)	(9,742)	(10,034)	(10,335)
Decrease in due from affiliate	64,301	-	-	-	-	-
Increase in prepaid expense	(6,471)	(6,665)	(6,865)	(7,071)	(7,283)	(7,502)
Increase in accounts payable and accrued expenses	24,808	25,553	26,319	27,109	27,922	28,760
Decrease in deferred rent	(3,429,307)	-	-	-	-	-
Total adjustments	(3,119,998)	774,686	774,977	775,277	775,586	775,904
Net cash provided by operating activities	<u>\$ 904,495</u>	<u>\$ 194,110</u>	<u>\$ 640,345</u>	<u>\$ 1,333,974</u>	<u>\$ 1,318,290</u>	<u>\$ 1,400,448</u>

See notes to financial statements, which includes significant forecast assumptions and accounting policies

## **BRONX CHARTER SCHOOL FOR EXCELLENCE**

### **SUMMARY OF SIGNIFICANT FORECAST ASSUMPTIONS AND ACCOUNTING POLICIES FOR THE YEARS ENDING JUNE 30, 2013 THROUGH 2018 See Independent Accountant's Examination Report**

#### **NOTE 1 – NATURE OF LIMITATIONS OF FORECASTS**

The accompanying forecasted financial statements present, to the best of management's knowledge and belief, Bronx Charter School for Excellence's financial position for the forecasted period, and the results of its operations for the years then ending June 30, 2013 through 2018. The forecasted statements reflect management's judgment as of April 1, 2013, the date of these forecasts, of the expected conditions and its expected course of action. The assumptions disclosed herein are those that management believes are significant to the forecast. Because events and circumstances frequently do not occur as expected, there will usually be differences between the forecasted and actual results; those differences may be material.

The forecasted financial statements present, to the best of management's knowledge and belief the effects on the financial conditions of the School after issuance of revenue bonds and the use of these proceeds to purchase and remodel facilities. These projections are designed to provide the School with information to analyze the effect of the issuance as described above. Accordingly these projections may not be useful for other purposes.

The Friends of Bronx Charter School for Excellence, Inc. (The Friends) is an affiliate organization to the School. It was established to provide technical and financial assistance in the improvement of educational opportunities for school-aged children in the Parkchester area of the Bronx, New York. The Friends also provided financial assistance to the School with the fund of an option premium deposit to the landlord and entered into a lease agreement on behalf of the School for a new building facility. The Friends also facilitate fundraisers and coordinate donations that benefit the School.

The Institution and The Friends are under common management and share many of the same trustees as well as a common goal of improving educational opportunities for school-aged children. For financial statement purposes, these Organizations are shown on a consolidated financial statement, however, for the purposes of this forecast, the operations of The Friends have not been consolidated with the School's operations.

#### **NOTE 2 – DESCRIPTION OF THE SCHOOL**

The Bronx Charter School for Excellence (the "Institution") is an educational corporation that operates a charter school in the borough of the Bronx, New York. The School was granted a full-term, five-year charter in March 2009 by the Board of Regents of the University of the State of New York. The current charter ends in December 2014. The Institution was established to prepare young people from New York City to compete for admission to, and succeed in, top public, private, and parochial schools by cultivating their intellectual, artistic, social, emotional, and ethical development. The School offers a challenging and rigorous academic curriculum which, at the earliest grades, has an eye towards college preparation. The Institution operates classes for students in kindergarten and grades 1 through 8.

See notes to financial statements, which includes significant forecast assumptions and accounting policies

## **BRONX CHARTER SCHOOL FOR EXCELLENCE**

SUMMARY OF SIGNIFICANT FORECAST ASSUMPTIONS AND ACCOUNTING POLICIES - Continued  
FOR THE YEARS ENDING JUNE 30, 2013 THROUGH 2018  
See Independent Accountant's Examination Report

### **NOTE 3 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The financial statements of the Institution have been prepared in conformity with generally accepted accounting principles (GAAP). The more significant of the Institution's accounting policies are described below.

#### **Basis of Presentation**

The Institution's financial statements consist of a statement of net assets; a statement of activities, and changes in net assets; and a statement of cash flows. The Institution uses the accrual basis of accounting.

#### **Measurement Focus**

Activity is accounted for using a flow of economic resources measurement focus. All assets and liabilities associated with the operation of the Institution are included on the statement of net assets. The statement of activities and changes in net assets presents increases (e.g. revenues) and decreases (e.g. expenses) in total net assets. The statement of cash flows reflects how the Institution's finances meet its cash flow needs.

#### **Basis of Accounting**

Basis of accounting determines when transactions are recorded in the financial records and reported on the financial statements. The Institution's financial statements are prepared using the accrual basis of accounting. Revenue resulting from exchange transactions, in which each party gives and receives essentially equal value, is recorded on the accrual basis when the exchange takes place. Revenue resulting from non-exchange transactions, in which the School receives value without directly giving equal value in return, such as grants and entitlements, are recognized in the period in which all eligibility requirements have been satisfied. Eligibility requirements include timing requirements, which specify the period when the resources are required to be used or the period when use is first permitted, matching requirements, in which the School must provide local resources to be used for a specified purpose, and expenditure requirements, in which the resources are provided to the School on a reimbursement basis. Expenses are recognized at the time they are incurred.

#### **Cash and Cash Equivalents**

Cash received by the School is reflected as "Cash and Cash Equivalents" on the statement of net assets. During the forecast period the School is anticipating to purchase investments to be held in escrow by a trustee to serve as a debt retirement fund.

See notes to financial statements, which includes significant forecast assumptions and accounting policies

## BRONX CHARTER SCHOOL FOR EXCELLENCE

SUMMARY OF SIGNIFICANT FORECAST ASSUMPTIONS AND ACCOUNTING POLICIES - Continued  
FOR THE YEARS ENDING JUNE 30, 2013 THROUGH 2018  
See Independent Accountant's Examination Report

### NOTE 3 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued

#### Capital Assets

The Institution's capital assets during the periods covered by this forecast consist of computers, furniture, buildings and improvements and other equipment. All capital assets are capitalized at cost and updated for additions and retirements during the fiscal year. Donated capital assets are recorded at their fair market values as of the date received. The School maintains a capitalization threshold of \$5,000. The Institution currently does not have any infrastructure. Capital assets acquired with certain government contract funds are recorded as expenses when the grantor retains title. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend an asset's life are not capitalized.

All capital assets are depreciated. Improvements are depreciated over the remaining useful lives of the related capital assets. Depreciation is computed using the straight-line method over the following useful lives:

Furniture, computers and equipment	5 years
Buildings and improvements	15 – 39 years

#### Operating Revenues and Expenses

Revenue from the federal, state and local governments resulting from the Institution's charter status and based on the number of students enrolled is recorded when services are performed in accordance with the charter agreement. Federal and state funds are recorded by the School when expenditures are incurred and billable. Cash received in excess of revenue recognized is recorded as refundable advances from state and local government grants.

Revenues from other government grants to which the Institution is entitled is recognized mostly on student enrollment. Some grants are provided for specific educational endeavors, which are not based on student enrollment, and are recorded when related expenditures are incurred by the Institution. Operating expenses are necessary costs incurred to provide the service that is the primary activity of the School.

#### Contributions and Contributed Services

The New York City Department of Education (the DOE) provides transportation and the federal government provides funding for free and reduced-cost breakfasts, lunches and snacks directly to a majority of the Institution's students. Such costs are not included in these statements.

Contributions are recognized as revenue in the year the pledge promise is received and documented. Contributions and unconditional promises to give are considered to be available for unrestricted use unless specifically restricted by the donor. Contributions of assets other than cash are recorded at their estimated fair value.

Contributed services are recorded at their fair value when such services are rendered. Contributed services are recognized as contributions if the services: (a) create or enhance nonfinancial assets, or (b) require specialized skills, are performed by people with those skills and would otherwise be purchased by the Institution.

See notes to financial statements, which includes significant forecast assumptions and accounting policies

## BRONX CHARTER SCHOOL FOR EXCELLENCE

SUMMARY OF SIGNIFICANT FORECAST ASSUMPTIONS AND ACCOUNTING POLICIES - Continued  
FOR THE YEARS ENDING JUNE 30, 2013 THROUGH 2018  
See Independent Accountant's Examination Report

### NOTE 3 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued

#### Tax Status

The Institution is exempt from federal income taxes under Section 501(a) of the Internal Revenue Code (the Code) as an organization formed for charitable purposes under Section 501(c)(3) of the Code and, accordingly, is not subject to income taxes. Additionally, the School, as a nonprofit entity is subject to unrelated business income tax (UBIT), if applicable.

#### Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results may differ from those estimates.

### NOTE 4 – FORECASTED CAPITAL ASSETS

Forecasted capital and intangible asset activity for the years ending June 30, 2013 through 2018 can be summarized as follows:

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Beginning balance	\$ 3,885,006	\$12,666,148	\$29,033,075	\$29,063,075	\$29,093,075	\$29,123,075
Additions	8,781,142	16,366,927	30,000	30,000	30,000	30,000
Disposals	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total cost	12,666,148	29,033,075	29,063,075	29,093,075	29,123,075	29,153,075
Accumulated depreciation	<u>(1,075,827)</u>	<u>(1,897,297)</u>	<u>(2,718,767)</u>	<u>(3,540,237)</u>	<u>(4,361,707)</u>	<u>(5,183,177)</u>
Undepreciated cost	<u>\$11,590,321</u>	<u>\$27,135,778</u>	<u>\$26,344,308</u>	<u>\$25,552,838</u>	<u>\$24,761,368</u>	<u>\$23,969,898</u>

See notes to financial statements, which includes significant forecast assumptions and accounting policies

## BRONX CHARTER SCHOOL FOR EXCELLENCE

SUMMARY OF SIGNIFICANT FORECAST ASSUMPTIONS AND ACCOUNTING POLICIES - Continued  
 FOR THE YEARS ENDING JUNE 30, 2013 THROUGH 2018  
 See Independent Accountant's Examination Report

### NOTE 4 – FORECASTED CAPITAL ASSETS - Continued

The Institution has prepared these forecasts under the assumption that it will receive financing, the proceeds of which will be utilized to acquire, renovate, and expand operating facilities to be used as a K-8 school. The facilities are forecasted to be purchased during the year ending June 30, 2013. The acquisition of this facility is a key component of the Institutions' forecasted enrollment figures and as a result its forecasted revenues.

### NOTE 5 – FORECASTED LONG TERM DEBT

The following is a summary of forecasted long-term obligations for the School for the years ending June 30, 2013 through 2018:

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Beginning balance	\$ -	\$24,000,000	\$24,000,000	\$24,000,000	\$ 23,840,000	\$ 23,395,000
Additions	24,000,000	-	-	-	-	-
Retirements	-	-	-	(160,000)	(445,000)	(470,000)
Subtotal	\$24,000,000	\$24,000,000	\$24,000,000	\$23,840,000	\$ 23,395,000	\$ 22,925,000
Unamortized bond premium	<u>1,685,268</u>	<u>1,628,779</u>	<u>1,572,290</u>	<u>1,515,801</u>	<u>1,459,312</u>	<u>1,402,823</u>
Ending balance	<u>\$25,685,268</u>	<u>\$25,628,779</u>	<u>\$25,572,290</u>	<u>\$25,355,801</u>	<u>\$ 24,854,312</u>	<u>\$ 24,327,823</u>
Due within one year	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 160,000</u>	<u>\$ 445,000</u>	<u>\$ 470,000</u>	<u>\$ 490,000</u>

The Institution is forecasting the issuance of Revenue Bonds bearing interest at average rates of 4.8% through the year ending June 30, 2043. The Revenue Bonds require semi-annual interest payments due October 1st and April 1st and an annual payment of principal due April 1st. The bonds will be collateralized by a mortgage on the Institution's facilities.

See notes to financial statements, which includes significant forecast assumptions and accounting policies

## BRONX CHARTER SCHOOL FOR EXCELLENCE

SUMMARY OF SIGNIFICANT FORECAST ASSUMPTIONS AND ACCOUNTING POLICIES - Continued  
FOR THE YEARS ENDING JUNE 30, 2013 THROUGH 2018  
See Independent Accountant's Examination Report

### NOTE 5 – FORECASTED LONG TERM DEBT - Continued

Total amounts of principal and interest forecasted to be due through the years ending June 30, 2043 are as follows:

	<u>Principal</u>	<u>Interest</u>
2013	\$ -	\$ -
2014	-	1,170,959
2015	-	1,247,175
2016	160,000	1,247,175
2017	445,000	1,239,175
2018 - 2022	2,525,000	5,928,402
2023 - 2027	3,055,000	5,406,152
2028 - 2032	3,970,000	4,523,620
2033 - 2037	5,185,000	3,339,750
2038 - 2042	6,865,000	1,706,064
2043	1,795,000	100,968

### NOTE 6 – REVENUES

The Institution's revenue consists primarily of payments from federal, state and local grants. Payments are calculated based on a per student allocation. The student enrollment upon which these financial forecasts are prepared is as follows:

	<u>Funding</u>	<u>Number of Funded Students</u>
2013	\$ 13,527	519
2014	13,527	554
2015	13,933	644
2016	13,933	700
2017	13,933	756
2018	13,933	756

The Institution has forecasted the above student numbers as attainable based upon the acquisition of a school facility. If these increased enrollment figures are not met, it could materially affect the forecasted financial statements. The assumption discussed is that which management believes is significant and is based on management's judgment at the date of the presentation.

Additionally the 2013 revenues include the reversal of deferred rent in the amount of \$3,429,307 that will not be payable as a result of the Revenue Bond transaction.

See notes to financial statements, which includes significant forecast assumptions and accounting policies

## BRONX CHARTER SCHOOL FOR EXCELLENCE

SUMMARY OF SIGNIFICANT FORECAST ASSUMPTIONS AND ACCOUNTING POLICIES - Continued  
 FOR THE YEARS ENDING JUNE 30, 2013 THROUGH 2018  
 See Independent Accountant's Examination Report

### NOTE 7 – EXPENSES

Substantially all expenses forecasted through 2018 are based upon the experience of the Institution's management. Expenses reflect projected increases in student counts and inflationary considerations.

### NOTE 8 – EMPLOYEE BENEFIT PLAN

The Institution maintains a deferred compensation plan qualified under Section 403(b) of the Code. The Institution matches up to 5% of each employee's annual compensation not to exceed the employees annual salary deferral amount. The School may also elect to make additional contributions to the plan on a discretionary basis.

### NOTE 9 – DEBT SERVICE

The following schedule depicts expected amounts available for debt service for the years ending June 30, 2014 through 2018:

	2014	2015	2016	2017	2018
<b>Available Cash</b>					
Change in net assets	\$ (580,576)	\$ (134,632)	\$ 558,697	\$ 542,704	\$ 624,544
Depreciation and amortization	764,981	764,981	764,981	764,981	764,981
Interest on bonds	1,170,959	1,247,175	1,247,175	1,239,175	1,216,925
Capitalized interest	429,583	-	-	-	-
Capital expenditures	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)
Total Available Cash	1,754,947	1,847,524	2,540,853	2,516,860	2,576,450
<b>Debt Service</b>					
Interest	1,170,959	1,247,175	1,247,175	1,239,175	1,216,925
Principal	-	-	160,000	445,000	470,000
Total Debt Service	<u>\$ 1,170,959</u>	<u>\$ 1,247,175</u>	<u>\$ 1,407,175</u>	<u>\$ 1,684,175</u>	<u>\$ 1,686,925</u>
<b>Debt Service Coverage Ratio</b>	1.50	1.48	1.81	1.49	1.53
<b>Days Cash on Hand</b>	127.9	135.7	177.4	200.7	225.7

See notes to financial statements, which includes significant forecast assumptions and accounting policies

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**APPENDIX D**

**COMBINED AUDITED FINANCIAL STATEMENTS OF  
THE ORGANIZATION FOR THE FISCAL YEAR ENDED  
JUNE 30, 2012 (INCLUDING JUNE 30, 2011  
COMPARATIVE INFORMATION)**

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# **Bronx Charter School for Excellence and Affiliate**

Combined Financial Report

June 30, 2012

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## Independent Auditor's Report

To the Board of Trustees  
Bronx Charter School for Excellence  
Bronx, New York

We have audited the accompanying combined statement of financial position of Bronx Charter School for Excellence and Affiliate (the Organization) as of June 30, 2012, and the related combined statements of activities, functional expenses, and cash flows for the year then ended. These financial statements are the responsibility of the Organization's management. Our responsibility is to express an opinion on these financial statements based on our audit. The prior-year summarized comparative information has been derived from the Organization's 2011 financial statements and in our report, dated October 18, 2011, we expressed an unqualified opinion on those financial statements.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the 2012 combined financial statements referred to above present fairly, in all material respects, the financial position of Bronx Charter School for Excellence and Affiliate as of June 30, 2012, and their changes in net assets and their cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Our audit was conducted for the purpose of forming an opinion on the basic combined financial statements taken as a whole. The supplementary combining information on pages 12 through 15 is presented for purposes of additional analysis of the basic combined financial statements rather than to present the financial position and changes in net assets of the individual entities and is not a required part of the basic combined financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic combined financial statements. The combining information has been subjected to the auditing procedures applied in the audit of the basic combined financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic combined financial statements or to the basic combined financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the basic combined financial statements as a whole.

A stylized, handwritten-style signature of "McGladrey LLP" in black ink.

New York, New York  
October 26, 2012

**Bronx Charter School for Excellence and Affiliate**

**Combined Statements of Financial Position**

**June 30, 2012**

**(with summarized comparative information as of June 30, 2011)**

	<b>2012</b>	<b>2011</b>
<b>ASSETS</b>		
Cash and Cash Equivalents	<b>\$ 1,496,784</b>	<b>\$ 2,105,088</b>
Grants and Other Receivables (Note 2)	<b>304,683</b>	<b>149,908</b>
Prepaid Expenses and Other Assets	<b>217,141</b>	<b>255,228</b>
Deferred Leasing Commissions	<b>322,232</b>	<b>336,242</b>
Property and Equipment, net (Note 3)	<b><u>3,054,179</u></b>	<b><u>2,144,370</u></b>
<b>Total assets</b>	<b><u>\$ 5,395,019</u></b>	<b><u>\$ 4,990,836</u></b>
<b>LIABILITIES AND NET ASSETS</b>		
Liabilities:		
Accounts payable and accrued expenses	<b>\$ 826,949</b>	<b>\$ 605,032</b>
Deferred rent (Note 4)	<b><u>3,429,307</u></b>	<b><u>3,033,156</u></b>
<b>Total liabilities</b>	<b><u>4,256,256</u></b>	<b><u>3,638,188</u></b>
Commitments and Contingencies (Notes 4 and 8)		
Net Assets:		
Unrestricted	<b>1,130,473</b>	<b>1,352,648</b>
Temporarily restricted (Note 7)	<b><u>8,290</u></b>	<b><u>-</u></b>
<b>Total net assets</b>	<b><u>1,138,763</u></b>	<b><u>1,352,648</u></b>
<b>Total liabilities and net assets</b>	<b><u>\$ 5,395,019</u></b>	<b><u>\$ 4,990,836</u></b>

See Notes to Combined Financial Statements.

**Bronx Charter School for Excellence and Affiliate**

**Combined Statements of Activities**

**Year Ended June 30, 2012**

**(with summarized comparative information for the year ended June 30, 2011)**

	2012			2011
	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Total</u>	<u>Summarized Comparative Total</u>
Operating Revenue:				
State and local per pupil operating revenue (Note 1)	\$ 6,440,262	\$ -	\$ 6,440,262	\$ 5,589,867
Government grants and contracts (Note 1)	363,985	-	363,985	226,049
<b>Total operating revenue</b>	<u>6,804,247</u>	<u>-</u>	<u>6,804,247</u>	<u>5,815,916</u>
Operating Expenses:				
Program services - School operations	5,963,563	-	5,963,563	4,689,007
General and administrative (Note 4)	1,138,631	-	1,138,631	1,015,698
<b>Total operating expenses (Notes 4, 5 and 6)</b>	<u>7,102,194</u>	<u>-</u>	<u>7,102,194</u>	<u>5,704,705</u>
<b>(Deficit) surplus from operations</b>	<u>(297,947)</u>	<u>-</u>	<u>(297,947)</u>	<u>111,211</u>
Support and Other Revenue:				
Contributions (Note 1):				
Foundations	15,000	-	15,000	32,500
Individuals	47,638	-	47,638	37,567
Donated goods or services	11,794	-	11,794	1,353
Special events	99,781	8,290	108,071	70,177
Interest income	4	-	4	2,557
Miscellaneous income	12,940	-	12,940	14,396
Fund-raising expenses (inclusive of direct costs amounting to \$35,468, and \$35,867, respectively, from special event)	(111,385)	-	(111,385)	(41,424)
<b>Total support and other revenue</b>	<u>75,772</u>	<u>8,290</u>	<u>84,062</u>	<u>117,126</u>
<b>Change in net assets</b>	<u>(222,175)</u>	<u>8,290</u>	<u>(213,885)</u>	<u>228,337</u>
Net Assets:				
Beginning	1,352,648	-	1,352,648	1,124,311
Ending	<u>\$ 1,130,473</u>	<u>\$ 8,290</u>	<u>\$ 1,138,763</u>	<u>\$ 1,352,648</u>

See Notes to Combined Financial Statements.

**Bronx Charter School for Excellence and Affiliate**

**Combined Statements of Functional Expenses**

**Year Ended June 30, 2012**

**(with summarized comparative information for the year ended June 30, 2011)**

	<b>Program Services - School Operations</b>	<b>Supporting Services</b>			<b>2012 Total</b>	<b>2011 Summarized Comparative Total</b>
		<b>General and Administrative</b>	<b>Fund- Raising</b>	<b>Total</b>		
Personnel expenses:						
Payroll	\$ 3,164,908	\$ 571,250	\$ 42,869	\$ 614,119	<b>\$ 3,779,027</b>	\$ 2,704,807
Payroll taxes and benefits	686,860	123,955	9,303	133,258	<b>820,118</b>	580,221
Rent (Note 4)	881,967	157,412	11,928	169,340	<b>1,051,307</b>	1,038,897
Academic programs	337,836	-	-	-	<b>337,836</b>	216,096
Property development studies	-	30	-	30	<b>30</b>	77,293
Facility maintenance and security	171,864	30,674	2,324	32,998	<b>204,862</b>	230,955
Utilities	95,665	17,074	1,294	18,368	<b>114,033</b>	108,357
Consultants and substitute teachers	5,652	19,131	-	19,131	<b>24,783</b>	58,709
Professional fees	102,588	108,291	1,228	109,519	<b>212,107</b>	181,378
Depreciation and amortization	203,320	50,301	2,750	53,051	<b>256,371</b>	200,672
Insurance	32,860	8,022	444	8,466	<b>41,326</b>	34,919
Office and other	138,422	27,216	1,861	29,077	<b>167,499</b>	119,786
Telephone and Internet	12,497	2,230	169	2,399	<b>14,896</b>	15,344
Real estate taxes	82,058	14,645	1,110	15,755	<b>97,813</b>	99,737
Equipment/software purchases and rental	47,066	8,400	637	9,037	<b>56,103</b>	39,279
Fund-raising expenses	-	-	35,468	35,468	<b>35,468</b>	35,867
Bad debt expense	-	-	-	-	<b>-</b>	3,812
	<b>\$ 5,963,563</b>	<b>\$ 1,138,631</b>	<b>\$ 111,385</b>	<b>\$ 1,250,016</b>	<b>\$ 7,213,579</b>	<b>\$ 5,746,129</b>

See Notes to Combined Financial Statements.

**Bronx Charter School for Excellence and Affiliate**

**Combined Statements of Cash Flows**

**Year Ended June 30, 2012**

**(with summarized comparative information for the year ended June 30, 2011)**

	2012	2011
Cash Flows From Operating Activities:		
Change in net assets	\$ (213,885)	\$ 228,337
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation and amortization	256,371	200,672
Deferred rent	396,151	396,151
Bad debt expense	-	3,812
Changes in operating assets and liabilities:		
(Increase) decrease in grants and other receivables	(154,775)	7,969
Decrease (increase) in prepaid expenses and other assets	38,087	(125,595)
Increase in accounts payable and accrued expenses	153,675	181,034
Decrease in due to DOE	-	(26,358)
<b>Net cash provided by operating activities</b>	<b>475,624</b>	<b>866,022</b>
Cash Flows From Investing Activities:		
Payments made on leasehold improvements	-	(404,014)
Purchases of property and equipment	(1,083,928)	(104,681)
<b>Cash used in investing activities</b>	<b>(1,083,928)</b>	<b>(508,695)</b>
Cash Flows Used In Financing Activity - principal payments on note payable	-	(15,291)
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>(608,304)</b>	<b>342,036</b>
Cash and Cash Equivalents:		
Beginning	2,105,088	1,763,052
Ending	<u>\$ 1,496,784</u>	<u>\$ 2,105,088</u>
Supplemental Disclosure of Noncash Investing Activities:		
Incurrence of accounts payable for construction-in-progress	<u>\$ 68,242</u>	<u>\$ -</u>

See Notes to Combined Financial Statements.

## Bronx Charter School for Excellence and Affiliate

### Notes to Combined Financial Statements

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#### Note 1. Principal Business Activity and Summary of Significant Accounting Policies

Nature of Operations: The Bronx Charter School for Excellence (the School) is an educational corporation that operates a charter school in the borough of the Bronx, New York. The School was granted a provisional charter on April 29, 2003 valid for a term of five years and renewable upon expiration by the Board of Regents of the University of the State of New York. In March 2009, the School was awarded a full-term, five-year charter renewal to March 2014. The School was established to prepare young people from New York City to compete for admission to, and succeed in, top public, private and parochial schools by cultivating their intellectual, artistic, social, emotional and ethical development. The School offers a challenging and rigorous academic curriculum which, at the earliest of grades, has an eye towards college preparation.

In fiscal year 2012, the School operated classes for students in kindergarten and grades 1 through 7.

The Friends of Bronx Charter School for Excellence, Inc. (the Affiliate or Friends) was organized under the laws of the State of New York on July 9, 2001, as a not-for-profit corporation under subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. Friends is a not-for-profit organization with certain common trustees as the School. Friends was established to provide technical and financial assistance in the improvement of educational opportunities for school-aged children in the Parkchester area of the Bronx, New York. Prior to fiscal 2007, Friends solely provided financial assistance to the School in connection with funding the option premium deposit to the landlord and entering into a lease agreement on behalf of the School for a new building facility. From fiscal 2007 through fiscal 2012, Friends was making new efforts to raise additional funds to support the School. For the period from fiscal 2007 through fiscal 2010, Friends continued to repay outstanding loan balances taken out to fund the option premium deposit.

Principles of Combination: The School and Friends are under common management and share many of the same trustees as well as a common goal of improving the educational opportunities for school-aged children. Accordingly, the accompanying combined financial statements include the accounts of the School and Friends (collectively referred to as the Organization). All intercompany accounts and transactions between these entities have been eliminated.

Basis of Accounting: The combined financial statements of the Organization have been prepared on the accrual basis of accounting in conformity with accounting principles generally accepted in the United States of America. Accordingly, net assets are classified as unrestricted, temporarily restricted or permanently restricted based on the designation of the donors.

The combined statements of activities and functional expenses include certain prior-year summarized comparative information in total but not by net asset class or functional classification. Such information does not include sufficient detail to constitute a presentation in conformity with accounting principles generally accepted in the United States of America (GAAP). Accordingly, such information should be read in conjunction with the Organization's combined financial statements for the year ended June 30, 2011, from which the summarized information was derived.

Use of Estimates: The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents: The Organization maintains cash in bank deposit accounts which, at times, may exceed federally insured limits. The Organization has not experienced any losses in such accounts.

The Organization considers all highly liquid instruments purchased with a maturity of three months or less to be cash equivalents. Cash equivalents consist of money market accounts.

## Bronx Charter School for Excellence and Affiliate

### Notes to Combined Financial Statements

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#### Note 1. Principal Business Activity and Summary of Significant Accounting Policies (Continued)

Deferred Leasing Commissions: A leasing consultant assisted the Organization with locating a new facility for the School's instructional and office space and negotiating the terms of the triple net lease agreement. Leasing commissions amounting to \$420,302 for these services rendered were provided at no charge during the year ended June 30, 2005. The Organization has capitalized these commissions and reflected them as deferred leasing commissions in the accompanying combined statements of financial position. These deferred costs are amortized on the straight-line basis over the life of the lease.

Property and Equipment: Property and equipment is recorded at cost. The Organization capitalizes all purchases of fixed assets in excess of \$5,000. Depreciation is computed using the straight-line method over the estimated useful lives of the respective assets. Leasehold improvements are amortized over the shorter of the estimated useful life of the asset or the remaining term of the related lease. Property and equipment acquired with certain government contract funds are recorded as expenses when the grantor retains title.

Operating Revenue: Revenue from the federal, state and local governments resulting from the School's charter status and based on the number of students enrolled is recorded when services are performed in accordance with the charter agreement. Federal and state funds are recorded by the School when expenditures are incurred and billable. Cash received in excess of revenue recognized is recorded as refundable advances from state and local government grants.

Revenue from other government grants to which the School is entitled is recognized mostly on student enrollment. Some grants are provided for specific educational endeavors, which are not based on student enrollment, and are recorded when related expenditures are incurred by the School.

Contributions and Contributed Services: The New York City Department of Education (the DOE) provides transportation and the federal government provides funding for free and reduced-cost breakfasts, lunches and snacks directly to a majority of the School's students. Such costs are not included in these financial statements.

Contributions are recognized as revenue in the year the pledge promise is received and documented. Contributions and unconditional promises to give are considered to be available for unrestricted use unless specifically restricted by the donor. Amounts received that are designated for future periods or restricted by the donor for specific purposes are reported as temporarily restricted or permanently restricted support, which increases those net asset classes. When the specified purpose of donor-restricted contributions is met, the net asset is released from restrictions and transferred to unrestricted net assets. Contributions of assets other than cash are recorded at their estimated fair value.

Contributed services are recorded at their fair value when such services are rendered. Contributed services are recognized as contributions if the services: (a) create or enhance nonfinancial assets, or (b) require specialized skills, are performed by people with those skills and would otherwise be purchased by the Organization.

A number of volunteers have made a contribution of their time to the Organization to develop its academic and other programs and to serve on both entities' boards of trustees. The value of this contributed time is not reflected in these combined financial statements as it does not meet the criteria for recognition.

During the years ended June 30, 2012 and 2011, contributions from board members were approximately \$54,000 and \$27,000, respectively; of these amounts, \$7,500 and \$0 were included in grants and other receivables, respectively.

## Bronx Charter School for Excellence and Affiliate

### Notes to Combined Financial Statements

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#### Note 1. Principal Business Activity and Summary of Significant Accounting Policies (Continued)

Tax Status: The School and Friends are exempt from federal income taxes under Section 501(a) of the Internal Revenue Code (the Code) as organizations formed for charitable purposes under Section 501(c)(3) of the Code and, accordingly, are not subject to income taxes. Additionally, the School and Friends as nonprofit entities are subject to unrelated business income tax (UBIT), if applicable. For the tax years ended June 30, 2012 and 2011, the School and Friends did not owe any UBIT.

