

**VILLAGE OF DOWNERS GROVE  
REPORT FOR THE VILLAGE COUNCIL MEETING  
DECEMBER 3, 2013 AGENDA**

<b>SUBJECT:</b>	<b>TYPE:</b>	<b>SUBMITTED BY:</b>
Public Hearing for Issuance of Revenue Bonds for Avery Coonley School	Resolution <input checked="" type="checkbox"/> Ordinance Motion Discussion Only	David Fieldman Village Manager

**SYNOPSIS**

A public hearing is scheduled to regarding the issuance of revenue bonds in an amount not to exceed \$6,300,000. Notice of the public hearing was published in the newspaper on November 13, 2013.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2011-2018 identified *Strong, Diverse Local Economy*.

**FISCAL IMPACT**

N/A

**RECOMMENDATION**

Hold the public hearing at the December 3, 2013 Village Council meeting.

**BACKGROUND**

Avery Coonley is requesting assistance from the Village through revenue bonds to refinance existing bonds and issue new bonds for the reconstruction and renovation of the school located at 1400 Maple Avenue. Pursuant to State law, the Village has the authority to issue tax-exempt economic development revenue bonds, also known as private activity bonds. The bonds do not affect the Village's credit rating.

The Bonds are special, limited obligations of the Village and the principal, redemption premiums, if any, and interest on the Bonds are payable **solely** from revenues and income derived from a Loan Agreement entered into with the Borrower. The Bonds and the obligation to pay the premium, if any, and interest are not considered indebtedness or an obligation of the Village and default will not affect the Village's credit rating. The ordinance contains flexibility to enable the Borrower to select a bond purchaser subject to the approval of the authorized officers of the Village.

Pursuant to the Loan Agreement between the Village and the Borrower, the Borrower will agree to release the Village and indemnify, hold harmless and defend the Issuer Indemnified Parties from and against any and all losses, claims, damages, liabilities and expenses relating to the bonds and the project. The indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except to the extent such damages are caused by the gross negligence or willful misconduct of the Village. The full language on the indemnification is found on Page 25 of the Loan Agreement.

The Village is scheduled to hold a public hearing on Tuesday, December 3, 2013 during the Village Council meeting and adopt the Bond ordinance on December 10, 2013.

**ATTACHMENTS**

Ordinance authorizing bonds

Bond Agreements

**PROCEDURES FOR PUBLIC HEARING  
BOND ISSUANCE FOR AVERY COONLEY SCHOOL  
December 3, 2013**

**1. Mayor Opens Hearing.**

This public hearing will please come to order.

This public hearing has been called by the Village Council of the Village of Downers Grove to consider issuance by the Village of Downers Grove Revenue Bonds, Series 2013, in an aggregate principal amount not to exceed \$6,300,000 with respect to the Avery Coonley School facility located in the Village of Downers Grove. Notice of this hearing was published in the Downers Grove Suburban Life Newspaper on November 13, 2013.

The procedures for tonight's meeting will be as follows:

1. Presentation by **Jim Snyder, Bond Counsel for the Village of Downers Grove**, who will present information related to the bond issuance.
2. Questions or comments from members of the Village Council.
3. Questions and comments from the public. These may include either written or oral statements as well as any petitions or other documents or information relevant to this public hearing.
4. Thereafter we will adjourn the hearing.

At this hearing, witnesses will not be sworn and a verbatim written transcript of the statements or testimony given at the hearing will not be prepared. However, a recording of the procedures will be made on Village equipment and retained until minutes of the hearing have been prepared and approved by the Village Council.

- 2. Presentation by Jim Snyder, Bond Counsel for the Village of Downers Grove.**
- 3. Questions or comments from the Village Council**
- 4. Statements or questions from the public.**
- 5. Final questions or comments from the Village Council.**
- 6. Adjournment.**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS REVENUE BONDS (AVERY COONLEY PROJECT), SERIES 2013 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$6,300,000 IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND AND LOAN AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS AND THE BORROWER; AND RELATED MATTERS.

WHEREAS, the Village of Downers Grove, DuPage County, Illinois (the "Village") is a municipal corporation and a home rule unit of local government and is authorized and empowered by the provisions of Section 6 of Article VII of the Illinois Constitution of 1970 and the Downers Grove Revenue Bond Ordinance constituting Chapter 27 of the Downers Grove Municipal Code (the "Act") to issue its Revenue Bonds and to finance or refinance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any economic development project in order to encourage economic development of the Village; and

WHEREAS, The Avery Coonley School, an Illinois not-for-profit corporation (the "Borrower"), has requested that the Village issue its revenue bonds for the purpose of (i) refinancing all or a portion of the Issuer's outstanding Revenue Bonds (The Avery Coonley School Project), Series 2004 (the "Prior Bonds"), (ii) finance or reimburse the Borrower for the renovation, expansion and equipping of a portion of the educational facility of the Borrower located at 1400 Maple Avenue, Downers Grove, Illinois (the "Project"), and (iii) pay all or a portion of the costs of issuance of the Bond; and

WHEREAS, the Project will be of the character and will accomplish the purposes provided by the Act; and the Village is willing to issue its revenue bonds to finance the Project and refinance the Prior Bonds, as set forth in the details and provisions of a Bond and Loan Agreement dated as of

December 1, 2013 by and among the Village, the Borrower and the Purchaser (as defined herein) (the "Loan Agreement"); and

WHEREAS, it is estimated that the costs of the Project and the refinancing of the Prior Bonds, including costs relating to the costs of issuance of the revenue bonds herein authorized, will not exceed \$6,300,000; and

WHEREAS, it is necessary and proper for the Village for the benefit of the inhabitants of the Village to authorize the financing of the Project, the refinancing of the Prior Bonds and issuance of revenue bonds hereinafter authorized and designated "Revenue Bond (Avery Coonley School Project), Series 2013" (the "Bond") in the aggregate principal amount of not to exceed \$6,300,000; and

WHEREAS, the Bonds will be sold directly to First American Bank (the "Purchaser") pursuant to the Loan Agreement or other agreement, dated as of December 1, 2013, between the Issuer, the Borrower and the Purchaser; and

WHEREAS, it is necessary to authorize the execution of a Loan Agreement among the Village, the Borrower and the Purchaser under the terms of which the Village will lend the proceeds of the sale of the Bonds to the Borrower to reimburse the Borrower for costs related to the Project and the refinancing of the Prior Bonds, the payments to be paid by the Borrower to the Village in repayment of the loan to be sufficient to pay at maturity the principal of, premium, if any, and interest on the Bonds; and

WHEREAS, the Village has caused to be prepared and presented to this meeting the following documents, which the Village proposes to enter into:

1. The Bond and Loan Agreement; and
2. The Bond.

WHEREAS, it is necessary to authorize the sale of the Bonds and to execute a Loan Agreement as hereinafter defined in connection therewith; and

WHEREAS, Notice of a Public Hearing was published in the Downers Grove Suburban Life on November 13, 2013; and

WHEREAS, the Village held a Public Hearing pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended, on December 3, 2013 and hereby approves the issuance of the Bonds;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

Section 1. Pursuant to the Act, in order to relieve the conditions of unemployment and to encourage the increase of economic development, the Project shall be and is hereby authorized to be financed as described herein. It is hereby found and declared that the financing of the Project and the use thereof by the Borrower and the refinancing of the Prior Bonds as hereinafter provided is necessary to accomplish the public purposes described in the preamble hereto and in the Act.

Section 2. That the form, terms and provisions of the proposed Loan Agreement be, and the same hereby is, in all respects approved, and that the Mayor and the Village Clerk of the Village be, and they are hereby authorized, empowered and directed to execute and deliver such instrument in the name and on behalf of the Village, and to cause the Loan Agreement to be delivered to the Borrower and the Purchaser. The Loan Agreement is to be in substantially the form attached to this Ordinance and is hereby approved, and the Mayor and Village Clerk are hereby authorized to make changes to the Loan Agreement as are consistent with this Ordinance. The execution of any and all documents related to the Loan Agreement, and the Bond by officials of the Village shall constitute conclusive evidence of the Village's approval of any and all changes or revisions therein from the form

of the Loan Agreement hereby approved; and that from and after the execution and delivery of such instrument, the officials, agents and employees of the Village are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of such instrument as executed. The Loan Agreement shall constitute and is hereby made a part of this Ordinance and a copy of such document shall be placed in the official records of the Village, and shall be made available for public inspection.

Section 3. That the issuance of the Bond in the aggregate principal amount of not to exceed \$6,300,000 to mature on or before January 1, 2035, and subject to optional and mandatory redemption in accordance with the terms and provisions of the Loan Agreement, as executed, and bearing interest initially at the Initial Interest Rate (as such term is defined in the Loan Agreement), and upon each of the Rate Reset Dates, a rate as determined in accordance with the Loan Agreement but in no event is the interest rate on the Bond (regardless of the rate period) to exceed fifteen percent (15%) per annum, is hereby approved and the Mayor and the Village Clerk of the Village be and are hereby authorized, empowered and directed to cause to be prepared the Bond in the form and having the other terms and provisions specified in the Loan Agreement (as executed and delivered); that the Bond shall be designated “Revenue Bond (Avery Coonley School Project), Series 2013”; that the Bond shall be executed in the name of the Village with the manual or facsimile signature of its Mayor and the manual or facsimile signature of its Village Clerk and the seal of the Village shall be impressed or reproduced thereon, and that the Mayor or any other officer of the Village shall cause the Bond, as so executed and attested, to be delivered to the Purchaser; and the form of the Bond submitted to this meeting as the same appears in the Loan Agreement, subject to appropriate insertion and revision in order to comply with the provisions of said Loan Agreement be, and the same hereby is, approved, and when the same shall be executed on behalf of the Village in the manner contemplated by the Loan

Agreement and this Ordinance in the principal amount of not to exceed \$6,300,000, it shall represent the approved form of the Bond of the Village.

Section 4. The Bond shall be special limited obligations of the Village and except to the extent payable from Bond proceeds or moneys from the investment thereof, shall be payable solely from the revenues and receipts and other amounts received by or on behalf of the Village pursuant to the Loan Agreement. The Bond and interest thereon shall not be deemed to constitute an indebtedness or a general obligation of the Village, the State of Illinois or any political subdivision thereof within the meaning of any constitutional or statutory provision or a charge against the general credit or taxing powers, if any, of the Village, the State of Illinois or any political subdivision thereof. No taxing powers of the Village, the State of Illinois or any political subdivision thereof are available to pay the Bond or interest thereon. The special limited nature of the obligation represented by the Bond are more fully set forth in the Loan Agreement, which provisions are incorporated herein by reference.

Section 5. That the sale of the Bond to the Purchaser at a price not to exceed \$6,300,000 is hereby in all respects authorized and approved.

Section 6. That from and after the execution and delivery of the Loan Agreement, the proper officials, agents and employees of the Village are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said document as executed and to further the purposes and intent of this Ordinance, including the preamble hereto. The Mayor and the Village Clerk be, and they are hereby, further authorized and directed for and on behalf of the Village, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of the authority conferred by this Ordinance or to evidence said authority, including without limitation the



signing of IRS Form 8038 and the filing thereof as therein required and the certifications relating to Section 148 of the Code and the regulations promulgated thereunder and changes in the documents approved hereby as approved by the officials of the Village executing the same, and to exercise and otherwise take all necessary action to the full realization of the rights, accomplishments and purposes of the Village under the Loan Agreement and to discharge all of the obligations of the Village thereunder. For purposes of certifying to matters of arbitration, the Mayor is hereby designated an officer responsible for issuing the Bond.

Section 7. That all acts and doings of the officials of the Village which are in conformity with the purposes and intent of this Ordinance and in furtherance of the issuance and sale of the Bond in the principal amount of not to exceed \$6,300,000 and the financing of the Project and the refinancing of the Prior Bonds hereby are, in all respects, approved and confirmed.

Section 8. That the Village hereby approves the Project, and its corresponding plan of financing, the refinancing of the Prior Bonds and the issuance of the Bond pursuant to Section 147(f) of the Code.

Section 9. The Village hereby designates the Bond to be “qualified tax-exempt obligations” pursuant to Section 265(b)(3)(B)(ii) of the Code.

Section 10. That the Bond shall be issued in compliance with and under the authority of the provisions of the Act, this Ordinance and the Loan Agreement.

Section 11. That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall, for any reason, be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 12. That all ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance (“Conflicting Council Actions”) are to be read as authorizing this

Ordinance. To the extent such a reading is not possible, all Conflicting Council Actions are hereby superseded and repealed to the extent of such conflict.

