

**LOAN AGREEMENT**

**Between**

**COUNTY OF MARSHALL, KENTUCKY**

**And**

**KENTUCKY BAPTIST ASSEMBLIES, INC.**

**\$ \_\_\_\_\_**  
**INDUSTRIAL BUILDING REVENUE REFUNDING BONDS, SERIES 2018**  
**(KENTUCKY BAPTIST ASSEMBLIES, INC. PROJECT)**

**Dated: November \_\_, 2018**

**THE INTEREST OF THE COUNTY OF MARSHALL, KENTUCKY  
IN THIS LOAN AGREEMENT HAS BEEN ASSIGNED TO  
U.S. BANK, NATIONAL ASSOCIATION**

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but is for convenience of reference only.)

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## LOAN AGREEMENT

This LOAN AGREEMENT, dated November \_\_, 2018, between the COUNTY OF MARSHALL, KENTUCKY, a political subdivision of the Commonwealth of Kentucky (the "Issuer"), and KENTUCKY BAPTIST ASSEMBLIES, INC., a Kentucky nonprofit corporation (the "Borrower"):

### WITNESSETH:

WHEREAS, pursuant to §§ 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the "Act"), the Issuer may issue revenue bonds and lend the proceeds thereof to any person to permanently finance the costs of the acquisition, construction, installation and equipping of facilities described in § 103.200; and

WHEREAS, such facilities are financed for the purposes of, inter alia, promoting the economic development in the Commonwealth of Kentucky, promoting the increase of industry, and relieving conditions of unemployment, such revenue bonds being payable from the revenues derived from the repayment of such loan and related sources and not from any general funds or other assets of the Issuer; and

WHEREAS, the Issuer, at the Borrower's request, heretofore issued its Industrial Building Revenue Refunding and Improvement Bonds, Series 2013 in the principal amount of \$5,750,000, the proceeds of which were loaned to the Borrower for the purposes of (a) providing funds for the acquisition, construction, installation and equipping of a project consisting of buildings, structures and facilities, including the site thereof, and machinery, equipment and furnishings suitable for use by the Borrower in furtherance of its educational purposes, which are more particularly described in Exhibit A attached hereto (the "Project"), (b) refunding the 2010 Bonds (as hereinafter defined), the proceeds of which were in turn used to provide funds for the acquisition, construction, installation and equipping of a portion of the costs of the Project (b) and (c) paying a portion of the costs related to issuance of the Bonds.

WHEREAS, the Issuer, at the Borrower's request, now proposes to make a loan to the Borrower and the Borrower desires to borrow from the Issuer funds for the purpose of refinancing the acquisition, construction, installation and equipping of the Project, and the Issuer proposes to provide funds for such loan by the issuance of its Industrial Building Revenue Refunding Bonds, Series 2018 in the principal amount of \$\_\_\_\_\_ and to secure said loan by an assignment and pledge of this Loan Agreement, an Open-End Mortgage and Security Agreement and a Bond Purchase Agreement; and

WHEREAS, such Project has and will promote the economic development of the Commonwealth of Kentucky, promote the increase of industry, relieve conditions of unemployment and otherwise contribute to the accomplishment of the purposes of the Act; and

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND RULES OF CONSTRUCTION**

#### **Section 1.1. Definitions**

. In addition to the words and terms defined in the recitals and elsewhere in this Agreement, the words and terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, except as otherwise expressly provided or unless the context otherwise requires. Those words and terms not expressly defined herein and used herein with initial capitalization where rules of grammar do not otherwise expressly provide or unless the context otherwise require capitalization shall have the meanings set forth in the Bond Legislation, as defined herein.

"Act" means §§ 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended and in full force on the date of execution of this Agreement.

"Affiliate" means any other Person directly or indirectly controlling or controlled by or under common control with the Borrower. For purposes of this definition, "control," when used with respect to any specified Person, means the controlling Person owns 10% or more of any class of voting securities (or other ownership interests) of the controlled Person or possesses power to direct or cause the direction of the management and policies of the controlled Person, directly or indirectly, whether through the ownership of voting rights, membership, the power to appoint members, trustees or directors, by contract or otherwise.

"Applicable Law" means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and nongovernmental bodies, (B) Governmental Approvals, and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

"Assignment" means the Assignment of the Mortgage and this Agreement of even date herewith from the Issuer to the Original Purchaser.

"Authorized Borrower Representative" means the person at the time designated to act on behalf of the Borrower by written instrument furnished to the Original Purchaser, containing the specimen signature of such person and signed on behalf of the Borrower by an officer of the Borrower. Such instrument may designate an alternate or alternates.

"Authorized Issuer Representative" means the person at the time designated to act on behalf of the Issuer by written instrument furnished to the Original Purchaser containing the specimen signature of such person and signed on behalf of the Issuer by the Judge/Executive or the Fiscal Court Clerk of the Issuer. Such instrument may designate an alternate or alternates.

"Board" means the Board of Governors of the Federal Reserve System or any successor thereto.

"Bond Account" means the Bond principal, premium and interest account established in accordance with the Bond Purchase Agreement.

"Bond Legislation" means the Ordinance adopted by the Issuer authorizing the issuance of the Bonds.

"Bond Purchase Agreement" means the Bond Purchase Agreement of even date herewith among the Issuer, the Borrower, and the Original Purchaser, and any permitted amendments or supplements thereto.

"Bondholder" or "Holder" means, initially, the Original Purchaser, and any person in whose name one of more of the Bonds is registered.

"Bond Service Charges" means the principal of and interest due on the Bonds and any purchase price payable upon tender by a Holder.

"Bonds" means the bond or bonds issued by the Issuer pursuant to the Bond Legislation and designated "Industrial Building Revenue Refunding Bonds, Series 2018 (Kentucky Baptist Assemblies, Inc. Project)" and includes any Bonds issued in exchange therefore pursuant to the Bond Legislation and the Bond Purchase Agreement.

"Business Day" means any day other than (a) a day on which banks located in the cities in which the principal office of either the Paying Agent or the Bank is located are required or authorized by law to remain closed, (b) a day on which the New York Stock Exchange is closed, or (c) a day on which the payment system of the Federal Reserve System is not operational. For purposes of this definition, the Bank's principal office shall be that office of the Bank in the city of Paducah, Kentucky.

"Change in Unrestricted Net Assets" means the excess of Revenues, Gains, and Support over the Expenses for the Unrestricted categories on the Statement of Activities, each as set forth in the most recent financial statements of the Borrower, prepared in accordance with GAAP

"Clerk" means the Fiscal Court Clerk of the Issuer.

"Code" means the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

"Commonwealth" means the Commonwealth of Kentucky.

"Cost of Issuance Account" means the account of that name established pursuant to Section 3.1 hereof.

"Debt" means with respect to any Person, all items that would be classified as a liability in accordance with generally accepted accounting principles, including, without limitation, (a) indebtedness or liability for borrowed money, or for the deferred purchase price of property or services (including trade obligations); (b) obligations as lessee under leases which should have been, or should be, recorded as capital leases in accordance with generally accepted accounting principles; (c) current liabilities in respect of unfunded benefits under employee benefit, retirement or pension plans; (d) current liabilities in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (e) obligations issued for the account of any other Person; (f) all obligations arising under acceptance facilities; (g) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any other Person or

otherwise to assure a creditor against loss; (h) obligations secured by any mortgage, lien, pledge, security interest or other charge or encumbrance on Property, whether or not the obligations have been assumed; and (i) obligations of such Person under interest rate protection agreements.

"Default Rate" means, for any day, a rate of interest per annum equal to ten percent (10.0%).

"Determination of Taxability" means (i) the filing by the Borrower or any other person or entity with the Internal Revenue Service of any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability has occurred, or (ii) the final assertion by the Internal Revenue Service or any agent thereof to the effect that interest on the Bonds is includable in the gross income for federal income tax purposes for any Holder or that the Bonds are not "qualified tax exempt obligations" for purposes of Section 265(b) of the Code, or (iii) the final adoption of legislation or regulations or a final determination, decision, decree or ruling of any judicial or administrative authority which has the effect of requiring interest on the Bonds to be included in the gross income for Federal income tax purposes for any Bondholder or that the Bonds are not "qualified tax exempt obligations" for purposes of Section 265(b) of the Code. For purposes of clause (ii) in the preceding sentence, an assertion by the Internal Revenue Service or any agent thereof shall be considered final when the Bondholder, the Issuer and the Borrower shall have received an opinion of nationally recognized bond counsel to the effect that such assertion is correct, and for purposes of clause (iii) in the preceding sentence, a decision, decree or ruling by any judicial or administrative authority shall be considered final upon the expiration or waiver of all periods for judicial review or appeal, as the case may be.

"Eligible Investments" means (i) any bonds or other direct obligations of the United States of America; (ii) obligations of the Federal National Mortgage Association or the Government National Mortgage Association; (iii) obligations of the Federal Intermediate Credit Banks; (iv) obligations of Federal Banks for Cooperatives; (v) obligations of Federal Land Banks; (vi) obligations of the Federal Financing Bank; (vii) bank repurchase agreements issued by a Federal Reserve member bank, including the Original Purchaser, fully secured by obligations of any of the kinds specified in clauses (i) through (vi) above; (viii) time deposits, certificates of deposit or bankers acceptances of banks or trust companies, organized under the laws of the United States of America or any state thereof, which have combined capital and earned and unearned surplus of at least \$5,000,000 in dollars of the United States of America; (ix) commercial paper or finance company paper which is rated not less than prime-one or A-1 or their equivalents by Moody's Investors Service, Inc., or Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., respectively, or their successors, or both, if rated by both; or (x) obligations, of any state of the United States of America or of any political subdivision or other instrumentality of any such state, which are rated at least "A" or its equivalent by either Moody's Investors Service, Inc., or Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., or their successors, or both, if rated by both.

"Environmental Laws" means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (i) protection of the environment, (ii) personal injury or property damage relating to the release or discharge of Hazardous Materials, (iii) emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment, including, without limitation, ambient air,



surface water, ground water, or land, or (iv) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the cleanup or other remediation thereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and all rules and regulations from time to time promulgated thereunder.

"Event of Default" means any of the events described in Section 7.1 hereof.

"Event of Insolvency" means, with respect to any Person, the occurrence of one or more of the following events:

(a) The parent, the Borrower or any of their Subsidiaries shall become insolvent or generally not able to pay its debts as they mature or shall apply for, shall consent to, or shall acquiesce in the appointment of a custodian, trustee or receiver of the Parent, the Borrower or such Subsidiary or for a substantial part of the property thereof or, in the absence of such application, consent or acquiescence, a custodian, trustee or receiver shall be appointed for the Parent, the Borrower or any of their Subsidiaries or for a substantial part of the property thereof and shall not be discharged within 60 days, or the Parent, the Borrower or any of their Subsidiaries shall make an assignment for the benefit of creditors;

(b) Any bankruptcy, reorganization, debt arrangement or other proceedings under any bankruptcy or insolvency law shall be instituted by or against the Parent, the Borrower or any of their Subsidiaries, and, if instituted against such Person, shall have been consented to or acquiesced in by the Parent, the Borrower or any such Subsidiary, or shall remain undismissed for 30 days, or an order for relief shall have been entered against the Parent, the Borrower or such Subsidiary;

(c) Any dissolution or liquidation proceeding not otherwise permitted hereunder shall be instituted by or against such Person or any of its Subsidiaries and, if instituted against the Person or such Subsidiary, shall be consented to or acquiesced in by the Person or such Subsidiary or shall remain for 30 days undismissed;

(d) the making of an assignment for the benefit of creditors by such Person;

(e) the declaration of a moratorium with respect to the payment of the debts of such Person;

(f) such Person shall admit in writing its inability to pay its debts when due;  
or

(g) the initiation of any action in furtherance of or to authorize any of the foregoing by or on behalf of such Person.

"Event of Taxability" means the occurrence of circumstances from which a Determination of Taxability shall have found to have occurred, and which results in the interest payable on the Bonds becoming includable in the gross income for Federal income tax purposes

of any Bondholder or that the Bonds are not "qualified tax exempt obligations" for purposes of Section 265(b) of the Code.

"Executive" means the Judge/Executive of the Issuer.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to the Original Purchaser on such day on such transactions as determined by the Original Purchaser.

"Final Maturity Date" means May 20, 2032.

"Fixed Charge Ratio" shall mean (a) Change in Unrestricted Net Assets, plus Depreciation Expense, plus Amortization Expense, plus Interest Expense, plus Rental Expense, less Maintenance Capital Expenditures, divided by (b) the sum of Interest Payments plus Principal Payments (scheduled) plus Rental Expense.

"GAAP" means generally accepted accounting principles as issued by the Financial Accounting Standards Board from time to time, consistently applied.

