
CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

and

CITY OF YONKERS

and

CITY SCHOOL DISTRICT OF THE CITY OF YONKERS

and

YONKERS JOINT SCHOOLS CONSTRUCTION BOARD

**INSTALLMENT SALE AGREEMENT
(NEW COMMUNITY SCHOOL PROJECT)**

Dated as of September 1, 2021

City of Yonkers Industrial Development Agency
School Facility Revenue Bonds

(New Community School Project) Series 2021

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INSTALLMENT SALE AGREEMENT (NEW COMMUNITY SCHOOL PROJECT)

THIS INSTALLMENT SALE AGREEMENT (NEW COMMUNITY SCHOOL PROJECT), made and entered into as of September 1, 2021 (this "*Agreement*"), by and among **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "*Agency*"), having its principal office at 470 Nepperhan Avenue – Suite 200, Yonkers, New York 10701, **CITY OF YONKERS**, a municipal corporation of the State of New York (the "*City*"), having its principal office at City Hall, 40 South Broadway, Yonkers, New York 10701, **CITY SCHOOL DISTRICT OF THE CITY OF YONKERS**, a school district of the State of New York, acting by and through its Board of Education ("*YCSD*"), having its principal office at One Larkin Center, Yonkers, New York 10701, and **YONKERS JOINT SCHOOLS CONSTRUCTION BOARD**, established pursuant to Chapter 355 of the Laws of 2016 of the State of New York and an intermunicipal agreement dated as of April 1, 2004, between the City and YCSD ("*YJSCB*"), having its principal office at One Larkin Center, Yonkers, New York 10701:

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "*Enabling Act*") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York (the "*State*") and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 83 of the 1982 Laws of New York, as amended (together with the Enabling Act, the "*IDA Act*"), for the benefit of the City and the inhabitants thereof; and

WHEREAS, the Legislature of the State has determined that many of the existing school buildings of the YCSD are in need of substantial rehabilitation and reconstruction and new City schools buildings must be built in order to improve the quality of education in the City; and

WHEREAS, pursuant to Chapter 355 of the Laws of 2016 of the State (the "*Yonkers Schools Act*"), the City, YCSD and the YJSCB entered into an intermunicipal agreement dated as of _____, 2021, pursuant to which the YJSCB shall enter into contracts and agreements on behalf of the City and the YCSD with respect to projects as defined in and undertaken pursuant to the Yonkers Schools Act (each as so defined, a "*Project*") for the construction of new schools and renovation of existing public schools, including management and administration on behalf of the City and YCSD of any comprehensive construction and reconstruction program and the financing thereof, as authorized from

time to time by the State Education Department and in accordance with the Yonkers Schools Act and applicable State and local law; and

WHEREAS, the Legislature has further determined that if the quality of education in the City is to be improved, existing schools must be rehabilitated and reconstructed and new City schools must be built, including retirement of old facilities and replacement by more efficiently operating buildings with better use of space shall result in facilities more conducive to current education requirements and equipped to operate at lower maintenance costs with improved energy efficiency; and

WHEREAS, pursuant to the Yonkers Schools Act, a Project undertaken pursuant to the Yonkers Schools Act has been determined to be a qualified "project" under the IDA Act, which the Agency may finance and in which it may have a leasehold or license interest; and

WHEREAS, to accomplish the purposes of the IDA Act, the Agency has entered into negotiations and has received a proper application from the YJSCB, acting on behalf of the YCSD and the City, for financing of the construction of new public school facilities in the City to be undertaken pursuant to the Yonkers Joint Schools Construction and Modernization Plan (the "*Program*"), to induce the Agency to (A) acquire an interest in and (B) undertake (i) acquisition of the site consisting of two lots located at 121 McLean Avenue and 469-470 Van Cortlandt Park Avenue in the City as described in Exhibit A attached hereto and made a part hereof (the "*Project Site*"), as well as any additional parcel(s) as may be required, including for offsite parking, demolition of three existing buildings thereon, and construction and equipping thereon of a new Pre-K to 8th grade public school including a 4-story Academic Building, a Community Building, playground, parking lot and related improvements for such school buildings and the acquisition and installation of all Equipment (the "*Equipment*") necessary and attendant to and for the use of such school building (collectively, the "*New Community School Project*" or "*Facilities*"), and (ii) the financing thereof; and

WHEREAS, the Agency has determined that the financing of the costs of the Facilities will assist the YCSD and the City in improving the quality of education in the City and thereby effectuate its public purposes for the benefit of the inhabitants of the City; and

WHEREAS, as a result of such negotiations, the YJSCB has requested the Agency to issue its revenue bonds from time to time in one or more Series through multiple indentures of trust in an aggregate principal amount not to exceed \$80,000,000 to effect such financing; and

WHEREAS, the Agency adopted a resolution on August 17, 2021 (the "*Resolution*") authorizing the issuance of its School Facility Revenue Bonds (New Community School Project) from time to time in one or more Series through multiple indentures of trust in an aggregate principal amount not to exceed \$80,000,000 to effect the financing of the Facilities, the acceptance of a license in and to the Facilities by the Agency from the City and the YCSD, the appointment of the YJSCB as agent of the Agency to complete the New Community School Project and the sale of the Agency's interests in and to the Facilities pursuant to this Agreement as amended from time to time, to the City and the YCSD; and

WHEREAS, in order to (i) finance a portion of the costs of the Facilities, in furtherance of the Program; (ii) refinance, in accordance with the Yonkers Schools Act, the City's outstanding \$6,000,000 bond anticipation notes which were issued to provide interim financing for a portion of the costs of the New Community School Project, and (iii) finance incidental and related costs and to provide funds to

pay the costs and expenses of the issuance of the bonds described herein, the Agency will issue on September 16, 2021 its School Facility Revenue Bonds (New Community School Project) Series 2021 in an aggregate principal amount of \$[] (the "*Series 2021 Bonds*"), pursuant to the Resolution and an Indenture of Trust (New Community School Project), dated as of even date herewith (as the same may be amended or supplemented, the "*Indenture*"), between the Agency and Manufacturers and Traders Trust Company, as trustee (the "*Trustee*"); and

WHEREAS, the City and the YCSD have granted to the Agency a license in and to the existing school buildings and existing school building sites comprising the Facilities; and

WHEREAS, the Agency will appoint the YJSCB as its agent pursuant to this Agreement for the purpose of completing the New Community School Project; and

WHEREAS, the Agency will sell its interest in the Facilities to the City and the YCSD pursuant to this Agreement; and

WHEREAS, it is contemplated that the Agency or other public entity will issue additional series of its bonds from time to time under separate indentures of trust to finance completion of the New Community School Project and all or a portion of the costs of additional public school facilities as part of the Program; and

WHEREAS, concurrently with the execution hereof, the YCSD and the City will enter into a State Aid Depository Agreement, dated as of even date herewith (the "*State Aid Depository Agreement*"), with Manufacturers and Traders Trust Company, Buffalo, New York, acting as Depository Bank, to provide for, among other things, the payment of all State Aid to Education (as defined therein) into the State Aid Depository Fund (also as defined therein) maintained with the Depository Bank for periodic transfer to the Bond Fund and equivalent fund established under each Series Indenture (including the Indenture) toward payment of the Series 2021 Bonds and each other series of Project Bonds (as defined herein) issued under a Series Indenture, and, to the extent of any deficiency therein, to the Debt Service Reserve Fund and equivalent fund, if any, established under a Series Indenture (including the Indenture), and the balance to the General Fund (also as defined therein); and

WHEREAS, pursuant to the Yonkers Schools Act, in the event that the City or the YCSD shall fail to make a payment due under this Agreement or any other Series Facilities Agreement (as defined herein), the Agency (or the related Series Trustee acting on its behalf) shall so certify the amount not paid to the State Comptroller who shall thereupon withhold such amount from any state aid payable to the YCSD or the City for the YCSD and immediately pay over same to the Agency (or such related Series Trustee); and

WHEREAS, all events, conditions and actions necessary and required by the laws of the State of New York in connection with or which are conditions precedent to the due authorization, execution and delivery of this Agreement have happened, occurred and been taken by the Agency, the City, the YCSD and the YJSCB;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (*provided that* in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not create a debt of the State of New York or a general obligation of the City,

and the State of New York shall not be liable on any obligation so incurred, but any such obligation shall be payable solely out of the installment purchase payments, revenues and receipts derived from or in connection with the Facilities, including moneys received under this Agreement).

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. Terms not otherwise defined herein shall have the same meanings as used in the Indenture or the State Aid Depository Agreement hereinbelow defined. The following terms shall have the respective meanings in this Agreement:

Additional Facilities shall mean any public school buildings of the City and/or the YCSD as shall after the Closing Date become subject to a Series Facilities Agreement other than this Agreement; *provided, however*, that to the extent that only items of machinery, equipment, furniture, furnishings or fixtures located within a public school building owned by the City and/or the YCSD shall be financed in whole or in part from a Series of Project Bonds, then "Additional Facilities" shall mean only such items so financed and all replacements, repairs or additions thereto.

Additional Payments shall mean all amounts payable by the YCSD and/or the City under this Agreement, other than for Installment Purchase Payments.

Agency shall mean the City of Yonkers Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

Agreement shall mean this Installment Sale Agreement (New Community School Project), dated as of September 1, 2021, among the Agency, the City, the YCSD and the YJSCB and shall include any and all amendments and supplements hereto hereafter made in conformity herewith and with the Indenture.

Agreement Term shall mean the duration of this Agreement, as specified in Section 2.2 hereof.

Architect shall mean, with respect to the Facilities, Kaeyer, Garment + Davidson Architects, PC.

Authorized Representative shall mean (i) in the case of the Agency, the Chairman, Vice Chairman, or President of the Agency, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Program Manager, the President, any Vice President, the Treasurer or any Assistant Treasurer of the Program Manager, or any officer or employee of the Program Manager authorized to perform specific acts or to discharge specific duties, (iii) in the case of the YCSD, the Superintendent of the YCSD, the President of the Board of Education or any other officer or employee of the YCSD authorized to so act, (iv) in the case of the YJSCB, the Chairperson or any other representative or agent authorized by the YJSCB to so act, and (v) in the case of the City, the Mayor, the Commissioner of Finance, or any other officer or employee authorized by the City to so act; *provided, however*, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Base Installment Purchase Payment Date shall mean, in the case of the Series 2021 Bonds, April 1 of each year, commencing April 1, 2022, all as set forth in Schedule A to this Agreement.

Base Installment Purchase Payments shall mean those installment purchase payments payable by the City and YCSD pursuant to Section 4.1(a) hereof.

Bill of Sale to City and YCSD shall mean the Bill of Sale (New Community School Project) from the Agency to the City and the YCSD conveying all of the Agency's interest in the Facility to the City and the YCSD, substantially in the form attached as Exhibit A to this Agreement upon the termination of the License.

Board of Education shall mean the Board of Education of the City School District of the City of Yonkers.

Bonds shall mean the Series 2021 Bonds and any Series of Additional Bonds issued under the Indenture.

City shall mean the City of Yonkers, New York.

Closing Date shall mean the date of the original issuance and delivery of the Series 2021 Bonds.

Code shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder.

Construction Contract shall mean one or more contracts procured by the YJSCB on behalf of the City and the YCSD pursuant to the Intermunicipal Agreement, in consultation with the Program Manager and in accordance with Section 103 of the New York General Municipal Law or the Yonkers Schools Act, with contractors for the work and materials required to complete the Facilities.

County shall mean Westchester County, New York.

Depository Bank shall mean Manufacturers and Traders Trust Company, Buffalo, New York, acting as depository bank pursuant to the State Aid Depository Agreement, and shall include its successors and assigns.

Environmental Compliance Agreement shall mean the Environmental Compliance and Indemnification Agreement, dated as of even date herewith, from the YCSD and the City for the benefit of the Agency, as amended or supplemented.

Equipment shall mean all items of machinery, equipment, furniture, furnishings and fixtures necessary or attendant to the use of the Facilities.

Event of Default or event of default shall mean an "event of default" described in Section 8.1 of this Agreement.

Event of Nonappropriation shall mean the failure by the City or the YCSD to pay or cause to be paid, when due, the Installment Purchase Payments or Additional Payments to be paid hereunder, as a result of (i) the failure by the YCSD to include in the annual YCSD budget submitted to the Mayor of the City line items for the Installment Purchase Payments or Additional Payments to be paid

hereunder or to approve such payments after appropriation by the City therefor; (ii) the failure by the City to approve the annual YCSD budget containing line items for the Installment Purchase Payments or Additional Payments to be paid hereunder and thereby appropriate funds for the payment thereof; or (iii) the failure by the YCSD to approve payment of Installment Purchase Payments or Additional Payments after appropriation by the City therefor.