Section 13. This Ordinance shall be in full force and effect from and after its passage and approval, in accordance with law.

Section 14. The Bonds, including but not limited to the principal of, premium, if any, interest thereon and any expenses thereto shall be limited obligations of the Village, payable solely and only from the revenues and receipts derived by the Village pursuant to the Loan Agreement and shall be otherwise secured as provided in the Loan Agreement. The Bonds shall not in any respect be a general obligation of the Village, nor shall they be payable in any manner from funds of the Village raised by taxation. The Bonds shall state that they do not constitute an indebtedness of the Village or a loan of credit thereof within the meaning of any constitutional or statutory provision. Nothing in this Ordinance, the Loan Agreement or the form of the Bond (hereinafter referred to collectively as the "Financing Documents") or in any document or agreement required hereby and thereby, shall be construed as an obligation or commitment by the Village to expend any of its funds other than (i) the proceeds derived from the sale of the Bonds, (ii) the revenues and receipts derived from the Loan Agreement, and (iii) any monies arising out of the investment or reinvestment of said proceeds, income, revenues, receipts or monies.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Village Clerk

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

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BOND AND LOAN AGREEMENT

dated as of December 1, 2013

among

VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS

THE AVERY COONLEY SCHOOL

and

FIRST AMERICAN BANK

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\$6,000,000 Village of Downers Grove Revenue Bonds  
(Avery Coonley School Project), Series 2013

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## BOND AND LOAN AGREEMENT

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BOND AND LOAN AGREEMENT dated as of December 1, 2013, among the VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS, a home rule unit of local government and municipality duly organized and validly existing under the laws of the State of Illinois (the "*Issuer*"), FIRST AMERICAN BANK, an Illinois banking corporation (the "*Purchaser*"), and THE AVERY COONLEY SCHOOL, an Illinois not-for-profit corporation (the "*Borrower*").

WHEREAS, the Issuer is a home rule unit of local government and municipality duly organized and validly existing under the laws of the State of Illinois and is authorized and empowered pursuant to the provisions of the 1970 Constitution of the State of Illinois, Article VII, Section 6 and the Downers Grove Revenue Bond Ordinance constituting Chapter 27 of the Downers Grove Municipal Code (collectively, the "*Act*") to finance or refinance in whole or in part the cost of acquisition, construction, improvement, extension, rehabilitation, renovation or equipping of any economic development project of the Issuer; and

WHEREAS, the Issuer is further authorized by the Act to issue revenue bonds payable solely and from the revenues and receipts derived from such facilities to provide funds to pay the costs of the financing, refinancing, acquisition, construction, improvement, renovation and equipping of such facilities; and

WHEREAS, pursuant to and in accordance with the provisions of the Act and by proceedings of its governing body in whom the governing and administrative powers of the Issuer are vested, the Issuer has authorized and undertaken to issue its \$6,000,000 principal amount of Revenue Bond (Avery Coonley School Project), Series 2013 (the "*Bond*") to provide funds to the Borrower to (i) refinance all or a portion of the Issuer's outstanding Revenue Bonds (The Avery Coonley School Project), Series 2004 (the "*Prior Bonds*"), (ii) finance or reimburse the Borrower for the renovation, expansion and equipping of a portion of the educational facility of the Borrower located at 1400 Maple Avenue, Downers Grove, Illinois (the "*Project*"), and (iii) pay all or a portion of the costs of issuance of the Bonds, which constitutes an "economic development project" under the Act; and

Accordingly, the Issuer, the Borrower and the Purchaser hereby agree as follows:

## **ARTICLE I.**

### **DEFINITIONS**

For all purposes of this Agreement, unless the context clearly requires otherwise, the following terms shall have the following meanings.

*"Act"* – means, collectively, the Article VII, Section 6 of the 1970 Constitution of the State of Illinois and the Downers Grove Revenue Bond Ordinance constituting Chapter 27 of the Downers Grove Municipal Code.

*"Advance"* means either the Initial Advance or a Supplemental Advance.



*"Agreement"* means this Bond and Loan Agreement, as amended or supplemented from time to time in accordance with its terms.

*"Assignment"* means the Assignment and Agreement Dated as of December 1, 2013, by and between the Issuer and the Bank, as may be amended and supplemented from time to time.

*"Authorized Borrower Representative"* means the Officers or Representatives who, at the time, shall have been designated as such pursuant to the provisions of this Agreement.

*"Bond Registrar"* means First American Bank and its successors and assigns.

*"Bond Ordinance"* means the ordinance adopted by the Issuer on December 10, 2013, authorizing the issuance, delivery and sale of the Bonds.

*"Bond"* or *"Bonds"* means the Bond issued pursuant to this Agreement.

*"Borrower"* means The Avery Coonley School, an Illinois not for profit corporation, its successors and assigns.

*"Business Day"* means any day other than a day on which banks in Chicago, or the city of the Purchaser's principal office, are required or authorized to close.

*"Closing Date"* means December \_\_, 2013, the date of initial issuance and delivery of the Bond to the Purchaser, or such other date mutually agreed to by the Issuer, Purchaser and Borrower.

*"Code"* means the Internal Revenue Code of 1986, as amended. Each citation to a Section of the Code shall include the Treasury regulations applicable to such Section.

*"Custodian"* shall have the meaning set forth in Section 8.1 hereof.

*"Default Rate"* shall have the meaning set forth in Section 3.3 hereof.

*"ERISA"* means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

*"Event of Default"* is defined in Section 8.1 of this Agreement.

*"Fiscal Year"* means the period from July 1 through June 30.

*"Fixed Rate"* shall have the meaning set forth in Section 3.3 hereof.

*"Governmental Authority"* means any nation or government, any state, department, agency or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

*"Indemnified Persons"* shall have the meaning set forth in Section 6.2 hereof.

*"Initial Advance"* means the Advance on the Bond to be made by the Purchaser on the Closing Date pursuant to Section 3.2 hereof.

*"Interest Period"* means each period of time that interest on the Bond is equal to a particular interest rate determined as provided in this Agreement. The initial Interest Period shall commence on the Closing Date and end on December 1, 2023.

*"Notice of Default"* shall have the meaning set forth in Section 8.1 hereof.

*"Opinion of Counsel"* means a written opinion of counsel who is reasonably acceptable to the Purchaser. The counsel may be an employee of or counsel to the Issuer or the Borrower.

*"Opinion of Tax Counsel"* means an Opinion of Counsel experienced in matters relating to the tax exemption of interest on obligations issued by states and their political subdivisions.

The term *"outstanding"* when used with reference to the Bond, or *"Bond outstanding"* means the Bond which has been authenticated and delivered to the Purchaser under this Agreement, except the following:

(a) Bond canceled or delivered to the Bond Registrar for cancellation.

(b) Bond in lieu of which others have been authenticated under Section 3.7 (relating to registration and exchange of Bond) or 3.8 (relating to mutilated, lost, stolen or destroyed Bond).

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

*"Person"* means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

*"Plan"* means, with respect to the Borrower at any time, an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code.

*"Prior Bonds"* means the Issuer's Revenue Bonds (The Avery Coonley School Project), Series 2004.

*"Project"* means the Project described in the introductory clauses to this Agreement and further described in the Arbitrage Certificate.

*"Arbitrage Certificate"* means the Certificate re: Arbitrage and Other Federal Tax Matters of the Issuer and the Borrower of that name, dated the date of initial issuance and delivery of the Bond.

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

"*Purchaser*" means the registered owner of the Bond, initially First American Bank, and its successors and assigns.

"*Rate Reset Dates*" means December 1, 2023 and December 1, 2033.

"*Rebate Fund*" means the fund by that name created under the Tax Certificate.

"*Related Documents*" means this Agreement, the Tax Certificate and the Arbitrage Certificate and any other agreement or instrument relating thereto.

"*State*" means the State of Illinois.

"*Supplemental Advance*" means the Advance subsequent to the Initial Advance made to fund costs of the Project pursuant to Section 3.2 hereof.

"*Tax Certificate*" means the Tax Compliance Certificate of the Borrower, dated the date of initial issuance and delivery of the Bond, as amended from time to time.

"*Tax-Exempt Organization*" means an entity organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code, and which is not a "private foundation" within the meaning of Section 509(a) of the Code or corresponding provisions of federal income tax laws from time to time in effect.

"*Unassigned Rights*" means the rights of the Issuer under Sections 4.4, 6.2 and 8.7 hereunder and its rights to receive notices hereunder and to consent to amendments hereto.

"*Variable Rate*" shall have the meaning set forth in Section 3.3 hereof.

## **ARTICLE II.**

### **REPRESENTATIONS**

*Section 2.1. Representations of Issuer.* The Issuer represents and warrants as follows:

(a) The Issuer is a home rule unit of local government and municipality duly organized and validly existing under the laws of the State of Illinois and is authorized and empowered pursuant to the provisions of the 1970 Constitution of the State of Illinois, Article VII, Section 6, Chapter 27 of the Downers Grove Municipal Code and the Bond Ordinance to enter into the transactions contemplated by this Agreement and the other Related Agreements to which it is a party and to carry out its obligations hereunder and thereunder, and by proper action of its governing body has been duly authorized to execute and deliver this Agreement and each other Related Agreement to which it is a party, and this Agreement and each other Related Agreement to which it is a party has been duly executed and delivered by the Issuer and is a valid and binding obligation of the Issuer enforceable in accordance with its terms.

(b) It is the Issuer's understanding, based upon certain representations of the Borrower, that the issuance and sale of the Bonds and the loaning of the proceeds of the

Bonds to the Borrower (which proceeds, along with certain other moneys, will be applied for the benefit of the Borrower) is to refinance the Prior Bonds and provide the moneys required to finance and refinance the Project.

(c) To provide funds to loan to the Borrower for the purposes described in (b) above, the Issuer has authorized its Bonds in the principal amount of \$6,000,000 to be issued under and secured by this Agreement, pursuant to which the Issuer's rights and interests in this Agreement, and revenues and income to be derived by the Issuer pursuant to this Agreement, excluding the Unassigned Rights, will be pledged and assigned as security for payment of the principal, purchase price, premium, if any, and interest on the Bonds. The Issuer covenants that it has not pledged or assigned and will not pledge or assign its interest in this Agreement or the revenue and receipts derived pursuant to this Agreement, excepting Unassigned Rights, other than to the Purchaser under this Agreement to secure the Bonds.

(d) Neither the Issuer's execution of this Agreement, its consummation of the transaction contemplated on its part thereby, nor the Issuer's fulfillment or compliance with the terms and conditions thereof conflicts with or results in a breach of the terms, conditions and provisions of any material restriction, agreement or instrument to which the Issuer is a party, or by which it or any of its property is bound, or constitutes a default under any of the foregoing.

(e) There is no litigation or proceeding pending as to which the Issuer has received actual notice, or to the knowledge of the Issuer threatened, against the Issuer, or to the knowledge of the Issuer affecting it, which would adversely affect the validity of this Agreement or the Bonds or the ability of the Issuer to comply with its obligations under this Agreement or the Bonds.

(f) The Issuer will not purchase any of the Bonds.

(g) The Issuer shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the maintenance of any security interest intended to be perfected thereby. The Issuer will execute such instruments as may be necessary in connection with such filing or recording.

(h) The Issuer hereby designates the Bonds as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Code. In support of such designation, the Issuer hereby certifies that (i) none of the Bonds will be at any time a "private activity bond" (as defined in Section 141 of the Code) other than a "qualified 501(c)(3) bond" (as defined in Section 145 of the Code), (ii) as of the date hereof, the Issuer has not issued any tax-exempt obligations of any kind in calendar year 2013 other than the Bonds nor have any tax-exempt obligations of any kind been issued on behalf of the Issuer and (iii) not more than \$10,000,000 of obligations of any kind (including the Bonds) issued by or on behalf of the Issuer during calendar year 2013 will be designated for purposes of Section 265(b)(3) of the Code, and (iv) the Issuer does not reasonably anticipate that for calendar year 2013 it will issue any obligations (other than the Bonds),

or that any such obligations will be issued on behalf of it.

*Section 2.2. Representations of Borrower.* The Borrower represents as follows:

(a) The Borrower is an Illinois not-for-profit corporation duly incorporated, validly existing and in good standing under the laws of the State and is authorized to conduct business in the State. The Borrower has full power under all applicable laws and the articles of incorporation and by-laws of the Borrower to create, issue, enter into, execute and deliver, as the case may be, this Agreement and the other Related Documents.