"Governmental Approvals" means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any governmental or regulatory unit.

"Hazardous Material" means any explosive or radioactive substances or wastes, any hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and any other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Holder" means the Original Purchaser so long as it is the registered owner of the Bonds, and thereafter any other registered owner of the Bonds.

"Interest Payment Date" means the twentieth day of each month, commencing December 20, 2018.

"Interest Rate for Advances" means the Taxable Rate of Interest plus 4% or 12% whichever is greater, plus, for payments not received on the applicable payment date the Interest Rate for Advances means a late payment fee equal the greater of \$50 or 5% of amount of the late payment, so long as the payment is received within 10 days of the applicable payment date.

"Issuing Authority" means the Fiscal Court of the Issuer.

"Maintenance Capital Expenditures" means fifty percent (50%) of depreciation (excluding building) for the period specified. Breakout of depreciation expense showing building depreciation and non-building depreciation shall be provided by Borrower.

"Material Adverse Change" means the occurrence of any event or change resulting in a material and adverse change in (i) the business, property, liabilities (actual and contingent), operations or condition (financial or otherwise), results of operations, or prospects of the Borrower and its Subsidiaries taken as a whole since the last day of the period reported in the financial statements of the Borrower received by the Bank and described in Section 5.17 hereof, (ii) the ability of the Borrower to perform its obligations under this Agreement or the Related Documents, or (iii) the validity or enforceability of any of this Agreement or the Related Documents or the rights or remedies of the Original Purchaser under this Agreement or the Related Documents.

"Material Adverse Effect" means (a) with respect to the Borrower, a material adverse effect (in the opinion of the Original Purchaser) upon the Borrower's business, assets, liabilities, condition (financial or otherwise), operations or business prospects and (b) with respect to any agreement or obligation, a material adverse effect (in the opinion of the Original Purchaser) upon the binding nature, validity or enforceability of such agreement or obligation or upon the ability of a party to perform such obligation or to perform its obligations pursuant to such agreement.

"Mortgage" means the Open-End Mortgage and Security Agreement of even date herewith whereby the Borrower has granted to the Issuer, as security for the payment of the Note and the Bonds, a mortgage on and security interest in the portions of the Project and the Project Site, located within Marshall County, Kentucky, and any amendments or supplements thereto.

"Modified Following Business Day Convention" means the first following day that is a business day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a business day."

"Multiemployer Plan" means a multiemployer plan, as such term is defined in Section 4001(a)(3) of ERISA.

"Note" means the Promissory Note, the form of which is attached hereto as a part hereof as Exhibit C, issued by the Borrower to the Issuer concurrent with the delivery of this Agreement.

"Note Payments" means payments of principal and interest due under the Note.

"Original Purchaser" means U.S. Bank, National Association, Paducah, Kentucky, a national association duly organized under the laws of the United States of America.

"Participant(s)" means any bank(s) or other financial institution(s) which may purchase a participation interest from the Original Purchaser in the Bonds, the Note this Agreement or any of the other Related Documents, pursuant to a participation agreement between the Original Purchaser and the Participant(s).

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 10756 (signed into law October 26, 2001).

"Payment in Full of the Bonds" means the first date when all principal of and premiums (if any) and interest on the Bonds shall have been paid in full, or amounts sufficient and available therefore shall have been deposited in the Bond Account.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Partial Prepayment Price" means, with respect to any single redemption of not more than 10% of the then outstanding principal amount of the Bonds during a twelve-month period, an amount of money equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the redemption date, without premium.

"Pledged Receipts" means (a) any and all payments of principal of and interest and prepayment premium, if any, on the Note, (b) all other moneys received by the Issuer, or the Holder or for the account of the Issuer, in respect of this Agreement or the Project, except certain expense, reimbursement and indemnity payments which are, pursuant to the provisions of this Agreement, to be made by the Borrower directly to the Issuer or the Original Purchaser, (c) unexpended proceeds derived from the sale of the Bonds, from the investment of any moneys while held in the Bond Account; provided that "Pledged Receipts" shall not include any money or investment in the Rebate Fund. Nothing herein shall be construed as requiring the Issuer to use or apply to the payment of Bond Service Charges any revenues from any source other than Pledged Receipts.

"Prior Bonds" means, the County of Marshall, Kentucky Industrial Building Revenue Refunding and Improvement Bonds, Series 2013 (Kentucky Baptist Assemblies, Inc. Project).

"Prohibited Transaction" means any transaction set forth in Section 406 of ERISA or Section 4975 of the Code.

"Project" means the real, personal, or real and personal property, including undivided interests or other interests therein, identified as such in Exhibit A attached hereto as a part hereof, or acquired, constructed, equipped or installed as a replacement or substitution therefore or an addition thereto, in accordance with the provisions of this Agreement or the Mortgage.

"Project Site" means the real estate and interests in real estate constituting the site of the Project, as described in Exhibit B attached hereto as a part hereof.

"Rebate Fund" means the Rebate Fund created in the Tax Regulatory Agreement.

"Related Documents" means, collectively, this Agreement, the Note, the Bonds, the Bond Purchase Agreement, the Mortgage and the Assignment.

"Reportable Event" means a reportable event as defined in Section 4043 of ERISA and the regulations issued under such Section, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event, provided that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any waiver in accordance with Section 412(d) of the Code. A Reportable Event shall also include the occurrence of an event under Section 4062(e) of ERISA and an event requiring notice to the PBGC under Section 4010 of ERISA, excluding however, any such event as to which the PBGC has waived the notice requirement under Section 4010 of ERISA.

"Subsidiary" of a Person means (i) any corporation more than 50% of the outstanding securities having ordinary voting power of which shall at the time be owned or controlled,

directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries, or (ii) any partnership, limited liability company, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Borrower.

"Taxable Rate of Interest" means (a) if there is an Event of Taxability, a rate sufficient to preserve the Holder's after-tax economic yield with respect to the interest payments on the Note and the Bonds; or (b) if the Bonds do not qualify as qualified tax-exempt obligations under Section 265(b) of the Code, a rate sufficient to preserve the Holder's after-tax economic yield with respect to the Note and the Bonds, taking into account any interest expense deductions lost by the Holder.

"Tax Regulatory Agreement" means the Tax Regulatory Agreement dated as of November 20, 2013 among the Issuer and the Borrower, and any permitted amendments or supplements thereto.

"2010 Bonds" means, the County of Shelby, Kentucky Variable Rate Demand Cultural and Recreational Revenue Bonds (Kentucky Baptist Assemblies, Inc. Project) Series 2010.

#### Section 1.2. Rules of Construction.

(a) Unless the context clearly indicates to the contrary, the words "herein" "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter," and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used. Words importing the singular number shall include the plural number and vice versa, and any pronoun used herein shall be deemed to cover all genders.

(b) Any reference herein to the Issuer or the Issuing Authority or any officer or official of the Issuer shall include those who succeed to their respective functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing such functions. Any reference herein to any other person or entity shall include his or its respective successors and assigns. Any reference herein to a Section or provision of the Code or the Constitution of the Commonwealth of Kentucky or to a section, provision or chapter of the Kentucky Revised Statutes shall include such Section or provision or chapter as from time to time amended, modified, revised, supplemented or superseded, provided that no such change shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer or the Borrower under this Agreement.

[End of Article I]

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties by the Issuer. The Issuer represents and warrants that:

(a) It is a political subdivision of the Commonwealth of Kentucky, duly organized and validly existing under the laws of the Commonwealth of Kentucky.

(b) It has the power to enter into this Agreement, the Mortgage, the Assignment, the Tax Regulatory Agreement and the Bond Purchase Agreement, and to carry out its obligations hereunder and thereunder, and neither the execution and delivery of any such agreements or instruments or the Bonds nor performance by the Issuer of any of its obligations hereunder or thereunder will violate or constitute a default under any provision of law or regulation, or any writ, order or decree of any court or governmental agency, or any indenture, agreement or other undertaking to which the Issuer is a party or by which it is bound.

(c) It has duly accomplished all conditions necessary to be accomplished by it prior to issuance and delivery of the Bonds and execution and delivery of this Agreement, the Mortgage, the Assignment, the Tax Regulatory Agreement and the Bond Purchase Agreement.

(d) It has been duly authorized to execute and deliver this Agreement, the Mortgage, the Assignment, the Tax Regulatory Agreement and the Bond Purchase Agreement and to issue the Bonds.

(e) This Agreement, the Mortgage, the Assignment, the Tax Regulatory Agreement and the Bond Purchase Agreement have been duly executed and delivered by the Issuer and constitute legal, valid and binding obligations of the Issuer in accordance with their respective terms.

Section 2.2. Representations and Warranties by the Borrower

. The Borrower represents and warrants that:

(a) It is a Kentucky nonprofit corporation, no part of the net earnings of which will inure to the benefit of any private shareholder or individual, and which is duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and it has the power and has been duly authorized to enter into this Agreement, the Mortgage, the Tax Regulatory Agreement and the Bond Purchase Agreement, issue the Note, and perform all of its obligations hereunder and thereunder and to carry on its business as now being conducted and as currently contemplated to be conducted hereunder.

(b) The Borrower represents that, as of the date of the Agreement: (i) it is an organization described in § 501(c)(3) of the Code, which is exempt from the payment of federal income taxes under § 501(a) of the Code and not a "private foundation" as defined in § 509(a) of the Code; and has a determination letter to that effect from the Internal Revenue Service; (ii) such letter or other notification has not been modified, limited or

revoked, (iii) it is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification; and (iv) the facts and circumstances which form the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist.

(c) The Project has and will be utilized as educational facilities in furtherance of the educational purposes of the Borrower, which will promote the economic development of the Commonwealth and the Issuer and has and will promote industry and will result in the creation or preservation of jobs and employment opportunities within the boundaries of the Issuer, thereby relieving conditions of unemployment and improving the economic welfare of the Commonwealth and the Issuer.

(d) The Borrower is not subject to any contractual or other limitation or provision of any nature whatsoever which in any way limits, restricts or prevents the Borrower from entering into this Agreement, the Mortgage, the Tax Regulatory Agreement or the Bond Purchase Agreement, issuing the Note, or performing any of its obligations hereunder or thereunder; and the execution and delivery of this Agreement, the Bond Purchase Agreement, the Tax Regulatory Agreement, the Note and the Mortgage, the consummation of the transactions contemplated hereby and thereby, and the fulfillment of or compliance with the terms and conditions of this Agreement, the Bond Purchase Agreement, the Tax Regulatory Agreement, the Note and the Mortgage will not conflict with or result in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which the Borrower is a party or by which it is bound, or constitute a default under any of the foregoing, and will not violate any provision of law or regulation applicable to the Borrower or any court or administrative order or decree.

(e) The Project has been completed on or before the date of this Agreement, and the related proceeds from the issuance of the Bonds are needed for the purpose of paying the redemption price of the Prior Bonds, which Prior Bonds will be redeemed within ninety days of the date of this Agreement.

(g) The Project, including all additions thereto, complies and will comply with all applicable zoning, planning, building, environmental and other regulations of the governmental authorities having jurisdiction of the Project or Project Site, and all necessary permits, licenses, consents and permissions necessary for the Project and Project Site have been obtained.

(h) The Project as well as its use and operation are and will be in complete conformance with the purposes and provisions of the Act and with the information regarding the operations of the Borrower submitted to the Internal Revenue Service on which its exemption from Federal income tax under § 501(c)(3) of the Code is based.

(i) This Agreement, the Bond Purchase Agreement, the Mortgage, the Tax Regulatory Agreement and the Note have been duly executed and delivered by the Borrower and constitute legal, valid and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower in accordance with their respective terms,, except to the extent that enforcement thereof may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other

laws affecting the enforcement of creditors' rights, and to the exercise of judicial discretion in accordance with general principles of equity.

(j) Except as disclosed in writing by the Borrower to the Issuer, there are no actions, suits or proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower before any court or before any governmental or administrative body or agency which might result in any material adverse change in the operations, business, property, assets or condition (financial or otherwise) of the Borrower; and the Borrower is not in default with respect to or under any applicable statute, rule, writ, injunction, decree, order or regulation of any governmental agency which might have consequences that would materially and adversely affect the operations, business, property or assets of the Borrower.

(k) The Bonds will not be guaranteed, directly or indirectly (in whole or in part), by the United States (or any agency or instrumentality thereof), and no proceeds of the Bonds are to be used in making loans the payment of principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or invested (directly or indirectly, and other than for a temporary period) in federally insured deposits or accounts.

(l) The assets listed on the financial statements delivered to the Holder are directly owned by the Borrower and if such assets are owned by a trust or another entity it is so noted.

(m) During the term of this Agreement, no material assets shall be transferred to another person, entity, or trust without the prior written consent of the Holder, which consent shall be withheld in the Holder's sole and absolute discretion.