Management evaluated the Organization's tax positions for all open tax years and has concluded that the Organization had taken no uncertain tax positions that require adjustment to the financial statements to comply with the provisions of Accounting Standards Codification 740, *Accounting for Income Taxes*. Generally, the Organization is no longer subject to income tax examinations by U.S. federal, state or local tax authorities for years before 2009, which is the standard statute of limitations look-back period.

Reclassifications: Certain 2011 amounts have been reclassified, where appropriate, to conform to the financial statement presentation used in 2012. Such reclassifications did not have any effect on total net assets or changes therein.

#### Note 2. Grants and Other Receivables

As of June 30, 2012 and 2011, grants and other receivables amounted to \$304,683 and \$149,908, respectively. Grants and other receivables include receivables from government contracts and unconditional promises to give. These receivables are due within one year.

All grants and other receivables are deemed collectible when due. Accordingly, no allowance for doubtful grants and other receivables has been provided in the accompanying combined financial statements.

#### Note 3. Property and Equipment, Net

Property and equipment, net, at cost or fair market value at date of donation, consists of the following at June 30, 2012 and 2011:

	<u>2012</u>	<u>2011</u>	<u>Estimated Useful Life</u>
Land	\$ 178,958	\$ -	
Leasehold improvements	2,411,762	2,411,762	Shorter of lease term or 30 years
Building	715,830	-	39 years
Computer and other equipment	254,280	174,162	5 years
Furniture and fixtures	180,957	146,912	5 years
Construction-in-progress	143,219	-	
	<u>3,885,006</u>	<u>2,732,836</u>	
Less accumulated depreciation and amortization	<u>(830,827)</u>	<u>(588,466)</u>	
	<u>\$ 3,054,179</u>	<u>\$ 2,144,370</u>	

## Bronx Charter School for Excellence and Affiliate

### Notes to Combined Financial Statements

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#### Note 3. Property and Equipment, Net (Continued)

On June 24, 2011, the Organization entered into a contractual agreement (the Agreement) with an unrelated third party to purchase the land and building situated at 2000 Benedict Avenue, Bronx, New York, which is adjacent to its elementary school. The purchase price was \$875,000 and the Organization intends to use this facility for additional educational space. This purchase is included in property and equipment, net in the statement of financial position as of June 30, 2012.

#### Note 4. Commitments

Operating Leases: Friends entered into a 30-year noncancelable operating lease agreement with an unrelated third party for a facility in the Bronx, New York. On July 1, 2005, Friends entered into a sublease agreement with the School, whereby the School assumes all obligations pertaining to Friends' lease agreement. As an inducement for Friends to enter into this lease agreement, the School has funded \$1,547,149 in leasehold improvements made to convert the leased space for use as an educational facility.

In addition, the School entered into a four-year operating lease agreement not cancelable for three years with an unrelated third party for a facility in the Bronx, New York in August 2010. This facility is to be used to operate classes for students in grades 5 through 8. This lease provides a leasehold incentive (work credit) of \$78,173 for costs to be incurred by the School to renovate the exterior of the building providing space for its middle school. The work credit will be amortized against the base rent on a monthly basis during the entire term of this lease.

Minimum future rental payments under these leases and sublease are summarized as follows:

<u>Year Ending</u>	<u>1960 Benedict Avenue</u>	<u>1804 Holland Avenue</u>	<u>Total</u>
2013	\$ 506,250	\$ 148,905	\$ 655,155
2014	506,250	148,905	655,155
2015	506,250	12,409	518,659
2016	683,438	-	683,438
2017	683,438	-	683,438
Thereafter	<u>21,298,909</u>	<u>-</u>	<u>21,298,909</u>
	<u>\$ 24,184,535</u>	<u>\$ 310,219</u>	<u>\$ 24,494,754</u>

The lease at 1960 Benedict Avenue provides for rent escalations and the School is responsible for real estate taxes and other operating expenses. The lease at 1804 Holland Avenue will require a net monthly rental payment of \$12,409 and 90% of utility charges incurred at this facility.

Deferred rent consists of the excess of the rental expenses on a straight-line basis over the payment required by the lease. Rent expenses amounted to \$1,051,307 and \$1,038,897 for the fiscal years ended June 30, 2012 and 2011, respectively, which includes noncash deferred rent adjustments of \$396,151 for the fiscal years ended June 30, 2012 and 2011.

## Bronx Charter School for Excellence and Affiliate

### Notes to Combined Financial Statements

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#### **Note 4. Commitments (Continued)**

Building Design Project Commitment: The School entered into a contractual arrangement (the contract) for architectural, design and other services for the expansion and renovation of the 1960 Benedict Avenue building, in conjunction with the potential bond issuance and related construction as discussed in Note 9. The contract amount is \$750,000, of which approximately \$97,000 of costs have been incurred through June 30, 2012. The contract cost of \$750,000 is an estimate based on a percentage of the current construction estimate.

The final cost of the contract will be determined when final construction plans are completed. If the construction plans are abandoned, the School will only be liable for actual time and expense costs incurred.

#### **Note 5. Employee Benefit Plan**

The School maintains a deferred compensation plan qualified under Section 403(b) of the Code. The School matches up to 5% of each employee's annual compensation not to exceed the employee's annual salary deferral amount. The School may also elect to make additional contributions to the plan on a discretionary basis. For the years ended June 30, 2012 and 2011, employer matching contributions in connection with this plan amounted to approximately \$80,000 and \$62,000, respectively, net of forfeitures.

#### **Note 6. Operating Expenses**

Operating expenses are presented in the combined statements of functional expenses classified according to the significant program activity related to the purpose for which the School exists or supporting services.

The significant activities are:

School Operations: Represents work (time and materials) that is specifically related to or necessary for the programming aspects of the School. If the activities and related costs directly affect students or parents, then they fall under this program.

General and Administrative: Represents work (time and materials) that is specifically related to running the nonprogrammatic/back-end operational functions of the School and Friends including but not limited to human resources, finance, technology and payroll.

Fund-Raising: Represents work (time and materials) associated with the School's and Friends' fund-raising programs including but not limited to annual mailings, donor meetings and events.

#### **Note 7. Temporarily Restricted Net Assets**

Temporarily restricted net assets of \$8,290 and \$0 represent purpose-restricted contributions as of June 30, 2012 and 2011, respectively.

#### **Note 8. Contingency**

Certain grants and contracts may be subject to audit by funding sources. Such audits might result in disallowances of costs submitted for reimbursement. Management is of the opinion that such cost disallowances, if any, will not have a material effect on the accompanying combined financial statements. Accordingly, no amounts have been provided in the accompanying combined financial statements for such potential claims.

## **Bronx Charter School for Excellence and Affiliate**

### **Notes to Combined Financial Statements**

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#### **Note 9. Subsequent Events**

The School entered in to an engagement letter (the "Agreement") with an underwriter for the purpose of structuring taxable and tax-exempt securities (the "Bonds"). The proceeds of the proposed Bonds, if issued, will be used to finance (i) the acquisition, construction, equipping and renovation of the School (ii) capitalized interest on the proposed Bonds and (iii) costs of issuance of the proposed Bonds. The proposed Bonds referred to above will have a preliminary par amount of approximately \$20,460,000 and are expected to be structured as fixed rate bonds to be sold in two series with one or more terms. The underwriting fee will be 1.75% of the par amount of the proposed bonds, with the School agreeing to pay all appropriate costs of issuance associated with this financing. This Agreement is not a final commitment by the underwriter until certain events have occurred, including final approval by the School's Board of Directors.

The Organization evaluated events occurring after the date of the combined financial statements to consider whether or not the impact of such events need to be reflected and/or disclosed in the financial statements. Such evaluation was performed through October 26, 2012, the date the combined financial statements were available to be issued.

**Bronx Charter School for Excellence and Affiliate**

**Supplementary Information**

**Combining Statements of Financial Position**

**June 30, 2012**

(with summarized comparative information as of June 30, 2011)

See Auditor's Report

	2012			2011	
	<b>Bronx Charter School for Excellence</b>	<b>Friends of Bronx Charter School for Excellence, Inc.</b>	<b>Eliminations</b>	<b>Total</b>	<b>Total</b>
<b>ASSETS</b>					
Cash and Cash Equivalents	\$ 1,406,063	\$ 90,721	\$ -	<b>\$ 1,496,784</b>	\$ 2,105,088
Grants and Other Receivables	297,183	7,500	-	<b>304,683</b>	149,908
Due From Affiliate	64,301	-	(64,301)	-	-
Prepaid Expenses and Other Assets	215,702	1,439	-	<b>217,141</b>	255,228
Deferred Leasing Commissions	-	322,232	-	<b>322,232</b>	336,242
Property and Equipment, net	<u>3,054,179</u>	<u>-</u>	<u>-</u>	<u><b>3,054,179</b></u>	<u>2,144,370</u>
<b>Total assets</b>	<u><b>\$ 5,037,428</b></u>	<u><b>\$ 421,892</b></u>	<u><b>\$ (64,301)</b></u>	<u><b>\$ 5,395,019</b></u>	<u><b>\$ 4,990,836</b></u>
<b>LIABILITIES AND NET ASSETS</b>					
Liabilities:					
Accounts payable and accrued expenses	\$ 826,949	\$ -	\$ -	<b>\$ 826,949</b>	\$ 605,032
Deferred rent	3,429,307	-	-	<b>3,429,307</b>	3,033,156
Due to affiliate	<u>-</u>	<u>64,301</u>	<u>(64,301)</u>	<u>-</u>	<u>-</u>
<b>Total liabilities</b>	<u>4,256,256</u>	<u>64,301</u>	<u>(64,301)</u>	<u><b>4,256,256</b></u>	<u>3,638,188</u>
Net Assets:					
Unrestricted	772,882	357,591	-	<b>1,130,473</b>	1,352,648
Temporarily restricted	<u>8,290</u>	<u>-</u>	<u>-</u>	<u><b>8,290</b></u>	<u>-</u>
<b>Total net assets</b>	<u>781,172</u>	<u>357,591</u>	<u>-</u>	<u><b>1,138,763</b></u>	<u>1,352,648</u>
<b>Total liabilities and net assets</b>	<u><b>\$ 5,037,428</b></u>	<u><b>\$ 421,892</b></u>	<u><b>\$ (64,301)</b></u>	<u><b>\$ 5,395,019</b></u>	<u><b>\$ 4,990,836</b></u>

**Bronx Charter School for Excellence and Affiliate**

**Supplementary Information**

**Combining Statements of Activities**

**Year Ended June 30, 2012**

**(with summarized comparative information for the year ended June 30, 2011)**

**See Auditor's Report**

	2012		2011	
	<b>Bronx Charter School for Excellence</b>	<b>Friends of Bronx Charter School for Excellence, Inc.</b>	<b>Total</b>	<b>Summarized Comparative Total</b>
Operating Revenue:				
State and local per pupil operating revenue	\$ 6,440,262	\$ -	<b>\$ 6,440,262</b>	\$ 5,589,867
Government grants and contracts	363,985	-	<b>363,985</b>	226,049
<b>Total operating revenue</b>	<b>6,804,247</b>	<b>-</b>	<b>6,804,247</b>	<b>5,815,916</b>
Operating Expenses:				
Program services - School operations	5,963,563	-	<b>5,963,563</b>	4,689,007
General and administrative	1,105,291	33,340	<b>1,138,631</b>	1,015,698
<b>Total operating expenses</b>	<b>7,068,854</b>	<b>33,340</b>	<b>7,102,194</b>	<b>5,704,705</b>
<b>(Deficit) surplus from operations</b>	<b>(264,607)</b>	<b>(33,340)</b>	<b>(297,947)</b>	<b>111,211</b>
Support and Other Revenue:				
Contributions:				
Foundations	15,000	-	<b>15,000</b>	32,500
Individuals	24,374	23,264	<b>47,638</b>	37,567
Donated goods or services	11,794	-	<b>11,794</b>	1,353
Special events	3,795	104,276	<b>108,071</b>	70,177
Interest income	4	-	<b>4</b>	2,557
Miscellaneous income	12,940	-	<b>12,940</b>	14,396
Fund-raising expenses (inclusive of direct costs amounting to \$35,468 and \$35,867, respectively, from special event)	(75,838)	(35,547)	<b>(111,385)</b>	(41,424)
<b>Total support and other revenue</b>	<b>(7,931)</b>	<b>91,993</b>	<b>84,062</b>	<b>117,126</b>
<b>Change in net assets</b>	<b>(272,538)</b>	<b>58,653</b>	<b>(213,885)</b>	<b>228,337</b>
Net Assets:				
Beginning	1,053,710	298,938	<b>1,352,648</b>	1,124,311
Ending	<u>\$ 781,172</u>	<u>\$ 357,591</u>	<u><b>\$ 1,138,763</b></u>	<u><b>\$ 1,352,648</b></u>

**Bronx Charter School for Excellence and Affiliate**

**Supplementary Information**

**Statements of Functional Expenses - Bronx Charter School for Excellence**  
**Year Ended June 30, 2012**  
**(with summarized comparative information for the year ended June 30, 2011)**  
**See Auditor's Report**

	<b>Program Services - School Operations</b>	<b>Supporting Services</b>			<b>2012 Total</b>	<b>2011 Summarized Comparative Total</b>
		<b>General and Administrative</b>	<b>Fund- Raising</b>	<b>Total</b>		
Personnel expenses:						
Payroll	\$ 3,164,908	\$ 564,864	\$ 42,804	\$ 607,668	\$ 3,772,576	\$ 2,698,632
Payroll taxes and benefits	686,860	122,590	9,289	131,879	818,739	578,842
Rent	881,967	157,412	11,928	169,340	1,051,307	1,038,897
Academic programs	337,836	-	-	-	337,836	216,096
Property development studies	-	30	-	30	30	77,293
Facility maintenance and security	171,864	30,674	2,324	32,998	204,862	230,955
Utilities	95,665	17,074	1,294	18,368	114,033	108,357
Consultants and substitute teachers	5,652	19,131	-	19,131	24,783	58,709
Professional fees	102,588	101,538	1,228	102,766	205,354	174,653
Depreciation and amortization	203,320	36,291	2,750	39,041	242,361	186,662
Insurance	32,860	6,425	444	6,869	39,729	33,641
Office and other	138,422	23,987	1,861	25,848	164,270	117,186
Telephone and Internet	12,497	2,230	169	2,399	14,896	15,344
Real estate taxes	82,058	14,645	1,110	15,755	97,813	99,737
Equipment/software purchases and rental	47,066	8,400	637	9,037	56,103	39,279
Bad debt expense	-	-	-	-	-	3,812
	<u>\$ 5,963,563</u>	<u>\$ 1,105,291</u>	<u>\$ 75,838</u>	<u>\$ 1,181,129</u>	<u>\$ 7,144,692</u>	<u>\$ 5,678,095</u>

**Bronx Charter School for Excellence and Affiliate**

**Supplementary Information**

**Statements of Functional Expenses - Friends of Bronx Charter School for Excellence, Inc.**

**Year Ended June 30, 2012**

**(with summarized comparative information for the year ended June 30, 2011)**

**See Auditor's Report**

	<b>Program Services - Support to Bronx Charter School for Excellence</b>	<b>Supporting Services</b>			<b>2012 Total</b>	<b>2011 Summarized Comparative Total</b>
		<b>General and Administrative</b>	<b>Fund- Raising</b>	<b>Total</b>		
Personnel expenses:						
Payroll	\$ -	\$ 6,386	\$ 65	\$ 6,451	<b>\$ 6,451</b>	\$ 6,175
Payroll taxes and benefits	-	1,365	14	1,379	<b>1,379</b>	1,379
Professional fees	-	6,753	-	6,753	<b>6,753</b>	6,725
Depreciation and amortization	-	14,010	-	14,010	<b>14,010</b>	14,010
Insurance	-	1,597	-	1,597	<b>1,597</b>	1,278
Office and other	-	3,229	-	3,229	<b>3,229</b>	2,600
Fund-raising expenses	-	-	35,468	35,468	<b>35,468</b>	35,867
	<u>\$ -</u>	<u>\$ 33,340</u>	<u>\$ 35,547</u>	<u>\$ 68,887</u>	<u><b>\$ 68,887</b></u>	<u>\$ 68,034</u>

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**APPENDIX E**

**UNAUDITED INTERIM FINANCIAL INFORMATION  
OF THE INSTITUTION FOR THE SEVEN-MONTH  
PERIOD ENDED JANUARY 31, 2013**

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## APPENDIX E

### UNAUDITED INTERIM FINANCIAL INFORMATION OF THE INSTITUTION FOR THE SEVEN-MONTH PERIOD ENDED JANUARY 31, 2013

Bronx Charter School for Excellence

Statement of Financial Position  
January 31, 2013

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#### ASSETS

Cash and Cash Equivalents	\$ 2,359,147
Grants and Other Receivables	102,780
Due From Affiliate	79,313
Prepaid Expenses and Other Assets	290,051
Property and Equipment, net	<u>3,291,020</u>
<b>Total assets</b>	<b><u>\$ 6,122,311</u></b>

#### LIABILITIES AND NET ASSETS

##### Liabilities:

Accounts payable and accrued expenses	\$ 643,861
Deferred revenue	1,265,051
Deferred rent	<u>3,660,395</u>

<b>Total liabilities</b>	<b><u>5,569,307</u></b>
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##### Net Assets:

Unrestricted and Temporarily restricted	<u>553,004</u>
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<b>Total net assets</b>	<b><u>553,004</u></b>
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<b>Total liabilities and net assets</b>	<b><u>\$ 6,122,311</u></b>
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**Bronx Charter School for Excellence**

**Statement of Activities**

**Seven Months Ended January 31, 2013**

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Operating Revenue:	
State and local per pupil operating revenue	\$ 3,840,252
Government grants and contracts	<u>156,033</u>
<b>Total operating revenue</b>	<b><u>3,996,285</u></b>
Operating Expenses:	
Personnel expenses:	
Payroll	2,248,371
Payroll taxes and benefits	495,545
Rent	613,262
Academic programs	168,903
Depreciation and amortization	154,318
Office and other	140,640
Facility maintenance and security	112,829
Professional fees	97,549
Utilities	76,122
Real estate taxes	57,335
Equipment/software purchases and rental	40,090
Insurance	28,325
Consultants and substitute teachers	11,814
Telephone and Internet	10,731
Bad debt expense	<u>3,300</u>
<b>Total operating expenses</b>	<b><u>4,259,134</u></b>
<b>Deficit from operations</b>	<b><u>(262,849)</u></b>
Support and Other Revenue:	
Contributions, individuals	17,530
Donated goods or services	13,603
Miscellaneous income	<u>3,548</u>
<b>Total support and other revenue</b>	<b><u>34,681</u></b>
<b>Change in net assets</b>	<b>(228,168)</b>
Net Assets:	
Beginning	<u>781,172</u>
Ending	<b><u>\$ 553,004</u></b>

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**APPENDIX F**

**CERTAIN DEFINITIONS**

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## APPENDIX F

### CERTAIN DEFINITIONS

*The following are definitions of certain terms, unless the context shall otherwise require, used in the Indenture, the Loan Agreement or this Official Statement.*

**Additional Bonds** shall mean one or more Series of additional bonds issued, executed, authenticated and delivered under the Indenture.

**Additional Improvements** shall mean alterations of or additions to the Facility Realty.

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

**Annual Administrative Fee** shall mean the Initial Annual Administration Fee and that Annual Administrative Fee established from time to time by the Issuer's Board of Directors as generally applicable to Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from such general applicability as may be established by the Issuer's Board of Directors).

**Approved Facility** shall mean the Facility as occupied, used and operated by the Institution substantially for the Approved Project Operations, including such other activities as may be substantially related to or substantially in support of such operations, all to be effected in accordance with the Loan Agreement.

**Approved Project Operations** shall mean use of the Facility by the Institution as a charter school providing educational services to students and, to the extent permitted by the Tax Certificate, the use of the Facility by Friends of Bronx Charter School for Excellence in furtherance of its exempt purposes.

**Assignment of Mortgage** shall mean the Assignment of Mortgage and Security Agreement, dated as of even date therewith, from the Issuer to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Authorized Denomination** shall mean, in the case of the Initial Bonds, \$5,000 or any integral multiple of \$5,000 in excess thereof.

**Authorized Principal Amount** shall mean, in the case of the Initial Bonds, \$24,000,000.

**Authorized Representative** shall mean, (i) in the case of the Issuer, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties, and (ii) in the case of the Institution, a person named in Exhibit C — "Authorized Representative" to the Loan Agreement, or any other officer or employee of the Institution who is authorized to perform specific duties under the Loan Agreement or under any other Project Document and of whom another Authorized Representative of the Institution has given written notice to the Issuer and the Trustee; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

**Beneficial Owner** shall mean, whenever used with respect to an Initial Bond, the Person in whose name such Initial Bond is recorded as the Beneficial Owner of such Initial Bond by the respective systems of DTC and each of the Participants of DTC. If at any time the Initial Bonds are not held in the Book-Entry System, Beneficial Owner shall mean "Holder" for purposes of the Security Documents.

**Benefits** shall mean the exemption from any applicable mortgage recording taxes, and filing and recording fees.

**Bond Fund** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Bondholder, Holder of Bonds, Holder or holder** shall mean any Person who shall be the registered owner of any Bond or Bonds.

**Bond Registrar** shall mean the Trustee acting as registrar as provided in the Indenture.

**Bond Resolution** shall mean the resolution of the Issuer adopted on December 11, 2012, authorizing the issuance of the Initial Bonds.

**Bonds** shall mean the Initial Bonds and any Additional Bonds.

**Business Day** shall mean any day that shall not be:

- (i) a Saturday, Sunday, or legal holiday;
- (ii) a day on which banking institutions in the City are authorized by law or executive order to close; or
- (iii) a day on which the New York Stock Exchange is closed.

**Capital Needs Assessment** shall have the meaning ascribed to such term in the Loan Agreement.

**Charter** shall mean, as approved, the proposed charter agreement dated as of February 25, 2003 between the Institution and the Board of Trustees of the State University of New York, as approved on April 29, 2003, by the Board of Regents of the State of New York for and on behalf of the State Education Department.

**City** shall mean The City of New York, New York.

**Claims** shall mean any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses, including attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

**Closing Date** shall mean April 24, 2013, the date of the initial issuance and delivery of the Initial Bonds.

**Code** shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder. All references to Sections of the Code or regulations thereunder shall be deemed to include any such Sections or regulations as they may hereafter be renumbered in any subsequent amendments to the Code or such regulations.

**Completed Improvements Rentable Square Footage** shall mean approximately 50,000 rentable square feet, the rentable square footage of the Improvements upon completion of the Project Work.

**Completion Date** shall mean April 1, 2016.

**Computation Date** shall have the meaning assigned to that term in the Tax Certificate.

**Computation Period** shall have the meaning assigned to that term in the Tax Certificate.

**Conduct Representation** shall mean any representation by the Institution under Section 2.2(t) of the Loan Agreement, or by any other Person in any Required Disclosure Statement delivered to the Issuer.

**Control** or **Controls**, including the related terms “controlled by” and “under common control with”, shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

**Costs of Issuance** shall mean issuance costs with respect to the Initial Bonds described in Section 147(g) of the Code and any regulations thereunder, including but not limited to the following: Original Purchaser’s fee; counsel fees (including bond counsel, counsel to the Original Purchaser, Trustee’s counsel, Issuer’s counsel, Institution’s counsel, as well as any other specialized counsel fees incurred in connection with the borrowing); financial advisor fees of any financial advisor to the Issuer or the Institution incurred in connection with the issuance of the Initial Bonds; engineering and feasibility study costs; guarantee fees (other than Qualified Guarantee Fees, as defined in the Tax Certificate); Rating Agency fees; Trustee and Paying Agent fees; accountant fees and other expenses related to issuance of the Initial Bonds; printing costs (for the Initial Bonds and of the preliminary and final Official Statement relating to the Initial Bonds); printing costs for the Initial Bonds and offering documents; public approval and process costs; fees and expenses of the Issuer incurred in connection with the issuance of the Initial Bonds; and Blue Sky fees and expenses; and similar costs.

**CSFP** means Charter School Financing Partnership, LLC, a Delaware limited liability company and its successors and assigns under the Debt Service Reserve Fund Agreement.

**Custodian** means U.S. Bank National Association, as custodian under the Custody Agreement.

**Custody Agreement** means the custody agreement dated as of April 1, 2013 by and among the Institution, the Custodian and the Trustee.

**Custody Agreement Notice** means the notice prepared by the Trustee in accordance with the provisions of the Custody Agreement and the Indenture. The form of Custody Agreement Notice shall be in the form set forth in Exhibit A to the Custody Agreement.

**Days Cash on Hand** shall mean means (a) Cash on Hand of the Institution, as shown on the financial statements for each Fiscal Year divided by (b) the quotient of Operating Expenses, as shown on the financial statements for such Fiscal Year, divided by 365.

**Debt Service Reserve Fund** shall mean the special trust fund so designated, established pursuant to the Indenture and the Debt Service reserve Fund Agreement.

**Debt Service Reserve Fund Requirement** shall mean for each Series of Bonds, as of any particular date of computation, an amount (which amount may take the form of cash, Qualified Investments or any combination thereof) equal to the lesser of:

- (i) ten percent (10%) of the Net Proceeds (as defined in the Tax Certificate) of such Series of Bonds;
- (ii) 100% of the greatest amount required in the then current or any future calendar year to pay the sum of the scheduled principal and interest payable on such Series of Bonds; or
- (iii) 125% of the average annual amount required in the then current or any future calendar year to pay the sum of scheduled principal and interest on such Series Bonds.

**Debt Service Reserve Fund Valuation Date** shall mean each Interest Payment Date commencing October 1, 2013.

**Default Rate** shall mean eight percent (8.0%) per annum

**Defaulted Interest** shall mean interest on any Initial Bond that is due and payable but not paid on the date due.

**Defeasance Obligations** shall mean Government Obligations that are not subject to redemption prior to maturity.

**Disability Aid** shall mean those certain federal and State payments payable to the Institution attributable to students with disabilities.

**Disclosure Agreement** means the Continuing Disclosure Agreement, dated as of April 1, 2013, between the Trustee and the Institution.

**DOL** shall mean The New York State Department of Labor.

**DTC** shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

**Due Date** means the date on which Institute is to make a payment, filing or delivery pursuant to the Loan Agreement.

**Earnings Fund** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Education Aid** shall mean, collectively, all State Education Operating Aid, Disability Aid and any Other Education Aid payable to the Institution pursuant to the New York State Education Law or federal law for the payment of operations of the Institution.

**Eliminated Expenses** shall mean any Operating Expenses that the Institution certifies will be eliminated as a result of any proposed Long-Term Indebtedness or Additional Bonds.

**Employment Information** shall mean information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Institution, or any information previously released as provided by all or any of the foregoing parties.

**Entity** shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

**Environmental Audit** shall mean that certain Phase I Environmental Site Assessment Report for Project 10:12-972 dated October 12, 2012, prepared by the Environmental Auditor.

**Environmental Auditor** shall mean Environment Building Solutions, LLC.

**Estimated Project Cost** shall mean \$24,227,795.71.

**Event of Default** shall have the meaning provided in the Indenture and the Loan Agreement, as applicable.

**Existing Facility Property** shall mean property constituting part of the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other item of personal property constituting part of the Facility Personalty.

**Facility** shall mean, collectively, the Facility Personalty and the Facility Realty.

**Facility Personalty** shall mean those items of machinery, equipment and other items of personalty the acquisition and/or the installation of which is to be financed in whole or in part with the proceeds of the Bonds for installation or use at the Facility Realty as part of the Project pursuant to the Loan Agreement and described in Exhibit B - "Description of the Facility Personalty" therein, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions of the Loan Agreement, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in the Loan Agreement.

**Facility Realty** shall mean, collectively, the Land and the Improvements.

**Final Project Cost Budget** shall mean that certain budget of costs paid or incurred for the Project to be submitted by the Institution pursuant to the Loan Agreement upon completion of the Project.

**Fiscal Year** shall mean a year of 365 or 366 days, as the case may be, commencing on July 1 and ending on June 30 of the next calendar year, or such other fiscal year of similar length used by the Institution for accounting purposes as to which the Institution shall have given prior written notice thereof to the Issuer and the Trustee at least ninety (90) days prior to the commencement thereof.

**Fitch** shall mean Fitch, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Fixed Date Deliverables** shall mean any of the documents required of the Institution under Section 8.14 or Section 8.16 of the Loan Agreement by the date therein stated.

**Friends of Bronx Charter School for Excellence** shall mean Friends of the Bronx Charter School for Excellence Inc., previously known as Parkchester Progressive Educational Initiative, Inc.

**GAAP** shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Closing Date, so as to properly reflect the financial position of the Institution, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

**Governing Body** shall mean, when used with respect to any Entity, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Entity are exercised.

**Government Obligations** shall mean the following:

- (i) direct and general obligations of, or obligations unconditionally guaranteed by, the United States of America;

(ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America for the timely payment thereof; or

(iii) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in clauses (i) or (ii) above.

**Gross Revenues** shall mean all receipts, revenues, income and other moneys received by or on behalf of the Institution, including, but without limiting the generality of the foregoing, revenues derived from the ownership or operation of all real or personal property owned by the Institution including but not limited to the Facility, casualty insurance and condemnation proceeds with respect to all real or personal property owned by the Institution including but not limited to the Facility or any portion thereof, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence; provided, however, that gifts, grants, bequests, donations and contributions heretofore or hereafter made and designated or specified by the granting authority, donor or maker thereof as being for specified purposes (other than payment of debt service on Indebtedness) and the income derived therefrom to the extent required by such designation or specification shall be excluded from Gross Revenues. Gross Revenues shall not include Education Aid, cash, cash equivalents, investment securities or endowment funds from time to time on hand with the Institution or amounts required to be set aside by the Board of Regents with the State of New York for and on behalf of the State Education Department.

**Hazardous Materials** shall include any petroleum, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

**Impositions** shall mean all taxes and assessments, general and specific, if any, levied and assessed upon or against the Trust Estate, the Facility Realty or any part thereof, or interest of the Institution in the Facility, or against any of the loan payments or other payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility Realty.

**Improvements** shall mean:

(i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Closing Date and erected or situated on the Land;

(ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land (including any improvements or demolitions made as part of the Project Work pursuant to the Loan Agreement); and

(iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

**Indebtedness** shall mean any obligation of the Institution for the payment of money, including without limitation, (i) indebtedness for money borrowed, (ii) purchase money obligations, (iii) leases evidencing the acquisition of capital assets, (iv) reimbursement obligations, and (v) guarantees of any such obligation of a third party, but excluding (a) obligations under contracts for supplies, services and pensions allocable to current operating expenses during the current or future Fiscal Years in which the supplies are to be delivered, the services rendered or

the pensions paid, and (b) payments payable in the current or future Fiscal Years under leases not intended to evidence the acquisitions of capital assets.

**Indemnification Commencement Date** shall mean December 11, 2012, the date on which the Issuer first adopted a resolution with respect to the Project.