(b) Neither the execution and delivery by the Borrower of the Related Documents, nor the consummation by the Borrower of the transactions contemplated hereby or thereby conflicts with, will result in a breach of or default under or will result in the imposition of any lien on any Property of the Borrower pursuant to any statute, order, rule, regulation, agreement or instrument to which the Borrower is a party or by which it is bound.

(c) The Related Documents are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity.

(d) The Borrower is not in default in any material respect under any order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease or instrument. The Borrower is not in default under any law, rule or regulation wherein such default could materially adversely affect the Borrower or the ability of the Borrower to perform its obligations under any Related Document.

(e) The Borrower intends to cause the Project to operate at all times during the term of this Agreement so as to qualify as a "project" as defined in the Act. No portion of the Project includes any property used or to be used for sectarian instruction or study or as a place for devotional activities or religious worship or any property which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(f) Neither the execution and delivery by the Borrower of the Related Documents to which it is a party, nor the consummation of the transactions therein contemplated, nor compliance with the provisions thereof will violate (a) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Borrower, (b) the Borrower's governing documents, or (c) the provisions of any indenture, instrument or agreement to which the Borrower is a party or is subject, or by which the Borrower, or any of its Property, is bound, or conflict with or constitute a default thereunder, or result in, or require, the creation or imposition of any lien in, of or on the Property of the Borrower pursuant to the terms of any such indenture, instrument or agreement, to the extent such violation would cause a material adverse effect on the operations or condition, financial

or otherwise, of the Borrower. No order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any governmental or public body or authority, or any subdivision thereof, which has not been obtained by the Borrower, is required to be obtained by the Borrower in connection with the execution and delivery of the Related Documents or the legality, validity, binding effect or enforceability of any of the Related Documents.

(g) No litigation, proceedings or investigations are pending or, to the knowledge of the Borrower, threatened against the Borrower seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of the Related Documents or which would in any manner challenge or adversely affect the existence or powers of the Borrower to enter into and carry out the transactions described in or contemplated by or the execution, delivery, validity or performance by the Borrower of the Related Documents. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the Borrower, threatened in writing against the Borrower, except litigation, proceedings or investigations involving claims for which the probable ultimate recoveries and the estimated costs and expenses of defense, in the opinion of management of the Borrower (i) will be entirely within the applicable insurance policy limits (subject to applicable deductibles) or are not in excess of the total of the available assets held under applicable self-insurance programs or (ii) will not have a material adverse effect on the operations or condition, financial or otherwise, of the Borrower.

(h) The Borrower is a Tax-Exempt Organization; the Borrower has received a determination letter from the Internal Revenue Service to the foregoing effect which letter is still in full force and effect; and Borrower has not declared and has not been determined to have any "unrelated business taxable income" as defined in Section 512 of the Code, in an amount which could have a material adverse effect on the Borrower's status as a Tax-Exempt Organization, or which, if such income were subject to federal income taxation, would have a material adverse effect on the condition, financial or otherwise of the Borrower.

(i) The consolidated audited financial statements of the Borrower for the fiscal year ended June 30 in 2010, 2011 and 2012, all prepared and certified by Ruzicka & Associates, LTD, independent certified public accountants, correctly and fairly present in all material respects the financial condition of the Borrower as of said dates, and the results of the operations of the Borrower for each of such periods, respectively, all in accordance with generally accepted accounting principles consistently applied except as stated in the notes thereto, and there has been no material adverse change in the condition, financial or otherwise, of the Borrower since June 30, 2013.

(j) The information used in the Related Documents and any other written statement furnished by the Borrower to the Issuer or the Purchaser do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading in any material respect. There is no fact which the Borrower has not disclosed to the Issuer or the Purchaser in writing

which materially adversely affects or, so far as the Borrower can now reasonably foresee, will materially adversely affect the financial condition of the Borrower, the tax-exempt status of the Borrower, the ability of the Borrower to own and operate the Project or the Borrower's ability to make payments under this Agreement when and as the same become due and payable.

(k) The Borrower has satisfied the minimum funding standards under ERISA with respect to their Plans. The Borrower has not incurred, nor is reasonably expected to incur, any withdrawal liability. Each Plan complies in all material respects with all applicable requirements of law and regulations, no reportable event has occurred with respect to any Plan, that could result in its termination or otherwise have a material adverse effect on the Borrower. The Borrower has not withdrawn from any Plan or initiated steps to do so, and no steps have been taken to reorganize or terminate any Plan, in each case where a material adverse effect could reasonably be expected to result therefrom. Compliance by the Borrower with the provisions of the Related Documents will not involve, to the extent applicable, any prohibited transaction within ERISA, or Section 4975 of the Code. No Plans, maintained by the Borrower, nor any trust created thereunder, have incurred any "accumulated funding deficiency" as defined in Section 302 of ERISA, to the extent applicable and the present value of all benefits vested under all Plans, if any, did not exceed, as of the last annual valuation date, the value of the assets of the Plans allocable to such vested benefits.

(l) The Borrower has any and all necessary licenses and permits to occupy and operate its existing facilities and has obtained, will obtain or will cause to be obtained all necessary licenses and permits to acquire, occupy and operate the Project, as they become required. With respect to the construction and equipping of the Project with proceeds of the Bonds, the Borrower has complied with and will comply with the Illinois Prevailing Wage Act, 820 ILCS 130/1 to 130/12, to the extent required by the Act and other applicable laws.

(m) The representations and certifications contained in the Tax Certificate executed by the Borrower on the Closing Date are true and correct in all material respects and are incorporated by reference herein.

(n) No director or officer of the Issuer has any interest of any kind in the Borrower which would result, as a result of the issuance of the Bonds, in a substantial financial benefit to such Persons other than as a member of the general public of the State of Illinois.

(o) All Property which is to be financed and refinanced by the net proceeds of the Bonds is expected to be owned by the Borrower during the term of the Bonds.

(p) No event has occurred and no condition exists with respect to the Borrower that would constitute an "Event of Default" under this Agreement or any Related Document or that, with the lapse of time or the giving of notice or both, would become an "Event of Default" under this Agreement or any Related Document.

(q) The Borrower has duly authorized all necessary action required to be taken by it for (i) the issuance and sale of the Bonds by the Issuer upon the terms and conditions set forth herein, (ii) the approval of the Bonds, and (iii) the execution, delivery and performance of the Related Documents and any and all such other agreements and documents as may be required to be executed, delivered and performed by the Borrower in order to carry out, effectuate and consummate the transactions contemplated on the Borrower's part by the Related Documents.

(r) The Borrower will use the proceeds of the sale of the Bonds to acquire, construct, improve and equip the Project substantially as described in the Related Documents and will not take or omit to take any action which will in any way cause or result in the proceeds of the sale of the Bonds being applied in a manner other than as provided in the Related Documents.

(s) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any agreement to which any is a party, which default could reasonably be expected to have a material adverse effect on the Borrower or the ability of the Borrower to perform its obligations under any Related Document or (ii) any agreement or instrument evidencing or governing indebtedness.

*Section 2.3. Representations of Purchaser.* The Purchaser represents, warrants and acknowledges as follows:

(a) The Purchaser is an Illinois banking corporation, is authorized to enter into the transactions contemplated by this Agreement and each other Related Document to which it is a party and to carry out its obligations hereunder and thereunder, and by proper action of its governing body has been duly authorized to execute and deliver this Agreement and each other Related Document to which it is a party, and this Agreement and each other Related Document to which it is a party has been duly executed and delivered by the Purchaser and is a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms

(b) In purchasing the Bond, it is not relying on any representations of the Issuer with respect to the financial quality of the Bond. The Purchaser is relying solely on statements and representations of the Borrower and on its own knowledge and investigation of the facts and circumstances relating to the purchase of the Bond and hereby waives any claims that it may have against the Issuer or the members of the governing body of the Issuer with respect to the financial quality of the Bond arising out of any action such governing body has taken or should have taken in the authorization, issuance or sale of the Bond or with respect to any statement or representation made by the Issuer in connection with the sale of the Bond. Insofar as the financial quality of the Bond is dependent solely on the ability of the Borrower to make all payments as and when due under this Agreement, the Purchaser acknowledges and agrees that it has evaluated the creditworthiness of the Borrower and has determined that, in the absence of the Bond, the Purchaser would nevertheless be willing to finance the Project through



a commercial loan to the Borrower on substantially the same terms and conditions (other than the interest rate on the Bond) as set forth in this Agreement.

(c) It intends to treat the purchase of the Bond as a commercial loan to the Borrower. The Purchaser also represents and warrants that its business is that of a commercial bank, and as such it is an "accredited investor" within the meaning ascribed to that term under Regulation D, Section 501 through 506 of the Securities Act of 1933, as amended. In connection with its business, the Purchaser holds an extensive portfolio of investments and commercial loans, tax-exempt obligations as well as other types of loans. The Purchaser has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of making the loan and purchasing the Bond.

(d) The Purchaser has had access to all information relative to the business of the Borrower that it has required in order to purchase the Bond and make the loan hereunder.

(e) The Issuer and the Borrower have made available during the course of the transaction and prior to the purchase of the Bond, to the Purchaser, the opportunity to ask questions and receive answers from such parties concerning the terms and conditions of the Bond offering and to obtain any additional information relative to the financial data and business of such parties, to the extent that such parties possess such information or can acquire it without unreasonable effort or expense.

(f) The Purchaser understands that the Bond has not been registered under the Securities Act of 1933, as amended, and that such registration is not legally required. The Purchaser represents that it is purchasing the Bond for investment for its own account and not with the present view of transferring the Bond or any portion of it in such a manner that would require registration under the Securities Act of 1933, as amended. The Purchaser agrees not to sell or transfer the Bond except in compliance with any applicable federal or state securities laws.

(g) The Bond may be transferred only in whole, in a single transaction whereby all right, title and interest in and to the Bond is transferred to a single transferee and only with the prior written consent of the Issuer. The Issuer agrees not to withhold its consent unreasonably, when provided with reasonable evidence of the following:

(i) that the transferee has been provided copies of the Related Documents, all as currently then in effect,

(ii) that the Purchaser's rights under the Related Documents have been assigned to the transferee as security for the Bond,

(iii) that the transferee has certified as to the representations contained in this Section 2.3 to the Issuer and the Borrower,

(iv) that the transferee has assumed and undertaken all obligations of the Purchaser under this Agreement, including the obligation to make Advances as provided herein, and

(v) that the transferee has been provided copies of any opinions of counsel previously delivered to the Purchaser.

### ARTICLE III.

#### ISSUANCE AND SALE OF BOND; ISSUER COVENANTS

*Section 3.1. Agreement to Issue and Sell Bond; Application of Bond Proceeds.* In order to provide funds to refinance the Prior Bonds and finance the costs of the Project, the Issuer agrees that it will issue, sell and cause to be delivered the Bond to the Purchaser on the Closing Date. The Purchaser agrees that it will purchase the Bond from the Issuer on the Closing Date at a purchase price of 100% of the principal amount thereof payable as provided below.

The purchase price for the Bond shall be paid in multiple Advances as funds are drawn from the Purchaser from time to time pursuant to Section 3.2 hereof. The Bond and all Advances made thereunder shall bear interest at the interest rate as set forth herein. The principal amount of the Bond at any time outstanding shall equal the aggregate principal amount of Advances made to the Borrower, less the principal amount of all Advances paid by the Borrower, whether at maturity or upon redemption.

The Bond shall be designated the "Village of Downers Grove Revenue Bond (Avery Coonley School Project), Series 2013." The total principal amount of the Bond that may be outstanding shall not exceed \$6,000,000, except as provided in Section 3.10 with respect to replacement of mutilated, lost, stolen, destroyed or undelivered Bond. The Bond shall be substantially in the form of *Exhibit B* to this Agreement. The Bond will be dated the Closing Date. The Bond shall be issued as a single fully registered Bond in the amount of \$6,000,000. The Bond may have notations, legends or endorsements required by law or usage. The Bond will be numbered as determined by the Bond Registrar.

Upon the execution and delivery of this Agreement, the Issuer will execute the Bond and deliver the Bond to the Purchaser.

*Section 3.2. Conditions for Advances.* The obligation of the Purchaser to make the Initial Advance, which will be at least \$5,000,000 and Supplemental Advance on the Bond hereunder is conditioned upon satisfaction of conditions set forth in Section 5.4 hereof and in Sections 10 of *Exhibit A* attached hereto.