(n) The Borrower is in compliance with all Applicable Law, including all Governmental Approvals, except for noncompliance that, singly or in the aggregate, has not had and will not have a Material Adverse Effect and will not cause a Material Adverse Change, on this Agreement or an adverse effect on the Borrower's ability to perform its obligations hereunder and under the Related Documents.

(o) The balance sheet of the Borrower as of March 31, 2018 and the related statement of revenues and expenses and changes in financial position for the year then ended and the auditors' reports with respect thereto and the balance sheet of the Borrower as of March 31, 2018 and the related statement of revenues and expenses and changes in financial position for the year then ended, copies of which have heretofore been furnished to the Original Purchaser, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the Borrower at such dates and for such periods, and were prepared in accordance with generally accepted accounting principles. Since March 31, 2018 there has been no Material Adverse Change or any increase in the longterm Debt of the Borrower.

(p) All information, reports, financial statements and other papers and data furnished to the Original Purchaser or its counsel by or on behalf of the Borrower were, at the time the same were so furnished, complete and correct in all material respects, to the extent necessary to give the recipient a true and accurate knowledge of the subject matter. No fact is known to the Borrower which has had or in the reasonable judgment of the



Borrower may in the future have a Material Adverse Effect upon the Borrower or on the Agreement which has not been set forth in the financial statements referred to in Subsection 5.12 or in such information, reports or other papers or data or otherwise disclosed in writing to the Original Purchaser prior to the Closing Date. No document furnished or other written statement made to the Original Purchaser in connection with the negotiation, preparation or execution of this Agreement or the Related Documents contains or will contain any untrue statement of a fact material to the creditworthiness of the Borrower or omits or will omit to state such a material fact necessary in order to make the statements contained therein not misleading.

(q) Except as disclosed in writing by the Borrower to the Issuer and the Original Purchaser, there are no actions, suits or proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower before any court or before any governmental or administrative body or agency which might result in any material adverse change in the operations, business, property, assets or condition (financial or otherwise) of the Borrower; and the Borrower is not in default with respect to or under any applicable statute, rule, writ, injunction, decree, order or regulation of any governmental agency which might have consequences that would materially and adversely affect the operations, business, property or assets of the Borrower.

(r) In the ordinary course of its business, the officers of the Borrower conduct an ongoing review of the effect of Environmental Laws on the business, operations and properties of the Borrower, in the course of which they identify and evaluate potential risks and liabilities and costs (including, without limitation, any capital or operating expenditures required for cleanup or closure of properties presently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, and related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted there at and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of this review, the Borrower has reasonably concluded that its Property and operations are in material compliance with applicable Environmental Laws that it has not failed to comply with any Environmental Laws in a manner which may individually or in the aggregate have a Material Adverse Effect on the Borrower. The Borrower has not received any notice to the effect that its Property and/or operations are not in material compliance with any of the requirements of applicable Environmental Laws or are the subject of any federal or state investigation evaluating whether any remedial action is needed to respond to a release of any Hazardous Material, which non-compliance or remedial action could reasonably be expected to have a Material Adverse Effect.

(s) (i) Neither the Borrower nor any of its Affiliates is in violation of any laws relating to terrorism or money laundering ("AntiTerrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Patriot Act;

(ii) No part of the proceeds of the Bond will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else

acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended;

(iii) Neither the Borrower nor any of its Affiliates (a) is a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) to the knowledge of any Authorized Officer engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise, to the knowledge of an Authorized Officer, associated with any such person in any manner violative of Section 2, or (c) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order a Person that is named as a "specially designated national and blocked person" on the most current list published by the Office of Foreign Asset Control ("OFAC") or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list;

(iv) Neither the Borrower nor any of its Affiliates (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection c above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any AntiTerrorism Law.

(t) Except for those representations and warranties which due to the passage of time are no longer true, the Borrower hereby makes to the Original Purchaser the same representations and warranties made by the Borrower in each Related Document to which it is a party, which representations and warranties, together with the related definitions of terms contained therein, are incorporated herein by this reference with the same effect as if each and every such representation and warranty and definition were set forth herein in its entirety. No amendment to or waiver of such representations and warranties or definitions made pursuant to the relevant Related Document or incorporated by reference shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Original Purchaser.

(u) Neither the Borrower nor any of its Affiliates has received any notice or has any knowledge to the effect that it is not in full compliance with any of the requirements of ERISA or the Code. No Reportable Event, Prohibited Transaction, or other fact or circumstance which may have an adverse effect on the Plan's tax qualified status exists in connection with any Plan. Neither the Borrower nor any of its Affiliates has (a) any withdrawal liability in connection with a Multiemployer Plan; (b) any accumulated funding deficiency within the meaning of ERISA; or (c) any liability, or knows of any fact or circumstances which could result in any liability to PBGC, the Internal Revenue Service, the Department of Labor or any participant in connection with any Plan (other than accrued

benefits which are or may become payable to participants or beneficiaries of any such Plan).

[End of Article II]

## ARTICLE III

### ISSUANCE OF BONDS AND LOAN OF PROCEEDS; REDEMPTION OF PRIOR BONDS; INVESTMENT OF FUNDS

#### Section 3.1. Issuance of Bonds and Loan of Proceeds

. In order to provide funds for refunding the Prior Bonds and paying the costs of issuance of the Bonds, the Issuer has, concurrent with the delivery of this Agreement, issued and delivered the Bonds to the Original Purchaser. The Bonds have been initially issued as one registered bond in the form attached to the Bond Purchase Agreement as Exhibit A thereto. Pursuant to the provisions of the Bond Purchase Agreement, the proceeds from the sale of the Bonds will be applied as follows: (i) \$ \_\_\_\_\_ will be paid directly to U.S. Bank, National Association, as the registered holder of the Prior Bonds (the "2013 Bondholder"), on November 20, 2018, for application on such date to the retirement in full of the Prior Bonds; (ii) \_\_\_\_\_ used to pay a portion of the costs of issuance on the Bonds will be deposited into the Cost of Issuance Account hereby established, and such payments and deposits will constitute a loan of such proceeds from the Issuer to the Borrower. Moneys on deposit in the Cost of Issuance shall be expended to pay costs of issuance of the Bonds in accordance with this Article III.

#### Section 3.2. Retirement of Prior Bonds

. The Borrower shall cause the 2013 Bondholder to retire and pay in full the Prior Bonds on November 20, 2018, which is not more than ninety days from the date of this Agreement.

#### Section 3.3. Costs of Issuance of the Bonds and Disbursements from the Cost of Issuance Account

. In accordance with the Bond Purchase Agreement, the Original Purchaser, at the request of the Borrower, shall disburse the moneys in the Cost of Issuance Account for the payment or reimbursement of the costs incurred directly in connection with the authorization, sale, issuance and delivery of the Bonds and the preparation and delivery of all agreements, instruments and documents related thereto, including, but not limited to, all financial, legal, administrative, accounting, printing and engraving fees, expenses and charges and all recording, filing, title examination or insurance, surety bond and any other fees, expenses or charges relating to the Project or the Bonds.

The payments specified in this Section shall be made by the Original Purchaser only upon receipt of a written requisition or written request for reimbursement for such payment, signed by the Authorized Borrower Representative and approved by the Original Purchaser, stating the name and address of the person, firm or corporation to whom such payment should be, or in the case of reimbursement, was made.

#### Section 3.4. Investment of Cost of Issuance Account and Bond Account Moneys

. Any moneys held as part of the Cost of Issuance Account or the Bond Account shall, at the oral or written request of the Authorized Borrower Representative, be invested or reinvested by the Original Purchaser in Eligible Investments. The Borrower shall restrict the use and investment of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of issuance of the Bonds,

so that the Bonds will not constitute an arbitrage bond under § 148 of the Code. Any oral request for the investment of moneys shall be promptly confirmed in writing by the Authorized Borrower Representative.

[End of Article III]

## **ARTICLE IV**

### **PROVISIONS FOR PAYMENT**

#### **Section 4.1. Payment Obligations of the Borrower.**

(a) In consideration of the issuance of the Bonds and the Issuer's agreement that the proceeds thereof be used as provided in this Agreement, the Borrower has, concurrent with the delivery of this Agreement, executed and delivered the Note to the Issuer. The Borrower shall promptly make when due all payments on the Note.

(b) The Borrower shall reimburse or pay the Issuer for any and all costs, expenses and liabilities paid or incurred by the Issuer in satisfaction of any obligation of the Borrower hereunder not performed by the Borrower in accordance with the terms hereof. The Borrower shall also repay or reimburse the Issuer for any and all expenses paid or to be paid by the Issuer and requested by the Borrower, or required by this Agreement or the Mortgage or Bond Purchase Agreement or incurred in enforcing the provisions of this Agreement or the Mortgage or Bond Purchase Agreement, or incurred in defending any action or proceedings with respect to the Project, this Agreement or the Mortgage or Bond Purchase Agreement, or arising out of or based upon any other document relating to the issuance of the Bonds, which are not otherwise required to be paid by the Borrower hereunder.

#### **Section 4.2. Payments, Note, Loan Agreement and Mortgage Assigned**

. The Issuer has, pursuant to the Bond Purchase Agreement, assigned the Note, this Agreement and the Mortgage to the Original Purchaser, and the Borrower hereby assents to such assignments. The Borrower further agrees to make all payments under the Note directly to the Original Purchaser for the account of the Issuer to be deposited in the Bond Account, and to make all payments required to be made under subsection (b) of Section 4.1 hereof directly to the Issuer.

#### **Section 4.3. Obligations Unconditional**

. The obligations of the Borrower to make the payments required to be made under the Note, the Mortgage, the Bond Purchase Agreement and this Agreement, and to perform and observe the other agreements on its part contained herein and in the Note, the Mortgage, the Bond Purchase Agreement and this Agreement, shall be absolute and unconditional and shall not be subject to diminution by set-off, counterclaim, abatement or otherwise. Until Payment in Full of the Bonds, the Borrower (a) will not suspend or discontinue any payments required to be made under the Note, (b) will perform and observe all its other agreements contained herein and in the Mortgage, the Bond Purchase Agreement and (c) except as provided in Sections 6.1 and 6.2 hereof, will not attempt to terminate this Agreement or its obligations under the Note, this Agreement, the Bond Purchase Agreement or the Mortgage for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, sale, loss, destruction or condemnation of or damage to the Project or the Project Site, any change in the tax or other laws of the United States of America or of the Commonwealth of Kentucky or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agreement. Nothing contained in this Section

shall be construed to release the Issuer from the performance of any of the agreements on its part contained herein; and in the event the Issuer should fail to perform any such agreement on its part, the Borrower may institute such action against the Issuer as the Borrower may deem necessary to compel such performance, provided that no such action shall affect the agreement on the part of the Borrower contained in the preceding sentence.

#### Section 4.4. Holder's Right to Set Off

. The Holder shall be entitled, and is hereby granted the right, to set off and deduct any unpaid payments required to be made under the Related Documents, non-reimbursed expenses and unsatisfied indemnification rights from any account of the Borrower other than the Rebate Fund.

#### Section 4.5. Costs, Expenses and Taxes

. The Borrower agrees to pay, on the Closing Date, all costs and expenses of the Original Purchaser in connection with the execution and delivery of this Agreement, the Related Documents and any other documents delivered in connection with any of the foregoing including, but not limited to, the fees and expenses of counsel for the Original Purchaser and all costs associated with any title/lien searches, title insurance, appraisals, environmental due diligence and recordation.

(a) The Borrower also agrees to pay all of the Original Purchaser's outofpocket expenses (including, without limitation, fees and expenses of counsel to the Original Purchaser) arising in connection with the enforcement or administration of, or preservation of rights (including in any bankruptcy or insolvency proceeding or any workout) in connection with, this Agreement, or the Related Documents, and the fees and expenses of counsel to the Original Purchaser in connection with such counsel advising the Original Purchaser as to its rights and responsibilities under this Agreement and the Related Documents.