Facility or Facilities shall mean, as applicable, the school building to be owned by the City and/or the YCSD and described in the Description of Facilities in Exhibit A attached hereto and made a part hereof, including the land upon which such school is located and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements now or at any time made, erected or situated thereon (including the improvements made pursuant to Section 3.1 hereof and the Construction Contracts), and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto, together with all items of Equipment located and used therein from time to time.

Fiscal Year shall mean a year commencing on July 1 and ending on the next succeeding June 30.

Indenture shall mean the Indenture of Trust (New Community School Project), dated as of even date herewith, between the Agency and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Installment Purchase Payments shall mean, collectively, the Base Installment Purchase Payments and the Reserve Payments.

Intermunicipal Agreement shall mean the intermunicipal agreement dated as of _____, 2021, by and between the City, YCSD and YJSCB, as amended or supplemented.

License shall mean the License Agreement (New Community School Project), dated as of even date herewith, between the City and the YCSD, as licensor, and the Agency, as licensee, with respect to the Facilities, as amended or supplemented.

Net Base Facilities Agreement Payment shall mean the Base Installment Purchase Payment as reduced by any credits from amounts available in the Bond Fund.

Permitted Encumbrances shall mean and include:

- (i) undetermined liens and charges incident to construction or maintenance, and liens and charges incident to construction or maintenance now or hereafter filed on record which are being contested in good faith and have not proceeded to judgment;
- (ii) the liens of taxes and assessments which are not delinquent;
- (iii) the liens of taxes and assessments which are delinquent but the validity of which is being contested in good faith unless thereby any of the affected Facility or the interest of the City or the YCSD therein may be in danger of being lost or forfeited;
- (iv) minor defects and irregularities in the title to any Facility which do not in the aggregate materially impair the use of the affected Facility for the purposes for which it is or may reasonably be expected to be held;

(v) easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of the affected Facility for the purposes for which it is or may reasonably be expected to be held;

(vi) rights reserved to or vested in any municipality or governmental or other public authority to control or regulate or use in any manner any portion of a Facility which do not materially impair the use of the affected Facility for the purposes for which it is or may reasonably be expected to be held;

(vii) any obligations or duties affecting any portion of a Facility of any municipality or governmental or other public authority with respect to any right, power, franchise, grant, license or permit;

(viii) present or future valid zoning laws or ordinances;

(ix) this Agreement, the Indenture and the License;

(x) the liens of any Series License, Series Facilities Agreement or Series Indenture; and

(xi) any other lien which, in the opinion of counsel to the City delivered and addressed to the Agency, the Series 2021 Bond Insurer and the Trustee, will not have a material adverse effect upon the obligations of the School Parties under this Agreement.

Plans and Specifications shall mean, as to a particular Facility, the plans and specifications for the construction, reconstruction, rehabilitation and/or equipping of such Facility, prepared by the Architect and approved by the City, the YCSD and the New York State Education Department, including site plans, as the same may be amended from time to time.

Program Manager means Savin Engineers, P.C., a New York corporation.

Program Manager Agreement shall mean the Program Manager Agreement, dated [], 2021, between the YJSCB, on its own behalf and as agent for the City and YCSD, and the Program Manager, pursuant to which the Program Manager has undertaken to manage the New Community School Project, as the same may be amended and supplemented from time to time in accordance therewith.

Project shall have the meaning assigned to such term by the Yonkers Schools Act.

Project Bonds shall mean the Bonds and any series of bonds of the Agency or any other public entity issued under a Series Indenture to finance all or a portion of the costs of a Project.

Project Documents shall mean, collectively, the Security Documents, the License, the State Aid Depository Agreement, the Program Manager Agreement, the Intermunicipal Agreement and the Environmental Compliance Agreement.

Reserve Payments shall mean those payments payable by the City and YCSD pursuant to Section 4.1(b) hereof.

Reserved Rights shall have the meaning assigned to that term under the Indenture.

School Party or School Parties shall mean, collectively or severally, as applicable, the City, the YCSD and the YJSCB.

YCSD shall mean the City School District of the City of Yonkers, a school district of the State of New York, acting by and through the Board of Education of the City School District of the City of Yonkers, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

Series Facilities Agreement shall mean this Agreement and each other installment sale agreement or facilities lease agreement pursuant to which the Agency or any other public entity shall sell, lease or sublease Additional Facilities to the City and the YCSD and appoint the YJSCB as its agent for purposes of completion of such Additional Facilities, and the City and YCSD shall be obligated to make installment purchase payments or rental payments, as applicable, with respect to a Series of Project Bonds upon terms substantively comparable to that provided in Article IV of this Agreement.

Series Indenture shall mean, collectively, the Indenture and each other indenture of trust or bond resolution pursuant to which a Series of Project Bonds shall be issued to finance all or a portion of the costs of a Project.

Series License shall mean the License and each other lease or license agreement by the City and/or the YCSD to the Agency or other public entity of Additional Facilities to be financed in whole or in part with a Series of Project Bonds.

Series 2021 Bonds shall mean the \$[] School Facility Revenue Bonds (New Community School Project), Series 2021 of the Agency issued, executed, authenticated and delivered under the Indenture.

New Community School Project shall mean, collectively, the Facilities.

Series Trustee shall mean the Trustee and each financial institution acting as Trustee under a Series Indenture (other than the Indenture).

State shall mean the State of New York.

State Aid Depository Agreement shall mean the State Aid Depository Agreement, dated as of even date herewith, among the YCSD, the City and the Depository Bank, and shall include any and all further amendments or restatements thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Tax Compliance Documents shall mean, with respect to a Series of Bonds, the Arbitrage and Use of Proceeds Certificate and Tax Certificate with respect to such Series of Bonds.

Yonkers Schools Act shall mean Chapter 355 of the Laws of 2016 of the State, as the same may be further amended from time to time.

Trustee shall mean Manufacturers and Traders Trust Company, Buffalo, New York, in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Yield shall have the meaning set forth for such term in the Tax Compliance Documents.

Section 1.2. Construction. In this Agreement, unless the context otherwise requires:

The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the Closing Date.

Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

Words importing persons shall include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

ARTICLE II

SALE OF FACILITIES; AGREEMENT TERM

Section 2.1. Sale of the Facilities. The Agency hereby sells to the City and the YCSD, and the City and the YCSD hereby purchase from the Agency (both sale and purchase to be effective on the Closing Date), the Agency's interest in the Facilities, Equipment and the site described in Exhibit A attached hereto and made a part hereof in their "as is," "where is" and "subject to all faults condition" and upon and subject to the terms and conditions herein set forth. The YCSD shall at all times during the Agreement Term occupy, maintain, use and operate each of the Facilities, or cause each of the Facilities to be occupied, maintained, used and operated, (a) in the same manner as existing school buildings owned by the City and operated and maintained by the YCSD as of the date hereof and (b) as a "project" in accordance with the provisions of the Yonkers Schools Act and the IDA Act and for the general purposes specified in the recitals to this Agreement. The YCSD shall not occupy, use or operate any of the Facilities or allow any of the Facilities or any part thereof to be occupied, used or operated for any unlawful purpose or in violation of any certificate of occupancy affecting any of the Facilities or which may constitute a nuisance, public or private.

Section 2.2. Agreement Term. The Agreement Term shall commence on September 16, 2021, and shall expire on midnight (New York City time) on May 1, 2051 (but in no event sooner than the date upon which the Bonds shall cease to be Outstanding and the lien of the Indenture shall have been discharged) or such earlier date as the Bonds shall cease to be Outstanding and all amounts payable by the YCSD and/or the City hereunder have been paid in full. The Agency hereby delivers to the YCSD and the YCSD hereby accepts sole and exclusive possession of the Facilities, subject to the terms and conditions herein set forth. The Agency makes no representations whatsoever in connection with the condition of any of the Facilities, and the Agency shall not be liable for any defects therein.

Section 2.3. Termination of License.

(a) The Agency's interest in the Facilities shall be conveyed (subject to the terms of the Security Documents) from the Agency to the YCSD and the City upon the date of completion or abandonment of the New Community School Project as evidenced by the certificate of the YJSCB delivered pursuant to Section 3.1(j) hereof.

(b) The sale and conveyance of the interest in and to the Facilities shall be effected by the delivery by the Agency to the YCSD and the City of the Notice of Termination of License to the YCSD and the City (in substantially the form attached hereto as Exhibit B and by this reference made a part hereof) and the Bill of Sale to City and YCSD (in substantially the form attached hereto as Exhibit C and by this reference made a part hereof).

(c) The YCSD and the City agree to prepare the Notice of Termination of License and Bill of Sale to City and YCSD and to forward same to the Agency at least thirty (30) days prior to the date that the Facilities or any portion thereof is to be conveyed to the YCSD and the City.

(d) Each of the YCSD and the City hereby agrees to pay all expenses and taxes, if any, applicable to or arising from the transfer contemplated by this Section 2.3.

(e) This Agreement shall survive the transfer of the Agency's interest in the Facilities to the YCSD and the City pursuant to this Section 2.3 and shall remain in full force and effect until all of the principal of, and interest and premium, if any, on the Bonds and all other sums payable by the YCSD and/or the City under the Project Documents shall have been paid in full, and thereafter the obligations of the School Parties shall survive as set forth in Section 4.3 hereof.

(f) Upon the payment in full of all indebtedness under or secured by this Agreement or the other Project Documents, and notwithstanding the survival of certain obligations of the School Parties as described in Section 4.3 hereof, the Agency and the Trustee shall upon the request of the YCSD and the City, at the cost of the YCSD and the City, execute and deliver to the YCSD and the City such documents as the YCSD and the City may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency and the Trustee under the Project Documents, such documents to be in form reasonably acceptable to the Trustee.

ARTICLE III

SERIES 2021 PROJECT AND ISSUANCE OF SERIES 2021 BONDS

Section 3.1. The New Community School Project.

(a) Pursuant to the License, the City and the YCSD have vested the Agency with a valid license in and to the Facilities including the Equipment, which interest the Agency is hereby selling to the City and the YCSD, subject to the terms and conditions herein set forth.

(b) As promptly as practicable after receipt of the proceeds of sale of the Series 2021 Bonds and out of said proceeds of sale, the YJSCB will proceed as agent for and on behalf of the Agency to effect the construction and/or equipping of the New Community School Project, a portion of the costs thereof to be paid from the proceeds of sale of the Series 2021 Bonds deposited in the Project Fund established under the Indenture. The YJSCB reasonably believes that the New Community School Project pursuant to the applicable Plans and Specifications will allow for use of the Facilities for their intended purposes. The YJSCB agrees that it will use its best efforts to cause the New Community School Project to be completed as soon as may be practicable, delays incident to strikes, riots, acts of God, the public enemy or any delay beyond its reasonable control only excepted. The City and the YCSD agree that no delay in the completion of the New Community School Project shall be the basis for any diminution in or postponement of the amounts payable hereunder by the City and the YCSD. In order to effect management of such work, the YJSCB has entered into the Program Manager Agreement and as soon as practicable after the Closing Date will enter into one or more Construction Contracts for completion of the New Community School Project in accordance with the applicable Plans and Specifications and construction schedule approved by the Program Manager. The Program Manager Agreement, each Construction Contract and each other agreement, contract, purchase order or other obligation entered into by the YJSCB as agent for the Agency shall expressly provide that the Agency shall have no liability thereunder, except to the extent of proceeds from the sale of the Series 2021 Bonds which may be available therefor. The Agency shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the purchase of any materials to be incorporated into a Facility or Facilities, except to the extent and solely from the proceeds of sale of the Series 2021 Bonds. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the work with respect to the New Community School Project in full, none of the School Parties shall be entitled to any reimbursement therefor from the Agency, the Series 2021 Bond Insurer, the Trustee or the Holders of any of the Series 2021 Bonds (except from proceeds of Additional Bonds which may be issued for that purpose), nor shall the City and YCSD be entitled to any diminution of the Installment Purchase Payments or Additional Payments to be made under this Agreement.