**Indemnified Parties** shall mean the Issuer, the Trustee, the Bond Registrar and the Paying Agents, and any director, member, officer, employee, servant, agent (excluding for this purpose the Institution, which is not obligated by the Loan Agreement to indemnify its own employees, Affiliates or affiliated individuals) thereof and persons under the Issuer's control or supervision.

**Indenture** shall mean the Indenture of Trust, dated as of April 1, 2013, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with the Indenture.

**Independent Accountant** shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Institution and approved by the Issuer and the Trustee (such approvals not to be unreasonably withheld or delayed).

**Independent Engineer** shall mean a Person (not an employee of either the Issuer or the Institution or any Affiliate of either thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Institution, and approved in writing by the Trustee (which approval shall not be unreasonably withheld).

**Information Recipients** shall mean the Issuer and/or NYCEDC, and/or to the successors and assigns of either.

**Initial Annual Administrative Fee** shall mean \$850.00.

**Initial Bonds** shall mean, collectively, the Issuer's \$23,310,000 Tax-Exempt Revenue Bonds, Series 2013A (Bronx Charter School for Excellence Project) and its \$690,000 Taxable Revenue Bonds, Series 2013B (Bronx Charter School for Excellence Project), each series authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

**Institution** shall mean Bronx Charter School for Excellence, a not-for-profit education corporation organized and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Institution under the Loan Agreement.

**Institution Documents** shall mean the Bond Purchase Agreement, the Loan Agreement, the Mortgage, the Pledge and Security Agreement, the Custody Agreement, the Disclosure Agreement, the Tax Certificate and any other Security Documents to which the Institution is a party, each as may be amended from time to time.

**Institution's Property** shall mean the machinery, equipment and other personal property installed or permitted to be installed at the Facility Realty, by the Institution and at the Institution's own cost and expense, in addition to the Facility Personalty.

**Interest Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to the Indenture.

**Interest Payment Date** shall mean, with respect to the Initial Bonds, October 1 and April 1 of each year, commencing October 1, 2013, and with respect to any Series of Additional Bonds, the dates set forth therefor in the Supplemental Indenture pursuant to which such Series of Additional Bonds are issued.

**Irrevocable Deposit** means the irrevocable deposit in trust of cash in an amount (or Government Obligations the principal of and interest on which will be in an amount), and under terms sufficient to pay all or a portion of the principal of and/or premium, if any, and interest on, as the same shall become due, of any Indebtedness which would otherwise be considered Outstanding. The trustee of such deposit may be any trustee or escrow agent authorized to act in such capacity.

**IRS Determination Letter** shall mean that certain ruling letter dated August 31, 2007, issued by the Internal Revenue Service to the Institution confirming that the Institution is a Tax-Exempt Organization.

**Issuer** shall mean Build NYC Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

**Issuer's Reserved Rights** shall mean, collectively,

(i) the right of the Issuer in its own behalf to receive all Opinions of Counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications required to be delivered to the Issuer under the Loan Agreement;

(ii) the right of the Issuer to grant or withhold any consents or approvals required of the Issuer under the Loan Agreement;

(iii) the right of the Issuer to enforce in its own behalf the obligation of the Institution under the Loan Agreement to complete the Project;

(iv) the right of the Issuer to enforce or otherwise exercise in its own behalf all agreements of the Institution under the Loan Agreement with respect to ensuring that the Facility shall always constitute the Approved Facility;

(v) the right of the Issuer to amend with the Institution the provisions of Section 5.3 of the Loan Agreement without the consent of the Trustee or any Bondholder;

(vi) the right of the Issuer in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.4, 4.5, 4.6, 4.7, 5.1, 5.2, 5.3, 6.1, 6.2, 6.3, 6.4, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16, 8.17, 8.18, 8.19, 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26, 8.28, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 10.1, 10.2, 10.3, 11.1, 11.3, 11.5, 12.1, 12.3, 12.4, 12.5, 12.6, 12.11, 12.13 and 12.14 of the Loan Agreement; and

(vii) the right of the Issuer in its own behalf to declare a default with respect to any of the Issuer's Reserved Rights and exercise the remedies set forth in the Loan Agreement.

**Land** shall mean that certain lots, pieces or parcels of land in Block 3930 and Lots 38 and 33, generally known by the street address of 1960 Benedict Avenue, Bronx, New York, all as more particularly described in Exhibit A — "Description of the Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c) of the Loan Agreement.

**Land Square Footage** shall mean approximately 17,500 square feet.

**Legal Requirements** shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes,

wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Institution, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

**Letter of Representation and Indemnity Agreement** shall mean the Letter of Representation and Indemnity Agreement, dated the Closing Date, from the Institution to the Issuer, the Trustee and the original purchaser(s) of the Initial Bonds.

**Liability** shall mean Claims of any kind for losses, damage, injury and liability

**Liens** shall mean any lien, encumbrance or charge filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body entered, made or issued or any claim.

**Loan** shall mean the loan made by the Issuer to the Institution pursuant to the Loan Agreement as described therein.

**Loan Agreement** shall mean the Loan Agreement, dated as of April 1, 2013, between the Issuer and the Institution, and shall include any and all amendments thereof and supplements thereto made in conformity therewith and with the Indenture.

**Loan Payment Date** shall mean the fifteenth (15<sup>th</sup>) day (or, if the fifteenth (15<sup>th</sup>) day shall not be a Business Day, the immediately preceding Business Day) of each January, March, May, July, September and November, commencing on May 15, 2013. In the event that the State funding mechanism for Education Aid changes, the Loan Payment Date may change to accommodate the same.

**Long-Term Indebtedness** shall mean all Indebtedness of the Institution, except: (i) Short Term Indebtedness, (ii) current obligations payable out of current revenues, including current payments for the funding of pension plans, (iii) obligations under contracts for supplies, services and pensions, allocable to the current operating expenses of future years in which the supplies are to be furnished, the services are to be rendered or the pensions paid, and (iv) scheduled payments under construction contracts.

**Loss Event** shall mean an event whereby the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement to which the Institution and those authorized to exercise such right are parties, or the temporary use of the Facility shall be so taken by condemnation or agreement.

**Majority Holders** shall mean the Beneficial Owners of at least a majority in aggregate principal amount of the Bonds Outstanding, or, if the Bonds shall cease to be in book-entry form, the Holders of at least a majority in aggregate principal amount of the Bonds Outstanding.

**Management Consultant** means an independent consulting firm for the purpose of passing on questions relating to financial affairs, marketing, management or operations of the Institution, has a favorable reputation for skill and experience in performing similar services in respect of Entities of a comparable size and nature and is not unsatisfactory to the Trustee or the Issuer.

**Maturity Date** shall mean (i) with respect to the Series 2013A Bonds, April 1, 2043, (ii) with respect to the Series 2013B Bonds, April 1, 2018, and (iii) with respect to any Additional Bonds, the maturity date set forth in the applicable Supplemental Indenture.

**Merge** shall mean the process whereby the Institution consolidates with or merges into another Entity or permits one or more Entities to consolidate with or merge into it.

**Moody's** shall mean Moody's Investors Service Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Mortgage** shall mean collectively, those certain Mortgage and Security Agreement granted by the Institution to the Issuer and the Trustee contemporaneously with the Indenture encumbering the Facility and certain other property recited therein to secure the Institution's payment and performance of its obligations under the Indenture, the Issuer's interest in which is being assigned to the Trustee contemporaneously with the Indenture.

**Nationally Recognized Bond Counsel** shall mean counsel acceptable to the Issuer and the Trustee and experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

**Net Income Available for Debt Service** shall mean, unless the context provides otherwise, with respect to the Institution as to any period of time, its combined excess of revenues over expenses (excluding income from all Irrevocable Deposits), before depreciation, amortization, and interest expense, as determined in accordance with generally accepted accounting principles; provided, that no determination thereof will take into account: (a) any gain or loss resulting from either the early extinguishment or refinancing of Indebtedness or the sale, exchange or other disposition of capital assets not made in the ordinary course of business; (b) gifts, grants, bequests, donations or contributions, and income therefrom, to the extent specifically permanently restricted by the donor or by law to a particular purpose inconsistent with their use for the payment of principal of, redemption premium and interest on Indebtedness or the payment of operating expenses; (c) the net proceeds of insurance (other than business interruption insurance) and condemnation awards; (d) adjustments to the value of assets or liabilities resulting from changes in generally accepted accounting principles; (e) unrealized gains or losses that do not result in the receipt or expenditure of cash; and (f) nonrecurring items which involve the receipt, expenditure or transfer of assets.

**Net Proceeds** shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Issuer or the Trustee) incurred in the collection thereof.

**Notice Parties** shall mean the Issuer, the Institution, the Custodian, the Bond Registrar, the Paying Agents and the Trustee.

**Notification of Failure to Deliver** shall mean a written notice from the Issuer to the Institution of failure to deliver on the Due Date the Annual Administrative Fee, a Fixed Date Deliverable and/or a Requested Document Deliverable.

**NYCDOF** shall mean the New York City Department of Finance.

**NYCEDC** shall mean New York City Economic Development Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State, and any successor thereof.

**NYCIDA** shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

**Operating Expenses** shall mean, with respect to any period of time, the total of all expenses actually incurred of whatever kind relating to the operation, maintenance and management of the Institution and computed in accordance with GAAP, including, without limitation, utilities, ordinary repairs and maintenance, insurance premiums, license fees, taxes and other charges, payroll and related taxes and specifically excluding

depreciation and amortization, income taxes, debt service, on any Indebtedness and any item of expense that in accordance with GAAP should be capitalized.

**Operations Commencement Date** shall mean the date on which the Project Work shall have been substantially completed (which shall be the earlier of (y) the Completion Date, and (z) the date stated in the certificate of an Authorized Representative of the Institution delivered to the Issuer pursuant to the Loan Agreement).

**Opinion of Counsel** shall mean a written opinion of counsel for the Institution or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

**Organizational Documents** shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the charter, articles of incorporation or certificate of incorporation, and the bylaws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

**Original Purchaser** shall mean with respect to the Initial Bonds, Piper Jaffray & Co..

**Other Education Aid** shall mean any federal or State payments, other than State Education Operating Aid or Disability Aid, payable to the Institution for the purpose of funding operations of the Institution.

**Outstanding** when used with reference to a Bond or Bonds, as of any particular date, shall mean all Bonds which have been issued, executed, authenticated and delivered under the Indenture, except:

(i) Bonds cancelled by the Trustee because of payment or redemption prior to maturity or surrendered to the Trustee under the Indenture for cancellation;

(ii) any Bond (or portion of a Bond) for the payment or redemption of which, in accordance with the Indenture, there has been separately set aside and held in the Redemption Account of the Bond Fund either:

(A) moneys, and/or

(B) Defeasance Obligations in such principal amounts, of such maturities, bearing such interest and otherwise having such terms and qualifications as shall be necessary to provide moneys,

in an amount sufficient to effect payment of the principal or applicable Redemption Price of such Bond, together with accrued interest on such Bond to the payment or redemption date, which payment or redemption date shall be specified in irrevocable instructions given to the Trustee to apply such moneys and/or Defeasance Obligations to such payment on the date so specified, provided, that, if such Bond or portion thereof is to be redeemed, notice of such redemption shall have been given as provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(iii) Bonds in exchange for or in lieu of which other Bonds shall have been authenticated and delivered under the Indenture,

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under the Indenture or under any other Security Document, Bonds owned by the Institution or any Affiliate of the Institution shall be disregarded and deemed not to be Outstanding, except that, in determining whether the

Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. Bonds which have been pledged in good faith may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Institution or any Affiliate of the Institution.

**Participants** shall mean those financial institutions for whom the Securities Depository effects book entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**Paying Agent** shall mean any paying agent for the Bonds appointed pursuant to the Indenture (and may include the Trustee) and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to the Indenture.

**Per Diem Fees** shall mean, collectively, the Per Diem Late Fee and the Per Diem Supplemental Late Fee.

**Per Diem Late Fee** shall mean that per diem late fee established from time to time by the Issuer's Board of Directors generally imposed upon Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from such general applicability as may be established by the Issuer's Board of Directors) and that have not (x) paid to the Issuer the Annual Administrative Fee on the date required under the Loan Agreement, (y) delivered to the Issuer all or any of the Fixed Date Deliverables on the respective dates required under the Loan Agreement, and/or (z) delivered to the Issuer all or any of the Requested Document Deliverables under the Loan Agreement within five (5) Business Days of the Issuer having made the request therefor.

**Per Diem Supplemental Late Fee** shall mean that supplemental per diem late fee established from time to time by the Issuer's Board of Directors generally imposed upon Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from general applicability as may be established by the Issuer's Board of Directors).

**Permitted Encumbrances** shall mean:

- (i) the Mortgage, the Assignment of Mortgage and any other Project Document;
- (ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien, security interest, encumbrance or charge or right in respect thereof, placed on or with respect to the Facility or any part thereof, if payment is not yet due and payable, or if such payment is being disputed pursuant to Section 8.11(b) of the Loan Agreement;
- (iv) utility, access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Institution certifies to the Issuer and the Trustee will not materially interfere with or impair the Institution's use and enjoyment of the Facility as provided in the Loan Agreement;
- (v) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Institution delivered to the Issuer and the Trustee, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired or purport to impose liabilities or obligations on the Issuer;

(vi) those exceptions to title to the Facility Realty enumerated in the title insurance policy delivered pursuant to Section 3.7 of the Loan Agreement insuring the Trustee's mortgagee interest in the Facility Realty, a copy of which is on file at the offices of the Issuer and at the designated corporate trust office of the Trustee;

(vii) liens arising by reason of good faith deposits with the Institution in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Institution to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

(viii) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Institution to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(ix) any judgment lien against the Institution, so long as the finality of such judgment is being contested in good faith and execution thereon is stayed;

(x) any purchase money security interest in movable personal property, including equipment leases and financing;

(xi) liens on property due to rights of governmental entities or third party payors for recoupment of excess reimbursement paid;

(xii) a lien, restrictive declaration or performance mortgage with respect to the operation of the Facility arising by reason of a grant or other funding received by the Institution from the City, the State or any governmental agency or instrumentality;

(xiii) any lien, security interest, encumbrances or charge which exists in favor of the Trustee or to which the Trustee shall consent in writing;

(xiv) any lease, license or other agreement granted for the siting and operation of telecommunications or similar equipment, for utility or similar infrastructure or services or otherwise granted in furtherance of the educational mission of the Institution or public safety or for any other use that will not have a material adverse effect on the Facility;

(xv) any short term lease, license or other use that is subordinate to the Mortgage and does not have a material adverse effect on the Facility; and

(xvi) liens in connection with additional debt, refinancing, refunding or replacing (in whole or in part) the foregoing, or other transactions permitted under the Loan Agreement.

**Person** shall mean an individual or any Entity.

**Plans and Specifications** shall mean the plans and specifications prepared for the Project by or on behalf of the Institution, as amended from time to time by or on behalf of the Institution to reflect any remodeling or relocating of the Project or substitutions, additions, modifications and improvements to the Project made by the Institution in compliance with the Loan Agreement, said plans and specifications being duly certified by an Authorized Representative of the Institution and filed in the designated corporate trust office of the Trustee and available to the Issuer.

**Pledge and Security Agreement** shall mean the Pledge and Security Agreement, dated as of even date therewith, from the Institution to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Pledged Collateral** shall mean

- (i) all Pledged Revenues;
- (ii) all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action, and all cash (or evidences of cash or of rights to cash) or other property or rights thereto relating to such claims or causes of action; and
- (iii) all proceeds relating to clauses (i) and (ii) above (including, without limitation, insurance proceeds and condemnation awards), whether cash or non-cash, of any of the above.

**Pledged Revenues** shall mean all accounts, investment property, payment intangibles, general intangibles, monies, receipts, earnings (inclusive of any investment income), revenues, rentals, income, insurance proceeds, fees, gifts, donations, contributions, charges and other moneys received or receivable by or on behalf of the Institution, including, but without limiting the generality of the foregoing, (i) fees and charges of the Institution including fees or charges derived from the ownership or operation of the Facility, and all rights to receive any of the above, whether in the form of accounts, payment intangibles, contract rights, general intangibles or other rights, and the proceeds of such rights, whether now owned or held or hereafter coming into existence; and (ii) gifts, grants, bequests, donations and contributions heretofore or hereafter made to the Institution; provided, however, that, there shall be expressly excluded from “Pledged Revenues” (w) monies set aside as required by the Charter, (x) Education Aid, and (y) Restricted Gifts. Notwithstanding the foregoing, “Pledged Revenues” shall include all income, distributions, dividends, earnings and revenues derived from Restricted Gifts (unless otherwise prohibited by the terms of a Restricted Gift).

**Policy(ies)** collectively or individually, the policies required to be obtained and maintained pursuant to Section 8.1(b) and (c) of the Loan Agreement.

**Predecessor Institution** shall have the meaning specified in Section 8.20(b)(ii) of the Loan Agreement.

**Principal Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to the Indenture.

**Principals** shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity and any Person as shall have the power to Control such Entity, and “principal” shall mean any of such Persons.

**Project** shall mean, collectively, (i) the financing of the acquisition of an approximately 12,500 square foot parcel of land and an existing building thereon located at 1960 Benedict Avenue, Bronx, New York and an approximately 5,000 square foot adjacent, vacant parcel (Block 3930, Lots 38 and 33) (the “Site”); (ii) the financing of renovation of the existing building, construction of a new 7-story building, equipping and/or furnishing both buildings, and certain ancillary property thereto, resulting in a combined approximately 50,000 square foot facility consisting of one or more buildings and ancillary facilities on the Site; (iii) the funding of capitalized interest for the bonds; (iv) the funding of a portion of the debt service reserve fund and (v) the financing of certain costs of issuance.

**Project Application Information** shall mean the eligibility application and questionnaire submitted to the Issuer by or on behalf of the Institution, for approval by the Issuer of the Project and the providing

of financial assistance by the Issuer therefor, together with all other letters, documentation, reports and financial information submitted in connection therewith.

**Project Costs** shall mean:

- (i) all costs of engineering and architectural services with respect to the Project, including the cost of test borings, surveys, estimates, permits, plans and specifications and for supervising demolition, construction and renovation, as well as for the performance of all other duties required by or consequent upon the proper construction of, and the making of alterations, renovations, additions and improvements in connection with, the completion of the Project;
- (ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to contractors, suppliers, builders and materialmen in connection with the completion of the Project;
- (iii) the interest on the Bonds during the construction and renovation of the Project;
- (iv) all costs of contract bonds and of insurance that may be required or necessary during the period of Project construction and renovation;
- (v) the cost of acquisition of the Facility Realty;
- (vi) all costs of title insurance as provided in the Loan Agreement;
- (vii) the payment of the Costs of Issuance with respect to the Initial Bonds;
- (viii) the payment of the fees and expenses of the Trustee during the period of construction and renovation of the Project;
- (ix) all costs which the Institution shall be required to pay, under the terms of any contract or contracts, for the completion of the Project, including any amounts required to reimburse the Institution for advances made for any item otherwise constituting a Project Cost or for any other costs incurred and for work done which are properly chargeable to the Project; and
- (x) all other costs and expenses relating to the completion of the Project or the issuance of a Series of Additional Bonds.

“Project Costs” shall not include (i) fees or commissions of real estate brokers, (ii) moving expenses, or (iii) operational costs.

**Project Documents** shall mean, collectively, the Institution Documents and the Security Documents.

**Project Fund** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Project Work** shall mean (i) the design, construction and/or renovation of the Improvements, including the acquisition of building materials and fixtures, and (ii) the acquisition, whether by title or lease, of the Facility Personalty and any work required to install same.

**Promissory Note** shall mean, with respect to the Initial Bonds, that certain Promissory Note in substantially the form of Exhibit H to the Loan Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement,

and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and the Indenture.

**Purchase Price** shall mean an amount equal to the Redemption Price that would be applicable to the Initial Bonds being purchased pursuant to the Indenture if such Initial Bonds were being optionally redeemed pursuant to the Indenture on the date such Initial Bonds are being so purchased, plus accrued interest thereon to the date of purchase.

**Qualified Investments** shall mean, to the extent permitted by applicable law, the following:

(i) Direct obligations of, and obligations fully and unconditionally guaranteed as to timely payment by, the United States government and any agency, instrumentality, or establishment of the United States government (“Government Securities”);

(ii) Commercial paper having, at the time of investment or contractual commitment to invest therein, a rating from S&P and Moody’s, of A1 and P1, respectively;

(iii) Repurchase and reverse repurchase agreements collateralized with Government Securities, including those of the Trustee or any of its affiliates;

(iv) Investment in money market mutual funds having a rating at time of investment in the highest investment category granted thereby from S&P or Moody’s, including, without limitation any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the Trustee collects fees for services rendered pursuant to the Indenture which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to the Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;

(v) Demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, and certificates of deposit or bankers acceptances of depository institutions, including the Trustee or any of its affiliates, rated in the AA long-term ratings category or higher by S&P or Moody’s or which are fully FDIC-insured;

(vi) Direct and general long-term obligations of any state of the United States on which the full faith and credit of the state is pledged and which are rated in either of the two highest rating categories by Moody’s or S&P;

(vii) Direct and general short-term obligations of any state of the United States on which the full faith and credit of the state is pledged and which are rated in the highest rating category by Moody’s and S&P;

(viii) Mutual funds with assets in excess of \$150,000,000 investing in obligations of the type specified above; and

(ix) Other obligations, interest on which is excludable from gross income for purposes of federal income taxation, which are rated in the two highest rating categories by S&P and Moody’s.

**Rating Agency** shall mean any of S&P, Moody’s or Fitch and such other nationally recognized securities rating agency as shall have awarded a rating to the Initial Bonds.

**Rating Category** shall mean one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

**Rating Confirmation Notice** shall mean a notice from a Rating Agency confirming that the rating on the Initial Bonds will not be lowered or withdrawn as a result of the action proposed to be taken.

**Rebate Amount** shall have the meaning assigned to that term in the Tax Certificate.

**Rebate Fund** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Recapture Event** shall mean any one of the following events:

(i) The Institution shall have failed to complete, or caused to be completed, the Project by the Completion Date.

(ii) Except as permitted by written consent of the Issuer pursuant to and in accordance with the Loan Agreement, the Institution shall have liquidated all or substantially all of its operating assets or shall have ceased all or substantially all of its operations.

(iii) The Institution shall have transferred all or substantially all of its employees to a location outside of the City.

(iv) The Facility has ceased to be the Approved Facility and/or the Institution shall have substantially changed the scope and nature of its operations at the Facility Realty.

(v) Except as permitted by written consent of the Issuer pursuant to and in accordance with the Loan Agreement, the Institution shall have sold, leased or otherwise disposed of all or substantially all of the Facility Realty.

(vi) The Institution shall have subleased all or part of the Facility Realty in violation of the Loan Agreement.

(vii) The Institution shall have relocated all or substantially all of its operations at the Facility Realty to another site; provided, however, and notwithstanding the foregoing, such relocation shall not be a Recapture Event if (A) the Institution has relocated its operations at the Facility Realty and at least 90% of its employees employed at the Facility Realty prior to the relocation, to another site within the City, (B) the Institution maintains, for the remaining balance of the Recapture Period, an employment level equal to at least 90% of the number of employees employed by the Institution at the Facility Realty prior to relocation, and (C) the Institution shall satisfy such other additional conditions as the Issuer may from time to time impose provided such additional conditions are reasonable and uniformly imposed, at the time, to other similar transactions under similar circumstances. There shall arise another Recapture Event upon the failure of the Institution to satisfy continuously the foregoing requirements for the remaining balance of the Recapture Period. Upon the occurrence of such subsequent Recapture Event, the Issuer shall have the right to demand payment of all amounts due under Section 5.3(b) or (c) of the Loan Agreement, and the calculation of interest pursuant to Section 5.3(c)(iii) thereunder shall assume that the subsequent Recapture Event replaces the original Recapture Event for purposes of that computation. The determination of the pre-relocation, 90%-employment level shall be done in a manner, and in respect of a date or period of time, that the Issuer deems appropriate in its sole discretion.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event:

(1) shall have arisen as a direct, immediate result of (x) force majeure as defined in the Loan Agreement, (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Institution to rebuild, repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Institution or any Affiliate, or

(2) is deemed, in the sole discretion of the Issuer, to be (x) as necessitated by law, (y) minor in nature, or (z) a cause of undue hardship to the Institution were the Issuer to recapture any Benefits.

**Recapture Period** shall mean the period of time commencing on the Closing Date, and expiring on the date which is the tenth anniversary of the Operations Commencement Date.

**Record Date** shall mean, with respect to any Interest Payment Date for the Initial Bonds, the close of business on the fifteenth (15<sup>th</sup>) day of the month next preceding such Interest Payment Date, or, if such day is not a Business Day, the next preceding Business Day.

**Redemption Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to the Indenture.

**Redemption Date** shall mean the date fixed for redemption of Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Indenture.

**Redemption Price** shall mean, with respect to any Bond or a portion thereof, the principal amount thereof to be redeemed in whole or in part, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or the Indenture.

**Refunding Bonds** shall mean one or more Series of Additional Bonds which may be authenticated and made available for pick-up upon original issuance to refund all Outstanding Bonds or any Series of Outstanding Bonds or any part of one or more Series of Outstanding Bonds.

**Related Security Documents** shall mean all Security Documents other than the Indenture.

**Renewal Fund** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Repair and Replacement Reserve Fund** shall mean an account with a financial institution into which the Institution shall make deposits from time to time in accordance with the Loan Agreement.

**Repair and Replacement Reserve Fund Deposit** shall mean \$16,666.67 until the Repair and Replacement Reserve Fund Requirement has been satisfied or such greater amount as required by a Capital Needs Assessment to fund such amounts as required during the period covered by such Capital Needs Assessment, but in no event to exceed the Repair and Replacement Reserve Fund Requirement. Once the Repair and Replacement Reserve Fund Requirement is satisfied, any draws made on the Repair and Replacement Reserve Fund shall be replenished in substantially equal monthly payments of the Repair and Replacement Reserve Fund Deposit until the Repair and Replacement Reserve Fund Requirement is satisfied again.

**Repair and Replacement Reserve Fund Requirement** shall mean \$500,000 or such higher amount as deemed necessary by a Capital Needs Assessment for an ensuing five year period.

**Representations Letter** shall mean the Blanket Issuer Letter of Representations from the Issuer to DTC with respect to the Initial Bonds.

**Requested Document Deliverables** shall mean any of the documents as shall have been requested by the Issuer of the Institution under Section 8.15 of the Loan Agreement.

**Required Disclosure Statement** shall mean that certain Required Disclosure Statement in the form of Exhibit F — “Form of Required Disclosure Statement” of the Loan Agreement.

**Responsible Officer** shall mean, with respect to the Trustee, any officer within the corporate trust office of the Trustee, including any vice-president, any assistant vice-president, any secretary, any assistant secretary, the treasurer, any assistant treasurer or other officer of the corporate trust office of the Trustee customarily performing functions similar to those performed by any of the above designated officers, who has direct responsibility for the administration of the trust granted in the Indenture, and shall also mean, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

**Restricted Gifts** shall mean gifts, grants, bequests, donations and contributions made to the Institution and designated or specified by the granting authority, donor or maker thereof as being for specified purposes that would prohibit the use of such amounts for the payment of the principal of and interest on the Initial Bonds or operating expenses.

**S&P** shall mean Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies, Inc., a corporation organized and existing under the laws of the State, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Sales Taxes** shall mean City and State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109 and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections).

**Securities Act** shall mean the Securities Act of 1933, as amended, together with any rules and regulations promulgated thereunder.

**Securities Depository** shall mean any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book-entry system to record ownership of book-entry interests in the Bonds, and to effect transfers of book-entry interests in the Bonds in book-entry form, and includes and means initially DTC.

**Security Documents** shall mean, collectively, the Loan Agreement, the Promissory Note, the Custody Agreement, the Pledge and Security Agreement, the Indenture, the Tax Certificate, the Mortgage, the Assignment of Mortgage and the Debt Service Reserve Fund Agreement.

**Securities Exchange Act** shall mean the Securities Exchange Act of 1934, as amended, together with any rules and regulations promulgated thereunder.

**Series** shall mean all of the Bonds designated as being of the same series authenticated and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter authenticated and delivered in lieu thereof or in substitution therefor pursuant to the Indenture.

**Short-Term Indebtedness** means all indebtedness of the Institution maturing or payable at the option of the obligee not more than 365 days after it is incurred excluding the current portion of any Long-Term Indebtedness.

**Sinking Fund Installment** shall mean an amount so designated and which is established for mandatory redemption on a date certain of the Bonds of any Series of Bonds pursuant to the Indenture. The portion

of any such Sinking Fund Installment of a Series of Bonds remaining after the deduction of any amounts credited pursuant to the Indenture toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments of such Series of Bonds due on a future date.

**Sinking Fund Installment Account** shall mean the special trust account of the Bond Fund so designated, which is established pursuant to the Indenture.

**Special Record Date** shall have the meaning specified in Section 2.02(f) of the Indenture.

**State** shall mean the State of New York.

**State Education Operating Aid** shall mean all New York State Education Department operating aid payments appropriated for the purpose of funding operating expenses of the School on a per-pupil basis.

**Successor Institution** shall mean the surviving, resulting or transferee Entity subsequent to a Merge that is not the Institution.

**Supplemental Indenture** shall mean any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Issuer and the Trustee in accordance with the Indenture.

**Tax-Exempt Bonds** shall mean the Series 2013A Bonds and any other Series of Bonds the interest on which is not includible in gross income for federal income tax purposes pursuant to Section 103 of the Code.

**Tax-Exempt Organization** shall mean an Entity organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code and exempt from Federal income taxes under 501(a) of Code, or corresponding provisions of Federal income tax laws from time to time in effect.

**Taxable Bonds** shall mean the Series 2013B Bonds and any Series of Bonds other than Tax-Exempt Bonds.

**Tax Certificate** shall mean the Tax Certificate, dated the Closing Date, from the Issuer and the Institution to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Termination Date** shall mean such date on which the Loan Agreement may terminate pursuant to the Loan Agreement.

**Transfer** shall mean the process whereby the Institution liquidates, winds up or dissolves or otherwise disposes of all or substantially all of its property, business or assets.