(b) The Borrower shall reimburse the Original Purchaser upon demand for all reasonable out-of-pocket expenses paid or incurred by the Original Purchaser, including, without limitation, filing and recording costs and fees, costs of any environmental review, and consultants' fees, travel expenses and reasonable fees, charges and disbursements of outside counsel to the Original Purchaser and/or the allocated costs of in-house counsel incurred from time to time, in connection with the due diligence, preparation, administration, negotiation, execution, delivery, syndication, distribution, review, amendment, modification, and administration of this Agreement or the Related Documents. The Borrower also agrees to reimburse the Original Purchaser for any costs, internal charges and out-of-pocket expenses, including, without limitation, filing and recording costs and fees, costs of any environmental review, and consultants' fees, travel expenses and reasonable fees, charges and disbursements of outside counsel to the Original Purchaser and/or the allocated costs of in-house counsel incurred from time to time, paid or incurred by the Original Purchaser in connection with the collection and enforcement of this Agreement or the Related Documents. Expenses being reimbursed by the Borrower under this Section include, without limitation, the cost and expense of obtaining an appraisal of each parcel of real property or interest in real property described in the Mortgages, which appraisal shall be in conformity with the applicable requirements of any

law or any governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any interpretation thereof, including, without limitation, the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, reformed or otherwise modified from time to time, and any rules promulgated to implement such provisions and] costs and expenses incurred in connection with the reports described in the following sentence. The Borrower acknowledges that from time to time the Original Purchaser may prepare certain audit reports (the "Reports") pertaining to the Borrower's assets for internal use by the Original Purchaser from information furnished to it by or on behalf of the Borrower, after the Original Purchaser has exercised its rights of inspection pursuant to this Agreement. In addition, the Borrower agrees to pay promptly all costs and expenses of the Original Purchaser (W) for any and all amounts that the Original Purchaser has paid relative to the Original Purchaser's curing of any Default or Event of Default under this Agreement or any default under any of the Related Documents, (X) in connection with the enforcement of or any negotiations or workout relating to this Agreement or any of the Related Documents, (Y) in connection with any action or proceeding relating to a court order, injunction, or other process or decree restraining or seeking to restrain the Original Purchaser from paying any amount under this Agreement or the Loan in compliance with the terms hereof and thereof and (Z) in connection with the collection of any monies due under this Agreement, the Loan or the Bonds or such other documents which may be delivered in connection herewith. The Borrower also agrees to indemnify the Original Purchaser with respect to any and all liabilities with respect to or resulting from any delay in paying or omission to pay any taxes and fees to the extent the Borrower is obligated to pay the same under this Section 3.08. The Original Purchaser shall give written notice to the Borrower of any amounts as to which the Original Purchaser is entitled to reimbursement or indemnification under this Section 3.08 (which notice may include amounts that have either been paid by the Original Purchaser or have been billed to the Original Purchaser and are due and payable upon demand), and the Borrower shall pay to the Original Purchaser the amounts set forth in such notice, together with interest on such amounts for each day from such date of demand until payment in full.

#### Section 4.6. Fees

(a) Closing Fee. The Borrower hereby agrees to pay, or cause to be paid, to the Original Purchaser on the Closing Date a closing fee of \$\_\_\_\_\_ (the "Closing Fee"); and

(b) Fees Nonrefundable. All fees payable hereunder shall be deemed to be fully earned when due and nonrefundable when paid.

#### Section 4.7. Yield Protection

. If there shall occur any adoption or implementation of, or change to, any Regulation, or interpretation or administration thereof, which shall have the effect of imposing on Original Purchaser (or Original Purchaser's holding company) any increase or expansion of or any new: tax (excluding taxes on its overall income and franchise taxes), charge, fee, assessment or deduction of any kind whatsoever, or reserve, capital adequacy, special deposits or similar



requirements against credit extended by, assets of, or deposits with or for the account of Original Purchaser or other-conditions affecting the extensions of credit under this Agreement or any Related Document; then Borrower shall pay to Original Purchaser such additional amount as Original Purchaser deems necessary to compensate Original Purchaser for any increased cost to Original Purchaser attributable to the extension(s) of credit under this Agreement or any Related Document and/or for any reduction in the rate of return on Original Purchaser's capital and/or Original Purchaser's revenue attributable to such extension(s) of credit. As used above, the term "Regulation" shall include any federal, state or international law, governmental or quasi-governmental rule, regulation, policy, guideline or directive (including but not limited to the Dodd Frank Wall Street Reform and Consumer Protection Act and enactments, issuances or similar pronouncements by the Original Purchaser for International Settlements, the Basel Committee on Banking Regulations and Supervision or any similar authority and any successor thereto) that applies to Original Purchaser. Original Purchaser's determination of the additional amount(s) due under this paragraph shall be binding in the absence of manifest error, and such amount(s) shall be payable within 15 days of demand and, if recurring, as otherwise billed by Original Purchaser. The obligations of the Borrower under this Section 4.7 shall survive the termination of this Agreement.

#### Section 4.8. Method and Application of Payments

. Except as may be otherwise provided herein, all fees hereunder and interest on amounts owed hereunder or with respect to the Loan shall be computed on the basis of a 360-day year. All payments by or on behalf of the Borrower to the Original Purchaser hereunder shall be fully earned when due and nonrefundable when paid and made in lawful currency of the United States of America and in immediately available funds. Amounts payable to the Original Purchaser hereunder shall be transferred to the Original Purchaser's account at U.S. Bank, National Association, Paducah, Kentucky not later than 3:30 p.m. on the date payment is due. Any payment received by the Original Purchaser after 3:30 p.m. shall be deemed to have been received by the Original Purchaser on the next Business Day. If any payment hereunder is due on a day that is not a Business Day, then such payment shall be due on the next succeeding Business Day, and, in the case of the computation of the interest or fees hereunder, such extension of time shall, in such case, be included in the computation of the payment due hereunder. Payments received by the Original Purchaser shall be applied, first, to any fees, costs, charges or expenses payable by the Borrower under this Agreement; second, to past due interest; third, to current interest; and, fourth, to principal.

#### Section 4.9. Maintenance of Accounts

. The Original Purchaser shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower resulting from the amounts of principal and interest payable and paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made in such account or accounts shall be presumptive evidence of the existence and amounts of the obligations of the Borrower therein recorded. The failure to record any such amount shall not, however, limit or otherwise affect the obligations of the Borrower hereunder to repay all amounts owed hereunder, together with all interest accrued thereon accruing daily as provided herein.

#### Section 4.10. Withholding

. All payments of principal, interest and any other sums due hereunder shall be made in the amounts required hereunder without any deduction or setoff, notwithstanding the assertion of any right of recoupment or setoff or of any counterclaim by the Borrower (which are hereby waived by the Borrower), and without any withholding on account of taxes, levies, duties or any other deduction whatsoever. If the Borrower is required by law to withhold or deduct any sum from payments required under this Agreement, the Borrower shall, to the extent permitted by applicable law, increase the amount paid by it to the Original Purchaser so that, after all withholdings and deductions, the amount received by the Original Purchaser shall equal the amount the Original Purchaser would have received without any such withholding or deduction.

#### Section 4.11. Maximum Rate

. Notwithstanding anything herein to the contrary, if at any time the interest rate in accordance with the terms hereof, together with all fees, charges and other amounts that are treated as interest under applicable law (collectively, the "Charges"), exceeds the maximum lawful rate (the "Maximum Lawful Rate") that may be contracted for, charged, taken, received or reserved by the Original Purchaser in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Lawful Rate and, to the extent lawful, the interest and Charges that would have been payable but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to the Original Purchaser in respect of other loans or periods shall be increased (but not above the Maximum Lawful Rate therefor) until the Original Purchaser has received such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment.

[End of Article IV]

## ARTICLE V

### PARTICULAR COVENANTS

#### Section 5.1. Issuer's and Holder's Expenses; Indemnification

. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the Borrower hereby agrees to indemnify and hold harmless each of the Issuer, the Original Purchaser, each Participant and their respective officers, directors, employees, advisors, affiliates and agents (each an "Indemnified Party") from and against any and all claims, damages, losses, penalties, judgments, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys' fees, charges and disbursements and settlement costs (including expenses of litigation and preparation therefor)) that an Indemnified Party may incur (or which may be claimed against an Indemnified Party by any Person whatsoever) that arises out of or relates to the transactions contemplated by this Agreement or any of the Related Documents, the transactions contemplated hereby, any alleged presence or related release of Hazardous Materials on or from any Property owned or operated by Borrower or any of its Subsidiaries, any environmental liability related in any way to Borrower or any of its Subsidiaries, or any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower or any of its Subsidiaries, or the direct or indirect application or proposed application of the proceeds of the Bonds issued in connection herewith; provided that the Borrower shall not be required to indemnify an Indemnified Party for any claims, damages, losses, penalties, judgments, liabilities, costs or expenses to the extent, but only to the extent, that they are determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of such Indemnified Party. If any proceeding shall be brought or threatened against such Indemnified Party (and except as otherwise provided above), the Original Purchaser shall promptly notify the Borrower in writing and the Borrower shall assume the defense thereof, including the employment of counsel and the payment of all costs of litigation. The Borrower will not settle or compromise any such action or claim without the prior written consent of the relevant Indemnified Party if the settlement or compromise involves any performance by or adverse admission of such Indemnified Party. Notwithstanding the preceding sentence, such Indemnified Party shall have the right to employ its own counsel and to determine its own defense of such action in any such case, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (a) the employment of such counsel shall have been authorized in writing by the Borrower, (b) the Original Purchaser shall have reasonably concluded, based upon an opinion of counsel reasonably satisfactory to the Borrower, that there may be a conflict of interest between the Borrower and such Indemnified Party in the conduct of the defense of such action (in which case the Borrower shall not have the right to direct the defense of such action on behalf of the Original Purchaser) or (c) the Borrower, after due notice of the action, shall not have employed counsel to have charge of such defense, in either of which events the reasonable fees and expenses of counsel for such Indemnified Party shall be borne by the Borrower. The Borrower shall not be liable for any settlement of any such action effected without its consent. Nothing under this Section 8.04 is intended to limit the Borrower's payment obligations hereunder.

The provisions of this Section 5.1 shall survive the termination of this Agreement and the repayment in full of the Loan and the Bonds and the obligations of the Borrower thereunder and hereunder.

#### **Section 5.2. Maintenance of Corporate Existence and Tax Status**

. The Borrower agrees that it will at all times maintain its existence as a nonprofit corporation and that it will not take any action or suffer any action to be taken by others which will alter, change or destroy its status as a nonprofit corporation or its status as an organization described in § 501(c)(3) of the Code and exempt from federal income taxation under § 501(a) of the Code (or any successor sections of a subsequent federal income tax statute or code).

The Borrower shall not dissolve nor shall it sell, lease, assign, transfer or otherwise dispose of all or substantially all of its Property. The Borrower shall not consolidate or merge with or into any other Person or permit one or more other Persons to consolidate with or merge into it or acquire all or substantially all of the Property of any other Person unless (A) the surviving, resulting or transferee legal entity as the case may be, shall be a nonprofit legal entity organized and existing under the laws of one of the states of the United States of America, shall be qualified to do business in the State, shall have a net worth immediately subsequent to such acquisition, consolidation, merger or transfer at least equal to 100% of that of the Borrower immediately prior to such acquisition, consolidation, merger or transfer, shall be an organization described in Section 501(c)(3) of the Code, and shall assume in writing all of the obligations of the Borrower under this Agreement and the Related Documents; (B) that such acquisition, consolidation, merger or transfer will not adversely affect the taxexempt status of the interest on the Bonds ; (C) that prior to such acquisition, consolidation, merger or transfer the Original Purchaser shall be furnished a certificate from the chief financial officer of the Borrower stating that in the opinion of such officer none of the covenants contained in this Agreement will be violated as a result of such acquisition, consolidation, merger or transfer; and (D) that the Original Purchaser shall have consented to such merger, sale or transfer, which consent shall not be unreasonably withheld or delayed. The Borrower shall (a) preserve and maintain its corporate existence, right (charter and statutory) and franchises, trade names and licenses necessary or desirable in the normal conduct of its business; (b) qualify and remain qualified to do business in each jurisdiction in which such qualification is necessary in view of the Borrower's business or operations and (c) preserve all of the Property of the Borrower used or useful in the conduct of the Borrower's business or operations and keep the same in good repair, working order and condition, and from time to time make, or cause to be made, all needful and proper repairs, renewals and replacements, betterments and improvements thereto, so that the business carried in connection therewith may be properly and advantageously conducted at all times.

#### **Section 5.3. Assignment by Issuer**

. Except for the assignment of the Note, this Agreement, the Pledged Receipts and the Mortgage to the Original Purchaser pursuant to the Assignment and the Bond Purchase Agreement, the Issuer shall not attempt to further assign, transfer or convey its interest in this Agreement or the Note-or Mortgage or create any pledge or lien of any form or nature with respect to the Pledged Receipts.

#### **Section 5.4. Redemption of Bonds**

. The Issuer, at the request of the Borrower, at any time, and if the Bonds are then redeemable in whole or in part, shall forthwith take all steps that may be necessary under the applicable redemption provisions thereof to effect redemption of all or any portion of the Bonds, as may be specified by the Borrower in such request, on the earliest redemption date on which such redemption may be made under such applicable provisions, being the date set for such redemption by the Borrower pursuant to Article VI hereof. So long as the Borrower is not in default hereunder or the Issuer is not obligated to redeem the Bonds pursuant to the terms hereof or of the Mortgage or Bond Purchase Agreement, and except for the amortization provisions provided for in the Bond Legislation, the Issuer shall not redeem any portion of the Bonds prior to their maturity unless requested in writing by the Borrower.