(c) As between the Agency and the YJSCB, the YJSCB, acting specifically as agent for the benefit of the Agency, shall be responsible for the letting and supervision of contracts for the construction, rehabilitation, reconstruction and equipping of a Facility, acceptance of a completed Facility or parts thereof, and all other matters incidental thereto. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, services, equipment, furnishings or materials for or in connection with the work with respect to a Facility shall be designated by the YJSCB, either on its own or as agent for the Agency.

(d) In order to accomplish the purposes of the Agency, and to assure the effectuation of the New Community School Project in conformity with the Plans and Specifications,

the School Parties have undertaken to proceed with the design of the New Community School Project, all either on their own or, in the case of the YJSCB, as agent for the Agency.

(e) As between the Agency on the one hand, and the School Parties on the other hand, the School Parties shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance and transfer of an interest in the Facilities to the Agency pursuant to the License, the delivery of any instruments and documents and their filing and recording, if required, (ii) all taxes and charges payable, if any, in connection with such conveyance and transfer, or attributable to periods prior to such conveyance and transfer, and (iii) all expenses or claims incurred in connection with the New Community School Project and not funded from the proceeds of sale of the Series 2021 Bonds (or any Series of Additional Bonds).

(f) None of the School Parties will terminate the Intermunicipal Agreement or be excused from performing its obligations thereunder for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of any of the Facilities, or the taking by eminent domain of title to or the right of temporary use of all or any part of any of the Facilities, or the failure of the Agency to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agreement. The City and the YCSD covenant and agree to continue the Intermunicipal Agreement for its entire term and such additional terms as shall be required to complete the New Community School Project. The City and YCSD acknowledge that pursuant to the Yonkers Schools Act, all contracts, agreements and obligations of the YJSCB are entered into and made on behalf of the City and the YCSD and in the event that the YJSCB shall cease to exist for any reason whatsoever during the term of this Agreement, this Agreement, the Program Manager Agreement and any other contract, agreement or obligation of the YJSCB relating to the Facilities shall remain in full force and effect and the City and YCSD shall stand jointly in the place and stead of the YJSCB thereunder.

(g) The YJSCB covenants that, at all times as it shall be effecting the work of the New Community School Project, it will comply with all laws, acts, rules, regulations, permits, orders and requirements lawfully made, of any Federal, State, legislative, executive, administrative or judicial body, commission or office exercising any power of regulation or supervision over such work or over the manner of construction or operation thereof and with the conditions and requirements of all policies of liability insurance as provided in Section 5.5 of this Agreement. Upon completion of the work with respect to a Facility, the YJSCB will promptly obtain or cause to be obtained all required occupancy and operation permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of such Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Trustee immediately upon receipt thereof.

(h) The YJSCB further covenants that all contracts entered into by the YJSCB for the New Community School Project in connection with the design, construction, rehabilitation, reconstruction and/or equipping of a Facility shall (i) be made in accordance with applicable law, including, but not limited to, the Yonkers Schools Act; (ii) contain a provision that the design and construction standards therefor shall be subject to the review and approval of the New York State Education Department; and (iii) contain a provision that the contractor shall furnish a labor and material bond guaranteeing prompt payment of moneys that are due to all persons furnishing labor or materials pursuant to the related contract and a performance bond, complying with New York General Municipal Law § 103-f.

(i) The YJSCB covenants to cause its contractors, architects, consultants and others with whom it contracts with respect to the design, construction, rehabilitation, reconstruction, and/or equipping of a Facility, to provide liability insurance coverage against all forms of risk which are appropriate, including general and professional liability insurance normally associated with the type and nature of the service, product or combination thereof, contracted to be provided by such contractors, architects, consultants and others, and to name the Agency as an additional insured as its interest may appear. The YJSCB shall promptly deliver to the Agency appropriate certificates of insurance evidencing the amount and scope of all liability insurance provided by each contractor, architect, consultant or other person pursuant to a contract with the YJSCB with respect to the design, construction, rehabilitation, reconstruction, equipping, operation, maintenance and/or repair or otherwise providing work with respect to a Facility.

(j) Upon the completion or abandonment by the YJSCB of the New Community School Project or any portion thereof, the YJSCB shall deliver a certificate of an Authorized Representative of the YJSCB to the Agency and the Trustee to such effect.

(k) The City agrees to keep and make open to public inspection copies of all payment and performance bonds required by the Yonkers Schools Act and Section 3.1(h) hereof.

Section 3.2. Project Fund.

(a) The Agency has in the Indenture authorized and directed the Trustee to make payments from the Project Fund from time to time to pay the cost of the construction, rehabilitation, reconstruction, and/or equipping of a Facility upon receipt of a requisition signed by an Authorized Representative of the YJSCB, in the form set forth in the Indenture.,

(b) The date of completion of the work for a Facility shall be evidenced to the Agency and the Trustee by a certificate of the YJSCB executed by an Authorized Representative of the YJSCB stating, except for any costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the YJSCB (i) the date of completion of such work; (ii) that the related Facility has been completed substantially in accordance with the Plans and Specifications and all labor, services, Equipment, materials and supplies used therefor have been paid for; (iii) that all other facilities necessary in connection with such Facility have been completed and all costs and expenses incurred in connection therewith have been paid; (iv) that all property of such Facility is subject to this Agreement; (v) that, in accordance with all applicable laws, regulations, ordinances and guidelines, such Facility has been made ready for occupancy, use and operation for its intended purposes; (vi) the amount, if any, required in his opinion for the payment of any remaining part of the costs with respect to such Facility; and (vii) the amount of the proceeds of the Series 2021 Bonds, including the investment earnings thereon, expended with respect to such Facility. The foregoing certificate shall be accompanied by a certificate executed by an Authorized Representative of the City certifying as to the determination of the Rebate Amount as provided in the Tax Compliance Documents and the Indenture. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Agency, the Trustee or the School Parties against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and Section 5.2 of the Indenture, and (z) that no Person other than the Agency and the Trustee may benefit therefrom. Such certificate of the Authorized Representative of the YJSCB shall be accompanied by (i) a temporary or permanent certificate of occupancy and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the completed Facility for the purposes

contemplated by this Agreement and the Yonkers Schools Act; (ii) a certificate of the YJSCB executed by an Authorized Representative of the YJSCB that all costs of the completed Facility have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with such Facility (or, to the extent that any such costs shall be the subject of a bona fide dispute in excess of \$100,000, evidence to the Trustee that such costs have been appropriately bonded or that the YJSCB shall have or caused to be posted a surety or security at least equal to the amount of such costs); and (iii) such additional documentation, if any, as required by the Indenture. Upon a determination by the YJSCB that the amount on deposit in the Account in the Project Fund established with respect to the New Community School Project is sufficient to pay all remaining Project Costs thereof, the YJSCB shall deliver to the Trustee a Project Fund Sufficiency Certificate (as defined in the Indenture) signed by an Authorized Representative of the YJSCB. The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document delivered pursuant to this Section and believed by them to be genuine and to have been signed or presented by the proper party or parties, not only as to due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein.

Section 3.3. Cooperation in Furnishing Documents. The YJSCB agrees to furnish to the Trustee any documents that are required to effect payments out of the Project Fund in accordance with Section 3.2 hereof. Such obligation is subject to any provisions of the Indenture requiring additional documentation with respect to such payments and shall not extend beyond the moneys in the Project Fund available for payment under the terms of the Indenture.

Section 3.4. Default in Contractors' Performance. In the event of default of any contractor or subcontractor under any contract made in connection with a particular Facility or Facilities, each School Party will exhaust its remedies against the contractor or subcontractor so in default and against each surety for the performance of such contractor. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid into the Project Fund.

Section 3.5. Issuance of Bonds. Contemporaneously with the execution and delivery of this Agreement, the Agency will sell and deliver the Series 2021 Bonds in the aggregate principal amount of \$[] under and pursuant to the Resolution, authorizing the issuance of the Series 2021 Bonds under and pursuant to the Indenture for the purpose of financing Project Costs of the New Community School Project. After the Closing Date, it is contemplated that Additional Bonds will be issued to finance the remaining Project Costs of the New Community School Project and for the other purposes set forth in Section 2.7 of the Indenture. It is contemplated that, thereafter, additional Series of Project Bonds may be issued from time to time pursuant to separate Series Indentures to finance the costs of construction, rehabilitation, reconstruction, and/or equipping of Additional Facilities pursuant to subsequent phases of the Program. That portion of the proceeds of sale of the Bonds deposited in the Project Fund shall be applied to the payment of Project Costs in accordance with the provisions of the Indenture.

Section 3.6. [Reserved].

Section 3.7. Expenses Chargeable to the YJSCB. As between the Agency on the one hand, and the School Parties on the other hand, the School Parties shall pay or cause to be paid all

expenses or other costs incurred in connection with the New Community School Project, including, but not limited to:

(a) all charges incurred in connection with the preparation, delivery, filing, recording (if required) or effectuation of any instruments of conveyance or transfer required by this Agreement, the License, the Program Manager Agreement, the Construction Contracts, the Indenture or any other Project Document;

(b) any closing costs or costs relating to issuance of a Series of Bonds other than those costs referenced in paragraph (i) above;

(c) all lawful claims which might or could if unpaid become a lien or charge on any of the Facilities;

(d) all pre-closing and post-closing taxes, assessments or other governmental or utility charges or impositions relating to any of the Facilities;

(e) the Agency's administrative fee;

(f) any legal fees or expenses incurred by the Agency or the Trustee in connection with the foregoing items of costs related to the issuance of a Series of Bonds;

(g) the State bond issuance charge; and

(h) any other costs incurred by the Agency in carrying out the New Community School Project.

Section 3.8. Additional Facilities. The Agency and the School Parties recognize that, under the provisions of and subject to the conditions set forth in the related Series Indenture, one or more Series of Additional Bonds or additional Series of Project Bonds may be issued from time to time pursuant to separate Series Indentures to finance the costs of the construction, rehabilitation, reconstruction, and/or equipping of Additional Facilities or one or more Facilities included in the Design Phase.

Section 3.9. Use of Series 2021 Bond Proceeds. The School Parties shall use, or permit or suffer to be used, the proceeds of the Series 2021 Bonds only for the purposes and costs permitted therefor under this Agreement, the Indenture and the Tax Compliance Documents.

Section 3.10. No Warranty of Condition or Suitability. THE AGENCY MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF ANY OF THE FACILITIES, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITIES, OR THE SUITABILITY OF ANY OF THE FACILITIES FOR THE PURPOSES OR NEEDS OF THE SCHOOL PARTIES OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE SERIES 2021 BONDS WILL BE SUFFICIENT TO PAY THE COSTS OF THE SERIES 2021 PROJECT AND COMPLETE THE SERIES 2021 PROJECT. EACH SCHOOL PARTY IS SATISFIED THAT EACH OF THE FACILITIES IS SUITABLE AND FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE

LIABLE IN ANY MANNER WHATSOEVER TO A SCHOOL PARTY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF ANY OF THE FACILITIES OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

ARTICLE IV

INSTALLMENT PURCHASE PAYMENTS AND OTHER PAYMENTS

Section 4.1. Payment of Installment Purchase Payments.

(a) Subject to Section 4.4 hereof, the City and the YCSD agree to pay or cause to be paid, the Base Installment Purchase Payments for the Facilities in the amounts as set forth in Schedule A attached hereto. Base Installment Purchase Payments must be deposited by or on behalf of the City and the YCSD, as provided in the State Aid Depository Agreement, with the Trustee by no later than each Base Installment Purchase Payment Date; *provided, however*, that there shall be credited against any Base Installment Purchase Payments any amounts available for such purpose and on deposit in the Bond Fund, including any amounts deposited to the Bond Fund pursuant to Section 5.4 of the Indenture and any amounts deposited to the Bond Fund pursuant to Section 4.1(a) of the Indenture and any Scheduled Debt Service Reserve Fund Earnings to the extent any such Scheduled Debt Service Reserve Fund Earnings shall not first be required when received to be deposited in any Account of the Project Fund or to satisfy any deficiency in the Debt Service Reserve Fund as required by Section 5.5 of the Indenture (such net amount being the "*Net Base Facilities Agreement Payment*"); provided, however, that upon receipt by the City and the YCSD of written notice from the Trustee that the Scheduled Debt Service Reserve Fund Earnings were not received in whole or in part, the City and the YCSD shall immediately pay to the Trustee, subject to Section 4.4 hereof, an amount equal to the deficiency (the City and the YCSD hereby acknowledging that such payment obligation is subject to the intercept provisions of the Yonkers Schools Act).