**Trustee** shall mean U.S. Bank National Association, New York, New York in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

**Trust Estate** shall mean all property, interests, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

**Yield** shall have the meaning assigned to such term in the Tax Certificate.

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**APPENDIX G**

**SUMMARY OF CERTAIN PROVISIONS  
OF THE LOAN AGREEMENT**

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## APPENDIX G

### SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

*The following is a summary of certain provisions of the Loan Agreement. This summary does not purport to be complete and reference is made to the Loan Agreement for the detailed provisions thereof. This summary is qualified in its entirety by such reference. Headings are not part of the Loan Agreement and are included for ease of reference only.*

#### **Loan of Proceeds.**

The Issuer agrees, upon the terms and conditions contained in the Loan Agreement and the Indenture, to make the Loan and lend to the Institution an amount equal to the principal amount of the Initial Bonds. The Loan shall be made by depositing on the Closing Date the proceeds from the sale of the Initial Bonds into the Project Fund in accordance with the Indenture. Such proceeds shall be disbursed to or on behalf of the Institution as provided in the Indenture. (Section 4.1)

#### **Promissory Note.**

The Institution's obligation to repay the Loan shall be evidenced by the Loan Agreement and the Promissory Note. On the Closing Date, the Institution shall execute and deliver the Promissory Note payable to the Issuer. (Section 4.2)

#### **Loan Payments; Pledge of the Loan Agreement and of the Promissory Note.**

The Institution covenants to pay the Promissory Note and repay the Loan made pursuant to the Loan Agreement by making loan payments which the Issuer agrees shall be paid in immediately available funds by the Institution directly to the Trustee on each Loan Payment Date (except as provided in the Loan Agreement which shall be paid on the respective due dates thereof) for deposit in the Bond Fund (except to the extent that amounts are on deposit in the Bond Fund and available therefor) in an amount equal to the sum of:

(i) with respect to interest due and payable on the Initial Bonds, an amount equal to one-third (1/3) of the amount of interest which will become due and payable on the Initial Bonds on the next succeeding Interest Payment Date (after taking into account any amounts on deposit in the Interest Account of the Bond Fund, and as shall be available to pay interest on the Initial Bonds on such next succeeding Interest Payment Date);

(ii) with respect to principal due on the Initial Bonds (other than such principal amount as shall become due as a mandatory Sinking Fund Installment payment), commencing on that Loan Payment Date as shall precede the first principal payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-sixth (1/6) of the amount of the principal of the Bonds Outstanding becoming due (other than by reason of mandatory Sinking Fund Installments) within the next succeeding thirteen (13) month period (or, if the first principal payment date following the Closing Date shall be on a date sooner than thirteen (13) calendar months following the Closing Date, then, with respect to such first principal amount, an amount equal to the quotient obtained by dividing such principal amount by the number of Loan Payment Dates between the Closing Date and such first principal payment date), and thereafter for each principal payment date commencing on that Loan Payment Date as shall precede such principal payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-sixth (1/6) of the amount of the principal of the Bonds Outstanding becoming due (other than by reason of mandatory Sinking Fund Installments) within such next succeeding thirteen (13) month period, provided that in any event the aggregate amount so paid with respect to principal on the Initial Bonds on or before the Loan Payment Date immediately preceding a principal payment date of the Initial Bonds shall be an amount sufficient to pay the principal of the Initial Bonds Outstanding becoming due on such next succeeding principal payment date of the Initial Bonds; provided, however, that in the event of the acceleration of the principal of the Initial Bonds, a loan payment in the amount of the principal amount of

the Initial Bonds Outstanding (together with all interest accrued thereon to the date of payment), shall be due and payable on such date of acceleration;

(iii) with respect to Sinking Fund Installment payments due on the Initial Bonds, commencing on that Loan Payment Date as shall precede the first Sinking Fund Installment payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-sixth (1/6) of the amount of the Sinking Fund Installment on the Initial Bonds first becoming due within the next succeeding thirteen (13) month period (or, if the first Sinking Fund Installment payment date following the Closing Date shall be on a date sooner than thirteen (13) calendar months following the Closing Date, then, with respect to such first Sinking Fund Installment, an amount equal to the quotient obtained by dividing such Sinking Fund Installment by the number of Loan Payment Dates between the Closing Date and such first Sinking Fund Installment payment date), and thereafter for each Sinking Fund Installment payment date commencing on that Loan Payment Date as shall precede such Sinking Fund Installment payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-sixth (1/6) of the amount of the Sinking Fund Installment of the Initial Bonds Outstanding becoming due within such next succeeding thirteen (13) month period, provided that in any event the aggregate amount so paid with respect to Sinking Fund Installments on the Initial Bonds on or before the Loan Payment Date immediately preceding a Sinking Fund Installment payment date of the Initial Bonds shall be an amount sufficient to pay the Sinking Fund Installment of the Initial Bonds Outstanding becoming due on such next succeeding Sinking Fund Installment payment date;

(iv) on each redemption date, with respect to the Redemption Price (other than by Sinking Fund Installments) due and payable on the Initial Bonds, whether as an optional or mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Initial Bonds being redeemed on such redemption date; and

(v) Reserved;

(vi) upon receipt by the Institution of notice from the Trustee pursuant to the Indenture that the amount on deposit in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Fund Requirement, the Institution shall pay to the Trustee for deposit in the Debt Service Reserve Fund on the first day of the month immediately following the receipt by the Institution of notice of such deficiency, and on the first day of each of the five (5) succeeding months, or over such longer time period as shall be consented to in writing by the Majority Holders, an amount equal to one sixth (1/6) of such deficiency in the Debt Service Reserve Fund.

(vii) commencing on the Loan Payment Date following the Completion Date, the Repair and Replacement Reserve Fund Deposit to be deposited in the Repair and Replacement Reserve Fund under the Indenture;

(viii) upon receipt by the Institution of notice from the Trustee pursuant to the Indenture that the amount on deposit in the Repair and Replacement Reserve Fund shall be less than the Repair and Replacement Reserve Fund Requirement, the Institution shall pay to the Trustee for deposit in the Repair and Replacement Reserve Fund on the first day of the month immediately following the receipt by the Institution of notice of such deficiency, and on the first day of the month for each of the three (3) succeeding years, or over such longer time period as shall be consented to in writing by the Majority Holders, an amount equal to one-eighteenth (1/18) of such deficiency in the Repair and Replacement Reserve Fund.

In the event the Institution should fail to make or cause to be made any of the payments required under the foregoing provisions, the item or installment not so paid shall continue as an obligation of the Institution until the amount not so paid shall have been fully paid.

The Institution has the option to make advance loan payments for deposit in the Bond Fund to effect the retirement, defeasance or redemption of the Bonds in whole or in part, all in accordance with the terms of the

Indenture; provided, however, that no partial redemption of the Bonds may be effected through advance loan payments under the Loan Agreement if there shall exist and be continuing an Event of Default. The Institution shall exercise its option to make such advance loan payments by delivering a written notice of an Authorized Representative of the Institution to the Trustee in accordance with the Indenture, with a copy to the Issuer, setting forth (i) the amount of the advance loan payment, (ii) the principal amount of Bonds Outstanding requested to be redeemed with such advance loan payment (which principal amount shall be in such minimum amount or integral Authorized Denomination as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Bonds are to be redeemed (which date shall be not earlier than forty-five (45) days after the date of such notice). In the event the Institution shall exercise its option to make advance loan payments to effect the redemption in whole of the Bonds, and such redemption is expressly permitted under the Indenture as a result of the damage, destruction or condemnation of the Facility, or changes in law, or executive or judicial action, the Institution shall further deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution stating that, as a result of the occurrence of the event giving rise to such redemption, the Institution has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes. Such advance loan payment shall be paid to the Trustee in legal tender, for deposit in the Redemption Account of the Bond Fund on or before the redemption date and shall be an amount which, when added to the amounts on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents in connection with such redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Institution shall further pay on or before such redemption date, in legal tender, to the Issuer, the Trustee, the Bond Registrar and the Paying Agent all fees and expenses owed such party or any other party entitled thereto under the Loan Agreement or the Indenture together with (i) all other amounts due and payable under the Loan Agreement and the other Security Documents, and (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Certificate.

At its option, to be exercised on or before the forty-fifth (45th) day next preceding the date any Bonds of a Series are to be redeemed from mandatory Sinking Fund Installments, the Institution may deliver to the Trustee Bonds of such Series which are subject to mandatory Sinking Fund Installment redemption in an aggregate principal amount not in excess of the principal amount of Bonds of such Series to be so redeemed on such date. Each such Bond so delivered shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against the obligation of the Issuer on such Sinking Fund Installment payment date and any excess over such Sinking Fund Installment shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by operation of the mandatory Sinking Fund Installments shall be accordingly reduced as of the payment date.

In the event Defaulted Interest (as defined in the Indenture) shall become due on any Initial Bond, the Institution shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Initial Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the Indenture), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment.

No further loan payments need be made to the Issuer on account of the Bonds when and so long as the amount of cash and/or Defeasance Obligations on deposit in the Bond Fund is sufficient to satisfy and discharge the obligations of the Issuer under the Indenture and pay the Bonds as provided in the Indenture.

In the event the State changes the dates and the mechanics for funding Education Aid, the Institution may then seek to change the Loan Payment Date.

Any amounts remaining in the Earnings Fund, the Rebate Fund, the Bond Fund, the Debt Service Reserve Fund (other than the 2013 CSFP Subaccount thereof), the Project Fund or the Renewal Fund after payment in full of (i) the Bonds (in accordance with the Indenture), (ii) the fees, charges and expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents in accordance with the Indenture, (iii) all loan payments and all other amounts payable under the Loan Agreement and under the Promissory Note, and all amounts required to be rebated to the Federal government pursuant to the Tax Certificate or the Indenture, and (iv) all amounts required to be paid

under any Project Document, shall have been so paid, shall belong to and be paid to the Institution by the Trustee as overpayment of the loan payments. Any amounts remaining in the 2013 CSFP Subaccount of the Debt Service Reserve Fund or the CSFP Fund shall be paid to CSFP.

In the event that the Institution fails to make any loan payment required in the Loan Agreement, the installment so in default shall continue as an obligation of the Institution until the amount in default shall have been fully paid.

Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal of, Sinking Fund Installments for, redemption premium, if any, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Institution shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund. *(Section 4.3)*

#### **Nature of Institution's Obligation Unconditional.**

The Institution's obligation under the Loan Agreement and under the Promissory Note to pay the loan payments and all other payments provided for in the Loan Agreement and in the Promissory Note shall be absolute, unconditional and a general obligation of the Institution, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Issuer, the Trustee or the Holder of any Bond and the obligation of the Institution shall arise whether or not the Project has been completed as provided in the Loan Agreement and whether or not any provider of a credit facility or liquidity facility with respect to the Bonds shall be honoring its obligations thereunder. The Institution will not suspend or discontinue any such payment or terminate the Loan Agreement (other than such termination as is provided for under the Loan Agreement), or suspend the performance or observance of any covenant or agreement required on the part of the Institution under the Loan Agreement, for any cause whatsoever, and the Institution waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender the Loan Agreement or any obligation of the Institution under the Loan Agreement except as provided in the Loan Agreement or to any abatement, suspension, deferment, diminution or reduction in the loan payments or other payments under the Loan Agreement or under the Promissory Note. *(Section 4.5)*

#### **Advances by the Issuer or the Trustee.**

In the event the Institution fails to make any payment or to perform or to observe any obligation required of it under the Loan Agreement, under the Promissory Note or under any other Security Document, the Issuer or the Trustee, after first notifying the Institution in writing of any such failure on its part (except that no prior notification of the Institution shall be required in the event of an emergency condition that, in the reasonable judgment of the Issuer or the Trustee, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Issuer or the Trustee under the Loan Agreement or any other Security Document to which the Issuer or the Trustee is a party, make such payment or otherwise cure any failure by the Institution to perform and to observe its other obligations under the Loan Agreement or any other Security Document. All amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Institution to the Issuer or the Trustee, as the case may be, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum, compounded daily, from the date advanced, the Institution will pay upon demand therefor by the Issuer or the Trustee, as applicable. Any remedy vested in the Issuer or the Trustee in the Loan Agreement or in any other Security Document for the collection of the loan payments or other payments or other amounts due under the Loan Agreement, under the Promissory Note or under any other Security Document shall also be available to the Issuer or the Trustee for the collection of all such amounts so advanced. No advance shall be made by the Trustee except upon the written direction of the Majority Holders. *(Section 4.6)*

#### **Damage, Destruction and Condemnation.**

In the event that the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement to which the Institution and those authorized

to exercise such right are parties, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a “**Loss Event**”):

(i) the Issuer shall have no obligation to rebuild, replace, repair or restore the Facility or to advance funds therefor,

(ii) there shall be no abatement, postponement or reduction in the loan payments or other amounts payable by the Institution under the Loan Agreement or the Promissory Note or any other Security Document to which it is a party, and the Institution by the Loan Agreement waives, to the extent permitted by law, any provisions of law which would permit the Institution to terminate the Loan Agreement, the Promissory Note or any other Security Document, or eliminate or reduce its payments under the Loan Agreement, under the Promissory Note or under any other Security Document, and

(iii) the Institution will promptly give written notice of such Loss Event to the Issuer and the Trustee, generally describing the nature and extent thereof. *(Section 6.1)*

### **Loss Proceeds.**

The Issuer, the Trustee and the Institution shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromise, arbitration or adjustment of any such claim or demand shall, as between the Issuer and the Institution, be subject to the written approval of the Institution and the Trustee (such approvals not to be unreasonably withheld).

The Net Proceeds with respect to the Facility shall be paid to the Trustee and deposited in the Renewal Fund (except as provided in the Mortgage). Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund shall be applied, and may be invested, as provided in the Indenture. The Institution shall be entitled to the Net Proceeds of any insurance proceeds or condemnation award, compensation or damages attributable to the Institution’s Property. *(Section 6.2)*

### **Pledge and Assignment to Trustee.**

As security for the payment of the Bonds and the obligations of the Institution under the Security Documents, (i) the Issuer shall pledge and assign to the Trustee pursuant to the Indenture all of the Issuer’s right, title and interest in the Promissory Note and all of the Issuer’s right, title and interest (except for the Issuer’s Reserved Rights) in the Loan Agreement, including all loan payments thereunder and under the Loan Agreement, and (ii) in furtherance of said pledge, the Issuer will unconditionally assign such loan payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture. The Institution consents to assignment of the Loan Agreement and the Promissory Note described in the Loan Agreement. *(Section 7.4)*

### **Insurance.**

The Institution shall obtain and maintain for the insurance required by the Loan Agreement. *(Section 8.1)*

### **Indemnity.**

The Institution shall at all times indemnify, defend, protect and hold the Issuer, the Trustee, the Bond Registrar and the Paying Agents, and any director, member, officer, employee, servant, agent (excluding for this purpose the Institution, which is not obligated by the Loan Agreement to indemnify its own employees, Affiliates or affiliated individuals) thereof and persons under the Issuer’s control or supervision (collectively, the “**Indemnified Parties**” and each an “**Indemnified Party**”) harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses, including attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses (collectively, “**Claims**”) of any kind for losses, damage, injury and liability (collectively, “**Liability**”) of every kind and nature and however caused (except, with respect to

any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing on the Indemnification Commencement Date, and continuing until the termination of the Loan Agreement, arising upon, about, or in any way connected with the Facility, the Project, or any of the transactions with respect thereto, including:

(i) the financing of the costs of the Facility or the Project and the marketing, offering, issuance, sale and remarketing of the Bonds for such purpose,

(ii) the planning, design, acquisition, site preparation, Project Work, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,

(iii) the maintenance, repair, replacement, restoration, rebuilding, construction, renovation, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,

(iv) the execution and delivery by an Indemnified Party, the Institution or any other Person of, or performance by an Indemnified Party, the Institution or any other Person, as the case may be, of, any of their respective obligations under, the Loan Agreement or any other Project Document, or other document or instrument delivered in connection with the Loan Agreement or therewith or the enforcement of any of the terms or provisions of the Loan Agreement or thereof or the transactions contemplated by the Loan Agreement or thereby,

(v) any damage or injury to the person or property of any Person in or on the premises of the Facility,

(vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including failure to comply with the requirements of the City's zoning resolution and related regulations, or

(vii) the presence, disposal, release, or threatened release of any Hazardous Materials that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Issuer, which are based upon or in any way related to such Hazardous Materials.

The Institution releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Institution or its Affiliates for, any Claim or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in the Loan Agreement including any Claim or Liability arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party, or at the direction of the Institution with respect to any of such matters above referred to.

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 the Loan Agreement; such notice shall be given in sufficient time to allow the Institution to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense under the Loan Agreement nor in any way impair the obligations of the Institution under the Loan Agreement.

Anything to the contrary in the Loan Agreement notwithstanding, the covenants of the Institution contained under this heading shall be in addition to any and all other obligations and liabilities that the Institution may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the termination of the Loan Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges (including reasonable attorneys

fees) incurred by the Indemnified Party relating to the enforcement of the provisions specified in the Loan Agreement. (Section 8.2)

**Assignment of the Loan Agreement or Lease of Facility.**

The Institution shall not at any time, except as permitted by the Loan Agreement, assign or transfer the Loan Agreement without the prior written consents of the Issuer and the Trustee (which consents may be withheld by the Issuer or the Trustee in their absolute discretion); provided further, that if the Issuer and the Trustee consent to any such assignment or transfer,

(i) the Institution shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative to the effect that the transfer or assignment to the assignee or transferee (the “**New Institution**”) shall not cause the Facility to cease being the Approved Facility;

(ii) the New Institution shall be liable to the Issuer for the payment of all loan and other payments and for the full performance of all of the terms, covenants and conditions of the Loan Agreement and of any other Project Document to which it shall be a party from and after the date of the transfer;

(iii) the New Institution shall have assumed in writing (and shall have executed and delivered to the Issuer and the Trustee such document and have agreed to keep and perform) all of the terms of the Loan Agreement and each other Project Document on the part of the New Institution to be kept and performed from and after the date of the transfer, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) the New Institution shall be a not-for-profit corporation or a limited liability company constituting a Tax-Exempt Organization;

(v) such assignment or transfer shall not violate any provision of the Loan Agreement or any other Project Document;

(vi) in the Opinion of Counsel addressed to the Issuer and the Trustee (x) such assignment or transfer shall constitute the legally valid, binding and enforceable obligation of the New Institution and shall not legally impair in any respect the obligations of the New Institution for the payment of all loan payments nor for the full performance of all of the terms, covenants and conditions of the Loan Agreement, of the Promissory Note or of any other Project Document to which the New Institution shall be a party, nor impair or limit in any respect the obligations of any other obligor under any other Project Document, and (y) the Loan Agreement and each of the other Project Documents to which the New Institution is a party constitute the legally valid, binding and enforceable obligation of the New Institution;

(vii) the New Institution shall deliver to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Issuer acting in its sole discretion, then the Institution shall be in default under the Loan Agreement;

(viii) each such assignment shall contain such other provisions as the Issuer or the Trustee may reasonably require; and

(ix) in the opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee, such assignment or transfer shall not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes.

The Institution shall furnish or cause to be furnished to the Issuer and the Trustee a copy of any such assignment or transfer in substantially final form at least thirty (30) days prior to the date of execution thereof.

The Institution shall not at any time lease all or substantially all of the Facility, without the prior written consents of the Issuer and the Trustee (which consents may be withheld by the Issuer or the Trustee in their absolute discretion); nor shall the Institution lease part (*i.e.*, not constituting substantially all) of the Facility without the prior written consents of the Issuer and the Trustee (which consents shall, in such case, not be unreasonably withheld and, in the case of the Issuer, such consent to be requested by the Institution of the Issuer in the form prescribed by the Issuer, and such consent of the Issuer to take into consideration the Issuer's policies as in effect from time to time); provided further, that if the Issuer and the Trustee consent to any such letting,

(i) the Institution shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative to the effect that the lease shall not cause the Facility to cease being the Approved Facility;

(ii) the Institution shall remain primarily liable to the Issuer for the payment of all loan and other payments and for the full performance of all of the terms, covenants and conditions of the Loan Agreement and of the Promissory Note and of any other Project Document to which it shall be a party;

(iii) any lessee in whole or substantially in whole of the Facility shall have assumed in writing (and shall have executed and delivered to the Issuer and the Trustee such document) and have agreed to keep and perform all of the terms of the Loan Agreement and each other Project Document on the part of the Institution to be kept and performed, shall be jointly and severally liable with the Institution for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) any lessee shall utilize the Facility as the Approved Facility and shall constitute a Tax-Exempt Organization;

(v) such lease shall not violate any provision of the Loan Agreement or any other Project Document;

(vi) with respect to any letting in part of the Facility, the term of each such lease shall not exceed five (5) years at any given date, and no more than an aggregate of twenty percent (20%) of the Rentable Square Footage shall be leased by the Institution;

(vii) in the Opinion of Counsel addressed to the Issuer and the Trustee, such lease shall constitute the legally valid, binding and enforceable obligation of the lessee and shall not legally impair in any respect the obligations of the Institution for the payment of all loan or other payments nor for the full performance of all of the terms, covenants and conditions of the Loan Agreement, of the Promissory Note or of any other Project Document to which the Institution shall be a party, nor impair or limit in any respect the obligations of any other obligor under any other Project Document;

(viii) such lease shall in no way diminish or impair the obligation of the Institution to carry the insurance required under the Mortgage or the Loan Agreement and the Institution shall furnish written evidence satisfactory to the Issuer and the Trustee that such insurance coverage shall in no manner be diminished or impaired by reason of such assignment, transfer or lease;

(ix) any such lessee shall deliver to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Issuer acting in its sole discretion, then the Institution shall be in default under the Loan Agreement;

(x) each such lease shall contain such other provisions as the Issuer or the Trustee may reasonably require; and

(xi) in the opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee, such lease shall not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes.

The Institution shall furnish or cause to be furnished to the Issuer and the Trustee a copy of any such lease in substantially final form at least thirty (30) days prior to the date of execution thereof. The Issuer and the Trustee by the Loan Agreement consent to the lease, license or other possession or occupancy of a part (not constituting substantially all) of the Facility by Friends of Bronx Charter School of Excellence and paragraphs (i), (iv)-(xi) above shall be deemed satisfied; provided, however, that any use of the Facility by the Friends of Bronx Charter School for Excellence shall be subject to the restrictions set forth in the Tax Certificate.

Any consent by the Issuer or the Trustee to any act of assignment, transfer or lease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Institution, or the successors or assigns of the Institution, to obtain from the Issuer and the Trustee consent to any other or subsequent assignment, transfer or lease, or as modifying or limiting the rights of the Issuer or the Trustee under the foregoing covenant by the Institution.

For purposes of the provisions under this heading, any license or other right of possession or occupancy granted by the Institution with respect to the Facility shall be deemed a lease subject to the provisions of under this heading. *(Section 8.9)*

#### **Retention of Title to or of Interest in Facility; Grant of Easements; Release of Portions of Facility.**

The Institution shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its fee title to or interest in the Facility, including the Improvements, or any part of the Facility or interest therein, except as set forth in the Loan Agreement, without the prior written consents of the Issuer and of the Trustee, and any purported disposition without such consents shall be void.

The Institution may, with the prior written consents of the Issuer and the Trustee (such consents not to be unreasonably withheld, conditioned or delayed), so long as there exists no Event of Default under the Loan Agreement, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the lien and security interest of the Mortgage, as shall be necessary or convenient in the opinion of the Institution for the operation or use of the Facility, or required by any utility company for its utility business, provided that, in each case, such rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility as the Approved Facility (other than a de minimis extent), and provided, further, that any consideration received by the Institution from the granting of said rights-of-way, easements, permits or licenses shall be paid to the Trustee and deposited in the Redemption Account of the Bond Fund. The Issuer agrees, at the sole cost and expense of the Institution, to execute and deliver, and to cause and direct the Trustee to execute and deliver, any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the lien and security interest of the Mortgage.

So long as there exists no Event of Default under the Loan Agreement, and the Institution delivers to the Trustee and the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that the following action will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes, the Institution may from time to time request in writing to the Issuer and the Trustee the release of and removal from the property comprising the Facility under the Loan Agreement and the lien and security interest of the Mortgage, of any unimproved part of the Land (on which none of the Improvements, including the buildings, structures, major appurtenances, fixtures or other property comprising the Facility Realty, is situated); provided that such release and removal will not adversely affect the use or operation of the Facility as the Approved Facility. Upon any such request by the Institution, the Issuer shall, at the sole cost and expense of the Institution, cause and direct the Trustee to execute and deliver any and all instruments necessary or appropriate to so release and remove such unimproved Land from the property comprising the Facility under the Loan Agreement and the lien and security interest of the Mortgage, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject on the Closing Date; (ii) any liens, easements and encumbrances created

at the request of the Institution or to the creation or suffering of which the Institution consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Institution to perform or observe any of the agreements on its respective part contained in the Loan Agreement or any other Project Document; (iv) Permitted Encumbrances (other than the lien of the Mortgage); and (v) any liens for taxes or assessments not then delinquent; provided, that, no such release shall be effected unless there shall be deposited with the Trustee the following:

(i) a certificate of an Independent Engineer, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the person signing such certificate, the unimproved Land and the release thereof so proposed to be made is not needed for the operation of the remaining Facility, will not adversely affect the use or operation of the Facility as the Approved Facility and will not destroy the means of ingress thereto and egress therefrom;

(ii) an amount of cash for deposit in the Redemption Account of the Bond Fund equal to the greatest of (A) the original cost of the unimproved Land so released, such allocable cost to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, (B) the fair market value of such unimproved Land, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, and (C) if such unimproved Land is released in connection with its sale, the amount received by the Institution upon such sale; and

(iii) the Facility Realty as shall remain subject to the Mortgage shall not constitute a portion of a tax lot.

No conveyance or release effected under the provisions under this heading shall entitle the Institution to any abatement or diminution of the loan payments or other amounts payable under the Loan Agreement or any other payments required to be made by the Institution under the Loan Agreement or any other Project Document to which it shall be a party. (*Section 8.10*)

### **Discharge of Liens.**

If any lien, encumbrance or charge is filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being collectively called in the Loan Agreement, “**Liens**”), whether or not valid, is made against the Trust Estate, the Facility or any part thereof or the interest therein of the Institution or against any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Security Documents, or the interest of the Issuer or the Institution in any Security Document, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by the Loan Agreement, the Institution forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Issuer and the Trustee and take all action (including the payment of money and/or the securing of a bond with respect to any such Lien) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full of such Lien and to remove or nullify the basis therefor. Nothing contained in the Loan Agreement shall be construed as constituting the express or implied consent to or permission of the Issuer for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien not permitted under the first paragraph under this heading

The Institution may at its sole cost and expense contest (after prior written notice to the Issuer and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (i) such proceeding shall suspend the execution or enforcement of such Lien against the Trust Estate, the Facility or any part thereof or interest therein, or against any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Project Documents or the interest of the Issuer or the Institution in any Project Document, (ii) neither the Facility nor any part thereof or interest therein, the Trust Estate or any portion thereof, the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Security Documents or the interest of the Issuer or the Institution in any Security Document would be in any danger of being sold, forfeited or lost, (iii) neither the

Institution, the Issuer nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Institution shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents. *(Section 8.11)*

#### **No Further Encumbrances Permitted.**

The Institution shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against (i) the Facility or any part thereof, or the interest of the Institution in the Facility, except for Permitted Encumbrances, or (ii) the Trust Estate or any portion thereof, the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Security Documents or the interest of the Issuer or the Institution in any Security Document. The Institution covenants that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that there are no mortgage liens on, or security interests in, the Facility (other than Permitted Encumbrances) prior to the mortgage liens thereon, and security interests therein, granted by the Mortgage. *(Section 8.13)*

#### **Taxes, Assessments and Charges.**

The Institution shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Trust Estate, the Facility Realty or any part thereof, or interest of the Institution in the Facility, or against any of the loan payments or other payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility Realty, all of which are called in the Loan Agreement, “**Impositions**”. The Institution may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility Realty is exempt from Impositions solely due to the Issuer’s involvement with the Project and the Facility Realty, the Institution shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facility Realty if and the Issuer had no involvement with the Project and the Facility Realty.

The Institution may at its sole cost and expense contest (after prior written notice to the Issuer and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition, if (i) such proceeding shall suspend the execution or enforcement of such Imposition against the Trust Estate, the Facility or any part thereof, or interest of the Institution in the Facility, or against any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, (ii) none of the Trust Estate, the Facility nor any part thereof or interest of the Institution in the Facility, or any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, would be in any danger of being sold, forfeited or lost, (iii) neither the Institution, the Issuer nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Institution shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents. *(Section 8.17)*

#### **Compliance with Legal Requirements.**

The Institution shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

At its sole cost and expense, the Institution shall promptly observe and comply with all applicable Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Institution, the Facility, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Institution will not, without the prior written consent of the Issuer and the Trustee (which consents shall not be unreasonably withheld, conditioned or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof.

The Institution may at its sole cost and expense contest in good faith the validity, existence or applicability of any of the matters described in the paragraph above if (i) such contest shall not result in the Trust Estate, the Facility or any part thereof or interest of the Institution in the Facility, or any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Institution, the Issuer or the Trustee being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Institution shall have furnished such security, if any, as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents for failure to comply therewith. *(Section 8.18)*

#### **Operation as Approved Facility.**

The Institution will not take any action, or suffer or permit any action, if such action would cause the Facility not to be the Approved Facility.

The Institution will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be the Approved Facility.

The Institution will permit the Trustee and its duly authorized agents, at all reasonable times and subject to reasonable security requirements upon two (2) days prior written notice to enter upon the Facility and to examine and inspect the Facility and exercise its rights under the Loan Agreement, under the Indenture and under the other Security Documents with respect to the Facility. The Institution will further permit the Issuer, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facility, but solely for the purpose of assuring that the Institution is operating the Facility, or is causing the Facility to be operated, as the Approved Facility consistent with the Approved Project Operations and with the corporate purposes of the Issuer. *(Section 8.19)*

#### **Preservation of Exempt Status.**

The Institution agrees that (i) it shall not perform any acts, enter into any agreements, carry on or permit to be carried on at the Facility, or permit the Facility to be used in or for any trade or business, which shall adversely affect the basis for its exemption under Section 501 of the Code; (ii) it shall not use more than three percent (3%) of the proceeds of the Bonds or permit the same to be used, directly or indirectly, in any trade or business that constitutes an unrelated trade or business as defined in Section 513(a) of the Code or in any trade or business carried on by any Person or Persons who are not governmental units or Section 501(c)(3) organizations; (iii) it shall not directly or indirectly use the proceeds of the Bonds to make or finance loans to Persons other than governmental units or Section 501(c)(3) organizations; (iv) it shall not take any action or permit any circumstances within its control to arise or continue, if such action or circumstances, or its expectation on the Closing Date, would cause the Bonds to be "arbitrage bonds" under the Code or cause the interest paid by the Issuer on the Bonds to be subject to Federal income tax in the hands of the Holders thereof; and (v) it shall use its best efforts to maintain the tax-exempt status of the Tax-Exempt Bonds. *(Section 8.21)*

#### **Special Covenants.**

The Institution covenants that, for so long as any Bonds shall be Outstanding, it will be registered with the New York State Department of Education as an eligible education institution.

In every academic year following the current academic year in effect as of the Closing Date, the Institution agrees that at least 20% of the Institution's students will be City residents.