Section 5.5. Reference to Bonds Ineffective After Bonds Paid

. Upon Payment in Full of the Bonds, all references in this Agreement and the Note to the Bonds shall be ineffective and neither the Issuer nor any Holder shall thereafter have any rights hereunder or under the Note, and the Borrower shall have no further obligation hereunder or under the Note, except for (a) any obligation to the Issuer or the Holder that shall have theretofore vested and that shall then retain unsatisfied, (b) the obligations set forth in Section 6.4 hereof if a Determination of Taxability shall occur after Payment in Full of the Bonds and (c) the provisions of Section 5.1 hereof.

Section 5.6. Concurrent Discharge of Note

. In the event any portion of the Bonds shall be paid and discharged, or deemed to be paid and discharged pursuant to any provisions of this Agreement or the Bond Legislation, an equivalent principal amount of the Note shall be deemed fully paid for purposes of this Agreement and to such extent, the obligations of the Borrower thereunder terminated. Upon Payment in Full of the Bonds, the Note shall be surrendered by the Holder to the Borrower for cancellation.

Section 5.7. Borrower's Performance Under Mortgage, Tax Regulatory Agreement and Bond Legislation

. The Borrower shall, for the benefit of the Issuer and each Holder, do and perform all acts and things required or contemplated in the Mortgage, the Bond Purchase Agreement, the Tax Regulatory Agreement or in the Bond Legislation to be done or performed by it, including, without limitation, the obligations of the Borrower with respect to insurance, taxes and other charges and maintenance, modification, repairs and restoration of the Project.

Section 5.8. [RESERVED].

Section 5.9. Borrower Not to Adversely Affect Tax Exempt Status of Interest on Bonds

. The Borrower agrees that it shall not perform any act, fail to perform any act, nor enter into any agreement which shall adversely affect the Federal income tax status of the Borrower or the Federal income tax status of the interest on the Bonds and shall conduct its operations and the Project in the manner which will conform to the standards necessary to qualify the Borrower as an organization described in § 501(c)(3) of the Code or any successor provisions of Federal income tax law.

#### **Section 5.10. Opinion to be Provided**

. At such times as the Holder shall reasonably request, the Borrower shall on behalf of the Issuer cause to be delivered to the Holder an opinion of counsel, who may be counsel for the Borrower, addressed to the Issuer and the Holder and stating that based upon the law in effect on the date of such opinion no filing, registration or recording and no refiling, reregistration or rerecording of the Mortgage or any assignment or any amendments or supplements thereto, or any financing statement, amendments thereto, continuation statements or instruments of a similar character relating to the pledges and assignments made by the Issuer or the Borrower to secure the Bonds, is required by law during the five year period commencing on the date of such request by the Holder, in order to fully preserve and protect the security of the Holder and the rights of the Holder under the Assignment and the Mortgage, or if such filing, registration, recording, refiling, reregistration or rerecording is necessary, setting forth the requirements in respect thereto. The Borrower, with such assistance and cooperation from the Issuer as the Borrower may reasonably request, shall take or cause to be taken all action necessary to satisfy any such requirements. Promptly after any filing, registration, recording, refiling, reregistration or rerecording of any such agreement or instrument, the Borrower on behalf of the Issuer will deliver to the Holder an opinion of counsel, who may be counsel for the Borrower, to the effect that such filing, registration, recording, refiling, reregistration or rerecording has been duly accomplished and setting forth the particulars thereof.

#### **Section 5.11. Mechanics' Liens**

. The Borrower shall not suffer or permit any mechanics' or other liens to be filed or exist against the Project or Project Site, nor against any loan payment paid or payable hereunder, by reason of work, labor, services or materials supplied or claimed to have been supplied to the Borrower or anyone holding the Project or Project Site or any part thereof through or under the Borrower. If any such mechanics' or other liens shall at any time be filed, the Borrower shall, within ninety (90) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. The Borrower shall have the right to contest the validity and the amount of any such lien by appropriate proceedings timely instituted, provided that the Borrower (a) gives the Holder written notice of its intention so to do, (b) diligently prosecutes any such contest, and (c) if requested by the Holder, furnishes a bond in cash or by surety, whichever shall be acceptable to the Holder, in an amount equal to twice the amount of the lien as claimed, and the Borrower shall not be in default hereunder for failure to pay or discharge any such lien so long as it is contesting the same as aforesaid.

#### **Section 5.12. Financial Statements and Covenants**

. The Borrower shall furnish the Original Purchaser with year-end financial statements and such other documents that the Borrower may possess in its files as the Original Purchaser may reasonably request.

(a) Borrower shall furnish the Original Purchaser:

(i) Within sixty (60) days after the end of each quarter, a copy of internally prepared consolidated financial statements for that quarter and for the year to date, prepared and certified as complete and correct, subject to changes resulting from year-end adjustments;

(ii) Within one hundred twenty (120) days after the end of each fiscal year, a copy of Borrower's consolidated year-end financial statements audited by a firm of independent certified public accountants.

(iii) Simultaneously with the delivery of each set of financial statements referred to in (a) and (b) above, a certificate signed by the President and Chief Executive Officer of the Borrower stating (i) the Fixed Charge Coverage Ratio, (ii) that under his/her supervision the Borrower has made a review of its activities during the preceding quarter or annual period for the purpose of determining whether or not the Borrower has complied with all of the terms, provisions and conditions of this Agreement and the Related Documents and (iii) that the Borrower is not in default in the performance or observance of any of the terms, covenants, provisions or conditions of this Agreement or any of the Related Documents, or if the Borrower shall be in default, such certificate shall specify each such default, the nature and status thereof and any remedial steps taken or proposed to correct each such default.

(b) Borrower shall furnish such other information as the Original Purchaser may reasonably request from time to time including, without limitation, such additional financial statements of the Borrower for such periods as the Original Purchaser may request.

(c) The Borrower will not adopt, permit or consent to any change in accounting practices other than as required by generally accepted accounting principles and will not adopt, permit or consent to any change in its fiscal year.

(d) The Borrower shall maintain a Fixed Charge Coverage Ratio of not less than 1.25 to 1.00, determined at the end of each fiscal quarter for the immediately preceding twelve-month period.

#### Section 5.13. Primary Depository Accounts

. The Borrower covenants and agrees that during the term of this agreement it will maintain all of its depository accounts with Original Purchaser.

#### Section 5.14. Appraisal

. Should the Holder reasonably believe that the Project or Project Site may have deteriorated in market value for any reason, the Holder may cause a subsequent re-appraisal to be completed for the benefit of the Holder, the cost of which shall be paid by Borrower. The Holder shall not be limited in number of subsequent re-appraisals required, but in no event shall Borrower be required to pay for more than one subsequent re-appraisal in any two year period, except in the event of default by the Borrower.

#### Section 5.15. Form 8038

. The Borrower covenants and agrees to timely furnish to the Issuer a fully completed Internal Revenue Service Form 8038, signed by the preparer thereof, with respect to the Bonds. The Borrower further covenants and agrees that Borrower or Borrower's agent will have the primary responsibility as between or among any preparers for the overall substantive accuracy of

the preparation of Form 8038 and will be considered to be the preparer of Form 8038 for the purpose of signing such form as preparer. The Borrower will hold harmless the Issuer, bond counsel and any purchaser or holder of the Bonds against all consequences of any material misrepresentation in or material omission from such Form 8038.

**Section 5.16. Compliance With Laws and Regulations**

. The Borrower shall comply with all Applicable Laws, including all Environmental Laws.

**Section 5.17. Right of Entry**

. The Borrower shall permit the duly authorized representatives of the Original Purchaser to enter the premises, the Project or of the Borrower, or any parts thereof, to examine and copy the Borrower's financial and corporate books, records and accounts, and to discuss the affairs, finances, business and accounts of the Borrower with the Borrower's officers and employees (which, unless a Default or Event of Default is continuing, shall be during normal business hours and upon reasonable notice).

**Section 5.18. Payment of Obligations; Removal of Liens**

. The Borrower shall pay (a) all indebtedness and obligations of the Borrower in accordance with the terms thereof and (b) all assessments or other governmental charges as the same respectively become due, all taxes, assessments (general or special) and governmental charges of any kind whatsoever that may be at any time lawfully assessed or levied against or with respect to its Property or any interest thereon and promptly discharge or cause to be discharged all liens, encumbrances and charges on such Property.

**Section 5.19. Related Obligations**

. The Borrower shall promptly pay all amounts payable by it hereunder and under the Related Documents according to the terms hereof and thereof and shall duly perform each of its obligations under this Agreement and the Related Documents to which it is a party; which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety without giving effect to any expiration, amendment, supplement or termination of the Related Documents to which the Original Purchaser has not given its express written consent.

**Section 5.20. Insurance**

. The Borrower will at all times maintain insurance with respect to its business operations and properties against such risks, in such amounts, with such companies and with such deductibles as is customary for business operations and properties of like size, location and character to those of the Borrower and the Borrower will furnish to the Original Purchaser upon request full information as to the insurance carried. The Original Purchaser shall be named as lender loss payee pursuant to a standard mortgagee provision acceptable to the Original Purchaser and/or additional insured with respect to any such insurance, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Original Purchaser, that it will give or endeavor to give



the Original Purchaser thirty (30) days prior written notices before any such policy or policies shall be cancelled.

**Section 5.21. Employee Benefit Plan Compliance**

. The Borrower and each of its Affiliates shall maintain each Plan as to which it may have any liability in compliance in all material respects with the applicable provisions of ERISA and the regulations and published interpretations thereunder, the failure to comply with which could subject the Borrower or any of its Affiliates to any material tax or penalty.

**Section 5.22. Disclosure of Participants**

. The Borrower agrees to permit the Original Purchaser to disclose any information received by the Original Purchaser in connection herewith, including without limitation the financial information described in Section 5.12 hereof, to any Participants of the Original Purchaser in this Agreement.

**Section 5.23. Continue in Present Field of Business**

. The Borrower shall continue to operate substantially all of its business as disclosed to the Original Purchaser.

**Section 5.24. Proceeds of Loan**

. The proceeds of the Bond will be used by the Borrower solely for the purposes described in this Agreement which are consistent with the limitations of the Code and the Act. None of the proceeds of the Bond will be used to provide inventories, raw materials or working capital for the Borrower.

**Section 5.25. Limitation on Interest Rate Protection Agreements**

. The Borrower shall not enter into any interest rate protection agreement if any termination amounts or similar amounts (but excluding regularly scheduled payments under such interest rate protection agreement) payable thereunder would be payable on parity with or senior to any amounts required to be paid to the Original Purchaser pursuant to this Agreement, the Loan or the Bond.

**Section 5.26. Liens**

. The Borrower shall not permit any of its Property, whether real, personal or mixed, to be subject to any liens or other encumbrances other than those created pursuant to this Agreement.

**Section 5.27. Federal Reserve Board Regulations**

. Neither Borrower nor any of its Subsidiaries will use any part of the proceeds of the Bonds directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (as defined in Regulation U of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred

for such purpose or (b) for any purpose that entails a violation of, or that is inconsistent with, the provisions of Regulations U or X of the Board.

Section 5.28. Debt

. The Borrower agrees to provide notice to the Original Purchaser within two (2) Business Days of (i) knowledge of any default, event of default, or any event that would, with the passing of time, constitute a default or event of default under any Debt, or (ii) any notice of default on any other Debt.

[End of Article V]

## **ARTICLE VI**

### **PREPAYMENT OF THE NOTE**

#### **Section 6.1. Option to Prepay Note**

. The Borrower shall have, and is hereby granted, the option to prepay the Note in full or in part on any date. To exercise the option granted in this paragraph, the Borrower shall, on or before the 10<sup>th</sup> day next preceding any such date of prepayment, give written notice to the Issuer and the Holder of its intention to prepay the Note in full or in part on such date pursuant to this paragraph, and shall specify therein the principal amount of the Bonds to be redeemed with the moneys received upon such prepayment. The exercise of such option to prepay the Note in full or in part shall also constitute an election by the Issuer to call for redemption, on the same date as the Note prepayment date, an equivalent portion of the Bonds outstanding on such date.