(b) Upon receipt by the City and the YCSD of notice from the Trustee pursuant to the Indenture that the amount on deposit in the Debt Service Reserve Fund (including any amounts deposited to the Debt Service Reserve Fund pursuant to Section 5.4 of the Indenture) shall be less than the Debt Service Reserve Requirement or upon receipt of notice that the provider of a Reserve Fund Credit Facility is owed any amounts in connection with a draw on such Reserve Account Credit Facility, the City and the YCSD shall immediately pay to the Trustee, subject to Section 4.4 hereof, for deposit in the Debt Service Reserve Fund, an amount equal to the deficiency or the amount so owed the provider of such Reserve Fund Credit Facility.

(c) The City and YCSD (at the direction of an Authorized Representative of the City) shall have the option to make from time to time prepayments in part of payments due as aforesaid of Base Installment Purchase Payments, together with interest accrued and to accrue and premium, if any, to be paid on a Series of Bonds, if, but only if, such prepayment is to be used for the redemption or defeasance of such Series of Bonds. The Trustee shall apply such prepayments in such manner consistent with the provisions of the Indenture as may be specified in writing by an Authorized Representative of the City at the time of making such prepayment. Upon any such prepayment, the City and the YCSD (or their designee(s)) shall, if necessary, cause the schedule of Base Installment Purchase Payments set forth in Schedule A attached hereto in accordance with the Indenture to be recalculated and deliver a revised schedule to the City, the YCSD, the Agency and the Trustee, and such revised schedule shall be deemed to replace the then-existing Schedule A attached hereto. The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon such recalculation.

Section 4.2. Direction as to Payment of Installment Purchase Payments. Base Installment Purchase Payments shall be paid to the Trustee for credit to the Bond Fund and Reserve

Payments shall be paid to the Trustee for deposit to the Debt Service Reserve Fund to the extent of any deficiency therein.

Section 4.3. Indemnification of the Agency and Trustee and Limitation on Liability.

(a) The YCSD shall, to the maximum extent permitted by law, at all times protect, defend and hold the Agency, the Trustee, the Bond Registrar, the Paying Agents and the Depository Bank and their respective officers, members, directors, employees and agents (collectively, the "*Indemnified Parties*") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to any Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about any of the Facilities or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the New Community School Project and the marketing, remarketing, issuance and sale of the Bonds from time to time for such purpose, (ii) the planning, design, acquisition, site preparation, construction, rehabilitation, equipping, or financing of the Facilities or any part of any thereof or the effecting of any work done in or about any of the Facilities, (iii) title to any Facility or any defects (whether latent or patent) in any of the Facilities, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of any of the Facilities or any portion thereof, or (v) this Agreement, the Indenture or any other Project Document or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby. Such indemnification set forth above shall be binding upon the YCSD for any and all claims, demands, expenses, liabilities and taxes set forth herein and shall survive the termination of this Agreement. Except as provided above, no Indemnified Party shall be liable for any damage or injury to the person or property of any School Party or its officials, members, directors, officers, employees, agents or servants or persons under the control or supervision of any School Party or any other Person who may be about any of the Facilities, due to any act or negligence of any Person other than for the gross negligence or willful misconduct of such Indemnified Party.

(b) Each School Party hereby releases each Indemnified Party from, and agrees, to the maximum extent permitted by law, that no Indemnified Party shall be liable for and the YCSD agrees to defend, indemnify and hold each Indemnified Party harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by such Indemnified Party with respect to any of the matters set forth in subdivision (i) through (v) of Section 4.3(a) hereof or at the direction of any School Party with respect to any of such matters above referred to; *provided, however*, that such indemnification by the YCSD shall not extend to any Indemnified Party whose gross negligence or willful misconduct resulted in such expense, loss, damage, injury or liability. An Indemnified Party shall promptly notify the YCSD in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the YCSD pursuant to this Section 4.3; such notice shall be given in sufficient time to allow the YCSD to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the YCSD under this Section 4.3, except that if (i) the Indemnified Party shall have had knowledge or notice of such claim or action but shall not have promptly notified the YCSD of any such claim or action, (ii) the YCSD shall have had no knowledge or notice of such claim or action, and (iii) the YCSD's ability to defend or participate in such claim or action is materially impaired by reason of not having received timely

notice thereof from the Indemnified Party, then the YCSD's obligation to so defend and indemnify such Indemnified Party shall be qualified to the extent (and only to the extent) of such material impairment.

(c) The indemnifications and protections set forth in this Section 4.3 shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under its control or supervision.

(d) Anything to the contrary in this Agreement notwithstanding, the covenants of the School Parties contained in this Section 4.3 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

(e) For the purposes of this Section 4.3, none of the School Parties shall be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(f) The obligations of the YCSD to the Indemnified Parties under this Section 4.3 and to the Trustee under Section 4.8 hereof shall survive the resignation or removal of the Trustee and the satisfaction and discharge of the Indenture.

Section 4.4. Nature of Obligations of the City and the YCSD.

(a) Except as hereinafter provided in this Section 4.4, the obligation of the City and YCSD to pay Installment Purchase Payments and Additional Payments shall be absolute and unconditional, and such Installment Purchase Payments and Additional Payments shall be payable without any rights of set-off, recoupment or counterclaim or deduction and without any right of suspension, deferment, diminution or reduction it might otherwise have against the Agency, the Trustee, any purchaser of any Bond or any other person, and whether or not the Facilities or any of them are used or occupied by the School Parties or available for use or occupancy by the School Parties.

(b) The obligation of the City and YCSD to pay Installment Purchase Payments shall be deemed executory only to the extent of State Aid to Education appropriated by the State and available to the City and/or the YCSD for the purpose of this Agreement and the State Aid Depository Agreement, moneys budgeted by the YCSD and appropriated by the City for such purpose and approved by the YCSD of payment thereof after appropriation by the City therefor, and no liability on account thereof shall be incurred by the YCSD or the City beyond the amount of such moneys; *provided, however*, that the failure of the City and the YCSD for any reason (including a failure by the YCSD to budget for Installment Purchase Payments, a failure by the City to approve a budget for the YCSD providing for payment of Installment Purchase Payments or a failure by the State to appropriate State Aid to Education) to make an Installment Purchase Payment or an Additional Payment shall be deemed a failure to make a payment for purposes of this Agreement and the Yonkers Schools Act, and in such event, the Agency has appointed the Trustee to act as its agent for purposes of taking action under Section 5.4 of the Indenture. Further, the obligation of the YCSD and the City to pay Installment Purchase Payments is not a general obligation of the YCSD or the City. Neither the faith and credit nor the taxing power of the City are pledged to the payment of any Installment

Purchase Payment or Additional Payment due under this Agreement. However, the obligations of the YCSD and the City under this Agreement to pay Additional Payments shall be a general obligation of the City and YCSD, executory, however, only to the extent of moneys budgeted by the YCSD and approved and appropriated therefor by the City. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make moneys available for the purposes of this Agreement.

(c) The obligations of the City and the YCSD under this Agreement, including their respective obligation to pay the Installment Purchase Payments and Additional Payments in any Fiscal Year for which this Agreement is in effect, shall constitute a current expense of the YCSD for such Fiscal Year and shall not constitute an indebtedness or moral obligation of the City or the YCSD within the meaning of any constitutional or statutory provision or other laws of the State. The only source of moneys available to the City and the YCSD for the payment of any Installment Purchase Payment coming due hereunder shall be moneys comprising State Aid to Education lawfully appropriated by the State and available therefor from time to time to or for the benefit of the YCSD, and approved and appropriated for such purpose by the City.

(d) The YCSD agrees that (i) its proposed expense budget for each ensuing Fiscal Year commencing with the Fiscal Year ending June 30, 2023 shall include, either as a separate item of expenditure or as an expenditure within a budget item, the amount of Installment Purchase Payments and Additional Payments to come due in such next Fiscal Year; and (ii) it shall approve payment of such Installment Purchase Payments and Additional Payments after appropriation by the City therefor. The City agrees that it shall approve a budget for the YCSD containing such item of expenditure or budget item and appropriate sufficient funds each ending Fiscal Year commencing with the Fiscal Year ending June 30, 2023 to make the Installment Purchase Payments and Additional Payments to come due in such next Fiscal Year, *provided, however*, that any such appropriation (y) of Installment Purchase Payments shall only be payable by the City and the YCSD to the extent of State Aid to Education, and (z) of Additional Payments shall only be payable by the City and the YCSD to the extent contained in the YCSD budget approved by the City.

(e) Subject to the limitations contained in Section 4.4(b) hereof, none of the School Parties will terminate this Agreement (other than such termination as is provided for hereunder) or be excused from performing its obligations hereunder for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of any of the Facilities, or the taking by eminent domain of title to or the right of temporary use of all or any part of any of the Facilities, or the failure of the Agency to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agreement.

(f) The School Parties presently intend to continue this Agreement for its entire term, and the City and the YCSD presently intend to pay all Base Installment Purchase Payments specified in Schedule A as such Base Installment Purchase Payments come due under the terms and provisions of this Agreement.

(g) No provision contained in this Section 4.4 shall be deemed to limit, impair or modify the intercept provisions of the Yonkers Schools Act or the application of the provisions of Section 5.4 of the Indenture.

(h) For purposes of this Section 4.4, references to the "approval" of the YCSD budget by the City shall include the affirmative approval of the YCSD budget by ordinance of the City's City Council approved by the Mayor of the City or, in the absence of such an ordinance, the effectiveness by the passage of time of an YCSD budget pursuant to the charter of the City.

Section 4.5. Directed State Aid Revenues.

(a) Pursuant to instructions, the Commissioner of Finance of the City and the President of the Board of Education have directed the State Comptroller's Office to deposit all State Aid to Education into the State Aid Depository Fund established under the State Aid Depository Agreement, and the Commissioner of Finance of the City and the President of the Board of Education have further instructed the Depository Bank, pursuant to the terms and provisions of the State Aid Depository Agreement, to transfer State Aid to Education to the Trustee and each other Series Trustee in accordance with the State Aid Depository Agreement for the purpose of, in the case of the Indenture, making deposits in the Bond Fund with respect to amounts due on the Bonds and for replenishing deficiencies in the Debt Service Reserve Fund. The City and the YCSD agree not to modify the procedures set forth in the State Aid Depository Agreement for the collection, deposit or disbursement of State Aid to Education, except as and to the extent permitted under the State Aid Depository Agreement.

(b) Each of the City and the YCSD acknowledge that, pursuant to Section 5.4 of the Indenture (and the Yonkers Schools Act), in the event of a failure to make a payment under this Agreement in the amount and by the date the same is due (for any reason, including the failure of the YCSD or the City to budget and appropriate moneys for such purpose and approve payment thereof with moneys appropriated therefor), the Agency has appointed the Trustee to act as its agent under the Indenture for the purpose of delivering a certificate to the State Comptroller certifying as to such failure and setting forth the amount of such deficiency, and the State Comptroller, upon receipt of such certificate, shall be authorized to withhold from the City and the YCSD state and/or school aid as is payable to the City and/or the YCSD to the extent of the amount so stated in such certificate of the Trustee as not having been made, and the State Comptroller shall immediately pay over to the Trustee on behalf of the Agency, the amount of such state and/or school aid so withheld. Notwithstanding anything to the contrary contained herein, amounts of such state and/or school aid received by the Trustee on behalf of the Agency and applied to the Installment Purchase Payments or Additional Payments shall be deemed to satisfy the obligation of the City and the YCSD to make such defaulted payment to the extent of the amount received.

Section 4.6. Assignment of Installment Purchase Payments by the Agency. It is understood that this Agreement and all Installment Purchase Payments by the City and the YCSD hereunder (except Additional Payments pursuant to Sections 4.3 and 4.8 hereof and other Additional Payments and/or rights comprising the Reserved Rights) are to be pledged and assigned by the Agency to the Trustee pursuant to the Indenture, and the City and the YCSD hereby consent thereto. Except as provided in this Section 4.6 and the Indenture, the Agency shall not assign this Agreement or any Installment Purchase Payments hereunder.

Section 4.7. [Reserved].