The Institution further covenants that the Institution shall not discriminate in admissions, hiring, the granting of scholarships or loans, or the administration of educational policies generally. (*Section 8.28*)

**No Name Change.**

The Institution shall not change its name unless prior to the effective date of such change the Institution has notified the Trustee of such change and complied with Section 8.12(h) of the Loan Agreement. (*Section 8.30*)

**Capital Need Assessment.**

The Institution agrees to prepare and deliver to the Trustee and to the Original Purchaser, on or before April 1, 2018, and on every fifth anniversary thereafter, a needs assessment for the ensuing five-year period with respect to the Facilities (the "**Capital Needs Assessment**"). The Capital Needs Assessment will include the projected costs of the required capital expenditures for such period identified in the Capital Needs Assessment. The Institution agrees to budget for and complete any capital repairs relating to the Facility identified by the Capital Needs Assessment. (*Section 8.31*)

**Events of Default.**

Any one or more of the following events shall constitute an "Event of Default" under the Loan Agreement:

(i) Failure of the Institution to pay any loan payment that has become due and payable by the terms of the Loan Agreement which results in an Event of Default under the Indenture;

(ii) Failure of the Institution to pay any amount (except as set forth above) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under the Loan Agreement and continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Institution specifying the nature of such failure by the Issuer or the Trustee or the Holders of more than fifty per cent (50%) in aggregate principal amount of the Bonds Outstanding;

(iii) Failure of the Institution to observe and perform any covenant, condition or agreement under the Loan Agreement on its part to be performed (except as set forth above) and (i) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Institution specifying the nature of same by the Issuer or the Trustee or the Holders of more than fifty percent (50%) in aggregate principal amount of the Bonds Outstanding, or (ii) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Institution fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice;

(iv) The Institution shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(v) A proceeding or case shall be commenced, without the application or consent of the Institution, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Institution or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Institution shall be entered in an involuntary case under such Bankruptcy Code; the terms “dissolution” or “liquidation” of the Institution as used above shall not be construed to prohibit any action otherwise permitted by the Loan Agreement;

(vi) Any representation or warranty made by the Institution (i) in the application and related materials submitted to the Issuer or the initial purchaser(s) of the Bonds for approval of the Project or its financing, or (ii) in the Loan Agreement or in any other Project Document, or (iii) in the Letter of Representation and Indemnity Agreement dated the Closing Date and delivered to the Issuer, the Trustee and the initial purchaser(s) of the Initial Bonds, or (iv) in the Tax Certificate, or (v) by or on behalf of the Institution or any other Person in any Required Disclosure Statement, or (vi) in any report, certificate, financial statement or other instrument furnished pursuant to the Loan Agreement or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(vii) The commencement of proceedings to appoint a receiver or to foreclose any mortgage lien on or security interest in the Facility including the Mortgage; or

(viii) An “Event of Default” under the Indenture or under any other Security Document shall occur and be continuing; or

(ix) If any Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion;

(x) Failure of the Institution to pay the amount required of it under Section 4.3(a)(vi) of the Loan Agreement when required thereunder. (*Section 9.1*)

### **Remedies on Default.**

Whenever any Event of Default referred to in the Loan Agreement shall have occurred and be continuing, the Issuer, or the Trustee where so provided, may, take any one or more of the following remedial steps:

(i) The Trustee, as and to the extent provided in the Indenture, may cause all principal installments of loan payments payable under the Loan Agreement until the Bonds are no longer Outstanding to be immediately due and payable, whereupon the same, together with the accrued interest thereon, shall become immediately due and payable; provided, however, that upon the occurrence of an Event of Default under specific sections of the Loan Agreement, all principal installments of loan payments payable under the Loan Agreement until the Bonds are no longer Outstanding, together with the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Issuer, the Trustee, the Holders of the Bonds or any other Person being a condition to such acceleration;

(ii) The Issuer or the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the loan payments then due and thereafter to become due, or to enforce performance or observance of any obligations, agreements or covenants of the Institution under the Loan Agreement; and

(iii) The Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder.

Upon the occurrence of a default with respect to any of the Issuer's Reserved Rights, the Issuer, without the consent of the Trustee or any other Person, may proceed to enforce the Issuer's Reserved Rights by

- (i) bringing an action for damages, injunction or specific performance, and/or
- (ii) taking whatever action at law or in equity as may appear necessary or desirable to collect payment of amounts due by the Institution under the Issuer's Reserved Rights or to enforce the performance or observance of any obligations, covenants or agreements of the Institution under the Issuer's Reserved Rights.

No action taken pursuant to the provisions under this heading or by operation of law or otherwise shall, except as expressly provided in the Loan Agreement, relieve the Institution from the Institution's obligations under the Loan Agreement, all of which shall survive any such action. *(Section 9.2)*

### **Bankruptcy Proceedings.**

In case proceedings shall be pending for the bankruptcy or for the reorganization of the Institution under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee (other than the Trustee under the Indenture) shall have been appointed for the property of the Institution or in the case of any other similar judicial proceedings relative to the Institution or the creditors or property of the Institution, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to the Loan Agreement and the Promissory Note, irrespective of whether the principal of the Bonds (and the loan payments payable pursuant to the Promissory Note and the Loan Agreement) shall have been accelerated by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand for payment under the Loan Agreement or thereunder, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Institution, the creditors or property of the Institution, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Indenture after the deduction of its charges and expenses. Any receiver, assignee or trustee in bankruptcy or reorganization is authorized by the Loan Agreement to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including expenses and fees of counsel incurred by it up to the date of such distribution. *(Section 9.3)*

### **Remedies Cumulative.**

The rights and remedies of the Issuer or the Trustee under the Loan Agreement shall be cumulative and shall not exclude any other rights and remedies of the Issuer or the Trustee allowed by law with respect to any default under the Loan Agreement. Failure by the Issuer or the Trustee to insist upon the strict performance of any of the covenants and agreements set forth in the Loan Agreement or to exercise any rights or remedies upon default by the Institution under the Loan Agreement shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy the strict compliance by the Institution with all of the covenants and conditions of the Loan Agreement, or of the rights to exercise any such rights or remedies, if such default by the Institution be continued or repeated. *(Section 9.4)*

### **No Additional Waiver Implied by One Waiver.**

In the event any covenant or agreement contained in the Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under the Loan Agreement. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Issuer and/or the Trustee and the Institution or any delay or omission on the part of the Issuer and/or the Trustee in exercising any rights under the Loan Agreement or under the Indenture or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, the Institution waives the benefit and advantage of, and covenants not to

assert against the Issuer or the Trustee, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist. *(Section 9.5)*

**Agreement to Pay Fees and Expenses of Attorneys and Other Consultants.**

In the event the Institution should default under any of the provisions of the Loan Agreement, and the Issuer or the Trustee should employ outside attorneys or other consultants or incur other expenses for the collection of loan payments or other amounts payable under the Loan Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Institution contained in the Loan Agreement or contained in any other Security Document, the Institution agrees that it will on demand therefor pay to the Issuer or the Trustee, as the case may be, the reasonable fees and disbursements of such attorneys or other consultants and such other expenses so incurred. *(Section 9.7)*

**Termination of the Loan Agreement.**

The Institution shall have the option to cause the redemption or defeasance in whole of all Outstanding Bonds in accordance with the terms set forth in the Indenture.

After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with the Indenture, but not later than the receipt by the Institution of ten (10) days prior written notice from the Issuer directing termination of the Loan Agreement, the Institution shall terminate the Loan Agreement by giving the Issuer notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to (x) the delivery of those documents referred to in the Loan Agreement, and (y) the survival of those obligations of the Institution set forth in the Loan Agreement. *(Section 10.1)*

**Issuance of Additional Bonds.**

If a Series of Additional Bonds are to be issued pursuant to the Indenture, for the purpose of (i) completing the Project, (ii) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility, the purpose of which shall be for the Approved Project Operations, or (iv) refunding Outstanding Bonds, the Issuer and the Institution shall enter into an amendment to the Loan Agreement, and the Institution shall execute and deliver a new Promissory Note, in each case providing, among other things, for the payment by the Institution of such additional loan payments as are necessary in order to amortize in full the principal of and interest on such Series of Additional Bonds and any other costs in connection therewith.

Any such completion, repair, relocation, replacement, rebuilding, restoration, additions, extensions or improvements shall become a part of the Facility and shall be included under the Loan Agreement to the same extent as if originally included under the Loan Agreement. *(Section 11.1)*

**Mandatory Redemption of Bonds as Directed by the Issuer.**

Upon the determination by the Issuer that (w) the Institution is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not for the Approved Project Operations in accordance with the Loan Agreement and the failure of the Institution within thirty (30) days of the receipt by the Institution of written notice of such noncompliance from the Issuer to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee), (x) the Institution, any Principal of the Institution or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Institution has committed a material violation of a material Legal Requirement and the failure of the Institution within thirty (30) days of the receipt by the Institution of written notice of such determination from the Issuer to cure such material violation (which cure, in the case of a Principal who shall have committed the material violation of a material Legal Requirement, may be effected by the removal of such Principal), (y) as set forth in the Loan Agreement, any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, the Institution covenants and agrees that it shall, no later

than ten (10) days following the termination of such thirty (30) day period, pay to the Trustee advance loan payments in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of 100% of the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to the redemption date. The Issuer shall give prior written notice of the meeting at which the Board of Directors of the Issuer are to consider such resolution to the Institution and the Trustee, which notice shall be no less than fifteen (15) days prior to such meeting.

In the event the Institution fails to obtain or maintain the liability insurance with respect to the Facility required under the Loan Agreement, and the Institution shall fail to cure such circumstance within ten (10) days of the receipt by the Institution of written notice of such noncompliance from the Issuer and a demand by the Issuer on the Institution to cure such noncompliance, upon notice or waiver of notice as provided in the Indenture, the Institution shall pay to the Trustee advance loan payments in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Bonds, together with interest accrued thereon to the date of redemption. *(Section 11.3)*

#### **Option to Purchase or Invite Tenders of Bonds.**

Except as provided in the provisions under this heading, neither the Institution nor any Related Person (as defined in the Tax Certificate) to the Institution shall purchase Bonds in an amount related to the amount of the Loan. The Institution shall have the option, at any time during the term of the Loan Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by making a tender offer to the Holders thereof, or pursuant to the purchase in lieu of redemption provisions of the Indenture. The Bonds so purchased by the Institution or by any Affiliate of the Institution shall be delivered to the Trustee for cancellation within fifteen (15) days of the date of purchase unless the Institution shall deliver to the Trustee and the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that the failure to surrender such Bonds by such date will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes. *(Section 11.6)*

#### **Investment of Funds.**

Any moneys held as part of the Rebate Fund, the Earnings Fund, the Project Fund, the Bond Fund, the Debt Service Reserve Fund (other than the 2013 CSFP Subaccount), the Repair and Replacement Reserve Fund or the Renewal Fund or in any special fund provided for in the Loan Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the written request of an Authorized Representative of the Institution, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the Tax Certificate). Neither the Issuer nor the Trustee nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom.

Amounts in the Series 2013 CSFP Subaccount of the Debt Service Reserve Fund, the CSFP Fund and any accounts therein, shall be invested by the Trustee at the written direction of CSFP in accordance with the Debt Service Reserve Fund Agreement set forth in Exhibit D to the Indenture.

Interest and profit derived from such investments shall be credited and applied as provided in the Indenture, and any loss resulting from such investments shall be similarly charged. *(Section 11.7)*

#### **Amendments.**

The Loan Agreement may be amended only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture and only by a written instrument executed by the parties to the Loan Agreement. *(Section 12.3)*

#### **Recourse Under the Loan Agreement.**

All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Loan Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer,

and not of any member, director, officer, employee or agent of the Issuer or any natural person executing the Loan Agreement on behalf of the Issuer in such person's individual capacity, and no recourse shall be had for any reason whatsoever under the Loan Agreement against any member, director, officer, employee or agent of the Issuer or any natural person executing the Loan Agreement on behalf of the Issuer. No recourse shall be had for the payment of the principal of, redemption premium, if any, Sinking Fund Installments for, Purchase Price or interest on the Bonds or for any claim based thereon or under the Loan Agreement against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds. In addition, in the performance of the agreements of the Issuer contained in the Loan Agreement, any obligation the Issuer may incur for the payment of money shall not subject the Issuer to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Issuer by the Institution under the Loan Agreement and under the Promissory Note. *(Section 12.14)*

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**APPENDIX H**

**SUMMARY OF CERTAIN PROVISIONS  
OF THE INDENTURE OF TRUST**

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## APPENDIX H

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST

*The following is a summary of certain provisions of the Indenture of Trust. This summary does not purport to be complete and reference is made to the Indenture of Trust for the detailed provisions thereof. This summary is qualified in its entirety by such reference. Headings are not part of the Indenture of Trust and are included for ease of reference only.*

#### **Authorized Amounts of Bonds; Pledge Effected by the Indenture.**

No Bond may be authenticated and delivered under the provisions of the Indenture except in accordance with the Indenture. Except as provided in the Indenture, the total aggregate principal amount of Bonds that may be authenticated and delivered under the Indenture is limited to the Authorized Principal Amount.

The proceeds of the Bonds deposited in the Project Fund and certain of the loan payments, receipts and revenues derived from or in connection with the Facility, including moneys which are required to be set apart, transferred and pledged to the Earnings Fund, to the Bond Fund, to the Debt Service Reserve Fund, to the Renewal Fund, the Repair and Replacement Reserve Fund or to certain special funds, including the investments, if any, thereof (subject to disbursements from such Funds in accordance with the provisions of the Indenture) are pledged by the Indenture for the payment of the principal or Redemption Price, if any, of, Sinking Fund Installments for, and interest on, the Bonds. All such Funds shall be held by the Trustee in trust for the benefit of the Bondholders, and while held by the Trustee constitute part of the Trust Estate and be subject to the lien of the Indenture. The Rebate Fund (including amounts on deposit therein) shall not be subject to any assignment, pledge, lien or security interest in favor of the Trustee or any Bondholder or any other Person. The Bonds shall be the special limited revenue obligations of the Issuer and shall be payable by the Issuer as to the principal or Redemption Price, if any, of the Bonds, Sinking Fund Installments for the Bonds, and interest on the Bonds only from the Funds, special funds and loan payments, revenues and receipts pledged therefor. The Bonds are additionally secured by a pledge and assignment of the Promissory Note and substantially all of the Issuer's right, title and interest in and to the Loan Agreement. Further, the Institution has granted a lien and security interest in the Pledged Collateral to the Trustee pursuant to the Pledge and Security Agreement. Pursuant to the Custody Agreement, the Institution will cause payments of Education Aid due to the Institution to be delivered to the Custodian, and the Custodian will make transfers of certain money to the Trustee for deposit under the Indenture. In addition, the Institution has granted mortgage liens on and security interests in its fee interest in the Facility to the Issuer and the Trustee pursuant to the Mortgage, and the Issuer has assigned its right, title and interest in the Mortgage to the Trustee pursuant to the Assignment of Mortgage.

In no event shall any obligations of the Issuer under the Indenture or the Bonds or under the Loan Agreement or under any other Security Document or related document for the payment of money create a debt of the State or the City and neither the State nor the City shall be liable on any obligation so incurred, but any such obligation shall be a special limited revenue obligation of the Issuer secured and payable solely as provided in the Indenture. (Section 2.01)

#### **Additional Bonds.**

So long as the Promissory Note, the Loan Agreement and the other Security Documents are each in effect, the Institution has met the requirements set forth in the Loan Agreement and the prior written consent of CSFP shall have been obtained, one or more Series of Additional Bonds may be issued, authenticated and delivered upon original issuance for the purpose of (i) completing the Project, (ii) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility, the purpose of which shall be for the Approved Project Operations, or (iv) refunding Outstanding Bonds. Such Additional Bonds shall be payable from the loan payments, receipts and revenues of the Facility including such extensions, additions and improvements thereto. Prior to the issuance of a Series of Additional Bonds and the execution of a Supplemental Indenture in connection therewith, the Issuer and the Institution shall enter into an amendment to the Loan Agreement, and the

Institution shall execute a new Promissory Note, which shall provide, among other things, that the loan payments payable by the Institution under the Loan Agreement and the aggregate amount to be paid under all Promissory Notes shall be increased and computed so as to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith. In addition, the Institution and the Issuer shall enter into an amendment to each Security Document with the Trustee which shall provide that the amounts guaranteed or otherwise secured thereunder be increased accordingly. *(Section 2.07(a))*

Each such Series of Additional Bonds shall be deposited with the Trustee and thereupon shall be authenticated by the Trustee. Upon payment to the Trustee of the proceeds of sale of such Series of Additional Bonds, they shall be made available by the Trustee for pick-up by the order of the purchaser or purchasers thereof, but only upon receipt by the Trustee of:

(1) a copy of the resolution, duly certified by the Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Issuer, authorizing, issuing and awarding the Series of Additional Bonds to the purchaser or purchasers thereof and providing the terms thereof and authorizing the execution of any Supplemental Indenture and any amendments of or supplements to the Loan Agreement and any other Security Document to which the Issuer shall be a party;

(2) original executed counterparts of the Supplemental Indenture and an amendment of or supplement to the Loan Agreement expressly providing that, to the extent applicable, for all purposes of the Supplemental Indenture, the Promissory Note, the Loan Agreement, the Mortgage, and the Custody Agreement, the Facility referred to therein and the premises related or subject thereto shall include the buildings, structures, improvements, machinery, equipment or other facilities being financed, and the Bonds referred to therein shall mean and include the Series of Additional Bonds being issued as well as the Initial Bonds and any Series of Additional Bonds theretofore issued;

(3) a written opinion by Nationally Recognized Bond Counsel, to the effect that the issuance of the Series of Additional Bonds and the execution thereof have been duly authorized and that all conditions precedent to the delivery thereof have been fulfilled and that the issuance of the Series of Additional Bonds will not cause the interest on any Series of Tax-Exempt Bonds Outstanding to become includable in gross income for Federal income tax purposes;

(4) except in the case of a Series of Refunding Bonds (defined below) refunding all Outstanding Bonds, a certificate of an Authorized Representative of the Institution to the effect that each Security Document to which it is a party continues in full force and effect and that there is no Event of Default nor any event which upon notice or lapse of time or both would become an Event of Default;

(5) written evidence from each Rating Agency by which any Series of Outstanding Bonds are then rated, if any, to the effect that it has reviewed the documentation pertaining to the issuance of the Series of Additional Bonds, and that the issuance of such Series of Additional Bonds will not result in a withdrawal, a suspension or a reduction of the long and short-term ratings, if applicable, then assigned to any Series of Outstanding Bonds by such Rating Agency;

(6) evidence that the Institution has met the requirements of the Loan Agreement;

(7) the written consent of CSFP to the issuance of Additional Bonds;

(8) an original, executed counterpart of the new Promissory Note and the amendment to each Security Document; and

(9) a written order to the Trustee executed by an Authorized Representative of the Issuer to authenticate and make available for pick-up the Series of Additional Bonds to the purchaser or purchasers therein identified upon payment to the Trustee of the purchase price therein specified, plus accrued interest, if any. *(Section 2.07(b))*

Upon the request of the Institution, one or more Series of Additional Bonds may be authenticated and made available for pick-up upon original issuance to refund (“**Refunding Bonds**”) all Outstanding Bonds or any Series of Outstanding Bonds or any part of one or more Series of Outstanding Bonds. Bonds of a Series of Refunding Bonds shall be issued in a principal amount sufficient, together with other moneys available therefor, to accomplish such refunding and to make such deposits required by the provisions of the Indenture and of the resolution authorizing said Series of Refunding Bonds. In the case of the refunding under the Indenture of less than all Bonds Outstanding of any Series or of any maturity within such Series, the Trustee shall proceed to select such Bonds in accordance with the Indenture.

A Series of Refunding Bonds may be authenticated and made available for pick-up only upon receipt by the Trustee (in addition to the receipt by it of the documents required by the Indenture, as may be applicable) of:

(A) Irrevocable instructions from the Issuer to the Trustee, satisfactory to it, to give due notice of redemption pursuant to the Indenture to the Holders of all the Outstanding Bonds to be refunded prior to maturity on the redemption date specified in such instructions; and

(B) Either:

(i) moneys in an amount sufficient to effect payment at maturity or upon redemption at the applicable Redemption Price of the Bonds to be refunded, together with accrued interest on such Bonds to the maturity or redemption date, which moneys shall be held by the Trustee or any Paying Agent in a separate account irrevocably in trust for and assigned to the respective Holders of the Outstanding Bonds being refunded, or

(ii) Defeasance Obligations in such principal amounts, having such maturities, bearing such interest, and otherwise having such terms and qualifications, as shall be necessary to comply with the provisions of the Indenture, and any moneys required pursuant to the Indenture (with respect to all Outstanding Bonds or any part of one or more Series of Outstanding Bonds being refunded), which Defeasance Obligations and moneys shall be held in trust and used only as provided in the Indenture.

(2) The Institution shall furnish to the Trustee and the Issuer at the time of delivery of the Series of Refunding Bonds a certificate of an independent certified public accountant stating that the Trustee and/or the Paying Agent (and/or any escrow agent as shall be appointed in connection therewith) hold in trust the moneys or such Defeasance Obligations and moneys required to effect such payment at maturity or earlier redemption. *(Section 2.07(c))*

Each Series of Additional Bonds issued pursuant to the provisions under this heading shall be equally and ratably secured under the Indenture with the Initial Bonds and all other Series of Additional Bonds, if any, issued pursuant to the provisions under this heading, without preference, priority or distinction of any Bond over any other Bonds except as expressly provided in or permitted by the Indenture, provided however, no Additional Series of Bonds shall be secured by the 2013 CSFP Subaccount of the Debt Service Reserve Fund. *(Section 2.07(d))*

No Series of Additional Bonds shall be issued unless the Promissory Note, the Loan Agreement, the Mortgage and the other Security Documents are in effect and, at the time of issuance, there is no Event of Default nor any event which upon notice or lapse of time or both would become an Event of Default. *(Section 2.07(e))*

**Creation of Funds and Accounts.**

(a) The Issuer establishes and creates the following special trust Funds and Accounts comprising such Funds:

- (1) Project Fund
- (2) Bond Fund
  - (a) Principal Account
  - (b) Interest Account
  - (c) Redemption Account
  - (d) Sinking Fund Installment Account
- (3) Renewal Fund
- (4) Earnings Fund
- (5) Rebate Fund
- (6) Debt Service Reserve Fund
  - (a) 2013 CSFP Subaccount
  - (b) 2013 Non-CSFP Subaccount
- (7) Repair and Replacement Reserve Fund
- (8) CSFP Fund
  - (a) CSFP Earnings Account
  - (b) CSFP Fee Account

(b) All of the Funds and Accounts created under the Indenture shall be held by the Trustee. All moneys required to be deposited with or paid to the Trustee for the credit of any Fund or Account under any provision of the Indenture and all investments made therewith shall be held by the Trustee in trust and applied only in accordance with the provisions of the Indenture, and while held by the Trustee shall constitute part of the Trust Estate (subject to the granting clauses of the Indenture), other than the Rebate Fund, and be subject to the lien of the Indenture.

(c) All funds received by the Trustee pursuant to the Loan Agreement and the Custody Agreement shall be applied in the following priority:

*First*, to the Interest Account, the Principal Account, the Sinking Fund Installment Account and the Redemption Account, respectively, in accordance with the Indenture;

*Second* to replenish any deficiencies in (i) the 2013 CSFP Subaccount of the Debt Service Reserve Fund, if any, then (ii) the 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund, if any;

*Third*, to the Rebate Fund to pay any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Certificate;

*Fourth*, an amount equal to Issuer's Annual Administrative fee due, if any;

*Fifth*, an amount equal to the annual Trustee fee due, if any;

*Sixth*, to the CSFP Fee Account of the CSFP Fund to fund the pro-rata requirement for an annual CSFP servicing fee of 0.15% per annum (calculated on the Outstanding balance of the Series 2013 Bonds);

*Seventh*, an amount equal to the Repair and Replacement Reserve Fund Deposit or the monthly amount required in connection with the replenishment of any deficiency in the Repair and Replacement Reserve Fund; and

*Eighth*, to the Institution to be used for any authorized purposes under the Loan Agreement and Indenture. (*Section 5.01*)

### **Project Fund.**

There shall be deposited in the Project Fund any and all amounts required to be deposited therein pursuant to the Indenture or otherwise required to be deposited therein pursuant to the Loan Agreement, or the Indenture.

The Trustee shall apply the amounts on deposit in the Project Fund to the payment, or reimbursement to the extent the same have been paid by or on behalf of the Institution or the Issuer, of Project Costs (including interest on the Bonds during the period of Project construction and renovation) to the extent requisitioned as described in the Indenture.

The Trustee is authorized to disburse from the Project Fund amounts required to pay (in whole or in part) the Project Costs and is directed to issue its checks (or, at the direction of the Institution, make wire transfers) for each disbursement from the Project Fund for the Project Costs, upon a requisition submitted to the Trustee, signed by an Authorized Representative of the Institution; provided, however, that the Trustee shall retain in the Project Fund an amount equal to the greater of (a) \$60,000 or (b) the lesser of (i) one percent (1%) of the original principal amount of the Initial Bonds or (ii) \$500,000, or (c) the retainage amount required pursuant to the construction contract, until an Authorized Representative of the Institution shall have delivered the completion certificate and other documents required by the Loan Agreement.

The requisition from the Project Fund shall be accompanied by bills or invoices (stamped "paid" by the Person to whom payment was due or with other evidence of payment if reimbursement is to be made to the Institution), including evidence that the bill, invoice or other evidence was not incurred on a date prior to sixty (60) days prior to the date of adoption by the Issuer or the Institution of the Reimbursement Resolution for the Project. Such requisition shall be as set forth in Exhibit D - "Form of Requisition from the Project Fund" and shall be submitted to the Trustee. The Trustee shall disburse amounts from the Project Fund not later than five (5) Business Days following the receipt of the executed requisition and accompanying bills or invoices, except that any such requisition and accompanying bills or invoices submitted on the Closing Date shall have disbursements made by the Trustee on such Closing Date. The Trustee shall be entitled to conclusively rely on the correctness and accuracy of such requisition as well as the propriety of the signature thereon.

In addition to the foregoing, any requisition submitted to the Trustee for costs of construction, improving and/or renovating the Facility Realty shall be accompanied by a notice of title continuation or an endorsement to the title insurance policies theretofore delivered pursuant to the Loan Agreement, indicating that since the last preceding disbursement of any amounts held in the Project Fund, there has been no change in the state of title and no exceptions not theretofore approved by the Issuer and the Trustee (which approvals shall not be unreasonably withheld, conditioned or delayed), which notice or endorsement shall contain no exception for inchoate mechanic's liens (and such affirmative insurance relating thereto as the Issuer and/or the Trustee shall reasonably require) and

shall have the effect of redating such policies to the date of the disbursement then being made and increasing the coverage of the policies by an amount equal to the disbursement then being made if the policies do not by their terms provide for such an increase.

The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom and shall furnish copies of same to the Issuer or the Institution upon reasonable written request.

The Trustee shall on written request furnish to the Issuer and the Institution within a reasonable time period a written statement of disbursements from the Project Fund, enumerating, among other things, item, cost, amount disbursed, date of disbursement and the person to whom payment was made, together with copies of all bills, invoices or other evidences submitted to the Trustee for such disbursement.

The completion of the Project shall be evidenced as set forth in the Loan Agreement including the filing of the certificate of an Authorized Representative of the Institution referred to therein. Upon the filing of such certificate and the payment of all the costs and expenses incident to the completion of the Project, any balance of such remaining amount in the Project Fund, together with any amount on deposit in the Earnings Fund derived from transfers made thereto from the Project Fund, shall, after making any such transfer to the Rebate Fund, transfer to the Rebate Fund as directed pursuant to the Tax Certificate and the Indenture, and after depositing in the Debt Service Reserve Fund an amount equal to any deficiency therein, be deposited in the Redemption Account of the Bond Fund to be applied to the redemption of Bonds at the earliest practicable date. The Trustee shall promptly notify the Institution of any amounts so deposited in the Redemption Account of the Bond Fund pursuant to the Indenture.

In the event the Institution shall be required to or shall elect to cause the Bonds to be redeemed in whole pursuant to the Loan Agreement, the balance in the Project Fund, in the Earnings Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to the Tax Certificate and the Indenture) and in the Debt Service Reserve Fund (other than the 2013 CSFP Subaccount) shall be deposited in the Redemption Account of the Bond Fund. In the event the unpaid principal amount of the Bonds shall be accelerated upon the occurrence of an Event of Default under the Indenture, the balance in the Project Fund, in the Earnings Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to the Tax Certificate and the Indenture) and in the Debt Service Reserve Fund shall be deposited in the Bond Fund as provided in the Indenture.

Except as provided in the Indenture, all earnings on amounts held in the Project Fund shall be transferred by the Trustee and deposited in the Earnings Fund. Any transfers by the Trustee of amounts to the Rebate Fund shall first be drawn by the Trustee from the Earnings Fund prior to drawing any amounts from the Project Fund. *(Section 5.02)*

#### **Payments into Renewal Fund; Application of Renewal Fund.**

The Net Proceeds resulting from any Loss Event with respect to the Facility, together with any other amounts so required to be deposited therein under the Loan Agreement or the Mortgage, shall be deposited in the Renewal Fund (except as otherwise provided in of the Mortgage).

In the event the Bonds shall be subject to redemption in whole (either by reason of such Loss Event or otherwise) pursuant to the terms thereof or the Indenture, and the Institution shall have so directed the Trustee in writing within ninety (90) days of the occurrence of such Loss Event, the Trustee shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Certificate and the Indenture, transfer the amounts deposited in the Renewal Fund to the Redemption Account of the Bond Fund.

If, on the other hand,

(1) the Bonds shall not be subject to optional redemption in whole (whether by reason of such Loss Event or otherwise), or

(2) the Bonds shall be subject to optional redemption in whole (whether by reason of such Loss Event or otherwise) and the Institution shall have failed to take action to effect such redemption, or

(3) the Institution shall have notified the Trustee of its intent to rebuild, replace, repair and restore the Facility,

the Trustee shall apply the amounts on deposit in the Renewal Fund, after making any transfer to the Rebate Fund as directed pursuant to the Tax Certificate and the Indenture, to such rebuilding, replacement, repair and restoration.

If an Event of Default shall exist at the time of the receipt by the Trustee of the Net Proceeds in the Renewal Fund, the Trustee shall promptly request the written direction of the Majority Holders and shall thereupon apply such Net Proceeds, after making any transfer to the Rebate Fund as directed pursuant to the Tax Certificate and the Indenture, to the rebuilding, replacement, repair and restoration of the Facility, or for deposit in the Redemption Account of the Bond Fund, as directed by the Majority Holders (or if no such direction shall be received within ninety (90) days after request therefor by the Trustee shall have been made, for deposit in the Redemption Account of the Bond Fund).

The Trustee is authorized to apply the amounts in the Renewal Fund to the payment (or reimbursement to the extent the same have been paid by or on behalf of the Institution or the Issuer) of the costs required for the rebuilding, replacement, repair and restoration of the Facility upon written instructions from the Institution. The Trustee is further authorized and directed to issue its checks for each disbursement from the Renewal Fund upon a requisition submitted to the Trustee and signed by an Authorized Representative of the Institution. Each such requisition shall be accompanied by bills, invoices or other evidences or documentation (including, without limitation, a title continuation or other evidence that no mechanics or other liens have been filed) satisfactory to the Trustee. The Trustee shall be entitled to rely on such requisition. The Trustee shall keep and maintain adequate records pertaining to the Renewal Fund and all disbursements therefrom and shall furnish copies of same to the Issuer and the Institution upon reasonable written request therefor.