The prepayment price to be paid upon prepayment of the Note and related Bond shall be the par amount of the Note to be prepaid, plus accrued interest; provided, however, that to the extent the aggregate amount of all prepayments in any 12-month period commencing on November 20 of any year exceeds ten percent (10%) of the outstanding and unpaid principal balance of the related Bond as of such November 20 (the "Threshold Amount"), the excess of such aggregate prepayments over the Threshold Amount shall be subject to the Prepayment Fee (the "Redemption Premium") as described herein. In such instance, the Threshold Amount shall be excluded from the determination of the Net Present Value of such Bond and the principal amount being prepaid on such Bond. Borrower acknowledges that in the event of such optional prepayment in excess of the Threshold Amount, or in the event of acceleration or of any involuntary prepayment of any principal under any Bond, Borrower shall be required, upon acceleration or prepayment of all or part of the principal amount before its scheduled due date, to pay the Holder a prepayment indemnity ("Prepayment Fee") equal to the greater of zero, or that amount, calculated by the Holder on any date of acceleration or prepayment ("Prepayment Date"), which is derived by subtracting: (a) the principal amount of such Bond or portion of such Bond accelerated or to be prepaid from (b) the Net Present Value of such Bond or portion of such Bond accelerated or to be prepaid on such prepayment date; provided, however, that the Prepayment Fee shall not in any event exceed the maximum prepayment fee permitted by applicable law.

For purposes of this Section 6.1, the following terms shall have the following definitions:

"Net Present Value" shall mean the amount which is derived by summing the present values of each prospective payment of principal and interest which, without such full or partial prepayment, could otherwise have been received by Purchaser over the shorter of the remaining contractual life of the Bond or next repricing date. The individual discount rate used to present value each prospective payment of interest and/or principal shall be the Money Market Rate At Prepayment for the maturity matching that of each specific payment of principal and/or interest.

"Money Market Rate At Prepayment" shall mean that zero-coupon rate, calculated on the Prepayment Date, and determined solely by the Holder, as the rate at which the Holder would be able to borrow funds in Money Markets for the prepayment amount matching the maturity of the Bond payment or repricing date, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. A separate Money Market Rate At Prepayment will be calculated for each prospective interest and/or principal payment date.

"Money Markets" shall mean one or more wholesale funding markets available to and selected by Purchaser, including negotiable certificates of deposit, commercial paper, Eurodollar deposits, bank Bonds, federal funds, interest rate swaps or others.

In calculating the amount of such Prepayment Fee, the Holder is hereby authorized by Borrower to make such assumptions regarding the source of funding, redeployment of funds and other related matters, as the Holder may deem appropriate. If the Borrower fails to pay any Prepayment Fee when due, the amount of such Prepayment Fee shall thereafter bear interest until paid at the Default Rate (computed on the basis of a 360-day year, actual days elapsed). Any prepayment of principal shall be accompanied by a payment of interest accrued to date thereon; and said prepayment shall be applied to the principal installments in the inverse order of their maturities. All prepayments shall be in an amount of at least \$100,000 or, if less, the remaining entire principal balance of the Bond. The Holder's internal records of applicable interest rates shall be determinative in the absence of manifest error.

The Borrower hereby acknowledges that the Borrower shall be required to pay the Prepayment Fee with respect to any portion of the principal balance accelerated or paid before its scheduled due date, whether voluntarily (except with respect to the Threshold Amount), involuntarily, or otherwise, including without limitation any principal payment made following default, demand for payment, acceleration, collection proceedings, foreclosure, sale or other disposition of collateral, bankruptcy or other insolvency proceedings, eminent domain, condemnation, application of insurance proceeds or otherwise. Such Prepayment Fee shall at all times be an obligation as well as an undertaking by the Borrower to the Holder whether arising out of acceleration or a voluntary or mandated prepayment.

The option granted to the Borrower in this Section shall be and remain prior and superior to the Mortgage and may be exercised whether or not the Borrower is in default hereunder or under any of the Related Documents; provided that no such exercise shall relieve the Borrower from liability for any such default.

#### Section 6.2. Obligatory Prepayment of Note

. If the Note or this Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed herein and in the Note by reason of any changes in the Constitution of the Commonwealth of Kentucky or the Constitution of the United States of America, or by reason of legislative or administrative action (whether state or federal) or any final decree, judgment, or order of any court (whether state or federal) entered after the contest thereof by the Issuer, the Holder or the Borrower in good faith, the Borrower shall be obligated to prepay the Note in full. Within 10 days after the event giving rise to such obligation to prepay the Note, the Borrower shall give written notice to the Issuer, the Original Purchaser and to the Holder and shall specify therein the event giving rise to such prepayment obligation, the prepayment price as provided in this Section and the date of such prepayment, which date shall be not less than 15 days nor more than 120 days from the date such notice is mailed. The giving of such prepayment notice shall also constitute the giving of notice by the Issuer of its call for redemption, on the same date as the Note prepayment date, of the entire amount of the Bonds outstanding on such date. If the Borrower fails to give any notice required to be given by it under this Section, the Holder may specify the date for prepayment of the Note and redemption of the Bonds, and giving of any such notice shall also constitute the

giving of notice by the Issuer of its call for redemption, on the same date as the Note prepayment date, of the entire amount of the Bonds outstanding on such date.

The prepayment price which shall be paid to the Original Purchaser by the Borrower under this Section shall be an amount of money equal to the principal amount of the Bonds outstanding, plus accrued interest thereon to the redemption date. No prepayment of the Note under this Section shall relieve the Borrower from liability for any default hereunder or under the Note, the Mortgage or the Bond Purchase Agreement.

**Section 6.3. Interest Rate in Event of Taxability**

. Upon the occurrence of a Determination of Taxability, the interest rate on the Note shall be adjusted and increased to Taxable Rate of Interest (retroactively, if necessary, to the date of the Event of Taxability from which the Determination of Taxability was found to have occurred for such Event of Taxability. In the event the Bonds do not qualify as a qualified tax exempt obligation under Section 265(b) of the Code, the interest rate on the Note will be adjusted and increased to the Taxable Rate of Interest (retroactively, if necessary to the date of issuance) for such event. The Borrower, on demand, shall promptly pay any additional interest that may be owed, whether or not any monthly installments of principal and interest under the Note shall then be outstanding.

**Section 6.4. Determination of Taxability After Note Prepayment**

. Notwithstanding anything herein or in the Note to the contrary, if after payment or prepayment of the Note in full and Payment in Full of the Bonds a Determination of Taxability shall occur and such Determination of Taxability causes any interest paid on the Bonds to be includable in the gross income of any Holder under the Code, or the Bond is determined not to be a qualified tax exempt obligation under Section 265(b) of the Code the Borrower shall, within 10 days after demand by such Holder, pay to such Holder an amount equal to the difference between (a) the aggregate amount of interest on the Bonds which would have been payable to such Holder if the interest rate on the Bonds, commencing on the date of the Event of Taxability, had been the Taxable Rate of Interest calculated as provided in Section 6.3 hereof, as applicable, and (b) the aggregate amount of interest on the Bonds actually paid to such Holder.

[End of Article VI]

## **ARTICLE VII**

### **DEFAULTS AND REMEDIES**

#### **Section 7.1. Events of Default**

. Each of the following events is hereby declared an Event of Default:

(a) The Borrower's failure to make any payment required to be made under the Note or this Agreement within ten (10) days after the same becomes due and payable, or any failure by the Borrower to observe and perform any covenant, condition or agreement contained in Sections 5.2 or 5.9 hereof.

(b) The occurrence of a default in the observance or performance of any of the covenants or agreements under the Mortgage, the Tax Regulatory Agreement, or the Bond Purchase Agreement or the acceleration of the Bonds by the Original Purchaser pursuant to the provisions of the Bond Purchase Agreement.

(c) The Borrower's failure to observe and perform any of its other covenants, conditions or agreements contained herein for a period of 30 days after written notice (unless the Issuer and the Holder shall agree in writing to an extension of such time prior to its expiration) specifying such failure and requesting that it be remedied, given by the Issuer or the Holder to the Borrower.

(d) If any representation or warranty by the Borrower contained in this Agreement, in the Mortgage, the Bond Purchase Agreement or the Tax Regulatory Agreement, or in any certificate or instrument delivered by the Borrower pursuant to this Agreement, the Mortgage, the Tax Regulatory Agreement, the Bond Purchase Agreement, is false or misleading in any material respect.

(e) An Event of Insolvency occurs with respect to the Borrower.

(f) The Borrower's failure, within 60 days after the commencement of any proceeding against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, to have such proceeding dismissed, or, within 60 days after the appointment without its consent or acquiescence of any trustee, receiver or liquidator of it or of any material part of its properties, to have such appointment vacated, or, within 60 days after being adjudicated bankrupt or insolvent, to have such decree or order stayed or discharged.

(g) Any foreclosure of, or ouster of the Borrower from possession of, the Project or Project Site or any portion thereof, or, except as otherwise provided for or permitted herein or in the Mortgage, any voluntary or involuntary transfer of possession or right of possession of the Project or Project Site or any portion thereof, without the written consent of the Holder.

(h) Any material change in the financial condition of the Borrower, including but not necessarily limited to cash flow and liquidity, that may affect the ability of the Borrower to make any payment required to be made under the Note when the same becomes due and payable.

(i) Any judgment or attachment that materially affects the Borrower's financial condition or the Project or Property.

(j) The Holder's good faith belief that the Holder's rights in the Project or Property are or will soon be impaired or that the Collateral itself is or soon will be impaired.

(k) The termination of existence or change in control of the Borrower.

(l) The Holder's good faith belief that the Borrower is unable or will soon be unable to perform the Borrower's duties under the Loan Agreement and Tax Regulatory Agreement, or the Holder's good faith belief that it is insecure as it related to the market value of the Project or Property.

(m) Default by the Borrower in the payment of any amount when due in respect of any Debt owed to the Original Purchaser; or default by the Borrower in the payment when due of any amount due in respect of any other Debt in an aggregate amount in excess of \$100,000 (measured in the case of any interest rate protection agreement, by the Borrower's Exposure thereunder); or default under any mortgage, agreement or other instrument under or pursuant to which such Debt is incurred or issued, and continuance of such default beyond the period of grace, if any, allowed with respect thereto; or the occurrence of any act or omission by the Borrower under any such mortgage, agreement or other instrument which results in such Debt becoming, or being capable of becoming, immediately due and payable (or, with respect to any Interest Rate Protection Agreement, which results in such interest rate protection agreement being terminated early or being subject to early termination).

(n) Any provision of this Agreement, the Bond Purchase Agreement, the Mortgage or the Tax Regulatory Agreement shall cease to be valid and binding or shall be declared null and void; or the Borrower or any governmental authority shall contest any such provision; or the Borrower or any agent or trustee on behalf of the Borrower shall deny that it has any further liability under any provision of this Agreement, the Bond Purchase Agreement, the Mortgage or the Tax Regulatory Agreement; or the Borrower shall, in writing to the Issuer, the Original Purchaser or any other Person, (i) claim that any of the Related Documents are not valid or binding on it, (ii) repudiate its obligations under any of the Related Documents and/or (iii) initiate any legal proceedings to seek an adjudication that this Agreement, or the Related Documents or the Borrower's obligation to repay any Material Debt is not valid or binding on it.

(o) Default in the payment of the principal of or the interest on any Indebtedness which as to priority is on a parity with the Note.

(p) The Holder deems itself in its sole judgment to be insecure with respect to repayment of the Note.

The provisions of paragraph (c) of this Section are subject to the same force majeure provisions as are contained in Section 3.1 of the Mortgage.

## **Section 7.2. Remedies on Default**

. Whenever any Event of Default shall have happened and be continuing, the Holder, as the assignee and pledgee of the Issuer, shall have the following rights and remedies:

(a) The Holder may declare all payments on the Note to be immediately due and payable, whereupon the same shall become immediately due and payable. If the Holder elects to exercise the remedy afforded in this Section 7.2(a) and accelerates all payments on the Note, the amount then due and payable by the Borrower resulting from such acceleration shall be the sum of (1) the aggregate principal amount of the Bonds then outstanding, (2) all unpaid interest on the Bonds accruing to the date of such acceleration, (3) any other amounts then due the Holder under this Agreement or the Related Documents and (4) any amount then due the Issuer hereunder.

(b) The Holder may have access to and inspect, examine and make copies of, the financial books, records and accounts of the Borrower pertaining to the Project and Project Site and the operation thereof.

(c) The Holder may exercise any remedy provided for in the Mortgage, the Tax Regulatory Agreement or the Bond Purchase Agreement.

(d) The Holder may take whatever action at law or in equity may appear necessary or desirable to collect any sums then due and thereafter to become due hereunder or under the Note or to enforce the observance or performance of any covenant, condition or agreement of the Borrower hereunder or under the Note; and

(e) The Holder may have access to and inspect the Project Site.

Any amounts collected pursuant to action taken by the Holder under this Section shall, except as otherwise provided in or permitted by the Mortgage, be paid into the Bond Account and applied in accordance with the provisions of the Mortgage, as the case may be. Subject to the provisions of Section 5.5 hereof, after Payment in Full of the Bonds and the payment of any costs occasioned by an Event of Default hereunder, any excess moneys in the Bond Account shall be returned to the Borrower as an overpayment of the Note.