Section 4.8. Compensation and Expenses of Trustee, Depository Bank, Bond Registrar, Paying Agents and Agency. The City and the YCSD shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following annual fees, charges and expenses

and other amounts: (1) the initial and annual fees of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, including the fees and expenses of any accountant or other agent engaged by the Trustee for performing such services, and the fees and expenses as Bond Registrar, and in connection with preparation of new Bonds upon exchanges or transfers or making any investments in accordance with the Indenture, (2) the reasonable fees and charges of the Trustee and any Paying Agents on the Bonds for acting as paying agents as provided in the Indenture, including the reasonable fees of its counsel, (3) the reasonable fees, charges, and expenses of the Trustee for extraordinary services rendered by it under the Indenture, including reasonable counsel fees, (4) the initial and annual fees of the Depository Bank for the ordinary services of the Depository Bank rendered and its ordinary expenses incurred under the State Aid Depository Agreement, and (5) the fees, costs and expenses of the Bond Registrar and the fees, costs and expenses (including legal, accounting and other administrative expenses) of the Agency. The City and the YCSD shall further pay the fees, costs and expenses of the Agency together with any reasonable fees and disbursements incurred by the Agency's bond counsel and general counsel in connection with (i) the Projects or this Agreement, including fees and expenses incurred by the Agency after the occurrence and during the continuance of an Event of Default as provided in Section 8.1 of this Agreement, (ii) the negotiation and execution of this Agreement, the Indenture and other Project Documents; and (iii) any waiver, modification or amendment to this Agreement, the Indenture or any other Project Document that may be requested by a School Party or any party thereto, and consented to by the City and the YCSD, or any action by the Agency requested by a School Party thereunder. The City and the YCSD shall further pay to the Agency on the date of issuance of the Series 2021 Bonds and on the date of issuance of any Additional Bonds an amount equal to one percent (1%) of the principal amount of such Series of Project Bonds. Notwithstanding anything herein to the contrary, nothing in this Agreement shall require the Trustee or the Depository Bank to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, and neither the Trustee nor the Depository Bank shall be under any obligation to exercise any of the rights or powers vested in it by this Agreement unless it shall have been offered security or indemnity (satisfactory to the Trustee or the Depository Bank, as applicable, in its sole and absolute discretion) against the costs, expenses and liabilities which may be incurred by it in exercising such right or power.

Section 4.9. Net Agreement. This Agreement shall be deemed and construed to be a "net agreement," and the City and the YCSD shall pay absolutely net during the Agreement Term the Installment Purchase Payments and all other payments required hereunder, free of all deductions, without abatement, diminution and set off.

ARTICLE V

OPERATION AND MAINTENANCE; INSURANCE; DAMAGE; DESTRUCTION AND CONDEMNATION

Section 5.1. Operation, Maintenance and Repair. During the Agreement Term, the YCSD shall be responsible for, and pay all costs of, operating the Facilities, maintaining the same in good and safe condition, and making all necessary repairs and replacements, interior and exterior, structural and non-structural. All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of any of the Facilities, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of any of the Facilities, or to furnish any utilities or services for any of the Facilities and the YCSD hereby agrees to assume full responsibility therefor.

Section 5.2. Utilities, Taxes and Governmental Charges.

(a) The YCSD will pay or cause to be paid all charges for water, electricity, light, heat or power, sewage, telephone and other utility service, rendered or supplied upon or in connection with the Facilities during the Agreement Term.

(b) In addition, the YCSD shall (i) pay, or make provision for payment of, all lawful taxes and assessments, including income, profits, property or excise taxes, if any, or other municipal or governmental charges, levied or assessed by any Federal, state or any municipal government upon the Agency, the City or the YCSD with respect to or upon any of the Facilities or any part thereof or upon any payments hereunder when the same shall become due; (ii) duly observe and comply with all valid requirements of any governmental authority relative to the Facilities; (iii) not create or suffer to be created any lien or charge upon any of the Facilities or any part of any thereof, except Permitted Encumbrances, or upon the payments in respect thereof pursuant hereto; and (iv) pay or cause to be discharged or make adequate provision to satisfy and discharge, within sixty (60) days after the same shall come into force, any lien or charge upon any of the Facilities or any part of any thereof, except Permitted Encumbrances, or upon any payments hereunder and all lawful claims or demands for labor, materials, supplies or other charges which, if unpaid, might be or become a lien upon any payments hereunder.

Section 5.3. Additions, Enlargements and Improvements. The YCSD shall have the right at any time and from time to time during the Agreement Term, at its own cost and expense, to make such additions, enlargements, improvements and expansions to, or repairs, reconstruction and restorations of, any of the Facilities, as the YCSD shall deem necessary or desirable in connection with the use of such Facilities. All such additions, enlargements, improvements, expansions, repairs, reconstruction and restorations when completed shall be of such character as not to reduce or otherwise adversely affect the value of the related Facility or the rental value thereof. The cost of any such additions, enlargements, improvements, expansions, repairs, reconstruction or restorations shall be promptly paid or discharged so that the affected Facility shall at all times be free of liens for labor and materials supplied thereto.

Section 5.4. Additional Rights of the YCSD. The Agency agrees that the YCSD shall have the right, option and privilege of erecting, installing and maintaining at its own cost and expense

equipment (not constituting part of the New Community School Project) in or upon any Facility as may in the YCSD's judgment be necessary for its purposes. It is further understood and agreed that any equipment erected or installed under the provisions of this Section shall be and remain the personal property of the YCSD and, if not constituting part of the New Community School Project, shall not become subject to this Agreement, and may be removed, altered or otherwise changed, upon or before the termination hereof.

Section 5.5. Liability Insurance.

(a) The YJSCB shall maintain or cause to be maintained with responsible insurers, for the benefit of the Agency and the Trustee until completion of the New Community School Project in accordance with Section 3.2(b) hereof, the following kinds and the following amounts of insurance with respect to the Facilities, with such variations as shall reasonably be required to conform to customary insurance practice:

(i) During any period of construction or reconstruction of any of the Facilities, Builders' Special Form Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris, insuring the buildings, structures, facilities, machinery, equipment, fixtures and other property included within reconstruction of any of the Facilities against loss or damage by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the School Parties, the Agency or the Trustee from becoming a co-insurer of any loss under the insurance policies; any such insurance may limit coverage to \$20,000,000 for any one Facility;

(ii) During any period of construction or reconstruction of any of the Facilities, commercial public liability insurance with respect to the construction activities at the Facilities in a minimum amount of \$26,000,000 per occurrence and aggregate, which insurance may be effected under overall blanket or excess coverage policies, *provided, however,* that at least \$1,000,000 is effected by a comprehensive liability insurance policy; and

(iii) Workers' compensation insurance and such other forms of insurance which the City, the YCSD or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of any contractor or subcontractor performing work with respect to any of the Facilities included within the New Community School Project; the YJSCB shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by law.

(b) Prior to the commencement of construction of the Facilities, the YJSCB shall deliver or cause to be delivered to the Agency and to the Trustee duplicate copies of insurance policies obtained by the YJSCB hereunder and/or binders evidencing compliance with the insurance requirements of this Section 5.5. If any change shall be made in any such insurance, a description and written notice of such change shall be furnished by the YJSCB to the Agency and the Trustee thirty (30) days in advance of such change.

(c) At least thirty (30) days prior to the expiration of any insurance policy required under this Section 5.5, the YJSCB shall furnish the Agency and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(d) All insurance required by Section 5.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State. Each of the policies or binders evidencing the insurance required above to be obtained shall:

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

(ii) provide that in respect of the interests of the Agency and the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of a School Party or any other Person and shall insure the Agency and the Trustee regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iii) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency or the Trustee to the extent that such other insurance provides the Agency or the Trustee with contingent and/or excess liability insurance with respect to its interest as such in the Facilities;

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

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

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

(e) The YJSCB shall, at the cost and expense of the YCSD and the City, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency or the Trustee to collect from insurers for any loss covered by any insurance required to be obtained by this Section 5.5. A School Party shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 5.5 would or might be suspended or impaired.

The YCSD hereby assumes all risks that the proceeds of any insurance may be inadequate to fully indemnify the Agency and the Trustee against, or to reimburse the Agency and the

Trustee for, any loss, liability, claim or judgment arising out of any risk, peril or insurable loss under the insurance required hereby. The YCSD acknowledges that the YCSD shall be solely responsible for the payment of any loss, liability, claim or judgment, or any portion thereof, falling within any deductible or self-insured retention or which is in excess of any available insurance coverage.

Section 5.6. Damage, Destruction or Condemnation.

(a) The School Parties agree to notify the Agency and the Trustee immediately in the case of damage to or destruction of any Facility or any portion thereof in an amount exceeding \$100,000 resulting from fire or other casualty, and shall state the plans of the School Parties with respect to the repair, reconstruction and restoration of the affected Facility.

(b) If any Facility or portion thereof shall be condemned or taken by eminent domain, this Agreement (with respect to the affected Facility or portion thereof) and the interest of the City and the YCSD hereunder shall terminate when title to such Facility or portion thereof vests in the party condemning or taking the same (hereinafter referred to as the "*termination date*"), and the School Parties will promptly give notice thereof to the Agency and the Trustee, and shall state the plans of the School Parties with respect to the replacement or restoration of the affected Facility.

(c) If any Facility shall be damaged or destroyed (in whole or in part), or the whole or any part of any Facility shall be taken or condemned by a competent authority or by agreement between the City and/or the YCSD and those authorized to exercise such right or if the temporary use of any Facility or any part thereof shall be so taken by condemnation or agreement (a "*Loss Event*") at any time while this Agreement is in effect:

(i) the Agency shall have no obligation to replace, repair, rebuild, restore or relocate the affected Facility; and

(ii) there shall be no abatement or reduction in the amounts payable by the City and the YCSD under this Agreement (whether or not the affected Facility is replaced, repaired, rebuilt, restored or relocated); and

(iii) the proceeds derived from the insurance or any condemnation award (after payment of all reasonable expenses, costs and taxes (including attorneys' fees) (the "*Net Proceeds*") incurred in obtaining such proceeds) shall be deposited in the Project Fund, and, subject to the provisions of Section 5.6(a)(iv) below, at the option of the City, shall be applied to either (A) replace, repair, rebuild, restore or relocate the affected Facility, or (B) redeem a principal amount of Bonds equal to such proceeds in accordance with the Indenture; and

(iv) If the School Parties replace, repair, rebuild, restore or relocate the affected Facility, the Trustee shall disburse such proceeds from the Project Fund in the manner set forth in Section 5.2 of the Indenture to pay or reimburse the School Parties for the cost of such replacement, repair, rebuilding, restoration or relocation. Notwithstanding anything to the contrary in Section 5.1(a) (iii) hereof, if (A) the aggregate net proceeds derived from insurance with respect to a particular loss are less than \$50,000, and (B) no Event of Default then exists under the Indenture or this Sale Agreement; the School Parties shall be entitled to withdraw such proceeds from the Project Fund for application to Project Costs in accordance herewith and with the Tax Compliance Documents.

(d) Any such replacements, repairs, rebuilding, restorations or relocations shall be subject to the following conditions:

(i) the restored Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction;

(ii) the restored Facility shall continue to constitute a "project" as such term is defined in the Yonkers Schools Act, and the tax-exempt status of the interest on the Bonds shall not, in the opinion of Bond Counsel, be adversely affected; and

(iii) the restored Facility will be subject to no Liens other than Permitted Encumbrances.

(e) All such repair, replacement, rebuilding, restoration or relocation of a Facility shall be affected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements and shall be promptly and fully paid for by the School Parties in accordance with the terms of the applicable contracts.

(f) In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, restoration or relocation, the School Parties shall nonetheless complete the work and pay from their own moneys or from proceeds of Additional Bonds, if any, issued for such purpose that portion of the costs thereof in excess of such proceeds. All such replacements, repairs, rebuilding, restoration or relocations made pursuant to this Section, whether or not requiring the expenditure of the money of the School Parties, shall automatically become a part of a Facility as if the same were specifically described herein.

(g) Any balance of such proceeds remaining in the Project Fund after payment of all costs of replacement, repair, rebuilding, restoration or relocation of an affected Facility shall, subject to any rebate required to be made to the federal government pursuant to the Indenture or the Tax Compliance Documents, be used to redeem the Bonds as provided in the Indenture. If the entire amount of the Bonds and interest thereon has been fully paid, or provision therefor has been made in accordance with the Indenture, all such remaining proceeds shall be paid to the City for the benefit of the YCSD.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Each of the City and the YCSD hereby represents and warrants as follows:

Section 6.1. Legal Entity. The YCSD is a school district of the State, duly created and validly existing under the Constitution and laws of the State. The City is a municipal corporation of the State duly created and validly existing under the Constitution and laws of the State.