The date of completion of the restoration of the Facility shall be evidenced to the Issuer and the Trustee by a certificate of an Authorized Representative of the Institution stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Trustee, has been made, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that all property constituting part of the Facility is subject to the terms of the Loan Agreement, and the mortgage liens and security interests of the Mortgage subject to Permitted Encumbrances, (v) the Rebate Amount applicable with respect to the Net Proceeds and the earnings thereon (with a statement as to the determination of the Rebate Amount and a direction to the Trustee of any required transfer to the Rebate Fund), and (vi) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Institution against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of the Indenture and the Loan Agreement, and (z) that no Person other than the Issuer or the Trustee may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if is a temporary certificate of occupancy, the Institution will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Loan Agreement; (ii) a certificate of an Authorized Representative of the Institution that all costs of rebuilding, repair, restoration and reconstruction of the Facility have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the rebuilding, repair, restoration and reconstruction of the Facility (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence to the Trustee that such costs have been appropriately bonded or that the Institution shall have posted a surety or security at least equal to the amount of such costs); and (iii) a search prepared by a title company, or other evidence satisfactory to the Trustee, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding,

replacement, repair and restoration of the Facility and that there exist no encumbrances other than those encumbrances consented to by the Issuer and the Trustee.

All earnings on amounts on deposit in the Renewal Fund shall be transferred by the Trustee and deposited in the Earnings Fund. Any transfers by the Trustee of amounts to the Rebate Fund shall first be drawn by the Trustee from the Earnings Fund prior to drawing any amounts from the Renewal Fund.

Any surplus remaining in the Renewal Fund after the completion of the rebuilding, replacement, repair and restoration of the Facility shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Certificate and the Indenture, and after depositing in the Debt Service Reserve Fund an amount equal to any deficiency therein, be transferred by the Trustee to the Redemption Account of the Bond Fund. *(Section 5.03)*

#### **Payments into Bond Fund.**

The Trustee shall promptly deposit the following receipts into the Bond Fund:

(a) The interest accruing on any Series of Bonds from the date of original issuance thereof to the date of delivery, which shall be credited to the Interest Account of the Bond Fund and applied to the payment of interest on such Series of Bonds.

(b) Amounts disbursed from the Project Fund for the payment of interest on the Bonds during the period of Project Work, which shall be credited to the Interest Account of the Bond Fund and applied to the payment of interest on the Bonds;

(c) Excess or remaining amounts in the Project Fund required to be deposited (subject to any transfer required to be made to the Rebate Fund in accordance with directions received pursuant to the Tax Certificate and the Indenture, or to the Debt Service Reserve Fund to the extent of any deficiency therein) (i) in the Redemption Account of the Bond Fund pursuant to the Indenture, which shall be kept segregated from any other moneys within such Account, or (ii) in the Bond Fund pursuant to the Indenture.

(d) Loan payments received by the Trustee pursuant to the Loan Agreement, and the Custody Agreement, which shall be deposited in and credited, to the extent necessary, first to the Interest Account, second to the Principal Account, and third to the Sinking Fund Installment Account of the Bond Fund.

(e) Advance loan payments received by the Trustee pursuant to the Loan Agreement, which shall be deposited in and credited to the Redemption Account of the Bond Fund.

(f) Any amounts transferred from the Earnings Fund pursuant to the Indenture, which shall be deposited in and credited to the Interest Account of the Bond Fund.

(g) The excess amounts referred to in the Indenture, which shall be deposited in and credited to the Interest Account of the Bond Fund.

(h) Any amounts transferred from the Redemption Account pursuant to the Indenture, which shall be deposited to the Interest Account, the Principal Account and the Sinking Fund Installment Account of the Bond Fund, as the case may be and in such order of priority, and applied solely to such purposes.

(i) Amounts in the Renewal Fund required by the Indenture or by the Mortgage to be deposited (subject to any transfer required to be made to the Rebate Fund in accordance with directions received pursuant to the Tax Certificate and the Indenture or to the Debt Service Reserve Fund to the extent of any deficiency therein) to the Redemption Account of the Bond Fund pursuant to the Indenture.

(j) All other receipts when and if required by the Loan Agreement or by the Indenture or by any other Security Document to be paid into the Bond Fund, which shall be credited (except as provided in the Indenture) to the Redemption Account of the Bond Fund.

(k) Any amounts transferred from the Debt Service Reserve Fund pursuant to the Indenture, which shall be deposited in and credited to the Interest Account, the Principal Account, the Sinking Fund Installment Account or the Redemption Account, as the case may be, of the Bond Fund.  
(Section 5.04)

#### **Application of Bond Fund Moneys.**

The Trustee shall (i) on each Interest Payment Date pay or cause to be paid out of the Interest Account in the Bond Fund the interest due on the Bonds, and (ii) further pay out of the Interest Account of the Bond Fund any amounts required for the payment of accrued interest upon any purchase or redemption (including any mandatory Sinking Fund Installment redemption) of Bonds.

The Trustee shall on each principal payment date on the Bonds pay or cause to be paid to the respective Paying Agents therefor out of the Principal Account of the Bond Fund, the principal amount, if any, due on the Bonds (other than such as shall be due by mandatory Sinking Fund Installment redemption), upon the presentation and surrender of the requisite Bonds.

There shall be paid from the Sinking Fund Installment Account of the Bond Fund to the Paying Agents on each Sinking Fund Installment payment date in immediately available funds the amounts required for the Sinking Fund Installment due and payable with respect to Bonds which are to be redeemed from Sinking Fund Installments on such date (accrued interest on such Bonds being payable from the Interest Account of the Bond Fund). Such amounts shall be applied by the Paying Agents to the payment of such Sinking Fund Installment when due. The Trustee shall call for redemption, in the manner provided in the Indenture, Bonds for which Sinking Fund Installments are applicable in a principal amount equal to the Sinking Fund Installment then due with respect to such Bonds. Such call for redemption shall be made even though at the time of mailing of the notice of such redemption sufficient moneys therefor shall not have been deposited in the Bond Fund.

Amounts in the Redemption Account of the Bond Fund shall be applied, at the written direction of the Institution, as promptly as practicable, to the purchase of Bonds at prices not exceeding the Redemption Price thereof applicable on the earliest date upon which the Bonds are next subject to optional redemption, plus accrued interest to the date of redemption. Any amount in the Redemption Account not so applied to the purchase of Bonds by forty-five (45) days prior to the next date on which the Bonds are so redeemable shall be applied to the redemption of Bonds on such redemption date. Any amounts deposited in the Redemption Account and not designated by the Institution in writing to the Trustee for payment of Interest or Principal and not applied within twelve (12) months of their date of deposit to the purchase or redemption of Bonds (except if held in accordance with the Indenture) shall be transferred to the Interest Account. Upon the purchase of any Bonds out of advance loan payments as provided in the subsection, or upon the redemption of any Bonds, an amount equal to the principal of such Bonds so purchased or redeemed shall be credited against the next ensuing and future Sinking Fund Installments for such Bonds in chronological order of the due dates of such Sinking Fund Installments until the full principal amount of such Bonds so purchased or redeemed shall have been so credited, or, in the case of Tax-Exempt Bonds, shall be credited in such other manner as in the opinion of Nationally Recognized Bond Counsel is necessary to preserve the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes. The portion of any such Sinking Fund Installment remaining after the deduction of such amounts so credited shall constitute and be deemed to be the amount of such Sinking Fund Installment for the purposes of any calculation thereof under the Indenture. The Bonds to be purchased or redeemed shall be selected by the Trustee in the manner provided in the Indenture. Amounts in the Redemption Account to be applied to the redemption of Bonds shall be paid to the respective Paying Agents on or before the redemption date and applied by them on such redemption date to the payment of the Redemption Price of the Bonds being redeemed plus interest on such Bonds accrued to the redemption date.

In connection with purchases of Bonds out of the Bond Fund as provided in the Indenture, the Institution shall arrange and the Trustee shall execute such purchases (through brokers or otherwise, and with or without receiving tenders) at the written direction of the Institution. The payment of the purchase price shall be made out of the moneys deposited in the Redemption Account of the Bond Fund and the payment of accrued interest shall be made out of moneys deposited in the Interest Account of the Bond Fund.

The Issuer shall receive a credit in respect of Sinking Fund Installments for any Bonds which are subject to mandatory Sinking Fund Installment redemption and which are delivered by the Issuer or the Institution to the Trustee on or before the forty-fifth (45th) day next preceding any Sinking Fund Installment payment date and for any Bonds which prior to said date have been purchased or redeemed (otherwise than through the operation of the Sinking Fund Installment Account) and cancelled by the Trustee and not theretofore applied as a credit against any Sinking Fund Installment (whether pursuant to this paragraph or otherwise). Each Bond so delivered, cancelled or previously purchased or redeemed shall be credited by the Trustee at one hundred per cent (100%) of the principal amount thereof against the obligation of the Issuer on such Sinking Fund Installment payment date with respect to Bonds of such Series and maturity and the principal amount of such Bonds to be redeemed by operation of the Sinking Fund Installment Account on the due date of such Sinking Fund Installment shall be reduced accordingly, and any excess over such principal amount shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by application of Sinking Fund Installment payments shall be accordingly reduced.

The Institution shall on or before the forty-fifth (45th) day next preceding each Sinking Fund Installment payment date furnish the Trustee with the certificate of an Authorized Representative of the Institution indicating whether or not and to what extent the provisions of the Indenture are to be availed of with respect to such Sinking Fund Installment payment, stating, in the case of the credit provided for, that such credit has not theretofore been applied against any Sinking Fund Installment and confirming that immediately available cash funds for the balance of the next succeeding prescribed Sinking Fund Installment payment will be paid on or prior to the next succeeding Sinking Fund Installment payment date. (*Section 5.05*)

#### **Payments into Earnings Fund; Application of Earnings Fund.**

All investment income or earnings on amounts held in the Project Fund, the Renewal Fund, the Repair Replacement Reserve Fund, the Debt Service Reserve Fund (other than 2013 CSFP Subaccount), or any other special fund (other than the Rebate Fund or the Bond Fund) shall be deposited upon receipt by the Trustee into the Earnings Fund. The Trustee shall keep separate accounts of all amounts deposited in the Earnings Fund and by journal entry indicate the Fund source of the income or earnings.

On the first Business Day following each Computation Period (as defined in the Tax Certificate), the Trustee shall withdraw from the Earnings Fund and deposit to the Rebate Fund an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated as of the last day of the Computation Period. In the event of any deficiency, the balance required shall be provided by the Institution pursuant to the Tax Certificate. Computations of the amounts on deposit in each Fund and of the Rebate Amount shall be furnished to the Trustee by the Institution in accordance with the Tax Certificate.

The foregoing notwithstanding, the Trustee shall not be required to transfer amounts from the Earnings Fund to the Rebate Fund (and shall instead apply such amounts in the Earnings Fund as provided in the immediately following sentence), if the Institution shall deliver to the Trustee a certificate of an Authorized Representative of the Institution to the effect that (x) the applicable requirements of a spending exception to rebate has been satisfied as of the relevant semiannual period as set forth in the Tax Certificate, (y) the proceeds of the Bonds have been invested in obligations the interest on which is not included in gross income for Federal income tax purposes under Section 103 of the Code or (z) the proceeds of the Bonds have been invested in obligations the Yield on which (calculated as set forth in the Tax Certificate) does not exceed the Yield on such Bonds (calculated as set forth in the Tax Certificate). Any amounts on deposit in the Earnings Fund following the transfers to the Rebate Fund required by the Indenture shall be deposited in the Project Fund until the completion of the Project as provided in the Loan Agreement, and thereafter in the Interest Account of the Bond Fund.

All investment income or earnings on amounts held in the 2013 CSFP Subaccount of the Debt Service Reserve Fund shall be transferred daily to the CSFP Earnings Account of the CSFP Fund. *(Section 5.06)*

**Payments into Rebate Fund; Application of Rebate Fund.**

The Rebate Fund and the amounts deposited therein shall not be subject to a security interest, pledge, assignment, lien or charge in favor of the Trustee, any Bondholder or any other Person.

The Trustee, upon the receipt of a certification of the Rebate Amount (as defined in the Tax Certificate) from an Authorized Representative of the Institution, shall deposit in the Rebate Fund within sixty (60) days following each Computation Date (as defined in the Tax Certificate), an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated as of such Computation Date. If there has been delivered to the Trustee a certification of the Rebate Amount in conjunction with the completion of the Project pursuant to the Loan Agreement or the restoration of the Facility pursuant to the Indenture, at any time during a Bond Year, the Trustee shall deposit in the Rebate Fund at that time an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated at the completion of the Project or the restoration of the Facility as aforesaid. The amount deposited in the Rebate Fund pursuant to the previous sentences shall be withdrawn from the Earnings Fund. If the amount on deposit in the Rebate Fund following such deposit is less than the Rebate Amount, the Trustee shall promptly deliver a notice stating the amount of such deficiency to the Institution. It is provided in the Loan Agreement that promptly upon receipt of such notice, the Institution shall deliver the amount necessary to make up such deficiency to the Trustee for deposit in the Rebate Fund.

If within sixty (60) days following any Computation Date, the amount on deposit in the Rebate Fund exceeds the Rebate Amount, the Trustee, upon the receipt of written instructions from an Authorized Representative of the Institution, shall withdraw such excess amount and deposit it in the Project Fund until the completion of the Project as provided in the Loan Agreement, or, after the completion of the Project, deposit it in the Interest Account of the Bond Fund.

The Trustee, upon the receipt of written instructions from an Authorized Representative of the Institution, shall pay to the United States, out of amounts in the Rebate Fund, (i) not less frequently than once each five (5) years after the Closing Date, an amount such that, together with prior amounts paid to the United States, the total paid to the United States is equal to 90% of the Rebate Amount with respect to the Initial Bonds as of the date of such payment and (ii) notwithstanding the defeasance provisions of the Indenture, not later than thirty (30) days after the date on which all Initial Bonds have been paid in full, 100% of the Rebate Amount as of the date of payment. *(Section 5.07)*

**Investment of Funds and Accounts.**

Except as otherwise provided in the Indenture, amounts in any Fund or Account established under the Indenture may, if and to the extent then permitted by law, be invested only in Qualified Investments provided that any Qualified Investment shall not have a maturity date greater than five (5) years from the date of the making of such investment unless such Qualified Investment may be put at par at any time at the option of the owner thereof, and provided, further, that any investment of amounts held in the Debt Service Reserve Fund (other than the 2013 CSFP Subaccount) shall be limited to Government Obligations. Any investment authorized in the Indenture is subject to the condition that no portion of the proceeds derived from the sale of the Bonds shall be used, directly or indirectly, in such manner as to cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. In particular, unexpended Bond proceeds transferred from the Project Fund (or from the Earnings Fund with respect to amounts deposited therein from the Project Fund) to the Redemption Account of the Bond Fund pursuant to the Indenture may not be invested at a Yield (as defined in the Tax Certificate) which is greater than the Yield on the applicable Series of Bonds. Such investments shall be made by the Trustee only at the written request of an Authorized Representative of the Institution; and if such investment is to be in one or more certificates of deposit, investment agreements or guaranteed investment contracts, then such written request shall include written assurance to the effect that such investment complies with the Tax Certificate. Any investment under the Indenture shall be made in accordance with the Tax Certificate, and the Institution shall so certify to the Trustee with each such investment direction as referred to below. Such investments shall mature in such amounts and at such times as may

be necessary to provide funds when needed to make payments from the applicable Fund. Net income or gain received and collected from such investments shall be credited and losses charged to (i) the Rebate Fund with respect to the investment of amounts held in the Rebate Fund, (ii) the Bond Fund with respect to the investment of amounts held in the Bond Fund, and (iii) the Earnings Fund with respect to the investment of amounts held in any other Fund.

At the written request of an Authorized Representative of the Institution no sooner than ten (10) days prior to each Loan Payment Date under the Loan Agreement, the Trustee shall notify the Institution of the amount of such net investment income or gain received and collected subsequent to the last such loan payment and the amount then available in the various Accounts of the Bond Fund.

Upon the written direction of an Authorized Representative of the Institution, the Trustee shall sell at the best price reasonably obtainable, or present for redemption or exchange, any obligations in which moneys shall have been invested to the extent necessary to provide cash in the respective Funds or Accounts, to make any payments required to be made therefrom, or to facilitate the transfers of moneys or securities between various Funds and Accounts as may be required from time to time pursuant to the provisions of the Indenture. The Trustee shall not be liable for losses incurred as a result of actions taken in good faith in accordance with the Indenture. As soon as practicable after any such sale, redemption or exchange, the Trustee shall give notice thereof to the Issuer and the Institution.

Neither the Trustee nor the Issuer shall be liable for any loss arising from, or any depreciation in the value of any obligations in which moneys of the Funds and Accounts shall be invested in accordance with the Indenture. The investments authorized by the Indenture shall at all times be subject to the provisions of applicable law, as amended from time to time.

In computing the amount in any Fund or Account, obligations purchased as an investment of moneys therein shall be valued at fair market value as determined by the Trustee one month prior to each Interest Payment Date.

The fair market value of Qualified Investments shall be determined as follows:

(i) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*), the average bid and asked prices for such investments so published on or most recently prior to such time of determination;

(ii) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or *The New York Times*, the average bid price at such nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or as quoted in the Interactive Data Service; and

(iii) as to certificates of deposit and bankers acceptances and other investments, the face amount thereof, plus accrued interest.

If more than one provision of this definition of “fair market value” shall apply at any time to any particular investment, the fair market value thereof at such time shall be determined in accordance with the provision establishing the lowest value for such investment.

In the case of the Debt Service Reserve Fund, a “surplus” means the amount by which the amount on deposit in any accounts or subaccount in any accounts or subaccounts relating to a Series of Bonds is in excess of the Debt Service Reserve Fund Requirement for such Series. On each Debt Service Reserve Fund Valuation Date, and upon any withdrawal from the Debt Service Reserve Fund, the Trustee shall determine the amount on deposit in the Debt Service Reserve Fund. If on any such date a deficiency exists, the Trustee shall notify the Issuer and the Institution of such deficiency and that such deficiency must be replenished by the Institution as required by the Loan Agreement. If a surplus exists, the Trustee shall notify the Issuer and the Institution thereof and, subject to the requirements of the Tax Certificate, shall upon written instructions of the Institution transfer an amount equal to

such surplus pro rata from amounts on deposit in the applicable accounts or subaccounts of the Debt Service Reserve Fund to (1) in the case of amounts in any subaccount other than the 2013 CSFP Subaccount, the Project Fund until the completion of the Project as provided in the Loan Agreement and thereafter shall transfer such amount to the Interest Account of the Bond Fund and (2) in the case of amounts in the 2013 CSFP Subaccount, CSFP.

Amounts in the 2013 CSFP Subaccount of the Debt Service Reserve Fund, the CSFP Fund and any accounts therein, shall be invested by the Trustee at the written direction of CSFP in accordance with the Debt Service Reserve Fund Agreement. *(Section 5.09)*

#### **Non-presentment of Bonds.**

In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, and funds sufficient to pay any such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, together with interest to the date on which principal is due, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to pay such funds to the Person entitled thereto or if the Person is not known to the Trustee, to hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under the Indenture or on, or with respect to, such Bond. Such amounts so held shall, pending payment to the Holder of such Bond, (y) be subject to any rebate requirement as set forth in the Tax Certificate or the Indenture, and (z) shall be uninvested, or, if invested, invested or re-invested only in Government Obligations maturing within thirty (30) days. Funds remaining with the Trustee as above and unclaimed for the earlier of two (2) years or one month less than the applicable statutory escheat period shall be paid to the Institution. After the payment of such unclaimed moneys to the Institution, the Holder of such Bond shall thereafter look only to the Institution for the payment thereof, and all obligations of the Trustee or such Paying Agent with respect to such moneys shall thereupon cease. *(Section 5.12)*

#### **Debt Service Reserve Fund.**

If on any Interest Payment Date or redemption date on the Bonds the amount in the Interest Account of the Bond Fund (after taking into account amounts available to be transferred to the Interest Account from the Project Fund) shall be less than the amount of interest then due and payable on the Bonds, or if on any principal payment date on the Bonds the amount in the Principal Account shall be less than the amount of principal of the Bonds then due and payable, or if on any Sinking Fund Installment payment date for the Bonds the amount in the Sinking Fund Installment Account of the Bond Fund shall be less than the amount of the Sinking Fund Installment then due and payable on the Bonds, in each case, after giving effect to all payments received by the Trustee in immediately available funds by 10:00 a.m. (New York City time) on such date from or on behalf of the Institution or the Issuer on account of such interest, principal or Sinking Fund Installment, the Trustee forthwith shall transfer moneys from the Series 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund and, first, to such Interest Account, second to such Principal Account, and third, to such Sinking Fund Installment Account, all to the extent necessary to make good any such deficiency. If a deficiency still exists and the Series 2013 Non-CSFP Subaccount of the Debt Service Reserve Fund has already been expended, the Trustee shall transfer from moneys in the 2013 CSFP Subaccount of the Debt Service Reserve Fund and, first, to such Interest Account, second to such Principal Account, and third, to such Sinking Fund Installment Account, all to the extent necessary to make good any such deficiency.

The Trustee shall give to the Institution on or prior to each Loan Payment Date on which the Institution is obligated pursuant to Section 4.3(a)(vi) of the Loan Agreement to pay to the Trustee amounts in respect of any deficiency in the Debt Service Reserve Fund, telephonic notice (to be promptly confirmed in writing) specifying any such deficiency in the Debt Service Reserve Fund. The failure of the Trustee to deliver such notice or any defect in such notice shall not relieve the Issuer from any of its obligations under the Indenture or any other obligor from any of its obligations under any of the Security Documents.

The 2013 CSFP Subaccount of the Debt Service Reserve Fund shall be established in the name of CSFP and shall not secure any Series of Bonds other than the Series 2013 Bonds.

Amounts in the 2013 CSFP Subaccount of the Debt Service Reserve Fund, the CSFP Fund and any accounts therein, shall be invested by the Trustee at the written direction of CSFP in accordance with the Debt Service Reserve Fund Agreement attached as Exhibit D to the Indenture. *(Section 5.13)*

#### **Repair and Replacement Reserve Fund.**

There shall be deposited in the Repair and Replacement Reserve Fund amounts required to be deposited pursuant to the Loan Agreement or the Indenture.

The Trustee shall apply the amounts on deposit in the Repair and Replacement Reserve Fund to the payment, or reimbursement to the extent the same have been paid by or on behalf of the Institution or the Issuer, of current and preventative repair and replacement costs and expenses.

If on any such date a deficiency exists, the Trustee shall notify the Issuer and the Institution of such deficiency and that such deficiency must be replenished by the Institution as required by Section 4.3(a) of the Loan Agreement. *(Section 5.14)*

#### **CSFP Fund.**

There shall be deposited in the CSFP Fund amounts required to be deposited pursuant to the Loan Agreement, the Custody Agreement or the Indenture.

Amounts held in the CSFP Fund, if any, shall be transferred by the Trustee to CSFP on each Interest Payment Date. *(Section 5.15)*

#### **Custody Agreement.**

Except as otherwise provided in the Custody Agreement, the Trustee shall deliver the Custody Agreement Notice to the Custodian no later than five (5) Business Days before such Education Aid payment date.

Except as otherwise provided in the Custody Agreement, each Custody Agreement Notice shall be prepared by the Trustee in substantially the form of Exhibit A attached to the Custody Agreement, with respect to each period from and including May 15, 2013, and from and including each succeeding Education Aid payment date, through and including the calendar day preceding each subsequent Education Aid payment date (each an “**Education Aid Funding Period**”), certifying the respective aggregate amounts to be transferred by the Custodian to the Trustee during the applicable Education Aid Funding Period.

Each Custody Agreement Notice shall describe the amount of Education Aid necessary to be paid to the Trustee to satisfy the payment obligations of the Institution under Section 4.3 of the Loan Agreement. Accordingly, each Custody Agreement Notice shall contain the following information: (1) a statement of the total amount of Education Aid to be paid over to the Trustee on the applicable Education Aid payment date, and (2) statements describing the portions of such total amount to be deposited into the various funds and accounts held by the Trustee under the Indenture. The Trustee shall prepare each Custody Agreement Notice in consultation with the Institution.

The Institution shall provide the Trustee, in a timely fashion (but at least ten (10) Business Days prior to each Education Aid payment date), the information reasonably needed by the Trustee in order to permit the Trustee to prepare each Custody Agreement Notice. *(Section 5.16)*

### **Creation of Liens; Indebtedness.**

It is the intention of the Issuer and the Trustee that the Mortgage is and will continue to be a mortgage lien upon the Facility (subject only to Permitted Encumbrances). The Issuer shall not create or suffer to be created, or incur or issue any evidences of indebtedness secured by, any lien or charge upon or pledge of the Trust Estate, except the lien, charge and pledge created by the Indenture and the other Security Documents. *(Section 7.05)*

### **Issuer Tax Covenant.**

The Issuer covenants that it shall not take any action within its control, nor refrain from taking any action reasonably requested by the Institution or the Trustee, that would cause the interest on the Bonds to become includable in gross income for Federal income tax purposes; provided, however, the breach of this covenant shall not result in any pecuniary liability of the Issuer and the only remedy to which the Issuer shall be subject shall be specific performance. *(Section 7.08)*

### **Events of Default; Acceleration of Due Date.**

Each of the following events is defined as and shall constitute an "Event of Default":

(1) Failure in the payment of the interest on any Bond when the same shall become due and payable;

(2) Failure in the payment of the principal or redemption premium, if any, of, or Sinking Fund Installment for, any Bonds, when the same shall become due and payable, whether at the stated maturity thereof or upon proceedings for redemption thereof or otherwise, or interest accrued thereon to the date of redemption after notice of redemption therefor or otherwise;

(3) Failure of the Issuer to observe or perform any covenant, condition or agreement in the Bonds or under the Indenture on its part to be performed (except as set forth above) and (A) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Issuer and the Institution specifying the nature of same from the Trustee or the Holders of more than fifty percent (50%) in aggregate principal amount of the Bonds Outstanding, or (B) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Issuer or the Institution fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice; or

(4) The occurrence of an "Event of Default" under the Loan Agreement or any other Security Document.

Upon the happening and continuance of any Event of Default, unless the principal of all the Bonds shall have already become due and payable, either the Trustee (by notice in writing to the Issuer and the Institution) or the Holders of over fifty percent (50%) in aggregate principal amount of the Bonds Outstanding (by notice in writing to the Issuer, the Institution and the Trustee) may declare the principal or Redemption Price, if any, of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything in the Indenture or in any of the Bonds contained to the contrary notwithstanding.

If there shall occur an Event of Default under Section 9.1(d) or (e) of the Loan Agreement, the unpaid principal of all the Bonds (and all principal installments of loan payments under the Loan Agreement) and the interest accrued thereon shall be due and payable immediately without the necessity of any declaration or other action by the Trustee or any other Person.

The right of the Trustee or of the Holders of over fifty percent (50%) in aggregate principal amount of the Bonds Outstanding to make any such declaration as aforesaid, however, is subject to the condition that if, at any

time before such declaration, all overdue installments of principal of and interest on all of the Bonds which shall have matured by their terms and the unpaid Redemption Price of the Bonds or principal portions thereof to be redeemed has been paid by or for the account of the Issuer, and all other Events of Default have been otherwise remedied, and the reasonable and proper charges, expenses and liabilities of the Trustee, shall either be paid by or for the account of the Issuer or provision satisfactory to the Trustee shall be made for such payment and the Facility shall not have been sold or otherwise encumbered, and all defaults have been otherwise remedied as provided in the Indenture, then and in every such case any such default and its consequences shall ipso facto be deemed to be annulled, but no such annulment shall extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

Pursuant to the Loan Agreement, the Issuer has granted to the Institution full authority for the account of the Issuer to perform any covenant or obligation the non-performance of which is alleged in any notice received by the Institution to constitute a default under the Indenture, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts with power of substitution. The Trustee agrees to accept such performance by the Institution as performance by the Issuer. (*Section 8.01*)

### **Enforcement of Remedies.**

Upon the occurrence and continuance of any Event of Default, then and in every case the Trustee may proceed, and upon the written request of the Holders of over fifty percent (50%) in aggregate principal amount of the Bonds Outstanding shall proceed, to protect and enforce its rights and the rights of the Bondholders under the Bonds, the Loan Agreement, the Indenture and under any other Security Document forthwith by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, whether for the specific performance of any covenant or agreement contained in the Indenture or in any other Security Document or in aid of the execution of any power granted in the Indenture or in any other Security Document or for the enforcement of any legal or equitable rights or remedies as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce such rights or to perform any of its duties under the Indenture or under any other Security Document. In addition to any rights or remedies available to the Trustee under the Indenture or elsewhere, upon the occurrence and continuance of an Event of Default the Trustee may take such action, without notice or demand, as it deems advisable.

In the enforcement of any right or remedy under the Indenture or under any other Security Document, the Trustee shall be entitled to sue for, enforce payment on and receive any or all amounts then or during any default becoming, and any time remaining, due from the Issuer, for principal, interest, Sinking Fund Installments, Redemption Price, or otherwise, under any of the provisions of the Indenture, of any other Security Document or of the Bonds, and unpaid, with interest on overdue payments at the rate or rates of interest specified in the Bonds, together with any and all costs and expenses of collection and of all proceedings under the Indenture, under any such other Security Document and under the Bonds, without prejudice to any other right or remedy of the Trustee or of the Bondholders, and to recover and enforce judgment or decree against the Issuer, but solely as provided in the Indenture and in the Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect (but solely from the moneys in the Bond Fund and other moneys available therefor to the extent provided in the Indenture) in any manner provided by law, the moneys adjudged or decreed to be payable. The Trustee shall file proof of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Bondholders allowed in any judicial proceedings relative to the Institution or the Issuer or their creditors or property.

Regardless of the occurrence of an Event of Default, the Trustee, if requested in writing by the Holders of over fifty percent (50%) in aggregate principal amount of the Bonds then Outstanding, and furnished with reasonable security and indemnity, shall institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under the Indenture or under any other Security Document by any acts which may be unlawful or in violation of the Indenture or of such other Security Document or of any resolution authorizing any Bonds, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders; provided, that such

request shall not be otherwise than in accordance with the provisions of law and of the Indenture and shall not be unduly prejudicial to the interests of the Holders of the Bonds not making such request. (Section 8.02)

**Application of Revenues and Other Moneys After Default.**

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture or under any other Security Document shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, be deposited in the Bond Fund and all moneys so deposited and available for payment of the Bonds shall be applied, subject to the Indenture, as follows:

(A) Unless the principal of all of the Bonds shall have become or have been declared due and payable,

First - To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

Second - To the payment to the Persons entitled thereto of the unpaid principal or Redemption Price, if any, of any of the Bonds or principal installments which shall have become due (other than Bonds or principal installments called for redemption for the payment of which moneys are held pursuant to the provisions of the Indenture), in the order of their due dates, with interest on such Bonds, at the rate or rates expressed thereon, from the respective dates upon which they become due and, if the amount available shall not be sufficient to pay in full Bonds or principal installments due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(B) If the principal of all the Bonds shall have become or have been declared due and payable, to the payment to the Bondholders of the principal and interest (at the rate or rates expressed in the Bonds) then due and unpaid upon the Bonds and if applicable to the Redemption Price of the Bonds without preference or priority of principal over interest or of interest over principal, Sinking Fund Installments, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

(C) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the default provisions of the Indenture, then, subject to the provisions of the Indenture which shall be applicable in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be applied in accordance with the provisions of paragraph (A) under this heading.