Whenever any Event of Default shall have occurred and be continuing which results from failure of the Borrower to pay to or perform for the Issuer any payment, covenant, agreement or warranty not assigned to the Holder, the Issuer may (but need not) proceed directly against the Borrower and may take any action at law or in equity which it may deem necessary or desirable to collect or enforce such payment or performance in default.

## **Section 7.3. Right of Setoff**

. the Original Purchaser and its affiliates may, at any time and from time to time, without notice to the Borrower or any other person (any such notice being expressly waived), set off and appropriate and apply, against and on account of, any obligations and liabilities of the Borrower to the Original Purchaser or its affiliates arising under or connected with this Agreement and the Related Documents, without regard to whether or not the Original Purchaser shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured, any and all deposits (general or special, including but not limited to indebtedness evidenced by



certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other indebtedness or other payment obligation at any time held or owing by the Original Purchaser or its affiliates to or for the credit or the account of the Borrower.

Section 7.4. No Remedy Exclusive

. No remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other remedy, and every remedy shall be cumulative and in addition to every other remedy herein or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to enable the Issuer or the Holder to exercise any remedy reserved to it herein, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

Section 7.5. Attorneys' Fees and Expenses

. Should an Event of Default occur and the Issuer or the Holder employs attorneys or incurs other expenses for the collection of sums due hereunder or under the Note or in the enforcement of performance of any other obligation of the Borrower hereunder or under the Note, the Borrower shall on demand therefore reimburse the Issuer and the Holder for the reasonable fees of such attorneys and such other reasonable expenses so incurred; provided, however, such attorney's fees shall only be allowed to the extent actually paid or agreed to be paid, and shall not be allowed to a salaried employee of the Holder.

Section 7.6. Waiver of Events of Default

. If the Holder shall waive any event of default under the Note or Mortgage, and its consequences, or rescind any declaration of acceleration of payments of the principal of and interest on the Bonds, such waiver shall also waive any corresponding Event of Default hereunder and its consequences, and such rescission of a declaration of acceleration of the principal of and interest on the Bonds shall also rescind any declaration of any corresponding acceleration of all payments on the Note. In case of any such waiver or rescission, or in case any proceeding taken by the Issuer or the Holder on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Borrower, and the Holder shall be restored to their former positions and rights hereunder and under the Note respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Section 7.7. Cure

. The Original Purchaser shall have the right, but not the obligation, to cure any Default, Event of Default or event of nonperformance. The Borrower agrees to pay to the Original Purchaser, on demand, any amounts advanced by or on behalf of the Original Purchaser to the extent required to cure any Default, Event of Default or event of nonperformance under this Agreement or any Related Document, together with interest thereon accruing daily at the Default Rate.

[End of Article VII]

## **ARTICLE VIII**

### **MISCELLANEOUS**

#### **Section 8.1. Term of Agreement**

. Subject to the provisions of Section 5.5 hereof, this Agreement shall terminate upon Payment in Full of the Bonds.

#### **Section 8.2. Notices**

. Except as otherwise specifically provided herein, all notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the Borrower, at 13420 Eastpoint Centre Dr., Louisville, KY 40223, Attention: Director of Business Management, (b) if to the Issuer, at the County of Marshall, Kentucky, 1101 Main Street, Benton, KY 42025, Attention: County Judge/Executive, or (c) if to the Original Purchaser, at 333 Broadway, P.O. Box 2400, Paducah, Kentucky 42002-2400, Attn: Commercial Lending Department. A duplicate copy of each notice, approval, consent, request or other communication given hereunder by either the Issuer or the Borrower to the other shall also be given to the Holder. The Issuer, the Borrower and the Holder may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed, but no such communications shall thereby be required to be sent to more than two addresses.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient).

The Original Purchaser, the Issuer or the Borrower may, in its respective discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it or as it otherwise determines, provided that such determination or approval may be limited to particular notices or communications.

Unless the Original Purchaser otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

#### **Section 8.3. Binding Effect**

. This Agreement shall be binding upon and inure to the benefit of the Issuer, the Borrower, the Original Purchaser and their respective successors, endorsees and assigns (but no other person shall have any benefit, right or interest under or because of this Agreement), except that neither the Issuer nor the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the Original Purchaser and any transfer by the Issuer or the Borrower not made in compliance with this Section 8.3 shall be null and void. This Agreement is a continuing obligation and shall survive the Termination Date. The Original Purchaser may grant interests in its rights hereunder as provided in Section 8.4.

Notwithstanding any other provision of this Agreement or the Related Documents, the Original Purchaser may at any time pledge or grant a security interest in all or any portion of its rights hereunder (including, without limitation, rights to payment under this Agreement) under the Bond or the rights thereunder to secure obligations of the Original Purchaser to a Federal Reserve Original Purchaser, without notice to or consent of the Issuer or the Borrower; provided that no such pledge or grant of a security interest shall release the Original Purchaser from any of its obligations hereunder, as the case may be, or substitute any such pledge or grantee for the Original Purchaser as a party hereto, as the case may be. Any obligation of the Issuer arising hereunder shall not be a general debt of the Issuer, but shall be payable solely out of the Pledged Receipts.

#### Section 8.4. Participations

. The Issuer and the Borrower acknowledge and agree that the Original Purchaser may, without the consent of the Borrower, participate portions of the obligations of the Borrower under the Bond, the Loan, this Agreement and any of the Related Documents (collectively, the "Participated Obligations") to affiliates, other financial institutions or third persons and waives any notice of such participations. The Issuer and the Borrower further acknowledge and agree that upon any such participation the Participants will become owners of a pro rata portion of the Participated Obligations and the Issuer and the Borrower waives any right of setoff it may at any time have against the Original Purchaser or any Participant with regard to the Participated Obligations. The Original Purchaser may disclose to any assignee or Participant and to any prospective assignee or Participant any and all financial information in such the Original Purchaser's possession concerning the Borrower or any of its Subsidiaries that has been delivered to the Original Purchaser by or on behalf of the Borrower or any of its Subsidiaries pursuant to this Agreement or any Related Document or that has been delivered to the Original Purchaser by or on behalf of the Borrower or any of its Subsidiaries in connection with the Original Purchaser's credit evaluation of the Borrower or any of its Subsidiaries prior to entering into this Agreement or any Related Document.

#### Section 8.5. Severability

. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. If any provision herein shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or

unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

Section 8.6. Amendments, Changes and Modifications

. Except as otherwise provided in this Agreement or in the Mortgage subsequent to the issuance of the Bonds and prior to all conditions provided for in the Mortgage for release of the Mortgage having been met, this Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Holder.

Section 8.7. Execution Counterparts

. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.8. Captions

. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

Section 8.9. Governing Law

. This Agreement shall be deemed to be a contract made under the laws of the Commonwealth of Kentucky and for all purposes shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Section 8.10. Consent to Jurisdiction, Venue and Service of Process

. THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN THE COMMONWEALTH OF KENTUCKY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED DOCUMENT AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ORIGINAL PURCHASER TO BRING PROCEEDINGS AGAINST THE BORROWER IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY THE BORROWER AGAINST THE ORIGINAL PURCHASER OR ANY AFFILIATE OF THE ORIGINAL PURCHASER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT OR ANY RELATED DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN THE COMMONWEALTH OF KENTUCKY. The Borrower and the Original Purchaser also irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to the respective address set forth for such party in Section 8.2. The Borrower and the Original Purchaser agree that a final judgment in any suit, action or proceeding shall be conclusive and may be enforced in appropriate jurisdictions by suit on the judgment or in any other manner

provided by law. All mailings under this Section 8.10 shall be by certified mail, return receipt requested.

Nothing in this Section 8.10 shall affect the right of the Original Purchaser to serve legal process in any other manner permitted by law or affect the right of the Original Purchaser to bring any suit, action or proceeding against the Borrower or its property in the courts of any other jurisdiction.

Section 8.11. WAIVER OF JURY TRIAL

. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE BORROWER AND THE ORIGINAL PURCHASER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (WHETHER AS A CLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE) BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OF THE RELATED DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE BORROWER OR THE ORIGINAL PURCHASER. THE BORROWER ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND RECOGNIZES AND AGREES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ORIGINAL PURCHASER ENTERING INTO THIS AGREEMENT AND PURCHASING THE BOND. THE BORROWER REPRESENTS AND ACKNOWLEDGES THAT IT HAS REVIEWED THIS PROVISION WITH ITS LEGAL COUNSEL AND THAT IT HAS KNOWINGLY AND VOLUNTARILY WAIVED ANY JURY TRIAL RIGHTS IT MAY HAVE FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL.

Section 8.12. Patriot Act

. The Original Purchaser hereby notifies the Borrower that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Original Purchaser to identify the Borrower in accordance with the Patriot Act. The Borrower hereby agrees that it shall promptly provide such information upon request by the Original Purchaser.

Section 8.13. Electronic Signatures

. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay

rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an email message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

Section 8.14. Third Party Beneficiaries

. The Holder shall be a third party beneficiary of this Agreement, and as such also agree and contract with the parties hereto to carry out all of their obligations hereunder

[End of Article VIII]

Section \_\_\_\_\_. **Successors and Assigns.** This Agreement is a continuing obligation and shall be binding upon the Borrower, its successors, transferees and assigns and shall inure to the benefit of the Noteholders and their respective permitted successors, transferees and assigns. The Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Original Purchaser.

Section \_\_\_\_\_. **Student Loan Referrals.** The parties hereto represent and warrant to one another that the pricing and terms and conditions for the services provided under this Agreement are unrelated to whether the Borrower refers student loans to the Original Purchaser (or any Purchaser Affiliate) and to the amount of any such referrals.

Section \_\_\_\_\_. **No Fiduciary Relationship.** The Borrower acknowledges and agrees that its dealing with the Purchaser are solely in the nature of a debtor/creditor relationship and that in no event shall the Original Purchaser be considered to be a partner or joint venturer of the Borrower. Also, the Borrower represents and warrants that it has independently evaluated the business transaction and has not relied upon, nor will it rely upon, the expertise, advice or other comments or statements of the Purchaser (including agents of the Purchaser), if any, in deciding to pursue such undertaking. As the Borrower is experienced in business, in no event shall the Purchaser owe any fiduciary or similar obligations to it in connection with the subject transaction.


Section \_\_\_\_\_. **Electronic Records.** Borrower hereby acknowledges the receipt of a copy of this Agreement and all other Related Documents. The Original Purchaser may, on behalf of Borrower, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the Related Documents. The Original Purchaser may store the electronic image of such Agreement and Related Documents in its electronic form and then destroy the paper original as part of Original Purchaser's normal business practices, with the electronic image deemed to be an original. The Original Purchaser is authorized, when appropriate, to convert any instrument into a "transferable record" under the Uniform Electronic Transactions Act ("UETA"), with the image of such instrument in the Original Purchaser's possession constituting an "authoritative copy" under UETA.





IN WITNESS WHEREOF, the Issuer and the Borrower have executed this Agreement all as of the date first above written.

**COUNTY OF MARSHALL, KENTUCKY**

  
\_\_\_\_\_  
Judge/Executive

Attest:

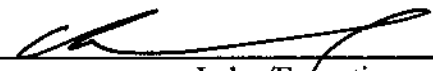
By:   
\_\_\_\_\_  
Fiscal Court Clerk

**KENTUCKY BAPTIST ASSEMBLIES, INC.**

\_\_\_\_\_  
President and Chief Executive Officer

The above Agreement is hereby assigned, without recourse, to U.S. Bank, National Association, Paducah, Kentucky, as Original Purchaser, as of the date first above written.

**COUNTY OF MARSHALL, KENTUCKY**

By:   
\_\_\_\_\_  
Judge/Executive

Attest:   
\_\_\_\_\_  
Fiscal Court Clerk

The above assignment is hereby accepted.

**U.S. BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Commercial Relationship Manager

## **EXHIBIT A**

### **THE PROJECT**

The Project consists of the acquisition, construction and equipping of educational facilities at the following locations: (i) the Jonathan Creek Camp and Conference Center, 3043 Beal Rd, Hardin, KY 42048, including but not limited to, property adjacent existing facility, two residential lodges, a 10,500 sq. ft. auditorium, high ropes recreation course; and (ii) Cedarmore Camp and Conference Center, 3083 Cedarmore Rd., Bagdad, KY 40003, including but not limited to, two residential lodges, and a water slide.