(a) Upon purchase of the Bond and making the Initial Advance thereunder as described in paragraph (a) above, the Purchaser shall affix Schedule I to this Agreement based upon the full funding of the Bond, and including an amortization schedule based on such assumption to final maturity for the Bond.

As promptly as possible after the date of the final Advance, the Purchaser shall amend Schedule I hereto, showing the actual amounts advanced and the actual amortization schedule. The Supplemental Advance shall be made no later than June 1, 2015. If the Supplemental Advance is not made prior to June 1, 2015, the Purchaser shall, not less than seven days prior to such date, amend the amortization schedule to reflect the then-outstanding principal amount of the Bond.

*Section 3.3. Principal of and Interest on the Bond.* Principal of and interest on the Bonds shall be payable monthly on the first (1st) Business Day of each month (each, an "Interest Payment Date") commencing January 1, 2014 with final payment on December 1, 2034 (the "Maturity Date"). The allocation between principal and interest shall be as set forth in Schedule I hereto. To the extent that the first (1st) day of a month is not a Business Day, the Bonds shall be payable on the next Business Day immediately succeeding the first (1st) day of the month.

During the Interest Period, interest on the Bonds shall accrue at the fixed rate of 2.60% (the "*Initial Interest Rate*"). Interest shall accrue based upon a year consisting of 360 days and charged for the actual number of days elapsed.

The Initial Interest Rate shall be reset on December 1, 2023 and thereafter for a one hundred twenty-month Interest Period (ending December 1, 2023), commencing on a December 1 and ending on a November 30; provided, however, that the final Interest Period shall end on the Maturity Date.

Commencing on December 1, 2023, the initial Rate Reset Date, the Bonds shall bear interest at a market rate as determined by the Purchaser in its sole discretion.

Notwithstanding the foregoing, the interest rate on the Bonds shall never exceed fifteen percent (15%) per annum (the "*Maximum Rate*").

The Purchaser shall notify the Borrower not less than sixty (60) days prior to each Reset Date of the Fixed Rate option, the Variable Rate option and the Bank Purchase Multiplier effective for the next Interest Period. The Borrower shall notify the Purchaser not less than sixty (60) days prior to each Reset Date whether it has selected the Fixed Rate or the Variable Rate option. If the Borrower has not notified the Purchaser by sixty (60) days prior to such Reset Date, then the Borrower shall be deemed to have elected the Variable Rate option to be effective for the next Interest Period.

Notwithstanding the foregoing, not less than thirty (30) days prior to the end of an Interest Period, the Purchaser may notify the Borrower of its intent to tender the Bonds back to the Borrower at the end of the current Interest Period at a tender price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to the date of the tender. If at the end of the Interest Period the Borrower does not have another purchaser for the Bonds, the Purchaser shall hold the Bonds for a period not to exceed ninety (90) days following what would have been the Reset Date for the Bonds and the Bonds shall bear interest during such period of time at the interest rate previously in effect for the Bonds, plus two percent (2.00%).

Interest on the Bonds in all events shall be computed on the basis of a 360-day year, for actual days elapsed. The Bonds shall bear interest on any overdue principal, premium, and, to the extent permitted by law, on overdue interest, at a rate equal to the sum of the interest rate then in effect as provided above plus 4% per annum (the "Default Rate"). In addition, during the continuation of an Event of Default, the Purchaser may, at its option, by notice to the Borrower, declare that the Bonds shall bear interest at the rate equal to the Default Rate.

During each Interest Period following the initial Interest Period, principal of and interest on the Bonds shall be payable monthly on the first (1st) day of each month and shall be payable in such amounts so as to achieve substantially level monthly debt service payments (assuming for such purpose only that such Interest Period extends to the maturity date for the Bond and the interest rate used for such calculation shall be the Fixed Rate as determined above). Notwithstanding the foregoing, the Purchaser and the Borrower may designate (without the consent of any other party) a different amortization schedule for a particular Interest Period upon delivery to the Issuer of an Opinion of Tax Counsel to the effect that the designation of a change in the amortization schedule will not adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes. The Purchaser shall, upon the establishment of the interest rate on the Bonds for a given Interest Period, prepare a revised amortization schedule in substitution for Schedule I hereto, which will reflect the level debt service payments on the Bonds to be made during such Interest Period.

*Section 3.4. Optional and Mandatory Tender.* The Purchaser shall have the right to tender the Bond for purchase by the Borrower, and the Borrower shall have the right to cause the Purchaser to tender the Bond for purchase by the Borrower, as provided in Section 4 of the form of Bond set forth in *Exhibit B* hereto.

*Section 3.5. Redemption.* The Bond shall be subject to optional and mandatory redemption as provided in Section 3 of the form of the Bond set forth in *Exhibit B* hereto.

The redemption date of the Bond pursuant to any optional redemption provision in the Bond will be a date permitted by the Bond and specified by the Borrower in a notice delivered to the Issuer and the Purchaser. The redemption date for a mandatory redemption will be determined by the Purchaser consistent with the provisions of the Bond.

The Bond called for redemption shall be paid at the applicable redemption price, plus interest accrued to the redemption date by payment directly to the Purchaser.

Upon surrender of the Bond optionally redeemed in part, the Bond Registrar will authenticate for the holder a new Bond equal in principal amount to the unredeemed portion of the Bond surrendered. Partial redemption payments in amounts less than \$100,000 shall be allocated to the principal installments payable on the Bond in the inverse order of their due date, or otherwise as agreed to by the Purchaser and the Borrower. Partial redemption payments in amounts greater than or equal to \$100,000 shall be allocated to the principal installments payable on the Bond *pro rata*, and the Purchaser shall amend Schedule I as promptly as possible to show the effect of such payment.

*Section 3.6. Execution and Authentication; Limited Obligation.* The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of the Mayor of the Issuer, and shall have impressed or imprinted thereon the official seal of the Issuer or a facsimile thereof and shall be attested by the manual or facsimile signature of the Village Clerk of the Issuer. All authorized facsimile signatures shall have the same force and effect as if manually signed. In case any officer of the Issuer whose signature or a facsimile thereof appears on a Bond shall cease to be such officer before the delivery of such Bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in the office until delivery. The Bonds may be signed on behalf of the Issuer by such persons who, at the time of the execution of such Bond, are duly authorized or hold the appropriate office of the Issuer, although on the date of the Bonds such persons were not so authorized or did not hold such office.

The Bonds, together with interest thereon and redemption premium with respect thereto, are not general obligations of the Issuer, but are special, limited obligations payable solely from Bond proceeds, the revenues of the Issuer from this Agreement (other than pursuant to Unassigned Rights) and other moneys pledged thereto. Such proceeds, revenues and other moneys are hereby pledged and assigned as security for the equal and ratable payment of the Bonds and shall be used for no other purposes than to pay the principal of, premium, if any, and interest on the Bonds, except as may be otherwise expressly authorized in this Agreement. The Bonds and the obligation to pay principal and interest thereon and any premium with respect thereto do not now and shall never constitute an indebtedness or an obligation of the Issuer, the State of Illinois or any political subdivision thereof, within the purview of any constitutional or statutory limitation or provision, or a charge against the general credit or taxing powers, if any, of any of them but shall be secured as aforesaid, and shall be payable solely from the revenues and income derived from this Agreement. No owner of the Bonds shall have the right to compel the exercise of the taxing power, if any, of the Issuer, the State of Illinois or any political subdivision thereof to pay any principal installment of, redemption premium, if any, or interest on the Bonds. The Issuer does not have the power to levy taxes for any purposes whatsoever. None of the members, officers, officials or employees of the Issuer, or any persons executing the Bond, shall be liable personally on the Bonds by reason of such execution.

*Section 3.7. Bond Register.* The Bond may be presented at the office of the Bond Registrar for registration, transfer and exchange. The Bond Registrar shall keep a register of the Bond and of their transfer and exchange.

The Bond may be transferred only on the register maintained by the Bond Registrar. Upon surrender for transfer of the Bond to the Bond Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the holder or the holder's attorney duly authorized in writing, the Bond Registrar will authenticate a new Bond in an equal total principal amount and registered in the name of the transferee.

The Bond Registrar shall not be required to register the transfer of the Bond after notice calling the Bond or portion thereof for redemption has been given to the Purchaser.

The Issuer may treat the registered owner of the Bond as the absolute owner thereof for all purposes, whether or not the Bond shall be overdue, and shall not be bound by any notice

to the contrary. All payments of or on account of the principal of and premium, if any, and the interest on any Bond as herein provided shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid.

The Bond Registrar will require the payment by the Purchaser requesting exchange or transfer of any tax or other governmental charge required to be paid in respect of the exchange or transfer but will not impose any other charge.

*Section 3.8. Mutilated, Lost, Stolen or Destroyed Bond.* If the Bond is mutilated, lost, stolen or destroyed, the Bond Registrar will authenticate a new Bond of the same denomination if any mutilated Bond shall first be surrendered to the Bond Registrar, and if, in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Bond Registrar evidence of such loss, theft or destruction, together with a satisfactory indemnity to the Bond Registrar, the Issuer and the Borrower. If the Bond has matured, instead of issuing a duplicate Bond, the Bond Registrar may with the consent of the Borrower pay the Bond without requiring surrender of the Bond (except in the case of a mutilated Bond) and make such requirements as the Bond Registrar deems fit for its protection, including a lost instrument bond. The Issuer, the Borrower and the Bond Registrar may charge their customary fees and reasonable expenses to the Purchaser or the then holder of the Bond in this connection.

*Section 3.9. Cancellation of Bond.* Whenever the Bond is delivered to the Bond Registrar for cancellation (upon payment, redemption or otherwise), or for transfer or replacement pursuant to Section 3.7 or 3.8, the Bond Registrar will promptly cancel and destroy the Bond in accordance with its customary procedures and issue a certificate of destruction to the Borrower and the Issuer.

*Section 3.10. Temporary Bond.* Until a definitive Bond is ready for delivery, the Issuer may execute and the Bond Registrar will authenticate a temporary Bond substantially in the form of the definitive Bond, with appropriate variations. The Issuer will, without unreasonable delay, prepare and the Bond Registrar will authenticate a definitive Bond in exchange for the temporary Bond. Such exchange shall be made by the Bond Registrar without charge to the Purchaser.

*Section 3.11. Payment of Bond.* The Issuer will promptly pay the principal of and interest on the Bond on the dates and in the manner provided in the Bond, but solely and only from payments to be made by the Borrower hereunder, it being agreed and understood that the Bond and interest thereon shall be limited obligations of the Issuer which are not in any way a general obligation of the Issuer nor payable in any manner from funds of the Issuer raised by taxation.

*Section 3.12. Further Assurances.* The Issuer will execute and deliver such further instruments, and do such further acts, as the Purchaser may reasonably require for the better assuring, assigning and confirming to the Purchaser the amounts assigned hereunder for the payment of the Bond.

*Section 3.13. Tax Exemption.* The Issuer covenants to comply with all requirements that must be satisfied in order for the interest to be paid on the Bond or beneficial interests therein

to be excludible from gross income for purposes of Federal income taxation. Toward that end, the Issuer shall comply with and take all actions expressly required of it by the Tax Certificate; *provided, further,* subject to the limitations on its liability as stated herein, the Issuer covenants and agrees that it has not knowingly engaged and will not knowingly engage, and that it has not knowingly taken and will not knowingly take any action, which would result in the interest to be paid on the Bond to be includible in the gross income of the bondholders or beneficial owners thereof for purposes of federal income taxation.

*Section 3.14. Performance of Covenants; Issuer.* The Issuer covenants that it will faithfully perform on its part at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement or in any Related Documents, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining thereto; provided, however, that except for the matters hereof relating to payment of the Bonds, the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower, or shall have received the instrument to be executed and at the option of the Issuer shall have received from the party requesting such execution assurance satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses, including legal counsel fees, incurred or to be incurred in connection with taking such action or executing such instrument. Anything contained herein to the contrary notwithstanding, it is hereby understood that none of the covenants of the Issuer contained herein are intended to create a general or primary obligation of the Issuer.

*Section 3.15. Fees, Charges and Expenses of the Bond Registrar and the Issuer.* The Bond Registrar and the Issuer shall be entitled to payment and reimbursement for reasonable fees for their respective services rendered hereunder and all advances, counsel fees and other expenses reasonably made or incurred by the Bond Registrar and the Issuer in connection with such services and in connection with entering into this Agreement, including any such fees and expenses incurred in connection with action taken hereunder. The Issuer shall not be obligated to execute any documents or take any other action under or pursuant to this Agreement, or any other document in connection with the Bonds unless and until provision for the payment of expenses of the Issuer, including legal counsel fees, shall have been made. Provisions for expenses shall be deemed to have been made upon arrangements reasonably satisfactory to the Issuer for the provision of expenses being agreed upon by the Issuer and the party requesting such execution.