Whenever moneys are to be applied pursuant to the default provisions of the Indenture, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue; provided, however, that if the principal or Redemption Price of the Bonds Outstanding, together with accrued interest thereon, shall have been declared to be due and payable pursuant to the Indenture, such date of declaration shall be the date from which interest shall cease to accrue. The Trustee shall give such written notice to all Bondholders as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be

required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid. *(Section 8.03)*

#### **Majority Holders Control Proceedings.**

Anything in the Indenture to the contrary notwithstanding, the Majority Holders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture, or for the appointment of a receiver or any other proceedings under the Indenture; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of the Indenture. *(Section 8.05)*

#### **Individual Bondholder Action Restricted.**

No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provisions of the Indenture or of any other Security Document or the execution of any trust under the Indenture or for any remedy under the Indenture or under any other Security Document, unless such Holder shall have previously given to the Trustee written notice of the occurrence of an Event of Default as provided in the Indenture, and the Holders of over fifty percent (50%) in aggregate principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, and shall have offered it reasonable opportunity either to exercise the powers granted in the Indenture or in such other Security Document or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of sixty (60) days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by his, its or their action to affect, disturb or prejudice the pledge created by the Indenture, or to enforce any right under the Indenture except in the manner provided in the Indenture; and that all proceedings at law or in equity to enforce any provision of the Indenture shall be instituted, had and maintained in the manner provided in the Indenture and, subject to the provisions of the Indenture, be for the equal benefit of all Holders of the Outstanding Bonds.

Nothing in the Indenture, in any other Security Document or in the Bonds contained shall affect or impair the right of any Bondholder to payment of the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on each of the Bonds to the respective Holders thereof at the time, place, from the source and in the manner in the Indenture and in said Bonds expressed. *(Section 8.06)*

#### **Notice of Default.**

The Trustee shall promptly mail to the Issuer, to registered Holders of Bonds and to the Institution by first class mail, postage prepaid, written notice of the occurrence of any Event of Default. The Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to mail any notice required by the Indenture. *(Section 8.10)*

#### **Waivers of Default.**

The Trustee shall waive any default under the Indenture and its consequences and rescind any declaration of acceleration only upon the written request of the Majority Holders; provided, however, that there shall not be waived without the consent of the Holders of all the Bonds Outstanding (a) any default in the payment of the principal of any Outstanding Bonds at the date specified therein or (b) any default in the payment when due of the interest on any such Bonds, unless, prior to such waiver, all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds on overdue installments of interest in respect of which such default shall have occurred, and all arrears of payment of principal when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then

and in every such case the Institution, the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights under the Indenture, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon. *(Section 8.11)*

### **Resignation or Removal of Trustee.**

The Trustee may resign and thereby become discharged from the trusts created under the Indenture for any reason by giving written notice by first class mail, postage prepaid, to the Issuer, to the Institution and to the Holders of all Bonds not less than sixty (60) days before such resignation is to take effect, but such resignation shall not take effect until the appointment and acceptance thereof of a successor Trustee pursuant to the Indenture.

The Trustee may be removed at any time by an instrument or concurrent instruments in writing filed with the Trustee and signed by the Issuer or the Majority Holders or their attorneys-in-fact duly authorized. Such removal shall become effective either upon the appointment and acceptance of such appointment by a successor Trustee or at the date specified in the instrument of removal. The Trustee shall promptly give notice of such filing to the Issuer and the Institution. No removal shall take effect until the appointment and acceptance thereof of a successor Trustee pursuant to the Indenture.

If the Trustee shall resign or shall be removed, such Trustee must transfer and assign to the successor Trustee, not later than the date of this acceptance by the successor Trustee of its appointment as such, or thirty (30) days from the date specified in the instrument of removal or resignation, if any, whichever shall last occur, (i) all amounts (including all investments thereof) held in any Fund or Account under the Indenture, together with a full accounting thereof, (ii) all records, files, correspondence, registration books, Bond inventory, all information relating to the Indenture and to Bond payment status (i.e., outstanding principal balances, principal payment and interest payment schedules, Sinking Fund Installment schedules, pending notices of redemption, payments made and to whom, delinquent payments, default or delinquency notices, deficiencies in any Fund or Account balance, etc.) and all such other information (in whatever form) relating to all Funds and Accounts in the possession of the Trustee being removed or resigning, and (iii) all Security Documents and other documents or agreements, including, without limitation, all Uniform Commercial Code Financing Statements, all insurance policies or certificates, letters of credit or other instruments provided to the Trustee being removed or resigning (clauses (i), (ii) and (iii), together with the Trust Estate, being collectively referred to as the “**Trust Corpus**”). *(Section 9.07)*

### **Successor Trustee.**

If at any time the Trustee shall be dissolved or otherwise become incapable of acting or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator thereof, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of Trustee shall thereupon become vacant. If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason or if the Trustee shall resign, the Institution shall cooperate with the Issuer and the Issuer shall appoint a successor Trustee and shall use its best efforts to obtain acceptance of such trust by the successor Trustee within sixty (60) days from such vacancy or notice of resignation. Within twenty (20) days after such appointment and acceptance, the Issuer shall notify in writing the Institution and the Holders of all Bonds.

In the event of any such vacancy or resignation and if a successor Trustee shall not have been appointed within sixty (60) days of such vacancy or notice of resignation, the Majority Holders, by an instrument or concurrent instruments in writing, signed by such Bondholders or their attorneys-in-fact thereunto duly authorized and filed with the Issuer, may appoint a successor Trustee which shall, immediately upon its acceptance of such trusts, and without further act, supersede the predecessor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of the Indenture, within ninety (90) days of such vacancy or notice of resignation, the Holder of any Bond then Outstanding, the Issuer or any retiring Trustee or the Institution may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

Any Trustee appointed under the Indenture shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States authorized to exercise corporate trust

powers under the laws of the State and authorized by law and its charter to perform all the duties imposed upon it by the Indenture and each other Security Document. At the time of its appointment, any successor Trustee shall (x) have a capital stock and surplus aggregating not less than \$100,000,000 and (y) have an investment grade rating of at least "Baa3" or "P-3".

Any predecessor Trustee shall transfer to any successor Trustee appointed under the Indenture as a result of a vacancy in the position the Trust Corpus by a date not later than thirty (30) days from the date of the acceptance by the successor Trustee of its appointment as such. Where no vacancy in the position of the Trustee has occurred, the transfer of the Trust Corpus shall take effect in accordance with the provisions of the Indenture.

Every successor Trustee shall execute, acknowledge and deliver to its predecessor, and also to the Issuer, an instrument in writing accepting such appointment, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers and trusts, and subject to all the duties and obligations, of its predecessor, with like effect as if originally named as such Trustee; but such predecessor shall, nevertheless, on the written request of its successor or of the Issuer, and upon payment of the compensation, expenses, charges and other disbursements of such predecessor which are due and payable pursuant to the Indenture, execute and deliver an instrument transferring to such successor Trustee all the estate, properties, rights, immunities, powers and trusts of such predecessor and the Trust Corpus; and every predecessor Trustee shall deliver all property and moneys, together with a full accounting thereof, held by it under the Indenture to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such Trustee the estate, properties, rights, immunities, powers and trusts vested or intended to be vested in the predecessor Trustee, any such instrument in writing shall, on request, be executed, acknowledged and delivered by the Issuer. Any successor Trustee shall promptly notify the Issuer and the Paying Agent of its appointment as Trustee.

Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States and shall be authorized by law and its charter to perform all the duties imposed upon it by the Indenture and each other Security Document shall be the successor to such Trustee without the execution or filing of any paper or the performance of any further act. (*Section 9.08*)

### **Defeasance.**

If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, interest and all other amounts due or to become due thereon or in respect thereof, at the times and in the manner stipulated therein and in the Indenture, and all fees and expenses and other amounts due and payable under the Indenture and the Loan Agreement, and any other amounts required to be rebated to the Federal government pursuant to the Tax Certificate or the Indenture, shall be paid in full, then the pledge of any loan payments, revenues or receipts from or in connection with the Security Documents or the Facility under the Indenture and the estate and rights granted by the Indenture, and all covenants, agreements and other obligations of the Issuer to the Bondholders under the Indenture shall thereupon cease, terminate and become void and be discharged and satisfied and the Bonds shall thereupon cease to be entitled to any lien, benefit or security under the Indenture, except as to moneys or securities held by the Trustee or the Paying Agents as provided below under this heading. At the time of such cessation, termination, discharge and satisfaction, (1) the Trustee shall cancel and discharge the lien of the Indenture and of the Mortgage and execute and deliver to the Institution all such instruments as may be appropriate to satisfy such liens and to evidence such discharge and satisfaction, and (2) the Trustee and the Paying Agents shall pay over or deliver to the Institution or on its order all moneys or securities held by them pursuant to the Indenture which are not required (i) for the payment of the principal or Redemption Price, if applicable, Sinking Fund Installments for, or interest on Bonds not theretofore surrendered for such payment or redemption, (ii) for the payment of all such other amounts due or to become due under the Security Documents, or (iii) for the payment of any amounts the Trustee has been directed to pay to the Federal government under the Tax Certificate or the Indenture.

Bonds or interest installments for the payment or redemption of which moneys (or Defeasance Obligations which shall not be subject to call or redemption or prepayment prior to maturity and the full and timely payment of the principal of and interest on which when due, together with the moneys, if any, set aside at the same time, will provide funds sufficient for such payment or redemption) shall then be set aside and held in trust by the Trustee or Paying Agents, whether at or prior to the maturity or the redemption date of such Bonds, shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph under this heading, if (i) in case any such Bonds are to be redeemed prior to the maturity thereof, all action necessary to redeem such Bonds shall have been taken and notice of such redemption shall have been duly given or provision satisfactory under the requirements of the Indenture to the Trustee shall have been made for the giving of such notice, and (ii) if the maturity or redemption date of any such Bond shall not then have arrived, (y) provision shall have been made by deposit with the Trustee or other methods satisfactory to the Trustee for the payment to the Holders of any such Bonds of the full amount to which they would be entitled by way of principal or Redemption Price, Sinking Fund Installments, and interest and all other amounts then due under the Security Documents to the date of such maturity or redemption, and (z) provision satisfactory to the Trustee shall have been made for the mailing of a notice to the Holders of such Bonds that such moneys are so available for such payment on such maturity or redemption date. *(Section 10.01)*

#### **Funds on Deposit in 2013 CSFP Subaccount Not Available for Defeasance**

Amounts on deposit in the 2013 CSFP Subaccount of Debt Service Reserve Fund shall not be used to provide for the defeasance of the Bonds under Article X of the Indenture. *(Section 10.04)*

#### **Limitation on Modifications.**

The Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of the Indenture. *(Section 11.01)*

#### **Supplemental Indentures Without Bondholder's Consent.**

The Issuer and the Trustee may, from time to time and at any time, enter into Supplemental Indentures without the consent of the Bondholders for any of the following purposes:

- (1) To cure any formal defect, omission or ambiguity in the Indenture or in any description of property subject to the lien of the Indenture, if such action is not materially adverse to the interests of the Bondholders.
- (2) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with the Indenture as theretofore in effect.
- (3) To add to the covenants and agreements of the Issuer in the Indenture other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with the Indenture as theretofore in effect.
- (4) To add to the limitations and restrictions in the Indenture other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with the Indenture as theretofore in effect.
- (5) To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, the Indenture, of the properties of the Facility, or revenues or other income from or in connection with the Facility or of any other moneys, securities or funds, or to subject to the lien or pledge of the Indenture additional revenues, properties or collateral.

(6) To modify or amend such provisions of the Indenture as shall, in the opinion of Nationally Recognized Bond Counsel, be necessary to assure that the interest on the Bonds not be includable in gross income for Federal income tax purposes.

(7) To effect any other change in the Indenture which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Bondholders.

(8) To modify, amend or supplement the Indenture or any Supplemental Indenture in such manner as to permit the qualification of the Indenture and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America, and, if they so determine, to add to the Indenture or any Supplemental Indenture such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to the Indenture, there shall have been filed with the Trustee an opinion of Nationally Recognized Bond Counsel stating that such Supplemental Indenture is authorized or permitted by the Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms. (*Section 11.02*)

#### **Supplemental Indentures With Bondholders' Consent.**

Subject to the terms and provisions contained in the Indenture, the Majority Holders shall have the right from time to time, to consent to and approve the entering into by the Issuer and the Trustee of any Supplemental Indenture as shall be deemed necessary or desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Indenture. Nothing in contained in the Indenture shall permit, or be construed as permitting, (i) a change in the times, amounts or currency of payment of the principal of, Sinking Fund Installments for, redemption premium, if any, or interest on any Outstanding Bonds, a change in the terms of redemption or maturity of the principal of or the interest on any Outstanding Bonds, or a reduction in the principal amount of or the Redemption Price of any Outstanding Bond or the rate of interest thereon, or any extension of the time of payment thereof, without the consent of the Holder of such Bond, (ii) the creation of a lien upon or pledge of the Trust Estate other than the liens or pledge created by the Indenture and the other Security Documents, except as provided in the Indenture with respect to Additional Bonds, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) a reduction in the aggregate principal amount of Bonds required for consent to such Supplemental Indenture, or (v) a modification, amendment or deletion with respect to any of the terms set forth in this paragraph, without, in the case of items (ii) through and including (v) of this paragraph, the written consent of one hundred percent (100%) of the Holders of the Outstanding Bonds.

If at any time the Issuer shall determine to enter into any Supplemental Indenture for any of the purposes under this heading, it shall cause notice of the proposed Supplemental Indenture to be mailed, postage prepaid, to all Bondholders. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture, and shall state that a copy thereof is on file at the offices of the Trustee for inspection by all Bondholders.

Within one year after the date of such notice, the Issuer and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice only if there shall have first been filed with the Trustee (i) the written consents of the Majority Holders or the Holders of not less than 100%, as the case may be, in aggregate principal amount of the Bonds then Outstanding and (ii) an opinion of Nationally Recognized Bond Counsel stating that such Supplemental Indenture is authorized or permitted by the Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms. Each valid consent shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given. A certificate or certificates by the Trustee that it has examined such proof and that such proof is sufficient in accordance with the Indenture shall be conclusive that the consents have been given by the Holders of the Bonds described in such certificate or certificates. Any such consent shall be binding upon the Holder of the Bonds giving such consent and upon any subsequent Holder of such Bonds and of

any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by the Holder of such Bonds giving such consent or a subsequent Holder thereof by filing such revocation with the Trustee prior to the execution of such Supplemental Indenture.

If the Holders of not less than the percentage of Bonds required by the Indenture shall have consented to and approved the execution thereof as provided in the Indenture, no Holder of any Bond shall have any right to object to the execution of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

Upon the execution of any Supplemental Indenture pursuant to the provisions of the Indenture, the Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under the Indenture of the Issuer, the Trustee and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced under the Indenture, subject in all respects to such modifications and amendments. *(Section 11.03)*

#### **Amendments of Related Security Documents Not Requiring Consent of the Bondholders.**

Subject to the Indenture, the Issuer and the Trustee may, without the consent of or notice to the Bondholders, consent (if required) to any amendment, change or modification of any of the Related Security Documents for any of the following purposes: (i) to cure any ambiguity, inconsistency, formal defect or omission therein; (ii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred; (iii) to subject thereto additional revenues, properties or collateral; (iv) to evidence the succession of a successor Trustee or to evidence the appointment of a separate or co-Trustee or the succession of a successor separate or co-Trustee; (v) to make any change required in connection with a permitted amendment to a Related Security Document or a permitted Supplemental Indenture; and (vi) to make any other change that, in the judgment of the Trustee (which, in exercising such judgment, may conclusively rely, and shall be protected in relying, in good faith, upon an Opinion of Counsel or an opinion or report of engineers, accountants or other experts) does not materially adversely affect the Bondholders. The Trustee shall have no liability to any Bondholder or any other Person for any action taken by it in good faith pursuant to the Indenture. Before the Issuer or the Trustee shall enter into or consent to any amendment, change or modification to any of the Related Security Documents, there shall be filed with the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change or modification will not cause the interest on any of the Tax-Exempt Bonds to cease to be excluded from gross income for federal income tax purposes under the Code. *(Section 12.02)*

#### **Amendments of Related Security Documents Requiring Consent of Bondholders.**

Except as provided in the Indenture, the Issuer and the Trustee shall not consent to any amendment, change or modification of any of the Related Security Documents, without mailing of notice and the written approval or consent of the Majority Holders given and procured as in set forth in the Indenture; provided, however, (i) there shall be no amendment, change or modification to the Loan Agreement, Mortgage, Pledge and Security Agreement or Custody Agreement which materially and adversely affects the rights of CSFP, without the prior written consent of CSFP, and (ii) there shall be no amendment, change or modification to (a) the obligation of the Institution to make loan payments with respect to the Bonds under the Loan Agreement or the Promissory Note or (ii) the Tax Certificate, without the delivery of an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change, modification, reduction or postponement will not cause the interest on any Series of Tax-Exempt Bonds to become includable in gross income for Federal income tax purposes. If at any time the Institution shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change or modification to be mailed in the same manner as is provided in the Indenture with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Trustee for inspection by all Bondholders. The Trustee may, but shall not be obligated to, enter into any such amendment, change or modification to a Related Security Document which affects the Trustee's own rights, duties or immunities under such Related Security Document or otherwise. Before the

Trustee shall enter into or consent to any amendment, change or modification to any of the Related Security Documents, there shall be filed with the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change or modification will not cause the interest on any of the Tax-Exempt Bonds to cease to be excluded from gross income for federal income tax purposes under the Code. *(Section 12.03)*

#### **Rights of CSFP.**

Anything in the Indenture to the contrary notwithstanding, any Supplemental Indenture entered into pursuant to the Indenture which materially and adversely affects any rights, powers and authority of CSFP under the Loan Agreement or the Indenture or requires a revision of the Loan Agreement shall not become effective unless and until CSFP shall have given its written consent to such Supplemental Indenture signed by an Authorized Representative of CSFP. *(Section 12.04)*

#### **No Pecuniary Liability of Issuer or Members; No Debt of the State or the City.**

Every agreement, covenant and obligation of the Issuer under the Indenture is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall not create a debt of the State or the City and neither the State nor the City shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor but shall be a limited revenue obligation of the Issuer payable by the Issuer solely from the loan payments, revenues and receipts pledged to the payment thereof in the manner and to the extent in the Indenture specified and nothing in the Bonds, in the Loan Agreement, in the Indenture or in any other Security Document shall be considered as pledging any other funds or assets of the Issuer. The Issuer shall not be required under the Indenture or the Loan Agreement or any other Security Document to expend any of its funds other than (i) the proceeds of the Bonds, (ii) the loan payments, revenues and receipts and other moneys pledged to the payment of the Bonds, (iii) any income or gains therefrom, and (iv) the Net Proceeds with respect to the Facility. No provision, covenant or agreement contained in the Indenture or in the Bonds or any obligations in the Indenture or therein imposed upon the Issuer or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit.

All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Indenture shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, employee or agent of the Issuer in his individual capacity, and no recourse shall be had for the payment of the principal or Redemption Price, if any, of, Sinking Fund Installments for, or interest on the Bonds or for any claim based thereon or under the Indenture against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds. Neither the Bonds, the interest thereon, the Sinking Fund Installments therefor, nor the Redemption Price thereof shall ever constitute a debt of the State or of the City and neither the State nor the City shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor. *(Section 13.07)*

#### **Priority of Indenture Over Liens.**

The Indenture and the Mortgage are given in order to secure funds to pay for the Project and by reason thereof, it is intended that the Indenture and the Mortgage shall be superior to any laborers', mechanics' or materialmen's liens which may be placed upon the Facility subsequent to the recordation of the Mortgage. In compliance with Section 13 of the Lien Law, the Issuer will receive the advances secured by the Indenture and the Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvements and that the Issuer will apply the same first to the payment of the costs of improvements before using any part of the total of the same for any other purpose. *(Section 13.08)*

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**APPENDIX I**

**FORM OF BOND COUNSEL OPINION**

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**APPENDIX I**  
**FORM OF BOND COUNSEL OPINION**

[Date of Closing]

Build NYC Resource Corporation  
New York, New York

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance of the Tax Exempt Revenue Bonds (Bronx Charter School for Excellence Project), Series 2013A in the aggregate principal amount of \$23,310,000 (the “Series 2013A Bonds”) and Taxable Revenue Bonds, (Bronx Charter School for Excellence Project), Series 2013B in the aggregate principal amount of \$690,000 (the “Series 2013B Bonds,” and collectively with the Series 2013A Bonds, the “Bonds”) of Build NYC Resource Corporation, a local development corporation organized pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York (the “Issuer”).

The Bonds are issued under and pursuant to an Indenture of Trust, dated as of April 1, 2013 (the “Indenture”), between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”), and a resolution of the Issuer adopted on December 11, 2012 authorizing the Bonds.

The Bonds are dated the date hereof, are issuable as registered bonds in the denomination of \$5,000 or any integral multiple of \$5,000 in excess thereof, mature on and bear interest on the dates and at the rates set forth in the Indenture. The Bonds are subject to optional and mandatory redemption prior to maturity, in the manner and upon the terms and conditions set forth in the Indenture.

The Bonds are issued for the purpose of (i) financing of the acquisition of an approximately 12,500 square foot parcel of land and an existing building thereon located at 1960 Benedict Avenue, Bronx, New York and an approximately 5,000 square foot adjacent, vacant parcel (Block 3930, Lots 38 and 33) (the “Land”); (ii) financing of renovation of the existing building, construction of a new 7-story building, equipping and/or furnishing both buildings, and certain ancillary property thereto, resulting in a combined approximately 50,000 square foot facility consisting of one or more buildings and ancillary facilities on the Land (clauses (i) and (ii) are collectively, the “Facility”); (iii) funding of capitalized interest for the bonds; (iv) funding of a portion of the debt service reserve fund and (v) financing of certain costs of issuance (clauses (i), (ii), (iii), (iv) and (v) comprise and are hereinafter referred to collectively as the “Project”).

The Issuer and the Institution have entered into a Loan Agreement, dated as of April 1, 2013 (the “Loan Agreement”), providing, among other things, for the financing of the Project and the loan of the proceeds of the Bonds to the Institution. The obligation of the Institution to repay the loan will be evidenced by a certain Promissory Note dated the date hereof from the Institution to the Issuer and endorsed to the Trustee (the “Promissory Note”). The Bonds are also secured by a mortgage lien on and a security interest in the Institution’s fee title interest in the Facility pursuant to a Mortgage and Security Agreement, dated as April 1, 2013, from the Institution, as mortgagor, to the Issuer and the Trustee, as mortgagees (the “Mortgage”). Pursuant to an Assignment of Mortgage and Security Agreement, dated as of April 1, 2013 (the “Assignment of Mortgage”), the Issuer has assigned to the Trustee all of the Issuer’s right, title and interest in and to the Mortgage. The Bonds will be further secured by a lien and security interest in the collateral pledged pursuant to a certain Pledge and Security Agreement, dated as of April 1, 2013, from the Institution in favor of the Trustee (the “Security Agreement”).

It is provided in the Indenture that, upon complying with certain prescribed conditions, the Issuer may issue additional bonds from time to time on the terms and conditions and for the purposes stated in the Indenture, and said additional bonds, if issued, will be equally and ratably secured under the Indenture with the Bonds.

The Internal Revenue Code of 1986, as amended (the “Code”), establishes certain requirements that must be met subsequent to the issuance and delivery of the Series 2013A Bonds in order that, for federal income tax purposes, interest on the Series 2013A Bonds not be included in gross income pursuant to Section 103 of the Code. These requirements include, but are not limited to, requirements relating to the use and expenditure of proceeds of the Series 2013A Bonds, restrictions on the investment of the Series 2013A Bond proceeds prior to expenditure and the requirement that certain earnings be rebated to the federal government. Noncompliance with such requirements may cause interest on the Series 2013A Bonds to become subject to federal income taxation retroactive to their date of issue, irrespective of the date on which such noncompliance occurs or is ascertained.

On the date of delivery of the Series 2013A Bonds, the Issuer and the Institution will execute a Tax Certificate as to Arbitrage and the Provisions of Section 103 and 141-150 of the Internal Revenue Code of 1986, dated the date hereof and the Institution will execute a related tax certificate (collectively, the “Tax Compliance Certificate”), containing provisions and procedures pursuant to which such requirements can be satisfied. In executing the Tax Compliance Certificate, the Institution covenants that it will comply with the provisions and procedures set forth therein and that it will do and perform all acts and things necessary or desirable to assure that interest paid on the Series 2013A Bonds will, for federal income tax purposes, be excluded from gross income.

Certain requirements and procedures contained or referred to in the Indenture, the Loan Agreement, the Tax Compliance Certificate dated the date hereof and other relevant documents may be changed and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of nationally-recognized bond counsel. Winston & Strawn LLP expresses no opinion as to the effect on the exclusion from gross income for federal tax purposes, and as to the effect on the non-inclusion in taxable income for purposes of personal income taxes imposed by the State of New York and any political subdivision thereof (including The City of New York), of interest on the Series 2013A Bonds of any such change occurring, or such action or other action taken or not taken, after the date of issue of the Series 2013A Bonds, upon the advice or approval of bond counsel other than Winston & Strawn LLP.

We are of the opinion that:

1. The Issuer is duly organized and validly existing under the New York Not-for-Profit Corporation Law (the “Act”), and has the right and power thereunder to enter into the Indenture, and the Indenture has been duly authorized, executed and delivered by the Issuer, is in full force and effect, and is valid and binding upon the Issuer and enforceable against the Issuer in accordance with its terms.

2. The Issuer has the right and power to enter into the Indenture, the Loan Agreement, the Mortgage and the Assignment of Mortgage. The Indenture, the Loan Agreement, the Mortgage and the Assignment of Mortgage have been duly authorized, executed and delivered by the Issuer, and, assuming due authorization, execution and delivery by the other parties thereto, are in full force and effect in accordance with their terms and are valid and binding upon the Issuer and enforceable in accordance with their respective terms, and no other authorization by the Issuer for the Indenture, the Loan Agreement, the Mortgage and the Assignment of Mortgage is required.

4. The Issuer has the right and power to authorize, execute and deliver the Bonds, and the Bonds have been duly authorized, executed and delivered by the Issuer. The Bonds are valid and binding special obligations of the Issuer, payable solely from the loan payments, revenues and receipts derived from the Loan Agreement and pledged under the Indenture. The Bonds are enforceable in accordance with their terms and the terms of the Indenture and are entitled to the benefit of the Indenture. All conditions precedent to the delivery of the Bonds have been fulfilled.

5. Under existing statutes and court decisions, and assuming continuing compliance with the tax covenants set forth in the Tax Compliance Certificate in the form as in effect on the date hereof, interest on the

Series 2013A Bonds is not includable in gross income for federal income tax purposes pursuant to Section 103 of the Code, and (ii) interest on the Series 2013A Bonds is not an “item of tax preference” for purposes of the federal alternative minimum tax imposed on individuals and corporations under the Code; such interest, however, is included in the adjusted current earnings of certain corporations for purposes of calculating the alternative minimum tax imposed on such corporations.

In rendering this opinion, we have relied on the opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Institution, regarding, among other matters, the current qualification of the Institution as an organization described in Section 501(c)(3) of the Code. We note that the opinion of counsel to the Institution is subject to a number of qualifications and limitations. Failure of the Institution to be organized and operated in accordance with the Internal Revenue Service’s requirements for the maintenance of the status of the Institution as an organization described in Section 501(c)(3) of the Code or the failure of the Institution to use the proceeds of the Series 2013A Bonds in furtherance of their exempt purposes may result in interest on the Series 2013A Bonds being included in gross income for federal income tax purposes, possibly from the date of issuance of the Series 2013A Bonds.

6. Certain maturities of the Series 2013A Bonds have been initially offered to the public at prices in excess of the principal amount thereof payable at maturity. An initial purchaser (other than a purchaser who holds the Series 2013A Bonds as inventory, stock in trade or for sale to customers in the ordinary course of business) with an initial adjusted basis in a Series 2013A Bond in excess of its principal amount (a “Premium Bond”) will have amortizable bond premium that is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of the Premium Bond based on the purchaser’s yield to maturity (or in the case of a Premium Bond callable prior to maturity, over the period to the call date that produces the lowest yield on the Premium Bond, based on the purchaser’s yield to the call date and giving effect to any call premium). For purposes of determining gain or loss on the sale or other disposition of a Premium Bond, an initial purchaser is required to decrease such purchaser’s adjusted basis in such Bond annually by the amount of the amortizable bond premium for the taxable year.

7. Assuming continuing compliance by the Issuer and the Institution (and their successors) with the requirements of the Code that must be met in order for interest on the Series 2013A Bonds to be not includable in gross income for federal income tax purposes, interest on the Series 2013A Bonds (including any accrued original issue discount) is also not includable in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers.

8. Under existing statutes and court decisions, interest on the Series 2013B Bonds is included in the gross income of the owners thereof for federal income tax purposes and is included in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, New York. The advice set forth in this section was not intended or written by Bond Counsel to be used and cannot be used by an owner of the Series 2013B Bonds for the purpose of avoiding penalties that may be imposed on the owner of the Series 2013B Bonds. The advice set forth herein is written to support the promotion or marketing of the Series 2013B Bonds. Each owner of the Series 2013B Bonds should seek advice based on its particular circumstances from an independent tax advisor.

Except as stated in paragraphs 5, 6, 7 and 8 above, we express no opinion as to any federal, state or local tax consequences arising with respect to the Bonds or the ownership or disposition thereof.

In rendering the opinions in paragraph 5 above, we have relied upon and assumed (i) the material accuracy of the representations, statements of intention and reasonable expectations, and certifications of fact, contained in the Tax Compliance Certificate with respect to the use of proceeds of the Series 2013A Bonds and the investment of certain funds, and other matters affecting the exclusion of interest on the Series 2013A Bonds from gross income for federal income tax purposes under Section 103 of the Code, (ii) the opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Institution, dated the date hereof, regarding, among other matters, the current qualifications of the Institution as an organization described in Section 501(c)(3) of the Code, and (iii) compliance by the Issuer with procedures and ongoing covenants set forth in the Tax Compliance Certificate and with the ongoing tax covenants set forth in the Indenture and the Loan Agreement. Under the Code, failure to comply with such procedures and covenants may cause the interest on the Series 2013A Bonds to be included in gross income for federal income tax

purposes, retroactive to the date of issuance of the Series 2013A Bonds, irrespective of the date on which such noncompliance occurs or is ascertained. Compliance with certain of such requirements may necessitate that persons not within the control of the Issuer take or refrain from taking certain actions.