## **EXHIBIT B**

### **PROJECT SITE**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARSHALL, STATE OF KENTUCKY, AND IS DESCRIBED AS FOLLOWS:

#### **TRACT I**

An approximately 86 acre tract of land as surveyed by Gammel Engineering of Benton, Kentucky in August, 1983, and being generally located on the West side of Beale Road (Kentucky Highway 1627) and on the East side of the Jonathan Creek Embayment of Kentucky Lake, approximately 8-1/2 miles Southeast of the City of Denton, Marshall County, Kentucky, and being more particularly described as:

Beginning at the Northeast corner of the property herein described, said corner being an existing axle with a concrete reference monument (set) located in the West right-of-way of Beale Road (Kentucky Highway 1627), 30 feet West of the centerline of said roadway, said axle being located approximately 30 feet Southwest of Shelton Road, said axle also being the Southeast corner of the Jerry Smith property as described in Deed Book 146, Page 607;

thence, along the West right-of-way of Beale Road, and when projected on straight lines with the following calls: South 45 degrees 47 minutes 16 seconds West - 193.63 feet; South 73 degrees 48 minutes 24 seconds West - 215.17 feet; South 61 degrees 28 minutes 46 seconds West - 118.24 feet; south 35 degrees 41 minutes 16 seconds West - 202.41 feet; South 51 degrees 06 minutes 21 seconds West - 210.24 feet; South 44 minutes 21 minutes 52 seconds West - 147.74 feet to an existing 1 inch pipe set in concrete at an existing fence corner post, said pipe being located in the West right-of-way of Beale Road, 30 feet West of the centerline of said roadway, said pipe also being the Northeast corner of the Herschel Underwood property as described in Deed Book 149, Page 175;

thence, North 81 degrees 52 minutes 30 seconds West - 293.71 feet, along the North line of the said Underwood property, to a concrete monument with a brass cap set 2.94 feet Northeast of an existing fence corner post;

thence, South 0 degrees 06 minutes 57 seconds East - 373.87 feet, along the West line of the said Underwood property, to an existing TVA #32-7 iron pipe with a concrete reference monument (set), said pipe being located approximately 13 feet East of an existing fence line;

thence, South 1 degree 34 minutes 08 seconds East - 722.80 feet, continuing along the West line of the said Underwood property and the West line of the William Traughber property (Deed Book 140, page 172), to a concrete monument with brass cap set at the former location of TVA #32-8, said monument being approximately 4 feet Northeast of an existing fence line in the center of the old roadbed, said concrete monument being a point in the North line of the Charles Rudolph property as described in Deed Book 179, Page 564;

thence, North 50 degrees 42 minutes 34 seconds West - 52.59 feet, along the North line of the said Rudolph property, to a point in an existing drain (TVA #32-79), said point being located 18.15 feet Northeast of an existing TVA metal post #32-79WC;

thence, South 10 degrees 24 minutes 04 seconds East - 213.82 feet, along a drain, to a point in the centerline of said drain (TVA #32-80), said point being located 11.40 feet Northwest of an existing TVA metal post #32-80WC;

thence, in a northerly direction with the 375 contour based on mean sea level data, along the East side of the Jonathan Creek Embayment of Kentucky Lake to a 1/2 inch rebar iron pin set at TVA #32-78, said iron pin being located 4.24 feet Northeast of an existing TVA metal post #32-78WC;

thence, North 0 degrees 01 minutes 35 seconds East - 89.34 feet to a 1/2 inch rebar iron pin set at TVA #32-77, said rebar being located 6.87 feet Northeast of an existing TVA metal post #32-77WC;

thence, North 7 degrees 56 minutes 07 seconds West - 68.45 feet to an existing TVA concrete monument #32-5, said monument being the Southeast corner of the Ernest Falls, Jr. property as described in Deed Book 134, Page 48;

thence, South 82 degrees 51 minutes 12 seconds East - 449.52 feet, along the south line of the property of Ruby Ivy (Deed Book 189, page 605), Arthur Mocs (Deed Book 190, Page 176), Robert Hubbard (Deed Book 190, Page 463 and Deed Book 189, Page 661), and Juanita Bender (Deed Book 151, page 519), to an existing TVA 1 inch iron pipe #32-4 with a concrete reference monument set at a 20 inch White Oak;

thence, South 66 degrees 48 minutes 37 seconds East - 1,233.70 feet, along the South line of the property of Ruby Ivy (Deed Book 142, page 117), K. Nylander (Deed Book 160, page 305), S. Tapp (Deed Book 158, page 214), S. Hardin (Deed Book 186, page 185), K. Higgins (Deed Book 195, page 77), J. W. Slayden (Deed Book 135, page 337), R. Warren (Deed Book 149, page 409) and Jerry Smith (Deed Book 146, page 607), to the point of beginning.

The above described property is subject to all covenants, easements and restrictions set forth in Deed Book 101, Page 481, as well as any other legal easements on record or in existence, including Deed Book 80, page 95, all in the Marshall County Court Clerk's Office in Marshall County, Kentucky.

## TRACT II

A 3.144 acre tract of land as surveyed by Kenar Architectural and Engineering, Inc. of Benton, Kentucky in February, 1991 and being generally located on the East side of Beale Road, 0.85 miles Southwest of U.S. Highway 68, on the Southeast side of the Jonathan Creek Embayment, and being more particularly described as:

Beginning at the Northernmost corner of the property herein described, said corner being a point located in the Southeast right-of-way of said Beale Road (30 feet Southeast of centerline), said point being 3.0 feet southeast of an existing 1-1/2 inch iron pipe (found); thence South 50°41'49" East, 289.88 feet, with the Stephen Kash boundary (Deed Book 175 Page 161), to an existing 1-1/2 inch iron pipe found on the North side of a 14 inch blazed twin oak tree near the bottom of a hill; thence South 26°00'34" West, 483.96 feet, continuing with the said Stephen Kash boundary, to a point in the Northeast right-of-way of said Beale Road (30 feet Northeast of centerline), said point being 5.0 feet Northeast of an existing 1-1/2 inch iron pipe found at a stone; thence in a Northeasterly direction with the East right-of-way of said Beale Road as it curves to the Northeast, and when projected on a straight line with the following calls: North 41°04'15" West, 139.82 feet; North 29°18'53" West, 138.08 feet; North 10°20'35" West, 79.78 feet; North 4°48'14" East, 80.44 feet; North 15°58'29" East, 80.90 feet; North 31°30'39" East, 86.14 feet; and, North 46°36'23" East, 120.67 feet to the point of beginning.

Being in all respects the same property conveyed to Kentucky Baptist Assemblies, Inc., by deed dated September 2, 1997, of record in Deed Book 297, page 628, Marshall County Clerk's Office.

EXHIBIT C

to

LOAN AGREEMENT

Between

COUNTY OF MARSHALL, KENTUCKY

and

KENTUCKY BAPTIST ASSEMBLIES, INC.

PROMISSORY NOTE

\$ \_\_\_\_\_

November \_\_, 2018

FOR VALUE RECEIVED, the undersigned Kentucky Baptist Assemblies, Inc. (the "Borrower"), hereby promises to pay to the order of the County of Marshall, Kentucky (the "Issuer"), the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), with interest on the outstanding principal amount from the date hereof through November 20, 2018 at the per annum rate equal to \_\_\_\_\_ percent (\_\_\_\_ %), and thereafter, commencing November 21, 2020, at an interest rate equal to the interest rate of United States Treasury Notes with a constant maturity of seven years, plus 150 basis points (1.50%), as established on November 20, 2020.

Principal and Interest shall be payable in monthly installments on the twentieth day of each month, or, if such day is not a Business Day, the next following Business Day (an "Interest Payment Date" or a "Principal Payment Date") commencing December 20, 2018, through and including May 20, 2032 (the "Final Maturity Date") with the payments of principal and interest being equal during each of the interest rate periods set forth above and being in an amount calculated to fully amortize the then outstanding principal balance of the Bonds over a term ending on the Final Maturity Date. The final payment due hereunder on the Final Maturity Date shall be in an amount equal to the principal balance of the Bonds on such date, plus accrued interest.

All payments hereon shall be credited first to interest and then to principal. Interest shall be calculated on calculated on the basis of a 360 day year with 30 day months.

As used herein the terms "Bond Account," "Determination of Taxability," "Event of Default," "Event of Taxability," "Holder," "Interest Rate for Advances," "Mortgage," "Original Purchaser," "Payment in Full of the Bonds," "Prepayment Fee," "Taxable Rate of Interest" and "Tax Regulatory Agreement" shall have the meanings assigned to them in the Loan Agreement dated as of November \_\_, 2018 between the Issuer and the Borrower (the "Loan Agreement") relating to the Bonds, as hereinafter defined.

All principal, interest and premium payments hereunder shall be made, in lawful money of the United States of America, to the Original Purchaser at its principal office (presently in Paducah, Kentucky), on or before the due date thereof, for deposit in the Bond Account for the

Account of the Issuer. Time is of the essence of this Promissory Note. Any payment not made when due hereunder, together with interest thereon at the Interest Rate for Advances, shall continue as an obligation of the Borrower until paid.

In any event, the sum of the principal and interest payments payable pursuant to this Note shall be sufficient to pay the total amount due with respect to principal and interest on the Bonds, as and when due, and if at any time when such payments are due the balance in the Bond Account is insufficient to make such payments, the Borrower will forthwith pay to the Original Purchaser, for the Account of the Issuer, for deposit into the Bond Account, any such deficiency; provided, that any amount at any time held by the Original Purchaser in the Bond Account shall be credited against the principal and interest payment next required to be paid by the Borrower hereunder, to the extent such amount is in excess of past due interest, of the amount required for payment of the principal amount of the Bonds theretofore required to be amortized or called for redemption, and of any amount required or permitted to be deposited in the Bond Account by the Mortgage and to be used pursuant thereto for other than the payment of the interest or principal of the Bonds on the next Interest Payment date.

Subject to the provisions of the Loan Agreement, upon Payment in Full of the Bonds, the Borrower shall not be obligated to make any further principal or interest payments hereunder and the Issuer or the Holder shall mark this Note "Paid in Full" and return it to the Borrower.

This Promissory Note is the Note referred to in Section 4.1 of the Loan Agreement and is entitled to the benefits and subject to the conditions of the Loan Agreement.

This Promissory Note is subject to prepayment as specified in the Bond Purchase Agreement and in Article 6 of the Loan Agreement and all of the terms, conditions and provisions of the Bond Purchase Agreement and the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Promissory Note. The obligation of the Borrower to make payments of principal and interest on the principal amount of this Note which remains outstanding after any partial redemption shall not be affected by such partial redemption, such partial redemption operating instead to pay and redeem the principal of the Note at dates earlier than the originally scheduled principal amortization or payment date or dates, in inverse chronological order

Upon the occurrence of a Determination of Taxability, the interest rate on the Note shall be adjusted and increased to the Taxable Rate of Interest (retroactively, if necessary, to the date of the Event of Taxability from which the Determination of Taxability was found to have occurred). In the event the Bonds do not qualify as a qualified tax exempt obligation under Section 265(b) of the Code, the interest rate on this Note will be adjusted and increased to the Taxable Rate of Interest (retroactively, if necessary to the date of issuance) for such event.

This Note shall be assigned only to the Original Purchaser, or any successor Holder, to secure payment of the Bonds.

If an Event of Default shall occur, the unpaid principal balance plus accrued interest may be declared due and payable by the Issuer or Holder without the necessity of any notice or action by the Issuer or Holder, in the manner and with the effect provided in the Loan Agreement, and the Issuer or Holder shall have any and all of the remedies on an Event of Default provided by the Loan Agreement.

Should an Event of Default occur and the Issuer or Holder employ attorneys or incur other expenses for the collection of sums due hereunder in enforcement or performance of the Borrower hereunder, the Borrower shall on demand therefore reimburse the Issuer and/or Holder for the reasonable fees of such attorneys and such other reasonable expenses so incurred, provided, however, such attorney's fees shall only be allowed to the extent actually paid or agreed to be paid, and shall not be allowed to a salaried employee of the Holder.

The Borrower hereby waives presentment, demand, notice, protest, and all other demands and notices in connection with the delivery, acceptance, performance, default, or enforcement of this Note, and assents to the addition or release of any other party or person primarily or secondarily liable under this Note.

IN WITNESS WHEREOF, the Borrower has executed this Promissory Note as of the date first above written.

KENTUCKY BAPTIST ASSEMBLIES, INC.

By: \_\_\_\_\_  
President and Chief Executive Officer

The above Promissory Note is hereby assigned, without recourse, to U.S. Bank, National Association, Paducah, Kentucky, as Original Purchaser, as of the date first above written.

COUNTY OF MARSHALL, KENTUCKY

By: \_\_\_\_\_  
Judge/Executive

Attest:   
Fiscal Court Clerk

The above assignment is hereby accepted.

U.S. BANK, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Customer Relationship Manager