Section 6.2. Legal Authority. The School Parties have the good right and lawful authority and power to execute and deliver this Agreement and each other Project Document to which any of them is a party, to perform the obligations and covenants contained herein and therein and to consummate the transactions contemplated hereby and thereby.

Section 6.3. Due Authorization. The City and the YCSD have duly authorized by all necessary actions the execution and delivery hereof and each other Project Document to which any School Party is a party and the performance of their respective obligations and covenants hereunder and thereunder, the execution and delivery hereof and thereof is indication of their respective approval hereof and thereof, and the consummation of the transactions contemplated hereby and thereby.

Section 6.4. Validity and Enforceability. This Agreement and each other Project Document to which the City, the YCSD or the YJSCB, on behalf of the City, the YCSD or both, is a party constitutes a legal, valid and binding obligation of the City or the YCSD, as the case may be, enforceable against such Person in accordance with its respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to the enforcement of creditors' rights generally or the availability of any particular remedy.

Section 6.5. No Conflict. This Agreement and each other Project Document to which the City and/or the YCSD is a party or to which the YJSCB is a party on behalf of the City, the YCSD or both, the execution and delivery hereof and thereof and the consummation of the transactions contemplated hereby and thereby (i) do not and will not in any material respect conflict with, or constitute on the part of such Person a breach of or default under (y) any existing law, administrative regulation, judgment, order, decree or ruling by or to which it or its revenues, properties or operations are bound or subject or (z) any agreement or other instrument to which the City, the YCSD or the YJSCB, on behalf of the City, the YCSD or both, is a party or by which it or any of its revenues, properties or operations are bound or subject and (ii) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the revenues, properties or operations of the City or the YCSD, as the case may be.

Section 6.6. Consents and Approvals. All consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the YCSD and/or the City of its respective obligations hereunder or under any other Project Document to which the YCSD and/or the City or the YJSCB, on behalf of the City, the YCSD or both, is a party or to which it is bound or the consummation of the transactions contemplated hereby or thereby have been duly obtained and are in full force and effect.

Section 6.7. No Defaults. Neither the City nor the YCSD is in breach of or default under any agreement or other instrument to which it or the YJSCB, on behalf of the City, the YCSD or both, is a party or by or to which it or its revenues, properties or operations are bound or subject, or any existing administrative regulation, judgment, order, decree, ruling or other law by or to which it or its revenues, properties or operations are bound or subject, which breach or default is material to the transactions contemplated hereby; and no event has occurred and is continuing that with the passage of time or the giving of notice, or both, would constitute, under any such agreement or instrument, such a breach or default material to such transactions.

Section 6.8. No Litigation. No action, suit, proceeding or investigation, in equity or at law, before or by any court or governmental agency or body, is pending or, to the best knowledge of the City or the YCSD, threatened wherein an adverse decision, ruling or finding might adversely affect the transactions contemplated hereby or the validity or enforceability hereof or of any agreement or instrument to which it is a party or to which it is bound or any revenues or properties and which is used or is contemplated for use in the consummation of the transactions contemplated hereby.

Section 6.9. Essentiality of New Community School Project. Both the City and the YCSD by appropriate legislative or administrative action have determined that the New Community School Project is essential to the proper administration of the public schools within the City and meets the essential needs of the students and residents, respectively, of the YCSD and the City. The City and the YCSD have further determined that the New Community School Project shall continue to be essential to such administration and to meet such needs throughout the Agreement Term.

Section 6.10. Not Indebtedness of the YCSD or the City. This Agreement and the obligations of the YCSD hereunder do not and will not constitute indebtedness or moral obligation of the YCSD or the City under Article VIII of the State Constitution or Section 20.00 of the Local Finance Law of the State nor shall they constitute a contractual obligation in excess of the amounts appropriated therefor.

Section 6.11. Environmental Quality Review and Historic Preservation. The provisions of Article 8 of the Environmental Conservation Law and the provisions of the Historic Preservation Act of 1980 of the State applicable to the construction, rehabilitation, reconstruction, and/or equipping of the New Community School Project have been complied with.

Section 6.12. Compliance with the IDA Act and the Yonkers Schools Act. The YCSD covenants and agrees to operate each of the Facilities or cause each of the Facilities to be operated in accordance with (i) this Agreement, (ii) as a qualified Project in accordance with and as defined under the Yonkers Schools Act, and (iii) as a "project" in accordance with the IDA Act.

Section 6.13. Use of Bond Proceeds. Any costs of the New Community School Project paid from the proceeds of the sale of the Series 2021 Bonds shall be treated or capable of being treated on the books of the YCSD as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis. No part of the proceeds of the Series 2021 Bonds will be used to finance inventory or will be used for working capital or used for any property which is not subject to the License, the Bill of Sale to the Agency and to this Agreement.

Section 6.14. Governmental Approvals. All consents, approvals or authorizations, if any, of any governmental authority, including all necessary filings and submissions, required on the part of the City and/or the YCSD in connection with (y) the execution and delivery of this Agreement and

each other Project Document to which such Person shall be a party or to which it is bound, and (z) the granting of the interest in the Facilities by the YCSD and the City to the Agency pursuant to the License and Bill of Sale to Agency, have been duly obtained.

Section 6.15. Interest of Agency. Pursuant to the License, the City and the YCSD have vested the Agency with a valid license in and to the Facilities, all of which has been sold by the Agency to the YCSD pursuant to this Agreement.

Section 6.16. YJSCB. The YCSD and the City have duly established the YJSCB pursuant to the Yonkers Schools Act and authorized the YJSCB to enter into contracts and agreements on behalf of the YCSD and the City for the construction of new schools and renovation of existing public schools, including the financing thereof, in accordance with the Intermunicipal Agreement, the Yonkers Schools Act and applicable State and local law. The Intermunicipal Agreement is in full force and effect and has not been amended, modified or rescinded. This Agreement, the other Project Documents to which the YJSCB, on behalf of the City, the YCSD or both, is a party and the acts, agreements and contracts of the YJSCB, on behalf of the City, the YCSD or both, have been ratified and/or approved and duly authorized by the City and the YCSD, as the case may be, and constitute valid and binding obligations of the City and the YCSD, as the case may be.

Section 6.17. Title to Facilities. The City and the YCSD have and will have good and marketable title to the Facilities, subject only to Permitted Encumbrances.

The YJSCB makes the following representations and warranties:

Section 6.18. Legal Entity. The YJSCB has been duly created and is validly existing under the Constitution and laws of the State.

Section 6.19. Legal Authority. The YJSCB, has the good right and lawful authority and power to execute and deliver this Agreement and each other Project Document to which it is a party, on its own behalf or on behalf of the City, the YCSD or both, to perform the obligations and covenants contained herein and therein and to consummate the transactions contemplated hereby and thereby.

Section 6.20. Due Authorization. The YJSCB has duly authorized by all necessary actions the execution and delivery hereof and each other Project Document to which it is a party and the performance of its obligations and covenants hereunder and thereunder, the execution and delivery hereof and thereof is indication of its approval hereof and thereof, and the consummation of the transactions contemplated hereby and thereby.

Section 6.21. Validity and Enforceability. This Agreement and each other Project Document to which the YJSCB is a party constitutes a legal, valid and binding obligation of the YJSCB, enforceable against it in accordance with its respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to the enforcement of creditors' rights generally or the availability of any particular remedy.

Section 6.22. No Conflict. This Agreement and each other Project Document to which the YJSCB is a party, the execution and delivery hereof and thereof and the consummation of the transactions contemplated hereby and thereby (i) do not and will not in any material respect conflict with, or constitute on the part of the YJSCB a breach of or default under (y) any existing law, administrative regulation, judgment, order, decree or ruling by or to which it or its revenues, properties

or operations are bound or subject or (z) any agreement or other instrument to which the YJSCB is a party or by which it or any of its revenues, properties or operations are bound or subject and (ii) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the revenues, properties or operations of the YJSCB.

Section 6.23. Consents and Approvals. All consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the YJSCB of its respective obligations hereunder or under any other Project Document to which the YJSCB is a party or the consummation of the transactions contemplated hereby or thereby have been duly obtained and are in full force and effect.

Section 6.24. No Defaults. The YJSCB is not in breach of or default under any agreement or other instrument to which it is a party or by or to which it or its revenues, properties or operations are bound or subject, or any existing administrative regulation, judgment, order, decree, ruling or other law by or to which it or its revenues, properties or operations are bound or subject, which breach or default is material to the transactions contemplated hereby; and no event has occurred and is continuing that with the passage of time or the giving of notice, or both, would constitute, under any such agreement or instrument, such a breach or default material to such transactions.

Section 6.25. No Litigation. No action, suit, proceeding or investigation, in equity or at law, before or by any court or governmental agency or body, is pending or, to the best knowledge of the YJSCB, threatened wherein an adverse decision, ruling or finding might adversely affect the transactions contemplated hereby or the validity or enforceability hereof or of any agreement or instrument to which it is a party or any revenues or properties and which is used or is contemplated for use in the consummation of the transactions contemplated hereby.

Section 6.26. Environmental Quality Review and Historic Preservation. The provisions of Article 8 of the Environmental Conservation Law and the provisions of the Historic Preservation Act of 1980 of the State applicable to the construction, rehabilitation, reconstruction, and/or equipping of the New Community School Project have been complied with.

Section 6.27. Governmental Approvals. All consents, approvals or authorizations, if any, of any governmental authority, including all necessary filings and submissions, required on the part of the YJSCB in connection with the execution and delivery of this Agreement and each other Project Document to which it shall be a party, have been duly obtained.

The Agency makes the following representations and warranties:

Section 6.28. Agency Authorization. The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, and is authorized and empowered to enter into the transactions contemplated by this Agreement and each other Project Document to which it is a party and to carry out its obligations hereunder and thereunder. By proper action of its members, the Agency has duly authorized the execution and delivery of this Agreement and each other Project Document to which it is a party.

Section 6.29. Determination of Public Purpose. The Agency hereby determines that the financing of the Facilities through the issuance of the Bonds will further and advance the public purpose of the Agency under the IDA Act and the Yonkers Schools Act.

ARTICLE VII

SPECIAL COVENANTS

Section 7.1. YCSD's Right to Possession. Except as otherwise provided herein, the YCSD shall be entitled to sole possession of the Facilities during the Agreement Term.

Section 7.2. [Reserved].

Section 7.3. Compliance With Laws and Regulations. Each of the YJSCB and the YCSD will, at its own cost and expense, promptly comply with, or cause to be complied with, all laws, rules, regulations and other governmental requirements, whether or not the same require structural repairs or alterations, which may be applicable to the School Parties and any of the Facilities or the use or manner of use of any of the Facilities; provided, *however*, the obligation of the YJSCB or the YCSD, as the case may be, to comply with any such law, rule, regulation or governmental requirement shall be suspended during any contest thereof in good faith by the YJSCB or the YCSD, which contest is being diligently prosecuted. Each of the YJSCB and the YCSD will also observe and comply with the requirements of all policies and arrangements of insurance at any time in force with respect to the Facilities.

Section 7.4. Covenant Against Waste. Each of the YJSCB and the YCSD covenants not to do or suffer or permit to exist any waste, damage, disfigurement or injury to, or public or private nuisance upon, any of the Facilities.

Section 7.5. Right of Inspection. The YCSD covenants and agrees to permit the Agency and the Trustee and the authorized agents and representatives of the Agency and the Trustee upon reasonable notice to the YCSD, to enter any of the Facilities for the purpose of inspecting the same.

Section 7.6. Condition of Facilities. Immediately upon the availability of any part of a Facility for use by the YJSCB or the YCSD, the YJSCB or the YCSD shall become thoroughly familiar with the physical condition of such part of the Facility. The Agency makes no representations whatever in connection with the condition of any Facility, and the Agency shall not be liable for any defects therein.