*Section 3.16. Borrower Required to Pay Costs in the Event Project Fund Insufficient.* In the event the money in the Project Fund available for payment of the costs of the Project shall not be sufficient to make such payment in full, the Borrower agrees to pay directly, or to deposit moneys in the Project Fund for the payment of, such costs of completing the Project as may be in excess of the moneys available therefor in the Project Fund. THE ISSUER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, THAT THE MONEYS WHICH WILL BE DEPOSITED INTO THE PROJECT FUND, AND WHICH UNDER THE PROVISIONS OF THIS BOND AND LOAN AGREEMENT WILL BE AVAILABLE FOR PAYMENT OF THE COSTS OF THE PROJECT, WILL BE SUFFICIENT TO PAY ALL OF THE COSTS WHICH WILL BE INCURRED IN CONNECTION THEREWITH. The Borrower agrees that if, after exhaustion of the moneys in the Project Fund, the Borrower should pay, or deposit monies in the Project Fund for the payment of, any portion

of the costs of the Project pursuant to the provisions of this Section 3.16, it shall not be entitled to any reimbursement therefor from the Issuer or owners of any of the Bonds, nor shall they be entitled to any diminution of the amounts payable under Section 4.1 hereof.

## **ARTICLE IV.**

### **REPAYMENT**

*Section 4.1. Loan Repayment. Principal, Premium and Interest.* Each Advance under the Bond pursuant to Section 3.1 hereof from time to time hereof shall constitute the loan of such proceeds by the Issuer to the Borrower. As repayment of such loan, the Borrower agrees to pay directly to the Purchaser amounts sufficient to pay the principal of, premium, if any or interest on the Bond on each day on which any payment of principal of, premium, if any or interest on the Bond shall become due (whether on an interest payment date, at maturity, or upon redemption or acceleration or otherwise). Such amounts shall be paid in immediately available funds on or before 11:00 a.m. (local time at the principal office of the Purchaser). If the Borrower defaults in any payment required by this Section, the Borrower will pay interest (to the extent allowed by law) on such amount until paid at the rate provided for in Section 3.3 hereof.

(a) *Purchase Price for Tendered Bond.* The Borrower agrees to pay directly to the Purchaser amounts sufficient to pay the purchase price of the Bond required by the Purchaser to be purchased by the Borrower, or required by the Borrower to be tendered for purchase by the Borrower, pursuant to Section 3.4. Such amounts shall be paid in immediately available funds on or before 11:00 a.m. (local time at the principal office of the Purchaser).

*Section 4.2. Prepayments.* On an annual basis, the Borrower may prepay to the Purchaser as provided in Section 3 of the Bond.

*Section 4.3. Obligations of Borrower Unconditional.* The obligations of the Borrower to make the payments required by Sections 4.1 and 4.2 and to perform its other agreements contained in this Agreement shall be absolute and unconditional. Until the principal of and interest on the Bond shall have been fully paid or provision for the payment of the Bond made in accordance with this Agreement, the Borrower (a) will not suspend or discontinue any payments provided for in Section 4.1 hereof, (b) will perform all its other agreements in this Agreement and (c) will not terminate this Agreement for any cause including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the Issuer to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Agreement.

*Section 4.4. Additional Expenses.* The Borrower will also pay within 30 days after receipt of a bill therefor, (i) all reasonable expenses of the Issuer in connection with and as provided in this Agreement, such expenses to be paid directly to the Issuer or as otherwise directed in writing by the Issuer; and (ii) all other reasonable fees and expenses incurred in connection with the issuance of the Bond.



## ARTICLE V.

### BORROWER COVENANTS

*Section 5.1. Financing Statements.* The Borrower will, at its own expense, take all necessary action to maintain and preserve the liens and security interest of this Agreement and any other relevant documents so long as any principal, premium, if any, or interest on the Bonds remains unpaid. The Borrower will, upon the execution and delivery of this Agreement, file any financing statements necessary to be filed in such manner and in such places as may be necessary by law to perfect and protect the lien and security interest created hereunder and shall file any necessary continuation statements related thereto. Except to the extent it is exempt therefrom, the Borrower will pay or cause to be paid all fees and expenses incident to such filing.

(a) The Borrower will, forthwith after the execution and delivery of the Agreements and thereafter from time to time, cause the Agreement, including any amendments thereof and supplements thereto, and any financing statements in respect thereof to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to perfect and protect (i) the lien and security interest thereof upon and the title of the Borrower to the Project, and (ii) the lien and security interest therein granted to the Purchaser, if any, to the rights, if any, of the Issuer assigned under the Agreement, and from time to time will perform or cause to be performed any other act as provided by law and will execute or cause to be executed any and all continuation statements and further instruments necessary for such publication, perfection and protection. Except to the extent it is exempt therefrom, the Borrower will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all reasonable expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all Federal or State fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Agreement and such instruments of further assurance.

(b) The Issuer shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the maintenance of any security interest intended to be perfected thereby. The Issuer will execute such instruments provided to it by the Borrower as may be reasonably necessary in connection with such filing or recording.

*Section 5.2. Borrower's Obligation with Respect to Exclusion of Interest Paid on the Bond.* Except to the extent caused by the actions or omissions of Issuer, the Borrower will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Bonds) if taking or omitting to take such action would cause the interest on the Bonds to be included in the gross income of the recipients thereof (other than the income of a "substantial user" of the Project or a "related person" with the meaning of section 147(a) of the Code) for federal income tax purposes. Toward that end, the Borrower covenants that it will comply with all provisions of the Tax Certificate. This provision shall control in case of conflict or ambiguity with any other provision of this Agreement. In furtherance thereof, the Borrower covenants as

follows:

(a) that the Borrower will not cause the Bonds to be treated as "federally guaranteed" obligations for purposes of section 149 of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to the "federally guaranteed" obligations described in section 149 of the Code. For purposes of this paragraph, the Bonds shall be treated as "federally guaranteed" if (i) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (ii) a significant portion of the proceeds of the Bonds will be (A) used in making loans the payment of principal or interest with respect to which is to be guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (B) invested directly or indirectly in federally insured deposits or accounts, and (iii) such guarantee is not described in section 149(b) of the Code;

(b) that the costs of issuing the Bonds which are financed with proceeds of the Bonds, if any, will not exceed an amount equal to 2 percent of the proceeds received from the sale of the Bonds; and

The Borrower acknowledges that in the event of an examination by the Internal Revenue Service of the exemption from Federal income taxation for interest paid on the Bonds, the Issuer is likely to be treated as the "taxpayer" in such examination and agrees that it will respond, and direct the Issuer to respond, in a commercially reasonable manner to any inquiries from the Internal Revenue Service in connection with such an examination. The Issuer covenants that it will cooperate with the Borrower, at the Borrower's expense and at its direction, in connection with such examination.

*Section 5.3. Maintenance of Existence; Qualification in State.* The Borrower agrees that (i) it will at all times maintain its existence as a not for profit corporation organization under the laws of the State of Illinois; (ii) that it will not take any action or permit any action to be taken by others within its control which will alter, change or destroy its status as a not for profit corporation or its status as a Tax-Exempt Organization; and (iii) will not fail to take any action within its control to preserve its status as a not for profit corporation or its status as a Tax-Exempt corporation.

(a) The Borrower agrees that unless it complies with the following provisions of this Section 5.3, as long as any portion of the Bond is outstanding it will maintain its existence, will not dissolve, liquidate or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it. Any dissolution, liquidation, disposition, consolidation or merger shall be subject to the following conditions:

(i) the Borrower provides a certificate to the Issuer and the Purchaser, in form and substance satisfactory to such parties, to the effect that no event of default exists hereunder and that no event of default will be caused by the dissolution, liquidation, disposition, consolidation or merger;

(ii) the entity surviving the dissolution, liquidation, disposition, consolidation or merger assumes in writing and without condition or qualification the obligations of the Borrower under each of the Related Documents to which it is a party;

(iii) the Borrower or the entity surviving the dissolution, liquidation, disposition, consolidation or merger, within ten (10) days after execution thereof, furnishes to the Issuer a true and complete copy of the instrument of dissolution, liquidation, disposition, consolidation or merger;

(iv) neither the validity nor the enforceability of the Bond or any agreements to which the Borrower is a party is adversely affected by the dissolution, liquidation, disposition, consolidation or merger;

(v) the exclusion of the interest on the Bond from gross income for federal income tax purposes is not adversely affected by the dissolution, liquidation, disposition, consolidation or merger, and Related Documents are complied with concerning the dissolution, liquidation, disposition, consolidation or merger;

(vi) no rating on the Bond, if the Bond is then rated, is reduced or withdrawn as a result of the dissolution, liquidation, disposition, consolidation or merger;

(vii) the Project continues to be as described herein;

(viii) any successor to the Borrower shall be qualified to do business in the State and shall continue to be qualified to do business in the State throughout the term hereof;

(ix) the advance written consent of the Purchaser is received; and

(x) the Issuer has executed a certificate acknowledging receipt of all documents, information and materials required by this Section 5.3.

As of the effective date of the dissolution, liquidation, disposition, consolidation or merger, the Borrower (at its cost) shall furnish to the Issuer and the Purchaser (i) an opinion of bond counsel, in form and substance satisfactory to such parties, as to items (iv) and (v) above, and (ii) an opinion of independent counsel, in form and substance satisfactory to such parties, as to the legal, valid and binding nature of item (ii) above.

*Section 5.4. Operation, Sale, Lease or Sublease of the Project.* The Borrower will not make any material change in its use of the Project unless the Purchaser and the Issuer receive an Opinion of Tax Counsel to the effect that such change will not adversely affect the exclusion of interest on the Bond from the gross income of holders of the Bond for federal income tax purposes.

Upon a sale, lease or sublease of all or any portion of the Borrower's interest in the Project (to the extent permitted hereunder), the Borrower will obtain, or cause there to be

obtained, the agreement of the purchaser, lessee or sublessee of the Project or any interest therein to comply with the provisions of this Section, regardless of whether such purchaser, lessee or sublessee assumes the obligations of the Borrower under this Agreement generally, and will provide the Issuer and the Purchaser with an Opinion of Tax Counsel to the effect that the sale, lease or sublease will not adversely affect the exclusion of the interest on the Bond from the Federal gross income of the owners thereof. Notwithstanding the foregoing, the Borrower shall have the right to lease certain portions of the Project to third-party users without delivery of an Opinion of Tax Counsel in connection with temporary parking arrangements, for recreational purposes and for other uses that are not inconsistent with the uses contemplated by the Borrower and ancillary uses reasonably related thereto.

*Section 5.5. Compliance with Laws; Taxes and Assessments.* The Borrower shall, at no expense to the Issuer, promptly comply or cause compliance in all material respects with all applicable laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alternation thereof, or to the use or manner of use of the Project, including, but not limited to, the Americans with Disabilities Act, Illinois Accessibility Code, all Federal, State and local environmental, health and safety laws, rules, regulations and orders applicable to or pertaining to the Project, Federal Worker Adjustment and Retraining Notification Act and Illinois Prevailing Wage Act.

*Section 5.6. Covenants to Purchaser.* The Borrower is making certain covenants for the benefit of the Purchaser (but not for the benefit of the Issuer or any other party) which covenants are set forth in *Exhibit A* hereto. The Borrower and the Purchaser may amend Exhibit A without notice to or consent of any other party.

*Section 5.7. Issuer's Right of Access to the Project.* The Borrower agrees that during the term of this Agreement, the Issuer, and its duly authorized agents shall have the right, but shall be under no duty or obligation to exercise this right, during regular business hours, with reasonable notice to the Borrower, to enter upon the premises and examine and inspect the Project, subject to such limitations, restrictions and requirements as the Borrower may reasonably prescribe.

*Section 5.8. Maintenance and Repair; Insurance.* The Borrower will maintain the Project in a good and safe operating condition after its completion, making from time to time all needed material repairs thereto, and shall, throughout the term of this Agreement, maintain reasonable amounts of insurance coverage with respect to the Project and shall pay all costs of such maintenance, repair and insurance.

*Section 5.9. Borrower Counsel Opinion.* The Borrower agrees that prior to the Initial Advance it will provide an opinion of its counsel satisfactory to the Purchaser.