The foregoing opinions are qualified only to the extent that the enforceability of the Bonds, the Indenture, the Tax Compliance Certificate, the Promissory Note, the Loan Agreement, the Mortgage, the Assignment of Mortgage and the Security Agreement may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

In rendering this opinion, with respect to the due recording of the Mortgage and the Assignment of Mortgage, and the due filing and sufficiency of financing statements under the New York State Uniform Commercial Code, we have relied on the opinions of Meredith Jones, Esq., General Counsel to the Issuer, and of Orrick, Herrington & Sutcliffe LLP, counsel to the Institution, each dated the date hereof.

In rendering this opinion, we have relied as to matters of title of the Institution to the Facility on the mortgagee title insurance policy issued by Old Republic National Title Insurance Company insuring the Trustee's mortgage interest under the Mortgage in the real property constituting a part of the Facility.

In rendering this opinion, with respect to the due authorization, execution and delivery of the Loan Agreement, the Promissory Note, the Mortgage, the Security Agreement by the Institution, the due authorization, execution and delivery of Tax Compliance Certificate by the Institution, we have relied upon the opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Institution, dated the date hereof.

In rendering this opinion, with respect to the due authorization, execution and delivery of the Indenture, the Mortgage and the Security Agreement by the Trustee, we have relied upon the opinion of Carter Ledyard & Milburn LLP, counsel to the Trustee, dated the date hereof.

Attention is called 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 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 purchaser of the Bonds.

In rendering this opinion, we express no opinion as to the necessity for obtaining any licenses, permits or other approvals relating to the operation of the Facility or the application or effect of any environmental laws, ordinances, rules, regulations or other requirements of any governmental authority with respect to the Facility or the transactions contemplated under the Indenture.

The foregoing opinions are further subject, however, to the qualification that, except as otherwise provided in paragraph 4 above, we express no opinion as to matters relating to the rights in, title to or sufficiency of the description of any property or collateral described in the Security Documents (as defined in the Indenture) or the creation, perfection or relative priority of any lien or security interest created with respect to such property or collateral thereunder.

We have examined a Bond in fully registered form and, in our opinion, the form of said Bond and its execution are regular and proper.

This opinion is issued as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any action hereafter taken or not taken, or any facts or circumstances, or any changes in law or in interpretations thereof, that may hereafter arise or occur, or for any other reason.

Very truly yours,

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**APPENDIX J**

**FORM OF CONTINUING DISCLOSURE AGREEMENT**

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**APPENDIX J**  
**FORM OF CONTINUING DISCLOSURE AGREEMENT**

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**CONTINUING DISCLOSURE AGREEMENT**

**between**

**Bronx Charter School for Excellence,  
as Borrower**

**and**

**U.S. Bank National Association,  
acting solely in its capacity as Dissemination Agent**

**Dated as of April 1, 2013**

**Relating to:**

**\$23,310,000**  
**Build NYC Resource Corporation**  
**Tax-Exempt Revenue Bonds, Series 2013A**  
**(Bronx Charter School for Excellence Project)**

**\$690,000**  
**Build NYC Resource Corporation**  
**Taxable Revenue Bonds, Series 2013B**  
**(Bronx Charter School for Excellence Project)**

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This instrument drafted by:  
Kennedy & Graven, Chartered (BWJ)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402

## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement, dated as of April 1, 2013 (this “Disclosure Agreement”), is executed and delivered by and between the Bronx Charter School for Excellence, a New York nonprofit education corporation (the “Institution”), and U.S. Bank National Association, acting solely in its capacity as dissemination agent, New York, New York (the “Trustee” and “Dissemination Agent”), in connection with the issuance by the Build NYC Resource Corporation (the “Issuer”) of its (i) Tax-Exempt Revenue Bonds (Bronx Charter School for Excellence Project), Series 2013A (the “Series 2013A Bonds”), in the original aggregate principal amount of \$23,310,000, and (ii) Taxable Revenue Bonds (Bronx Charter School for Excellence Project), Series 2013B (the “Series 2013B Bonds”), in the original aggregate principal amount of \$690,000. The Series 2013A Bonds and the Series 2013B Bonds are collectively referred to herein as the “Series 2013 Bonds”. The Series 2013 Bonds are being issued by the Issuer pursuant to (i) a resolution of the governing body of the Issuer, and (ii) an Indenture of Trust, dated as of April 1, 2013 (the “Indenture”), between the Issuer and Trustee. Capitalized terms used but not otherwise defined in this Disclosure Agreement shall have the meanings assigned thereto in the Indenture.

**Section 1. Purpose of Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the Institution for the benefit of the Registered Owners of the Series 2013 Bonds (for such purpose beneficial owners of the Series 2013 Bonds shall also be considered Registered Owners of the Series 2013 Bonds) and to assist Piper Jaffray & Co., Minneapolis, Minnesota (the “Underwriter”), in complying with paragraph (b)(5) of Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. § 240.15c2-12) (the “Rule”).

### **Section 2. Defined Terms.**

“*Annual Report*” means the financial information and operating data required to be transferred by the Institution to the Dissemination Agent pursuant to the Section 3(a)(1) of this Disclosure Agreement.

“*Beneficial Owner*” means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2013 Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series 2013 Bonds for federal income tax purposes.

“*Construction Reports*” means the construction status reports required to be transferred by the Institution to the Dissemination Agent pursuant to the Section 4(a)(c) of this Disclosure Agreement.

“*CSFP*” means Charter School Financing Partnership, LLC, its successors and assigns.

“*Disclosure Report*” means any of the Annual Reports, Quarterly Reports, Construction Reports, or Operations Reports required by this Disclosure Agreement.

“*Dissemination Agent*” initially means the Trustee, as dissemination agent under this Disclosure Agreement, its successors and assigns.

“*EMMA*” means the Electronic Municipal Market Access system operated by the MSRB and the primary portal for complying with the continuing disclosure requirements of the Rule.

“*Events Notices*” means the notices required to be given by the Institution pursuant to Section 5 of this Disclosure Agreement.

“*Indenture*” means the Indenture of Trust, dated as of April 1, 2013, between the Issuer and Trustee.

“*Institution*” means Bronx Charter School for Excellence, a New York nonprofit education corporation, its successors and assigns.

*“Institution’s Audited Financial Statements”* means the School’s annual financial statements, prepared in accordance with generally accepted accounting principles (“GAAP”).

*“Institution’s Disclosure Representative”* means the Executive Director of the Institution or his designee or such other person as the Institution shall designate in writing to the Trustee from time to time.

*“Institution’s Fiscal Year”* means the fiscal year of the Institution.

*“Issuer”* means Build NYC Resource Corporation, its successors and assigns.

*“MSRB”* means the Municipal Securities Rulemaking Board, located at 1900 Duke Street, Suite 600, Alexandria, Virginia 22314, its successors and assigns.

*“Official Statement”* means the Official Statement, dated April 16, 2013, relating to the Series 2013 Bonds.

*“Operations Report”* means the financial information and operating data required to be transferred by the Institution to the Dissemination Agent pursuant to the Section 3(a)(3) of this Disclosure Agreement.

*“Participating Underwriter”* means the Underwriter, as original purchaser of the Series 2013 Bonds, its successors and assigns.

*“Quarterly Report”* means the financial information and operating data required to be transferred by the Institution to the Dissemination Agent pursuant to the Section 3(a)(2) of this Disclosure Agreement.

*“Repository”* means EMMA and any successor thereto.

*“Rule”* means SEC Rule 15c2-12(b)(5) promulgated by the SEC under the Securities Exchange Act of 1934, as amended or supplemented by the SEC from time to time.

*“SEC”* means the Securities and Exchange Commission, its successors and assigns.

*“Series 2013 Bonds”* means the Issuer’s Series 2013A Bonds and its Series 2013B Bonds.

*“Series 2013A Bonds”* means the Issuer’s Revenue Bonds, Series 2013A (Bronx Charter School for Excellence) issued by the Build NYC Resource Corporation. in the original aggregate principal amount of \$23,310,000.

*“Series 2013B Bonds”* means the Issuer’s Revenue Bonds, Series 2013B (Bronx Charter School for Excellence) issued by the Build NYC Resource Corporation in the original aggregate principal amount of \$690,000.

*“Significant Bondholder”* means a Beneficial Owner of \$1,000,000 or more of the Series 2013 Bonds.

*“Trustee”* means U. S. Bank National Association, its successors and assigns.

*“Underwriter”* means Piper Jaffray & Co., its successors and assigns.

### **Section 3. Provision of Annual Reports, Quarterly Reports, and Operations Reports.**

(a) (1) *Annual Reports.* Not later than one hundred fifty (150) days after the end of the Institution’s fiscal year, commencing with the fiscal year ended June 30, 2013, the Institution shall provide to the Repository (or shall cause the Dissemination Agent to provide to the Repository), an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Institution may be submitted separately from the balance of the Annual Report and later than the date required

above for the filing of the Annual Report if the audited financial statements are not available by that date, but the unaudited financial information available on such date is submitted. The Annual Report shall be provided at least annually notwithstanding a fiscal year longer than twelve (12) calendar months. The Institution may change its current fiscal year, but must notify the Issuer and the Repository or any other filing system approved by the SEC, of each such change within thirty (30) days after the later of the adoption of a new fiscal year and the end of the fiscal year that occurs before the former fiscal year would have ended. The Institution's audited financial statements shall include the Institution's Days Cash on Hand calculation and Debt Service Coverage Ratio for such fiscal year.

(2) *Quarterly Reports.* On or before forty-five (45) days after the end of each fiscal quarter (each a "Quarterly Submission Date"), commencing with the quarter ending June 30, 2013, and the Institution shall provide to the Repository (or shall cause the Dissemination Agent to provide to the Repository), certain financial information relating to the Institution as specified in Section 4(b) hereof (the "Quarterly Reports"). In each case, the Quarterly Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement.

(3) *Operations Reports.* Within thirty (30) days of receipt or completion, the Institution shall provide (or shall cause the Dissemination Agent to provide to the Repository) the following information to the Repository:

(i) a copy (which may be sent electronically) of the Institution's adopted annual budget for the present Fiscal Year and a copy of revisions, if any, to the Institution's annual budget as approved by its governing board; and

(ii) as required by the Loan Agreement, a five-year comprehensive capital assessment plan (which may be sent electronically) with respect to the Facility, detailing the condition and projected sources of funding such needs, if any.

(b) As soon as is practicable after the completion of any of the disclosure reports required by paragraph (a) above (collectively referred to as the "Disclosure Reports"), the Institution shall provide the Dissemination Agent, the Participating Underwriter, CSFP, and, upon request, any Significant Bondholder with a copy (which may be by electronic transfer) of each Disclosure Report as requested. The Dissemination Agent shall, at the Institution's cost, transmit the information contained in the Disclosure Reports to each Significant Bondholder, at their request, and to the Issuer, at its request. The Dissemination Agent shall have no duty regarding such information other than to retain any such information that it receives and to transmit same in accordance with the Agreement.

(c) If the Institution does not provide to the Dissemination Agent a copy of an Annual Report or the Quarterly Report by the applicable dates required in Section 3(a) above, the Dissemination Agent shall send a notice to the Institution, the Repository, and the Participating Underwriter, in substantially the form attached as EXHIBIT B. In the event that the Institution files the Disclosure Reports directly with the Repository on or before the dates required in Section 3(a) above, the Institution shall promptly provide the Dissemination Agent with a certification, or other documentation reasonably required by the Dissemination Agent, that the filing of the Disclosure Report was made in a timely manner on or before the date required herein and such filing contained the information required by this Disclosure Agreement.

(d) The Dissemination Agent shall, provided the Annual Report has been provided to the Dissemination Agent by the Institution, file a report with the Institution, and (if the Dissemination Agent is not the Trustee) the Trustee that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided, and listing all the Repositories to which it was provided.

#### **Section 4. Content of Annual Reports and Quarterly Reports.**

(a) *Annual Reports.* The Annual Report shall contain or include by reference the audited financial statements of the Institution for the prior fiscal year, prepared in accordance with generally accepted accounting

principles as promulgated from time to time. If the Institution's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain financial statements that have not been reviewed in a format similar to the Institution's audited financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

To the extent not included in the audited final statements of the Institution, the Annual Report shall also include (i) updates to the information in Appendix A to the Official Statement found in the tables substantially the form set forth in Exhibit A; and (ii) a certificate substantially in the form attached hereto as EXHIBIT A that provides certain Institution data and demonstrates the Institution's compliance with certain operating covenants contained in the Loan Agreement.

(b) *Quarterly Reports.* The Quarterly Report shall contain unaudited financial statements of the Institution for such fiscal quarter consisting of at least statements of financial position (balance sheets and income statements) as of the end of such quarter and statements of activities for such fiscal quarter and year to date, each prepared in accordance with generally accepted accounting principles, as in effect from time to time (subject to year end adjustments and except such financial statements may omit footnotes that would be required by generally accepted accounting principles), consistently applied, or, if and to the extent such financial statements have not been prepared in accordance with such generally accepted accounting principles beyond the reasonable control of the Institution noting the discrepancies therefrom and the effect thereof. The Quarterly Report shall include a comparison of revenues and expenditures to budgeted revenues and expenditures, with an explanation provided for any variances greater than 10%.

(c) *Construction Reports.* Commencing July 2013, during construction of the Project, the Institution shall deliver to the Trustee on the first Business Day of each month, a certificate of an Authorized Representative of the Institution stating: (i) the estimated occupancy date for the Project, (ii) the percentage of Project completion, and (iii) the amount of Series 2013 Bond proceeds expended as of the date of the certificate.

(d) *Annual Conference Calls.* The Institution shall hold an annual conference call with Beneficial Owners by December 31 of each calendar year following issuance of the audited financial statements of the Institution. Upon request of any Significant Bondholder, such conference call shall take place within three (3) Business Days of issuance of such annual financial statements. Notice of the annual conference call shall be posted to EMMA at least three (3) Business Days prior to the occurrence of the call. Such call shall be recorded and posted to EMMA for at least a 30-day period following occurrence of the call.

(e) Any or all of the Disclosure Reports may be incorporated by reference from other documents, including official statements, which have been submitted to the Repository. If the Disclosure Report information is changed or this Disclosure Agreement is amended in accordance with its terms, then the Institution is to include in the next Disclosure Report to be delivered thereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided.

**Section 5. Listed Events.** The Institution agrees to provide or cause to be provided, in a timely manner not in excess of ten (10) business days, to the Repository or to any other filing system approved by the SEC, notice of the occurrence of any of the following events ("Events Notice") with respect to the Series 2013 Bonds:

- (a) Principal and interest payment delinquencies;
- (b) Non-payment related defaults, if material;
- (c) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) Substitution of credit or liquidity providers, or their failure to perform;

(f) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;

(g) Modifications to rights of security holders, if material;

(h) Bond calls, if material, and tender offers;

(i) Defeasances;

(j) Release, substitution, or sale of property securing repayment of the securities, if material;

(k) Rating changes;

(l) Bankruptcy, insolvency, receivership or similar event of the obligated person;

(m) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(n) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

Each Events Notice shall be so captioned and shall prominently state the date, title and (to the extent less than all of the Series 2013 Bonds are affected by the related material event) CUSIP numbers of the affected Series 2013 Bonds. The Institution may from time to time choose to provide notice of the occurrence of certain other events, in addition to those listed above.

**Section 6. EMMA.** The SEC has designated the EMMA system operated by the MSRB as the nationally recognized municipal securities information repository and the exclusive portal for complying with continuing disclosure requirements of the Rule. Until the EMMA system is amended or altered by the MSRB or the SEC, the Institution or the Dissemination Agent shall make all filings required under this Disclosure Agreement solely with EMMA.

**Section 7. Dissemination Agent.** The Institution has engaged the Trustee to assist the Institution in disseminating information hereunder (the “Dissemination Agent”). The Institution shall send all Disclosure Reports required by Section 3 hereof, and Event Notices required by Section 5 hereof, to the Dissemination Agent. The Dissemination Agent shall, within five (5) days of receipt of such Disclosure Report and within ten (10) days of the occurrence of the events requiring an Events Notice, forward such information to (i) the Repository and/or the MSRB or any other filing system approved by the SEC, as appropriate; (ii) the Issuer; (iii) the Participating Underwriter; (iv) CSFP, and (v) any Significant Bondholder who requests such information in writing from the Dissemination Agent or the Institution or who is identified in writing by the Participating Underwriter.

The Institution agrees to pay any reasonable costs incurred by the Dissemination Agent as a result of disseminating information to any requesting Registered or Beneficial Owners of the Series 2013 Bonds. The Institution may discharge the Dissemination Agent or any successor Dissemination Agent with or without appointing a successor Dissemination Agent. The Dissemination Agent does not have any duty to review the materials described in this paragraph prior to disseminating such materials.

**Section 8. Termination of Obligations.** Pursuant to paragraph (b)(5)(iii) of the Rule, the Institution’s obligation to provide the Disclosure Reports and any Events Notice, as set forth in this Disclosure Agreement, shall terminate if and when the Institution no longer remains an obligated person with respect to the Series 2013 Bonds, which shall occur upon either payment of the Series 2013 Bonds in full or the legal defeasance of the Series 2013 Bonds in accordance with the Indenture.

**Section 9. Enforceability and Remedies.** This Disclosure Agreement is intended to be for the sole benefit of the Registered Owners of the Series 2013 Bonds (for such purpose beneficial owners of the Series 2013 Bonds shall also be considered Registered Owners of the Series 2013 Bonds), the Issuer, and the Underwriter and shall create no rights in any other person or entity.

This Disclosure Agreement shall be enforceable by or on behalf of any such Registered Owner of the Series 2013 Bonds, provided that the right of any Registered Owner to challenge the timely filing, failure to file or the adequacy of the information furnished pursuant to this Disclosure Agreement shall be limited to an action by or on behalf of Registered Owners representing at least 25% of the aggregate outstanding principal amount of the Series 2013 Bonds. This Disclosure Agreement is also enforceable on behalf of the Registered Owners of the Series 2013 Bonds by the Trustee, and the Trustee may, and upon the written direction of (i) the Registered Owners of not less than 25% of the aggregate outstanding principal amount of the Series 2013 Bonds or (ii) the Underwriter shall, proceed to protect and enforce the rights of the Registered Owners of the Series 2013 Bonds pursuant to this Disclosure Agreement; provided that in all cases the Trustee shall be entitled to the indemnification and other provisions of the Indenture with regard to any actions. Prior to proceeding at the request or direction of the Underwriter the Trustee may require the same types of indemnification and related protections from the Underwriter to which the Trustee would otherwise be entitled under the Indenture if so requested or directed by the Registered Owners under the terms of the Indenture. Any failure by the Institution to comply with the provisions of this Disclosure Agreement shall not be an Event of Default under the Loan Agreement or the Indenture.

The Registered Owners' and the Trustee's rights to enforce the provisions of this Disclosure Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel the Institution to perform the Institution's obligations under this Disclosure Agreement, and the Institution, its directors, officers and employees shall incur no liability under this Disclosure Agreement by reason of any act or failure to act hereunder. Without limiting the generality of the foregoing, neither the commencement nor the successful completion of an action to compel performance under this Section 9 entitles the Trustee or any other person to attorneys' fees, financial damages of any sort or any other relief other than an order or injunction compelling performance; provided that the Trustee shall nevertheless be entitled to attorneys' fees and such other rights and amounts as provided in the Indenture.

**Section 10. Amendment.** Notwithstanding any other provision of this Disclosure Agreement, the Institution and the Trustee may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, without the consent of the Registered Owners but with the consent of the Trustee, under the following conditions:

(a) The amendment or waiver may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the Institution, or type of business conducted;

(b) This Disclosure Agreement, as amended or with the provision so waived, would have complied with the requirements of the Rule at the time of the original issuance of the Series 2013 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not materially impair the interest of Registered Owners of the Series 2013 Bonds, as determined either by parties unaffiliated with the Institution (which shall include the Trustee or Bond Counsel, or any other party determined by any of them to be unaffiliated), or by approving vote of Registered Owners of the Series 2013 Bonds pursuant to the terms of the Indenture at the time of the amendment or waiver.

The Institution shall provide notice of each amendment or waiver to the Repository or any other filing system approved by the SEC. The initial annual financial or operating information provided by the Institution after the amendment or waiver shall explain, in narrative form, the reasons for the amendment or waiver and the effect of the change in the type of operating data or financial information being provided.

**Section 11. Counterparts.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

**Section 12. Choice of Law.** This Disclosure Agreement shall be governed by and construed in accordance with the laws of the State of New York, provided that to the extent this Disclosure Agreement addresses matters of federal securities laws, including the Rule, this Disclosure Agreement shall be construed in accordance with such federal securities laws and official interpretations thereof.

**Section 13. Severability.** If any portion of this Disclosure Agreement shall be held invalid or inoperative, then, so far as is reasonable and possible (i) the remainder of this Disclosure Agreement shall be considered valid and operative, and (ii) effect shall be given to the intent manifested by the portion held invalid or inoperative.

**Section 14. Other Instruments.** The Institution and the Dissemination Agent covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Disclosure Agreement.

**Section 15. Captions, Titles, and Headings.** The captions, titles, and headings used in this Disclosure Agreement are for convenience only and shall not be construed in interpreting this Disclosure Agreement.

**Section 16. Entire Agreement.** This Disclosure Agreement contains the entire understanding among the parties and supersedes any prior understandings or written or oral agreements between them respecting the subject matter of this Disclosure Agreement.

**Section 17. Misconduct.** The Dissemination Agent may act through agents and shall not be responsible for the willful misconduct or gross negligence of any agent appointed with due care.

**Section 18. Force Majeure.** In no event shall the Dissemination Agent be responsible or liable for any failure or delay in the performance any act or obligation obligations hereunder arising out of or caused by, directly or indirectly, force majeure events beyond its control, including without limitation, strikes, work stoppages, accidents, acts of war, other military disturbances or terrorism, earthquakes, fire, flood, sabotage, epidemics, riots, nuclear or natural catastrophes or acts of God, labor disputes, acts of civil or military authority and governmental action, or the unavailability of the Federal Reserve Board wire systems and interruptions, loss or malfunctions of utilities, communication facilities or computer (software and hardware) services; it being understood that the Dissemination Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**Section 19. Actions, Suites or Proceedings.** Each of the parties hereto hereby irrevocably agrees that any action, suit or proceedings against any of them by any of the aforementioned parties arising out of or in connection with this agreement shall be brought before the jurisdiction of any federal or state court of competent jurisdiction located in the Borough of Manhattan, New York City, New York.

**Section 20. Waiver of Trial by Jury.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER.

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IN WITNESS WHEREOF, we have set our hands as of the date set forth above.

**BRONX CHARTER SCHOOL FOR EXCELLENCE**, a  
New York nonprofit education corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**, as Trustee and  
Dissemination Agent

By: \_\_\_\_\_

Its: \_\_\_\_\_

(Signature Page to the Bronx Charter School for Excellence Continuing Disclosure Agreement)

## EXHIBIT A

### FORM OF CERTIFICATE FOR ANNUAL FILING OF CERTAIN INSTITUTION OPERATING COVENANTS

Name of Issuer: Build NYC Resource Corporation

Name of Bond Issue: Revenue Bonds (Bronx Charter School for Excellence)  
Tax-Exempt Series 2013A  
Taxable Series 2013B

Dissemination Agent: U.S. Bank National Association

Name of Institution: Bronx Charter School for Excellence

Date of Issuance: April 24, 2013

NOTICE IS HEREBY GIVEN that the Institution is providing to the Dissemination Agent the following operational information as required under Section 4(a) of the Continuing Disclosure Agreement, dated as of April 1, 2013 (the "Disclosure Agreement"), between the Dissemination Agent, the Institution. The Disclosure Agreement requires that the Institution provide this information to the Dissemination Agent within one hundred eighty (180) days of the end of each fiscal year. Defined terms used in this certificate and not defined herein shall have the meanings granted to such terms in the Indenture of Trust, dated as of April 1, 2013 (the "Indenture"), between the Issuer and U.S. Bank National Association, as trustee (the "Trustee"). The information contained Section 1 below is unaudited, but is derived from the audited financial statements of the Institution. The Tables in Section 2 below have been prepared by the Institution.

1. As of June 30, 20\_\_, the Institution's:

- (a) Cash on Hand was equal to \$\_\_\_\_\_.
- (b) Days Cash on Hand was \_\_\_\_ days (Cash on Hand in the amount of \$\_\_\_\_\_, divided by the quotient of Operating Expenses for the 20\_\_ fiscal year of \$\_\_\_\_\_ for the fiscal year ended June 30, divided by 365).
- (c) The amount of Cash on Hand required to comply with the covenant contained in Section \_\_\_\_ of the Loan Agreement for current fiscal year is \$\_\_\_\_\_ and the Borrower [is/is not] in compliance with such covenant.
- (d) The amount on deposit in the Repair and Replacement Fund was \$\_\_\_\_\_.
- (e) The Borrower's Debt Service Coverage Ratio for fiscal year 20\_\_ was \_\_\_\_x.

#### 2. BCSE Teacher and Educational Associate Experience

	<u>2012-2013</u>	<u>2011-2012</u>	<u>2010-2011</u>	<u>2009-2010</u>	<u>2008-2009</u>
Beginners					
1-5 Years Experience					
6-10 Years Experience					
Over 10 Years Experience					
Total Teachers and Educational Associates					
Student – Teacher Ratio					

**3. BCSE Teacher and Educational Associate Turnover Rate**

	<u>2011-2012</u>	<u>2010-2011</u>	<u>2009-2010</u>	<u>2008-2009</u>	<u>2007-2008</u>
Less than Five Years Experience					
Total					

- 4. Performance Scores.** The following are average BCSE and 11th District student performance scores for the past five school years.

**Average Student Performance Scores: BCSE and 11th District**

<u>School Year</u>	<u>Average Score: English Language Arts</u>		<u>Average Score: Mathematics</u>	
	<u>BCSE</u>	<u>11th District</u>	<u>BCSE</u>	<u>11th District</u>
2007-08				
2008-09				
2009-10				
2010-11				
2011-12				

**5. Historical Enrollment by Grade Level**

<u>Grade</u>	<u>2008-09</u>	<u>2009-2010</u>	<u>2010-2011</u>	<u>2011-2012</u>	<u>2012-2013</u>
K					
1					
2					
3					
4					
5					
6					
7					
8					
Total Enrollment					

**6. Projected Enrollment by Grade Level**

<b>Projected Enrollment by Grade Level</b>					
<u>Grade</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>
K					
1					
2					
3					
4					
5					
6					
7					
8					
Total Enrollment					

7. **Student Retention Percentage**

**Retention Rate by School Year**

School Year	Percent Retention from Previous School Year
2005-2006	
2006-2007	
2007-2008	
2008-2009	
2009-2010	
2010-2011	
2011-2012	
2012-2013	

8. **Current Wait List**

**Current 20\_\_ - \_\_ Waitlist**

Grade	Waitlisted Students	Available Openings
K		
1		
2		
3		
4		
5		
6		
7		
8		
Total		

This certificate is being provided by the Institution to the Dissemination Agent on a date which is [within][outside] of one hundred fifty (150) days from the end of the Institution's prior fiscal year.

Dated: \_\_\_\_\_

**BRONX CHARTER SCHOOL FOR EXCELLENCE**, as  
Institution

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT B**

**NOTICE TO REPOSITORIES OF FAILURE TO  
FILE ANNUAL OR QUARTERLY REPORT**

Name of Issuer: Build NYC Resource Corporation

Name of Bond Issue: Revenue Bonds (Bronx Charter School for Excellence)  
Tax-Exempt Series 2013A  
Taxable Series 2013B

Dissemination Agent: U.S. Bank National Association

Name of Institution: Bronx Charter School for Excellence

Date of Issuance: April 24, 2013

NOTICE IS HEREBY GIVEN that the Institution has not provided an [Annual Report][Quarterly Report] with respect to the above-named Series 2013 Bonds as required by the Continuing Disclosure Agreement, dated as of April 1, 2013, between the undersigned Dissemination Agent and the Institution. The Institution anticipates that the [Annual Report] [Quarterly Report] will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION,**  
as Dissemination Agent

By \_\_\_\_\_  
Authorized Signatory

cc: Build NYC Resource Corporation  
Bronx Charter School for Excellence  
Piper Jaffray & Co.

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**APPENDIX K**

**BOOK-ENTRY ONLY SYSTEM**

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## APPENDIX K

### BOOK-ENTRY ONLY SYSTEM

*The information in this APPENDIX K concerning DTC (as defined below), Cede & Co. and the Book-Entry System has been furnished by DTC for use in disclosure documents such as this Official Statement. The Issuer and the Underwriter believe such information to be reliable, but neither the Issuer nor the Underwriter takes any responsibility for the accuracy or completeness thereof.*

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the securities discussed in the body of this Official Statement (the “Series 2013 Bonds”). The Series 2013 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2013 Bond certificate will be issued for each maturity of the Series 2013 Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

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

Purchases of the Series 2013 Bonds under the DTC system must be made by or through Direct Participants which will receive a credit for the Series 2013 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2013 Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2013 Bond are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2013 Bonds, except in the event that use of the book-entry system for the Series 2013 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2013 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2013 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2013 Bond; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2013 Bond are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2013 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2013 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Series 2013 Bond documents. For example, Beneficial Owners of the Series 2013 Bonds may wish to ascertain that the nominee holding the Series 2013 Bond for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption notices are required to be sent to DTC. If less than all of the Series 2013 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to Series 2013 Bond unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Series 2013 Bond are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Series 2013 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the Issuer or the Bond Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or the Bond Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner will give notice to elect to have its Series 2013 Bond purchased or tendered, through its Participant, to the Bond Trustee, and will effect delivery of such Series 2013 Bond by causing the Direct Participant to transfer the Participant's interest in the Series 2013 Bonds, on DTC's records, to the Bond Trustee. The requirement for physical delivery of Series 2013 Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Series 2013 Bond are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Series 2013 Bonds to the Bond Trustee's DTC account.

DTC may discontinue providing its services as depository with respect to the Series 2013 Bonds at any time by giving reasonable notice to the Issuer or the Bond Trustee. Under such circumstances, in the event that a successor depository is not obtained, Series 2013 Bond certificates are required to be printed and delivered. The Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Series 2013 Bond certificates will be printed and delivered to DTC.

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

THE INFORMATION ABOVE DISCUSSING THE BOOK-ENTRY SYSTEM HAS BEEN FURNISHED BY DTC. NO REPRESENTATION IS MADE BY THE ISSUER, THE CORPORATION OR THE UNDERWRITER AS TO THE COMPLETENESS OR ACCURACY OF SUCH INFORMATION OR AS TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE

HEREOF. NO ATTEMPT HAS BEEN MADE BY THE ISSUER, THE CORPORATION OR THE UNDERWRITER TO DETERMINE WHETHER DTC IS OR WILL BE FINANCIALLY OR OTHERWISE CAPABLE OF FULFILLING ITS OBLIGATIONS. THE ISSUER HAS NO RESPONSIBILITY OR OBLIGATION TO DTC PARTICIPANTS, INDIRECT PARTICIPANTS OR BENEFICIAL OWNERS, OR THE PERSONS FOR WHICH THEY ACT AS NOMINEES WITH RESPECT TO THE SERIES 2013 BOND, OR FOR ANY PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST PAYMENT THEREON.

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