Section 7.7. Assignment and Sale by the School Parties. The School Parties will not sell, lease, transfer or otherwise dispose of or encumber any of their interest in any of the Facilities except in the case of Permitted Encumbrances or as provided in Section 7.15 hereof; *provided, however*, that the YCSD may lease or license part of any Facility (x) for a purpose and use consistent with the License and this Agreement, (y) upon delivery to the Trustee of an Opinion of Counsel to the effect that such lease or license shall neither limit nor impair the obligations of the School Parties under this Agreement, and (z) upon delivery to the Trustee of an opinion of Nationally Recognized Bond Counsel to the effect that such lease or license, as applicable, will not cause interest on any of the Bonds to become includable in gross income for federal income tax purposes. This Agreement may be assigned in whole or in part by one or more of the School Parties upon written consent of the Agency, the other School Parties and the Trustee (which consent may be unreasonably withheld), but no assignment shall relieve the School Parties, as applicable, from primary liability for any of its obligations hereunder, and in the event of any such assignment the School Parties shall continue to remain primarily liable for the payments specified herein and the YCSD, the City and/or the YJSCB, as applicable, for performance and observance of the other agreements on its part herein provided.

Section 7.8. Use of the Facilities. Each Facility shall be used by the YCSD or any other governmental agency, department, division, commission or board thereof and used for public purposes of the YCSD or such agency, department, division, commission or board, and as a "project" under the IDA Act and as a Project as provided in the Yonkers Schools Act.

Section 7.9. [Reserved].

Section 7.10. Compliance With Laws. The parties hereto agree to comply with all laws, rules, regulations, orders and decrees applicable to the Facilities or the performance hereof

Section 7.11. Covenant Not to Affect the Tax-Exempt Status of the Bonds. The School Parties each agree that throughout the Agreement Term, it will comply with the Tax Compliance Documents and it will take no action, or permit any action to be taken, with respect to any Facility which will impair the exemption of interest on any Outstanding Bonds from Federal income taxes.

Section 7.12. Covenants as to State Aid Depository Agreement. The City and the YCSD agree not to revoke the instructions furnished to the State Comptroller's office to forward all State Aid to Education payments to the Depository Bank. The City and the YCSD also agree to comply with and not to terminate the State Aid Depository Agreement or materially modify the terms and provisions thereof, except as may be permitted under the terms of the State Aid Depository Agreement.

Section 7.13. Filings. The City shall be responsible for the filing of financing statements (including continuation statements) in connection with and in order to continue the security interest created by the Indenture.

Section 7.14. Equal Employment Opportunities.

(a) The YCSD shall ensure that all employees and applicants for employment with regard to each of the Facilities are afforded equal employment opportunities without discrimination.

(b) Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the New Community School Project (whether by the YCSD or any other occupant of a Facility) shall be listed by the YCSD (or, if applicable, such other occupant) with the New York State Department of Labor Community Services Division, and with the administrative entity of each service delivery area created by the Workforce Investment Act of 1998 (P.L. No. 05-220) in which each of the Facilities is located. Except as is otherwise provided by collective bargaining contracts or agreements, the YCSD agrees, and shall cause any other occupant of a Facility to agree, where practicable, to first consider persons eligible to participate in the Workforce Investment Act of 1998 (P.L. No. 105-220) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

Section 7.15. Release of Facilities. Notwithstanding any other provision of this Agreement, so long as there exists no event of default hereunder, nor any event which upon the giving of notice or the passage of time or both, would constitute an event of default, the YCSD may, upon written notice to the Agency and the Trustee and compliance with the following, effect the release of a Facility, to no longer be used by the YCSD as a public school, or the costs with respect to which have been financed with the Bonds which are no longer Outstanding, from this Agreement and the License. Upon receipt of such notice, the Agency and the Trustee shall, at the sole cost and expense of the YCSD, execute

and deliver any and all instruments necessary or appropriate to so release and remove such Facility from the Facilities subject to this Agreement and the License; *provided, however*, that in the event the release is of the last remaining Facility, the YCSD and the City must further pay Base Installment Purchase Payments necessary to effect the redemption in whole of the Bonds.

No conveyance or release effected under the provisions of this Section 7.15 shall entitle the YCSD or the City to any abatement or diminution of the Installment Purchase Payments payable under Section 4.1 hereof or the Additional Payments required to be made by the YCSD and the City under this Agreement.

Section 7.16. No-Default Certificates.

(a) Each School Party shall deliver to the Agency and the Trustee within one hundred and twenty (120) days after the close of each Fiscal Year, a certificate of an Authorized Representative thereof as to whether or not, as of the close of such preceding Fiscal Year, and at all times during such Fiscal Year, the School Party was in compliance with all the provisions which relate to it in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an event of default hereunder, and any action proposed to be taken by the YCSD, the City and/or the YJSCB, as applicable, with respect thereto, and, until such time as the New Community School Project has been completed and a certificate evidencing the same pursuant to Section 3.2(b) of this Agreement has been delivered to the Agency and the Trustee, a certificate of an Authorized Representative of the YJSCB that the insurance it maintains and/or is required to provide complies with the provisions of Section 5.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding Fiscal Year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and the Trustee and are in full force and effect. In addition, upon twenty (20) days' prior request by the Agency or the Trustee, each School Party will execute, acknowledge and deliver to the Agency and the Trustee a certificate of an Authorized Representative thereof either stating that to his knowledge no default or breach exists hereunder or specifying each such default or breach of which he has knowledge.

(b) Each School Party shall immediately notify the Agency and the Trustee of the occurrence of any event of default or any event which with notice and/or lapse of time would constitute an event of default under any Project Document of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the appropriate School Party and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the notice shall state this fact.

Section 7.17. Further Assurances. Each School Party will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the YCSD and the City, as the Agency or the Trustee deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency or the Trustee hereunder, under the Indenture or under any other Project Documents.

Section 7.18. Recording and Filing. The Pledge and Assignment and this Agreement as originally executed or a memorandum thereof shall be recorded by the YCSD in the appropriate office of the Clerk of the County, or in such other office as may at the time be provided by law as the proper place for the recordation thereof. The security interest of the Trustee created under the Indenture shall

be perfected by the filing of financing statements by the YCSD which fully comply with the New York State Uniform Commercial Code - Secured Transactions in the office of the Secretary of State of the State, in the City of Albany, New York. The City shall file or cause to be filed all necessary continuation statements (and additional financing statements) within the time prescribed by the New York State Uniform Commercial Code - Secured Transactions in order to continue (or attach and perfect) the security interest created by the Indenture, to the end that the rights of the Agency, the Holders of the Bonds and the Trustee in this Agreement, in the Installment Purchase Payments payable under this Agreement and in the Trust Estate, shall be fully preserved as against creditors or purchasers for value from the Agency, the City or the YCSD. The Agency and the Trustee are authorized, if permitted by applicable law, to file one or more Uniform Commercial Code financing statements disclosing any security interest in this Agreement and the Installment Purchase Payments due under this Agreement.

Section 7.19. Furnishing of Information. Each School Party shall promptly furnish to the Agency and the Trustee such information, in such form and supported by such certifications as the Agency or the Trustee shall reasonably request, relating to such School Party and the Facilities, and the past, present and future employment by the YCSD at the Facilities.

Section 7.20. Use of Bond Proceeds. Each School Party shall use, or permit or suffer to be used, the proceeds of the Bonds only for the purposes and costs permitted therefor under this Agreement, the Indenture and the Tax Compliance Documents.

Section 7.21. Compliance with Requirements for State Aid to Education and Other State and/or School Aid. The School Parties will comply with all requirements necessary to ensure receipt of State Aid to Education or other state and/or school aid payable to the City or the YCSD over the term of this Agreement.

Section 7.22. No Impairment of Pledge of State Aid to Education and Other State and/or School Aid. Each of the YCSD and the City covenants and agrees that it shall enter into no agreement, indenture or other instrument, including any Series Facilities Agreement, in connection with a Series of Project Bonds under a Series Indenture, which shall have the effect, directly or indirectly, of providing a greater priority or preference to the intercept of state and/or school aid under the Yonkers Schools Act; *provided, however*, that nothing contained in this Agreement shall be deemed (y) to limit or deny the ability of the issuer of a Series of Project Bonds to pledge State Aid to Education on a parity with the pledge effected by the Agency under the Indenture, or (z) to require that any Series of Project Bonds issued under a Series Indenture have the same payment dates or amortize principal on a schedule comparable to that of the Bonds Outstanding under the Indenture, or that any lease rental payment dates or installment purchase payment dates, as applicable, under a Series Facilities Agreement be the same as provided for hereunder.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default. An "event of default" or a "default" shall mean, whenever they are used herein, any one or more of the following events:

(a) Default in the due and punctual payment of any Installment Purchase Payment (other than failure to pay as a result of an Event of Nonappropriation);

(b) Default in the due and punctual payment of any Additional Payment, which default shall continue for a period of thirty (30) days after payment thereof was due;

(c) Failure by any School Party to observe and perform any of the terms and covenants on its part to be observed or performed set forth in Section 4.4(d), 4.4(e), 4.4(f), 7.12 or 7.21 hereof;

(d) Failure of the YCSD to observe and perform the covenants set forth in Section 4.3 hereof, and continuance of any such failure for a period of thirty (30) days after receipt by the YCSD of written notice specifying the nature of such default from the Agency or the Trustee;

(e) Failure of the YJSCB to observe and perform the covenants set forth in Section 5.5 hereof, and continuance of any such failure for a period of thirty (30) days after receipt by the YJSCB of written notice specifying the nature of such default from the Agency or the Trustee;

(f) Failure by any School Party to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in paragraphs (a), (b), (c), (d) and (e) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the defaulting party and the other School Parties by the Agency, the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding, unless by reason of the nature of such failure the same cannot be remedied within such thirty (30) day period and the defaulting party has within such period commenced to take appropriate actions to remedy such failure and is diligently prosecuting such actions;

(g) The City or the YCSD shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the City or the YCSD seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver; trustee, or other similar official for it for any substantial part of its property; or the City or the YCSD shall authorize any of the actions set forth above in this paragraph (g); or

(h) The entering of an order or decree appointing a receiver of the Facilities or any thereof with the consent or acquiescence of the City or the YCSD or the entering of such order or decree without the acquiescence or consent of the City or the YCSD if it shall not be vacated, discharged or stayed within ninety (90) days after entry.

Notwithstanding anything contained in this Section to the contrary, a failure by the City or the YCSD to pay when due any payment required to be made hereunder or a failure by the City or the YCSD to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, resulting from a failure by the Board of Education to include such payment obligation and moneys for such purposes in the annual budget for the YCSD, failure by the City to approve such budget and appropriate moneys for such purpose, or a failure by the YCSD to approve payment thereof after appropriation by the City therefor shall not constitute an event of default hereunder. However, the failure by the City or the YCSD to pay when due any payment required to be made by it under this Agreement shall constitute a failure to make a payment under this Agreement for purposes of the Yonkers Schools Act, and in such event the Agency has appointed the Trustee to act as its agent for purposes of taking action under Section 5.4 of the Indenture. The City and the YCSD agree to provide written notice to the Trustee indicating either (i) the Board of Education submitted an annual budget for the YCSD to the Mayor of the City that fails to include a separate line item representing the full amount of Installment Purchase Payments payable during the applicable Fiscal Year, (ii) the City approved an annual budget for the YCSD that fails to include such a separate line item, or (iii) the YCSD failed to approve payment of such full amount after appropriation by the City therefor.

Section 8.2. Remedies. Whenever any event of default referred to in Section 8.1 hereof shall have happened and be continuing, or whenever an Event of Nonappropriation shall have occurred and be continuing, the Agency (with the prior written consent of the Trustee) or the Trustee, subject in all respects to Section 4.4 hereof, may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the School Parties hereunder. Notwithstanding the foregoing, for so long as any of the Bonds are Outstanding or any amounts remain due and payable by the City or the YCSD under this Agreement, neither the Agency nor the Trustee shall take any action which shall have the effect of terminating this Agreement or the interest in or rights of possession of the City or the YCSD in the Facilities, *provided, however*, that in addition to any other rights or remedies granted by this Section to the Agency, the Agency may enforce any of the Agency's Reserved Rights without the consent of the Trustee or any other person, by an action for damages, injunction or specific performance.

No action taken pursuant to this Section 8.2 shall relieve any School Party from its obligations hereunder, all of which shall survive any such action.

Section 8.3. Cure. Notwithstanding any remedy taken by the Agency or the Trustee pursuant to Section 8.2 hereof, if all arrears of Installment Purchase Payments, and all other Additional Payments, shall have been paid, all other things shall have been performed in respect of which there was an event of default or Event of Nonappropriation and there shall have been paid the reasonable fees and expenses, including expenses of the Trustee (including reasonable attorneys' fees paid or incurred), then the event of default or Event of Nonappropriation shall be waived without further action by the Trustee or the Agency.