*Section 5.10. No Warranty by the Issuer or the Purchaser.* THE BORROWER RECOGNIZES THAT NEITHER THE ISSUER NOR THE PURCHASER HAS MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND NEITHER THE ISSUER NOR THE PURCHASER MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE,

DESCRIPTION, DESIGN, MERCHANTABILITY, CONDITION, WORKMANSHIP OR FITNESS, SUITABILITY OR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF. THE BORROWER FURTHER RECOGNIZES THAT THE ISSUER HAS NO TITLE OR INTEREST TO ANY PART OF THE PROJECT AND THAT THE ISSUER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND AS TO THE BORROWER'S TITLE THERETO OR OWNERSHIP THEREOF OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, NEITHER THE ISSUER NOR THE PURCHASER SHALL HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION 5.10 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY EITHER THE ISSUER OR THE PURCHASER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OF ILLINOIS OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

## **ARTICLE VI.**

### **NO RECOURSE TO ISSUER; INDEMNIFICATION**

*Section 6.1. No Recourse to Issuer.* The obligations of the Issuer under this Agreement are special, limited obligations of the Issuer, payable solely out of the revenues and income derived under this Agreement and as otherwise provided under this Agreement and the Bond Ordinance. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State of Illinois or any political subdivision thereof within the purview of any constitutional limitation or statutory provision, or a charge against the credit or general taxing powers, if any, of any of them. The Issuer does not have the power to levy taxes for any purpose whatsoever. Neither the Issuer nor any member, director, officer, employee or agent of the Issuer nor any person executing the Bonds shall be liable personally for the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds. No recourse shall be had for the payment of the principal of, redemption premium, if any, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in this Agreement against any past, present or future member, officer, agent or employee of the Issuer, or any incorporator, member, officer, employee, director or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, officer, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement and the issuance of the Bonds.

*Section 6.2. Indemnification.* Borrower will pay, and will protect, indemnify and save the Issuer and its respective past, present and future members, officers, directors, employees, agents, successors, assigns and any other person, if any, who "controls" the Issuer as that term is

defined in Section 15 of the Securities Act of 1933, as amended (the Issuer and the other listed persons, collectively referred to as, the "Indemnified Persons") harmless from and against any and all liabilities, losses, damages, taxes penalties, costs and expenses (including attorneys' fees and expenses of the Issuer), causes of action, suits, proceedings, claims, demands, tax reviews, investigations and judgments of whatsoever kind and nature (including, but not limited to, those arising or resulting from any injury to or death of any person or damage to property) arising from or in any manner directly or indirectly growing out of or connected with the following:

(1) the use, financing, non-use, condition or occupancy of the Project, any repairs, construction, alterations, renovation, relocation, remodeling and equipping thereof or thereto or the condition of the Project including adjoining sidewalks, streets or alleys and any equipment or facilities at any time located on or connected with the Project or used in connection therewith but which are not the result of the gross negligence of the Issuer;

(2) a violation by the Borrower of any agreement, warranty, covenant or condition of this Agreement or any other agreement executed in connection with this Agreement or any Related Document;

(3) a violation of any contract, agreement or restriction by the Borrower relating to the Project;

(4) a violation of any law, ordinance, rule, regulation or court order with respect to the Project or the ownership, occupancy or use thereof or the Bonds or use of the proceeds thereof;

(5) any statement or information concerning the Borrower, any of its officers and members, its operations or financial condition generally or the Project, contained in any official statement or supplement or amendment thereto furnished to the Issuer or the purchaser of any Bonds, that is untrue or incorrect in any material respect, and any omission from such official statement of any statement or information which should be contained therein for the purpose for which the same is to be used or which is necessary to make the statements therein concerning the Borrower, any of its officers and members and the Project not misleading in any material respect, provided that such official statement or supplement or amendment has been approved by the Borrower and the Indemnified Persons did not have actual knowledge of the omission or misstatement; or

(6) with respect to the Issuer only, the acceptance or administration of this Agreement, including without limitation, the enforcement of any remedies hereunder.

(a) In case any claim shall be made or any action shall be brought against one or more of the Indemnified Persons in respect of which indemnity can be sought against the Borrower pursuant to any of the preceding items (1) – (6), the Indemnified Party seeking indemnity shall promptly notify the Borrower, in writing, and the Borrower shall promptly assume the defense thereof, including the employment of counsel chosen by the Borrower and approved by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld), the payment of all expenses and the right to negotiate and consent to settlement. If any Indemnified Person is advised in a written

opinion of counsel that there may be legal defenses available to such Indemnified Person which are adverse to or in conflict with those available to the Borrower or that the defense of such Indemnified Person should be handled by separate counsel, the Borrower shall not have the right to assume the defense of such Indemnified Person, but the Borrower shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnified Person in assuming its own defense, and provided also that, if the Borrower shall have failed to assume the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnified Person shall be paid by the Borrower. Notwithstanding the foregoing, any one or more of the Indemnified Persons shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Person unless the employment of such counsel has been specifically authorized by the Borrower or unless the provisions of the immediately preceding sentence are applicable. The Borrower shall not be liable for any settlement of any such action affected without the consent of the Borrower, but if settled with the consent of the Borrower or if there be a final judgment for the plaintiff in any such action with or without consent, the Borrower agrees to indemnify and hold harmless the Indemnified Person from and against any loss, liability or expense by reason of such settlement or judgment.

(b) The Borrower shall also indemnify the Issuer and Indemnified Persons for all reasonable costs and expenses, including reasonable counsel fees, incurred in: (i) enforcing any obligation of the Borrower under this Agreement or any Related Documents agreement, (ii) taking any action requested by the Borrower, (iii) taking any action required by this Agreement or any Related Documents, or (iv) taking any action considered necessary by the Issuer and which is authorized by this Agreement or any Related Documents.

(c) All amounts payable to the Issuer under this Section shall be deemed to be fees and expenses payable to the Issuer for the purposes of the provisions hereof dealing with assignment of the Issuer's rights hereunder. The Issuer and its members, officers, agents, employees and their successors and assigns shall not be liable to the Borrower for any reason.

(d) Any provision of this Agreement or any other instrument or document executed and delivered in connection therewith to the contrary notwithstanding, the Issuer retains the right to (i) enforce any applicable federal or state law or regulation or resolution of the Issuer and (ii) enforce any rights accorded to the Issuer by federal or state law or regulation or ordinance of the Issuer, and nothing in this Agreement shall be construed as an express or implied waiver thereof.

(e) If the Issuer is to take any action under this Agreement or any other instrument executed in connection herewith for the benefit of the Borrower, it will do so if and only if (i) the Issuer is a necessary party to any such action or proceeding, and

(ii) the Issuer has received specific written direction from the Borrower, as required hereunder or under any other instrument executed in connection herewith, as to the action to be taken by the Issuer.

(f) The obligations of the Borrower under this indemnification section shall survive the delivery of the Bonds.

*Section 6.3. Default by Issuer-Limited Liability.* Notwithstanding any provision or obligation to the contrary set forth herein, no provision of this Agreement shall be construed so as to give rise to a pecuniary liability of the Issuer or to give rise to a charge upon the general credit of the Issuer, the liability of the Issuer hereunder shall be limited to its interest in the Project, this Agreement, and all other Related Documents and collateral and the lien of any judgment shall be restricted thereto. In the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not be a debt of the Issuer, nor shall the Issuer be liable on any obligation so incurred. The Issuer does not assume general liability for the repayment of the Bonds or for the costs, fees, penalties, taxes, interest, commissions, charges, insurance or any other payments recited herein, and shall be obligated to pay the same only out of the amounts payable by the Borrower hereunder. The Issuer shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Borrower if a default shall occur hereunder.

*Section 6.4. Indemnification by Purchaser.* The Purchaser agrees, at its expense, to indemnify, defend and hold harmless the Issuer, along with the Issuer's members, officers, employees and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the Issuer, or the Issuer's regulations or bylaws ("Issuer Indemnified Parties"), from and against any and all losses, claims, damages, demands, liabilities, costs or expenses (collectively, the "Claims"), including reasonable attorneys' fees and expenses, if such Claims are the result of, arise out of or are materially increased, strengthened or enhanced by or would not exist but for a breach by the Purchaser of its duties under, or failure to abide by any of its covenants in this Agreement. The Purchaser shall promptly assume the defense of any Claim made against any Issuer Indemnified Party, including the employment of counsel reasonably satisfactory to the Issuer at the sole expense of the Purchaser.

## **ARTICLE VII.**

### **ASSIGNMENT**

*Section 7.1. Assignment by Borrower.* The rights of the Borrower under this Agreement may be assigned in whole or in part by the Borrower only with the prior written consent of the Purchaser. No such assignment will be made unless the Borrower causes there to be delivered to the Purchaser and the Issuer an Opinion of Tax Counsel to the effect that such assignment will not cause interest on the Bond to be includable in the gross income of the owners thereof for federal income tax purposes.

*Section 7.2. Security Interest; Assignment by Issuer.* As security for the payment of the Bond, the Issuer hereby assigns and pledges to the Purchaser all right, title and interest of the Issuer in and to this Agreement, including the right to receive payments hereunder (except its



Unassigned Rights, including without limitation, the right to receive payment of expenses, fees, indemnification and the rights to make determinations and receive notices as herein provided), and hereby directs the Borrower to make said payments directly to the Purchaser. The Borrower herewith assents to such assignment and pledge and will make payments directly to the Purchaser without defense or set-off by reason of any dispute between the Borrower and the Issuer or Purchaser, and hereby agrees that its obligation to make payments hereunder and to perform its other agreements contained herein are absolute and unconditional. Until the principal of and interest on the Bond is paid in accordance with this Agreement, the Borrower (a) will not suspend or discontinue any payments provided for in this Agreement, (b) will perform all its other duties and responsibilities called for by this Agreement, and (c) will not terminate this Agreement for cause including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the Issuer to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Agreement.

## **ARTICLE VIII.**

### **DEFAULTS AND REMEDIES**

*Section 8.1. Events of Default.* An "Event of Default" is any of the following:

(a) There is a failure to make due and punctual payment of any interest on the Bonds within ten (10) days following written notice after the date on which payment is due.

(b) There is a failure to make due and punctual payment of principal on the Bonds within ten (10) days following written notice after the date on which payment is due, at maturity, upon acceleration or redemption or otherwise.

(c) The Issuer fails to perform any of its agreements in this Agreement or the Bond (except a failure that results in an Event of Default under clause (a) or (b) above), the performance of which is material to the Purchaser, and the failure continues after the notice and for the period specified in this Section.

(d) The Borrower fails to perform any of its agreements in this Agreement (except a failure by Borrower to perform or observe any term, covenant or agreement contained in Sections 2, 3, 5 and 6 of Exhibit A hereof, for which no cure period shall apply), and the failure continues after the notice and for the period specified in this Section.

(e) The Borrower pursuant to or within the meaning of any Bankruptcy Law (as defined below) (1) commences a voluntary case, (2) consents to the entry of an order for relief against it in an involuntary case, (3) consents to the appointment of a Custodian (as defined below) for the Borrower, or any substantial part of its property or (4) makes a general assignment for the benefit of its creditors.

(f) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (1) is for relief against the Borrower in an involuntary case, (2) appoints a Custodian for the Borrower or any substantial part of its, his or her property or (3) orders the winding up or liquidation of the Borrower, and the decree or order remains unstayed and in effect for 60 days.

(g) An event of default occurs and is continuing under the Related Documents or any other financing agreement between the Borrower and the Purchaser (after the expiration of any applicable cure period).

*"Bankruptcy Law"* means Title 11 of the United States Code or any similar Federal or state law for the relief of debtors. *"Custodian"* means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A default under clause (c) or (d) of this Section is not an Event of Default until the Purchaser gives the Issuer and the Borrower a notice specifying the default, demanding that it be remedied and stating that the notice is a *"Notice of Default,"* and the Issuer or the Borrower does not cure the default within 30 days after receipt of the notice, or within such longer period as may be required to cure the default, so long as the Borrower is diligently attempting to cure such default. The Issuer authorizes the Borrower to perform, in the name and on behalf of the Issuer and for the purpose of curing or preventing the occurrence of an Event of Default, any agreement of the Issuer in this Agreement or the Bond.

*Section 8.2. Acceleration.* If any Event of Default solely (other than an Event of Default under Section 8.1(c)) occurs and is continuing, the Purchaser by notice to the Issuer and the Borrower (except for an Event of Default under clause (e) or (f) of the foregoing Section, for which a declaration can be made without any notice), may declare the principal of and accrued interest on the Bond to be due and payable immediately, and such principal and interest shall thereupon become and be immediately due and payable. The Purchaser may rescind an acceleration and its consequences if all existing Events of Default have been cured or waived, if the rescission would not conflict with any judgment or decree.