Section 8.4. No Remedy Exclusive. Subject to the provisions of the second sentence of Section 8.2 hereof, no remedy herein conferred upon or reserved to the Agency or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but

any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency or the Trustee to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 8.5. Waiver and Non-Waiver. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 8.6. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Trustee under the Indenture or this Agreement or under any other Security Document on account of any event of default or Event of Nonappropriation hereunder or under the Indenture shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then, and in every such case, the Agency, the Trustee, the Bond Insurer and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Trustee shall continue as in effect prior to the commencement of such proceedings.

Section 8.7. Agreement to Pay Attorneys' Fees and Expenses. In the event the Agency, the Bond Insurer or the Trustee should employ attorneys or incur other expenses for the collection of Installment Purchase Payments or Additional Payments payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the School Parties herein contained or contained in any other Project Document, each of the City or the YCSD agree that it will on demand therefor pay to the Agency, the Bond Insurer or the Trustee the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

ARTICLE IX

LIMITATIONS ON TERMINATION OF AGREEMENT

Section 9.1. Limitations on Termination of Agreement. Notwithstanding any provisions of this Agreement to the contrary, neither the Agency, the Trustee nor any School Party shall take or fail to take any action which would cause this Agreement to terminate while any Bonds remain Outstanding or any amounts remain due and payable under this Agreement or prior to the discharge of the lien of the Indenture. Notwithstanding the foregoing, the Trustee hereby undertakes to perform only such duties as are specifically and expressly set forth in this Agreement, and the parties acknowledge that such duties shall be deemed purely ministerial in nature, and the Trustee shall not be liable except for the performance of such duties, and no implied covenants or obligations shall be read into this Agreement against the Trustee.

ARTICLE X

MISCELLANEOUS

Section 10.1 [Reserved].

Section 10.2. Successors and Assigns. This Agreement shall inure to the benefit of the School Parties, the Agency and the Trustee and their respective successors and assigns, and shall be binding upon the Agency and the School Parties, subject, however, to the provisions of Sections 7.7 and 7.8 hereof.

Section 10.3. Severability. In the event any one or more of the covenants, stipulations, promises, obligations and agreements herein on the part of the Agency or a School Party to be performed should be contrary to law, then such covenant or covenants, stipulation or stipulations, promise or promises, obligation or obligations, or agreement or agreements shall be null and void, shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, obligations and agreements herein contained and shall in no way affect the validity or enforceability of the other provisions hereof.

Section 10.4. Amendments, Changes and Modifications. Except as otherwise provided herein or in the Indenture, subsequent to the issuance of Series 2021 Bonds, and prior to payment or provision for the payment of the Bonds in full, and payment or provision for the payment of all amounts due and payable to the Agency pursuant hereto or to any indemnity, this Agreement may not be amended, changed, modified, altered or terminated except as provided in the Indenture.

Section 10.5. Amounts Remaining Under the Indenture. It is agreed by the parties hereto that any amounts remaining in any fund or account created under the Indenture, upon expiration or sooner termination of the Agreement Term, as provided herein, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and the fees, charges, indemnities and expenses of the Trustee, the Paying Agents, the Bond Insurer and the Agency in accordance herewith and with the Indenture, shall belong to and be paid to the City for the benefit of the YCSD.

Section 10.6. Compliance with Indenture. Each School Party hereby approves of and agrees to the provisions of the Indenture. Each School Party agrees to do all things within its power in order to enable the Agency to comply with all requirements and to fulfill all covenants of the Indenture so that the Agency will not be in default in the performance of any covenant, condition, agreement or provision of the Indenture.

Section 10.7. Investment of Moneys. The Agency hereby acknowledges that the City may in its sole discretion direct the investment of certain moneys held under the Indenture as provided therein. Neither the Agency nor the Trustee shall have any liability arising out of or in connection with the making or disposition of any investment authorized by the provisions of Section 5.6 of the Indenture in the manner provided therein, for any depreciation in value of any investment or for any loss, direct or indirect, resulting from any such investment or disposition. In the absence of such written instructions, such moneys shall be held uninvested.

Section 10.8. Disclaimer of Personal Liability. No recourse shall be had against or liability incurred by any official or member of any School Party or any officer or employee of any School Party,

or any person executing this Agreement for any covenants and provisions hereof or for any claims based thereon, and no recourse shall be had for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any official, member, officer or employee of a School Party.

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity, and no recourse shall be had for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing the Bonds.

Section 10.9. Effective Date; Counterparts. This Agreement shall become effective upon its delivery. 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 10.10. Headings. The headings preceding the text of the several Articles and Sections hereof and any table of contents appended to copies hereof shall be solely for convenience of reference and shall not constitute a part hereof nor shall they affect its meaning, construction or effect.

Section 10.11. Notices. All notices, demands or other communications hereunder shall be sufficient if sent by registered or certified United States mail, postage prepaid, addressed, if to the Agency, 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, Attention: Chairman; in the case of the City, addressed to it to the attention of the Mayor, at City Hall, Yonkers, New York 10701, with a copy to Corporation Counsel, City of Yonkers, at City Hall, Yonkers, New York 10701; in the case of the YCSD, addressed to it to the attention of the YCSD's Superintendent, at 1 Larkin Center, Yonkers, New York 10701, with a copy to Corporation Counsel, City of Yonkers, at City Hall, Yonkers, New York 10701; in the case of the YJSCB, addressed to it to the attention of the Chairman, at City Hall, Yonkers, New York 10701, with a copy to Corporation Counsel, City of Yonkers, at City Hall, Yonkers, New York 10701; in the case of the Trustee, addressed to it at 285 Delaware Avenue, 3rd Floor, Buffalo, NY 14202; and in each case, to such other individual and at such other address as the person to be notified shall have specified by notice to the other persons. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date it shall have been mailed.

Section 10.12. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral (other than any Project Documents or other agreements executed concurrently herewith or with respect to the New Community School Project), between the Agency, on the one hand, and the School Parties, on the other hand, relating to the Facilities.

Section 10.13. Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State.

Section 10.14. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency and the School Parties and their respective successors and assigns.

Section 10.15. Investment of Funds. Any moneys held as part of the Project Fund, the Bond Fund, the Debt Service Reserve Fund or in any special fund provided for in this Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the joint written request of an Authorized Representative of the City, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the applicable Tax Compliance Documents). Neither the Agency nor the Trustee nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom. In the absence of such written instructions, such moneys shall be held uninvested.

Section 10.16. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Facilities or any matters whatsoever arising out of or in any way connected with this Agreement.

The provisions of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 10.17. Non-Discrimination.

(a) At all times during the maintenance and operation of the Facilities, the YCSD shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The YCSD shall use its best efforts to ensure that employees and applicants for employment with the YCSD are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The YCSD shall, in all solicitations or advertisements for employees placed by or on behalf of the YCSD, state that all qualified applicants will be considered for employment without regard to race, color, creed, age, sex or national origin.

(c) The YCSD shall furnish to the Agency all information required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

Section 10.18. Limitation on Liability of the Agency or the State. The liability of the Agency to the School Parties under this Agreement and to the Trustee and the Holders of the Bonds shall be enforceable only out of, and limited to, the Agency's interest under this Agreement and under the License and the security interest created by the Indenture. There shall be no other recourse against the Agency, its members, directors, officers, agents, servants and employees and persons under the Agency's control or supervision, past, present or future, or against any of the property now or hereafter owned by it or them. Any obligation the Agency may incur for the payment of money in the performance of this Agreement shall not create a debt of the State, and the State shall be not liable on any obligation so incurred. Any such obligation shall be payable solely out of any payments or other proceeds or funds derived from this Agreement. All obligations of the Agency under this Agreement shall be deemed to be the obligation of the Agency, and not of any member, director, officer, servant, employee or agent of the Agency or person under the Agency's control or supervision, past, present or future, in his individual capacity. No recourse shall be had against any such persons, or against any

natural person executing the Bonds, for any claim against the Agency arising under this Agreement, including, without limitation, any claim for the payment of the principal of, redemption premium, if any, or interest on the Bonds.

Section 10.19. Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on the date of original issuance and delivery of the Series 2021 Bonds.

IN WITNESS WHEREOF, the Agency, the City, the YCSD and the YJSCB have caused this Installment Sale Agreement to be executed in their respective names by their duly authorized officers or agents and to be dated as of the day and year first above written, all being done as of the year and day first above written.

**CITY OF YONKERS INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

ATTEST:
City Clerk

CITY OF YONKERS

By: _____
Mayor

**CITY SCHOOL DISTRICT OF CITY OF
YONKERS**

By: _____
Superintendent

**YONKERS JOINT SCHOOLS
CONSTRUCTION BOARD**

By: _____
Chairman

STATE OF NEW YORK)
): **SS.**
COUNTY OF WESTCHESTER)

On the _____ day of _____, in the year 2021, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
): **SS.**
COUNTY OF WESTCHESTER)

On the _____ day of _____, in the year 2021, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

DESCRIPTION OF FACILITIES

EXHIBIT B

NOTICE OF TERMINATION OF LICENSE

The undersigned, **CITY OF YONKERS ("City") and CITY SCHOOL DISTRICT OF THE CITY OF YONKERS ("YCSD")** (the City and the YCSD together the "**Licensor**"), as Licensor, and the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly organized and existing under the laws of the State of New York (the "**Licensee**"), having its principal office at 470 Nepperhan Avenue, Suite 200, Yonkers, New York, 10701 as Licensee, entered into a certain License Agreement (New Community School Project) dated as of September 1, 2021 (the "**License Agreement**").

Capitalized terms used in this Notice shall have the meaning given to them in the License Agreement.

Such License Agreement covers the real property (the "**Premises**"), including any buildings, structures or improvements now or hereafter affixed or attached thereto, as more particularly described in Exhibit "A" attached hereto and made a part hereof.

The Licensee and Licensor hereby acknowledge that the term of the License Agreement and the Licensee's interest in the Premises terminated effective as of _____.

IN WITNESS WHEREOF, the Licensor and the Licensee have caused this Notice to be executed in their respective names as of _____.

**CITY SCHOOL DISTRICT OF CITY OF
YONKERS**

By: **YONKERSJOINT SCHOOLS
CONSTRUCTION BOARD**, its duly
authorized agent

By: _____
Name:
Title:

**CITY OF YONKERS INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

EXHIBIT C

BILL OF SALE TO CITY AND YCSD

THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the "*Grantor*"), for the consideration of one Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from the **CITY OF YONKERS**, a municipal corporation of the State of New York (the "*City*"), having its principal office at City Hall, Yonkers, New York 10701 and the **CITY SCHOOL DISTRICT OF THE CITY OF YONKERS**, a school district of the State of New York, acting by and through its Board of Education ("*YCSD*"), having its principal office at 1 Larkin Center, Yonkers, New York 10701 (the City and the YCSD are referred to collectively as the "*Grantee*"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all those materials, machinery, equipment fixtures or furnishings which are described in Exhibit "A" attached hereto and by this reference made a part hereof, including any additions thereto, now owned or hereafter acquired by the Grantor with proceeds of the sale of the Series 2021 Bonds (as defined in the Installment Sale Agreement (New Community School Project) dated as of September 1, 2021 (the "*Installment Sale Agreement*") by and among the Grantor, the Yonkers Joint Schools Construction Board and the Grantee) or any payment made by the Grantee pursuant to Section 4.6 of this Installment Sale Agreement, and such additions thereto and substitutions therefor as may be made from time to time.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF ANY OF THE EQUIPMENT DESCRIBED ABOVE. THE GRANTEE ACCEPTS TITLE TO SUCH EQUIPMENT "AS IS," WITHOUT RECOURSE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. IN THE EVENT OF A DEFICIENCY OR DEFAULT OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer on the date indicated beneath the signature of such officer and dated as of the ____ day of September, 2021.

**CITY OF YONKERS INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

EXHIBIT "A"

TO BILL OF SALE TO CITY

DESCRIPTION OF THE EQUIPMENT

All articles of personal property and all appurtenances acquired or refinanced with the proceeds of the Series 2021 Bonds, and now or hereafter attached to, contained in or used in connection with the Facilities or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, computers, furniture, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

SCHEDULE A

INSTALLMENT PURCHASE PAYMENTS

The following table sets forth the annual Installment Purchase Payments due on April 1 of each year pursuant to the Installment Sale Agreement with respect to the Series 2021 Bonds, respectively.

Payment Date Due May 1	Principal	Interest Rate	Interest*	Total Installment Purchase Payments
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