*Section 8.3. Other Remedies.* If an Event of Default occurs and is continuing, the Purchaser may pursue any available remedy by proceeding at law or in equity to collect the principal of or interest on the Bond or to enforce the performance of any provision of the Bond or this Agreement.

A delay or omission by the Purchaser in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

*Section 8.4. No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Issuer 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 under this Agreement, now or hereafter existing, at law or in equity or by statute. No delay or omission to exercise any right or power and accruing upon any Event of Default hereunder 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.

*Section 8.5. Waiver of Past Defaults.* The Purchaser by notice to the Issuer and the Borrower may waive an existing Event of Default and its consequences. When an Event of Default is waived, it is cured and stops continuing, but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent to it.

*Section 8.6. Purchaser May File Proofs of Claim.* The Purchaser may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Purchaser allowed in any judicial proceedings relative to the Borrower, its creditors or its property and, unless prohibited by law or applicable regulations, may vote on behalf of the holders in any election of a trustee in bankruptcy or other person performing similar functions.

*Section 8.7. Attorneys' Fees and Expenses.* If the Borrower should default under any provision of this Agreement and the Issuer or Purchaser should employ attorneys or incur other expenses for the collection of the payments due under this Agreement, the Borrower will on demand pay to the Issuers or the Purchaser, as the case may be the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Issuer or the Purchaser, as the case may be.

## **ARTICLE IX.**

### **MISCELLANEOUS**

*Section 9.1. Notices.* Any notice, request, direction, designation, consent, acknowledgment, certification, appointment, waiver or other communication required or permitted by this Agreement or the Bond must be in writing except as expressly provided otherwise in this Agreement or the Bond.

(a) Any notice or other communication shall be sufficiently given and deemed given when delivered by hand, by national overnight courier, mailed by first-class mail (postage prepaid) or sent via facsimile (with a copy delivered by mail) and addressed as follows: if to the Issuer, to the Village of Downers Grove, 801 Burlington Avenue, Downers Grove, Illinois 60515, facsimile number: (630) 434 - 5571, Attention: Village Manager; with a copy to: Village Attorney at same facsimile as Village, Attention: Enza Petrarca; if to the Purchaser, to First American Bank, 1650 Louis Avenue, Elk Grove Village, Illinois 60007, facsimile number: (847) 586-2242, Attention: Steve Eikenberry; and if to the Borrower, to 1400 Maple Avenue, Downers Grove, Illinois 60515, facsimile number: (630) 969-0131, Attention: Mary Kay Markunas. Any addressee may designate additional or different addresses for purposes of this Section.

(b) If any notice contemplated by this Agreement, any other Related Document or the Bond would by the terms thereof otherwise be due on a non-Business Day, such notice shall be due on the next Business Day. Any notice received after 5:00 p.m. on any Business Day shall be deemed received on the following Business Day.

*Section 9.2. Books and Records; Required Reporting to the Issuer.* The Purchaser shall keep, or cause to be kept, proper books of records and accounts in which complete and accurate entries shall be made of all funds and accounts established by or pursuant to this Agreement, which shall at all reasonable times be subject to the inspection by the Issuer.

*Section 9.3. Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Purchaser and their respective successors and assigns.

*Section 9.4. Severability.* If any provision of this Agreement shall be determined to be unenforceable at any time, that shall not affect any other provision of this Agreement or the enforceability of that provision at any other time.

*Section 9.5. Amendments.* After the issuance of the Bond, this Agreement may not be effectively amended or terminated without the written consent of the parties hereto. Notwithstanding any other provision herein to the contrary, the Borrower and the Purchaser may amend any provision in *Exhibit A* without the consent of the Issuer.

*Section 9.6. Right of Borrower to Perform Issuer's Agreements.* The Issuer irrevocably authorizes and empowers the Borrower to perform in the name and on behalf of the Issuer any agreement made by the Issuer in this Agreement which the Issuer fails to perform in a timely fashion if the continuance of such failure could result in an Event of Default. This Section will not require the Borrower to perform any agreement of the Issuer.

*Section 9.7. Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

*Section 9.8. Captions; References to Sections.* The captions in this Agreement are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Agreement. References to Articles and Sections are to the Articles and Sections of this Agreement, unless the context otherwise requires.

*Section 9.9. Complete Agreement.* This Agreement represents the entire agreement between the Issuer, the Purchaser and the Borrower with respect to its subject matter.

*Section 9.10. Termination.* This Agreement shall be in full force and effect from the date hereof, and shall continue in effect until the payment in full of all principal of, premium, if any, and interest on the Bond, or provision for the payment thereof shall have been made pursuant hereunder; all fees, charges, indemnities and expenses of the Issuer and Bond Registrar have been fully paid or provision made for such payment (the payment of which fees, charges, indemnities and expenses shall be evidenced by a written certification of the Borrower that it has fully paid or provided for all such fees, charges, indemnities and expenses); and all other amounts due hereunder have been duly paid or provision made for such payment. All representations, certifications and covenants by the Borrower as to the indemnification of various parties and the payment of fees and expenses of the Issuer as described in Sections 4.4, 6.2, 8.7 and 8.8 hereof, and all matters affecting the tax-exempt status of the Bond shall survive the termination of this Agreement.

*Section 9.11. Counterparts.* This Agreement may be signed in several counterparts. Each will be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the Issuer has caused this Agreement to be executed in its name and on its behalf by its Mayor and Village Clerk thereunto duly authorized, and the Borrower and the Purchaser have caused this Agreement to be executed in their respective names and on their respective behalf by their duly authorized officers, all as of the Dated Date.

**VILLAGE OF DOWNERS GROVE, DUPAGE  
COUNTY, ILLINOIS**

By: \_\_\_\_\_  
Title: Mayor

[SEAL]

Attest:

By \_\_\_\_\_  
Village Clerk

**THE AVERY COONLEY SCHOOL**

By \_\_\_\_\_  
Its: \_\_\_\_\_

By \_\_\_\_\_  
Its: \_\_\_\_\_

**FIRST AMERICAN BANK**

By \_\_\_\_\_  
Mark Kroencke  
Vice President

## EXHIBIT A TO BOND AND LOAN AGREEMENT

### COVENANTS TO PURCHASER ONLY

The Borrower agrees that so long as the Bond is outstanding, unless waived in writing by the Purchaser:

**1. Financial Information, Reports.** The Borrower will maintain a standard and modern system of accounting in accordance with generally accepted practice and will furnish to the Purchaser and its duly authorized representatives such information with respect to the business, affairs, operations, and financial condition of the Borrower as may be reasonably requested from time to time. The Borrower shall provide the Purchaser with such financial information as the Purchaser may reasonably request, including but not limited to:

(a) as soon as available, and in any event not more than 45 days after the close of each quarterly fiscal period of the Borrower, a profit and loss statement of the Borrower for the period from the beginning of the current fiscal year to the end of such quarterly period, prepared by the Borrower and signed by a principal officer of the Borrower, and a copy of the most recent statement of account provided to the Borrower from the account manager(s) for the Borrower's marketable securities and endowment accounts;

(b) as soon as practicable and in any event within 180 days after the end of each fiscal year of the Borrower, a profit and loss statement and a reconciliation of surplus accounts of the Borrower for such year, and a balance sheet of the Borrower as of the end of such year, setting forth in each case in comparative form corresponding figures from the preceding fiscal year, all in reasonable detail and satisfactory to the Purchaser and audited by an independent certified public accounting firm of recognized standing selected by the Borrower, with a certificate of such independent certified public accounting firm satisfactory to the Purchaser in scope and substance;

(c) promptly upon receipt thereof, copies of any detailed reports submitted to the Borrower by independent accountants in connection with each annual audit or any annual or interim review of the books and records of the Borrower made by such accountants; and

(d) promptly upon receipt thereof any management investment reports or annual summary statements provided to the Borrower from the managers of Borrower's investments.

All financial statements of the Borrower specified in the preceding clauses (a) or (b) shall be furnished in consolidated and consolidating form for the Borrower and all subsidiaries that the Borrower may at any time have. Together with each delivery of financial statements required by the preceding clauses (a) and (b), the Borrower will deliver to the Purchaser a certificate of a principal officer of the Borrower stating that there exists no Event of Default or any event or condition that, with notice or lapse of time, or both, would constitute an Event of Default, or, if any such Event of Default or event or condition exists, specifying the nature thereof, the period of existence thereof, and what action the Borrower proposes to take with respect thereto. The Borrower will permit any person designated by the Purchaser to visit and inspect any of the properties, corporate books, and financial records of the Borrower, and to discuss the affairs,

finances, and accounts of the Borrower, all at such reasonable times and as often as the Purchaser may reasonably request.

2. **Negative Pledge.** The Borrower shall not create, assume, or suffer to exist any mortgage, deed of trust, pledge, encumbrance, lien, or collateral assignment upon any of the real or personal property or assets of the Borrower, whether now owned or hereafter acquired, *except*: (a) liens for taxes not yet due or which are being contested in good faith by appropriate proceedings; (b) other liens, charges, and encumbrances incidental to the conduct of the Borrower's business or the ownership of its property and assets which are not incurred in connection with the borrowing of money or the obtaining of advances of credit and which do not in the aggregate materially impair the use of such property or assets in the operation of the Borrower's business; (c) any future liens in favor of the Purchaser; (d) the existing specific liens to American Capital Financial Services, Inc.; or (e) other purchase money mortgages and other purchase money liens or security interests (including finance leases) upon any fixed or capital assets hereafter acquired by the Borrower, provided that no such mortgage, lien, or security interest shall extend to or cover any other property of the Borrower, and further provided that the principal amount of the aggregate of all such indebtedness secured by all such mortgages, liens, and security interests shall not exceed \$250,000.00.

3. **Permitted Debt.** The Borrower shall not create, incur, assume, or suffer to exist any funded or current debt, or guarantee, endorse or otherwise be or become contingently liable in connection with the obligations, stock, or dividends of any person, except: (a) debt represented by the Bond; (b) funded or current debt secured by liens and retentions permitted under Section 2 above; (c) contingent liabilities arising out of the endorsement in the ordinary course of business of negotiable instruments in the course of collection thereof; and (d) current liabilities arising in the ordinary course of business of the Borrower and which are not incurred for money borrowed.

4. **Deposit Relationship.** The Borrower shall at all times maintain its entire deposit relationship with the Purchaser, including its operating cash accounts, corporate checking accounts and money market deposit accounts.

5. **Cash Flow Coverage Ratio.** The Borrower shall maintain a Cash Flow Coverage Ratio of not less than 1.10 to 1.00 with respect to each fiscal year of operations of the Borrower measured annually upon receipt of the Borrower's audited financial statements. For purposes of this Exhibit A, Cash Flow Coverage Ratio shall mean for any period, as determined in accordance with GAAP, the ratio of (A) the sum of the total change (a positive number if an increase, and a negative number if a decrease) in unrestricted net assets during such period, plus interest expense, plus depreciation and amortization expense, plus or minus unrealized loss or gain in investments, plus any write-off of deferred financing costs related to the refinancing of the Series 2004 Bonds, to (B) the sum of principal payments made of long term debt, plus cash payments of interest expense. However, if the Borrower achieves an Asset Maintenance Ratio (as defined below) of greater than 0.75 to 1.00 for any fiscal year of operations then the above requirement to achieve a Cash Flow Coverage Ratio of not less than 1.10 to 1.0 for that period will be waived.



6. **Asset Maintenance Ratio.** The Borrower shall maintain an Asset Maintenance Ratio of at least 0.50 to 1.00 measured annually upon receipt of the Borrower's audited financial statements. For purposes of this Exhibit A, the Asset Maintenance Ratio shall mean for any period, as determined in accordance with GAAP, the ratio of (A) unrestricted cash and marketable securities to (B) total funded debt.

7. **Insurance.** The Borrower will maintain insurance coverage by reputable insurance companies in such forms and amounts, and against such hazards, as are ordinarily carried by other companies similarly situated in operating like businesses and properties. Without limiting the generality of the foregoing, property and casualty insurance shall be in amounts and forms insuring the full replacement cost of fixed assets of the Borrower. Unless the Borrower shall provide the Purchaser with the evidence of insurance required herein, the Purchaser may purchase insurance at the Borrower's expense to protect the Purchaser's assets. The Borrower may later cancel any insurance purchased by the Purchaser, but only after providing the Purchaser with evidence that the Borrower has obtained insurance as required by this agreement. If the Purchaser purchases insurance, the Borrower will be responsible for the costs of that insurance, including interest and any other charges the Purchaser may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Borrower's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on Borrower's own.

8. **Plans and Specifications.** The plans and specifications delivered to the Purchaser in connection with the Project (the "Plans and Specifications") are complete and adequate for the construction of the Project. The Plans and Specifications will be approved, if required, by all governmental authorities having jurisdiction over the land and by the beneficiary of each restrictive covenant affecting the land whose approval is required.

9. **Project Budget.** The budget delivered to the Purchaser in connection with the Project (the "Project Budget") is true and complete in all material respects, and the proceeds of the Bonds, together with the contribution of funds from the Borrower, as shown on the Project Budget, will be sufficient to complete and pay finally and fully for the costs to construct and equip the Project.

10. **Construction Covenants.**

(a) **Completion of Construction.** The Borrower shall cause the construction of the Project to be prosecuted in a good and workmanlike manner and shall cause the same to be completed in accordance with the Project Budget and with the schedule delivered to the Purchaser in connection with the Project (the "Project Schedule") and substantially in accordance with the Plans and Specifications.

(b) **Compliance with Laws; Encroachments.** The Project shall be constructed in accordance with all applicable (whether present or future) laws. The Project shall not encroach upon any easement or right-of-way, or upon the land of others. Construction of the Project shall occur wholly within all applicable building restriction lines and set-backs, however established,

and shall be in strict compliance with all applicable use or other restrictions and the provisions of any prior agreements, declarations, covenants and all applicable zoning and subdivision ordinances and regulations.

(c) Inspections; Cooperation. The Borrower shall permit representatives of Purchaser to enter upon the property of the Borrower, to inspect the Project and the construction of the Project, to examine all detailed plans and shop drawings and similar materials as well as all records and books of account maintained by or on behalf of the Borrower relating thereto and to discuss the affairs, finances and accounts pertaining to the construction project and the Project with representatives of the Borrower. The Borrower shall at all times cooperate and cause each and every one of its subcontractors and material suppliers to cooperate with the representatives of Purchaser in connection with or in aid of the performance of Purchaser's functions under this Agreement.

(d) Payment and Performance of Contractual Obligations. The Borrower shall perform in a timely manner all of its obligations under the construction contract and any and all other contracts and agreements related to the construction or operation of the Project, and the Borrower will pay when due all bills for services or labor performed and materials supplied in connection with the construction of the Project. Within thirty (30) days after the filing of any mechanic's lien or other lien or encumbrance against the Project, the Borrower will promptly discharge the same by payment or filing a bond or otherwise as permitted by law. So long as Purchaser's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Purchaser in its sole and absolute discretion, the Borrower shall have the right to contest in good faith any claim, lien or encumbrance, provided that the Borrower does so diligently and without prejudice to Purchaser or delay in completing construction of the Project.

(e) Correction of Construction Defects. Promptly following any demand by Purchaser or any governmental authority, the Borrower shall correct or cause the correction of any defects in the Project, any work that fails to comply with the requirements of any applicable laws, ordinances, rules or regulations, and any material departures or deviations from the Plans and Specifications.

(f) Changes. The Borrower shall not make or permit any changes in the Plans and Specifications, Project Budget or Project Schedule, including any such changes that alter, diminish or add to the work to be performed or change the design of the Project, without the prior written consent of Purchaser and under such reasonable conditions as Purchaser may establish. Purchaser's prior written consent shall not be required, however, as to any change order which (a) individually does not cause any line item in the Project Budget to be increased or decreased by more than 25% and, when added to all previous change orders, does not cause the fixed or guaranteed maximum price of the construction contract to be increased or decreased by more than 25% in the aggregate, (b) does not result in a material change to the design of the Project, and (c) has been approved in writing by the architect and any governmental authority, tenant or other party whose approval is required .

**EXHIBIT B**

[FORM OF BOND]

No. R-1

REGISTERED AMOUNT  
\$6,000,000

**THIS BOND AND THE OBLIGATION TO PAY PRINCIPAL OR PREMIUM, IF ANY, WITH RESPECT HERETO, AND INTEREST HEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, SECURED AS AFORESAID AND PAYABLE SOLELY OUT OF THE REVENUES AND INCOME DERIVED FROM THE AGREEMENT AND AS OTHERWISE PROVIDED IN THE AGREEMENT, AS DESCRIBED HEREIN. THIS BOND AND THE OBLIGATION TO PAY PRINCIPAL OR PREMIUM, IF ANY, WITH RESPECT HERETO, AND INTEREST HEREON SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION OF THE ISSUER, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE PURVIEW OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OR PROVISION OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS, IF ANY, OF ANY OF THEM. THE ISSUER DOES NOT HAVE THE POWER TO LEVY TAXES FOR ANY PURPOSE WHATSOEVER. NO OWNER OF THIS BOND SHALL HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER, IF ANY, OF THE ISSUER, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY ANY PRINCIPAL INSTALLMENT OF, PREMIUM, IF ANY, OR INTEREST ON THIS BOND.**

UNITED STATES OF AMERICA  
STATE OF ILLINOIS  
VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS  
REVENUE BOND  
(AVERY COONLEY SCHOOL PROJECT), SERIES 2013

Dated Date: December \_\_, 2013

Registered Owner: First American Bank

Principal Amount: SIX MILLION DOLLARS

THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS, a home rule unit of local government and municipality duly organized and validly existing under the laws of the State of Illinois (the "*Issuer*"), promises to pay, solely from the sources described in this Bond, to the registered owner identified above, or registered assigns, on the principal payment dates described below (or if this Bond is called for earlier redemption as described herein, on the redemption date), the principal amount identified above (to the extent such principal amount has been advanced by the Registered Owner to the Borrower defined below) and to pay interest solely from the sources described in this Bond. The Bond shall bear interest from the date hereof

on the balance of said principal sum from time to time advanced by the Purchaser and remaining outstanding and unpaid at the rate or rates described below (computed on the basis of a 360-day year for actual days elapsed) until the payment of principal in full, and at the rate on overdue principal, premium, if any, and, to the extent permitted by law, on overdue interest at the rate or rates described below plus 4% per annum.

Principal of and interest on the outstanding principal amount of the Bond shall be payable on the first Business Day of each month commencing on January 1, 2014 with a final installment payable on December 1, 2034. Principal of the Bond shall be payable in the amounts as set forth in Schedule I to the Agreement (as hereinafter defined), as amended from time to time.

The purchase price for the Bond shall be paid in multiple Advances as funds are drawn from the Purchaser from time to time pursuant to the Agreement. The Bond and all Advances made thereunder shall bear interest at the interest rate determined as provided in Section 3.3 of the Agreement. The principal amount of the Bond at any time outstanding shall equal the aggregate principal amount of Advances made to the Borrower, less the principal amount of all Advances paid by the Borrower, whether at maturity or upon redemption.

During the initial Interest Period the Bond shall bear interest at the Initial Interest Rate as provided in the Agreement. For each of the subsequent Interest Periods, the Bond shall bear interest at the Fixed Rate or Variable Rate determined as provided in the Agreement. Interest on the Bond shall continue to be payable monthly on the first day of each month.

No recourse shall be had for the payment of the principal of, premium, if any, or interest hereon or for any claims based thereon or upon any obligation, covenant or agreement contained in the Agreement, against any past, present or future incorporator, officer, member, director or employee of the Issuer, or any incorporator, officer, member, director or employee of any successor organization, as such, either directly or through the Issuer or any successor organization, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such official, officer or employee as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Agreement and the issuance of the Bonds.

No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future official of the Issuer, or officer, employee or agent of the Issuer nor shall any officer thereof executing the Bonds be liable personally hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

This Bond is issued with the intent that the laws of the State will govern its construction.

Principal and interest payments on this Bond is payable in lawful money of the United States of America at the office of First American Bank, as the registered owner thereof (together with any permitted successor owner of this Bond, the "*Purchaser*"). If any payment on the Bond is due on a non-Business Day, it will be made on the next Business Day, and no interest will accrue as a result.

1. *Bond and Loan Agreement.* This Bond is the bond (the "*Bond*"), limited to \$6,000,000

in aggregate authorized principal amount, issued under the Agreement. The terms of the Bond include those in the Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.

1. *Source of Payments.* This Bond is a special, limited obligation of the Issuer and, as provided in the Agreement, is payable solely from payments to be made by the Borrower under the Agreement.

2. *Redemption.* The Bond is subject to redemption only as described below:

*Optional Redemption.* Notwithstanding anything stated in the Agreement to the contrary, the Bond may be prepaid by the Borrower only as stated below:

(a) On any date, the Bonds are subject to optional redemption at the direction of the Borrower in whole or in part, upon at least 30 days' prior written notice from the Borrower to the Purchaser, at a redemption price of par, plus accrued interest, if any, to the redemption date (the "Redemption Date") plus, unless the prepayment meets the conditions specified in paragraph (b) below, a redemption premium equal to 4% of the principal amount being redeemed (if the Redemption Date is in the first year), which redemption premium will decrease ratably (that is, by 0.33%) each year thereafter to 1% at the end of the tenth year (January 1, 2024). (By way of example, in the third year, the redemption premium should be 3.33%.)

(b) Notwithstanding paragraph (a) above, if the prepayment is from capital campaigns of the Borrower, there will be no prepayment premium due, if the principal amount to be redeemed is less than \$500,000 in any consecutive twelve month period.

(c) The Borrower acknowledges that the loan by the Purchaser was made on the basis and assumption that the Purchaser would receive the payments of principal and interest set forth in the Agreement for the full term of the Bond. Therefore, whenever the maturity of the Bond has been accelerated by the Purchaser by reason of the occurrence of an Event of Default, a premium (determined in the same manner as the premium in paragraph (b) above) may be due, in addition to the outstanding principal balance, accrued interest and other sums due pursuant to the Agreement.

This redemption premium shall compensate the Purchaser for the lost profit arising by the prepayment of the Bond; *provided, however*, that the foregoing shall not limit the Borrower's rights to redeem the Bond without premium under the circumstances described herein.

*Mandatory Redemption on Determination of Taxability.* This Bond will be redeemed in whole (or in part as provided below) at a redemption price equal to the principal amount of the Bond redeemed, plus accrued interest to the redemption date, plus a premium equal to any optional redemption premium which would be payable if the Bond were optionally redeemed on such date in accordance with the provisions under "*Optional Redemption*" above, on any day within 180 days after the Borrower receives written notice from the Purchaser or any former registered owner of the Bond of a final determination by the Internal Revenue Service or a court of competent jurisdiction that the interest paid or to be paid on the Bond (except to a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of

the Internal Revenue Code of 1986 (the "*Code*") is or was includible in the gross income of the Bond's owner for Federal income tax purposes. No such determination will be considered final unless the Purchaser or former registered owner involved in the determination gives the Borrower prompt written notice of the commencement of the proceedings resulting in the determination and offers the Borrower, subject to the Borrower's agreeing to pay all expenses of the proceedings and to indemnify the Purchaser or former registered owner against all liabilities that might result from it, the opportunity to control the defense of the proceeding and either the Borrower does not agree within 30 days to pay the expenses, indemnify the Purchaser or former registered owner and control the defense or the Borrower exhausts or chooses not to exhaust available procedures to contest or obtain review of the result of the proceedings.

4. (a) *Optional Tender*. At the option of the Purchaser, the Purchaser may require that the Bond be purchased by the Borrower with funds furnished by the Borrower on the Rate Reset Date at a purchase price of 100% of the then outstanding principal amount thereof plus accrued interest, if any. To exercise such option, the Purchaser must deliver to the Borrower written notice at least 60 days before such Rate Reset Date.

(b) *Mandatory Tender*. At the option of the Borrower, the Borrower may require that the Purchaser tender the Bond for purchase by the Borrower with funds furnished by the Borrower on the Rate Reset Date at a purchase price of 100% of the then outstanding principal amount thereof plus accrued interest, if any, plus a premium equal to the redemption prices set forth in Section 3 hereof. To exercise such option, the Borrower must deliver to the Purchaser written notice at least 30 days before such Rate Reset Date.

In the event of any optional or mandatory tender of the Bond for purchase by the Borrower as provided above, the Borrower must purchase the Bond in whole at a purchase price of 100% of the principal amount thereof plus accrued interest to the purchase date. Upon purchase of the Bond, the Bond shall thereafter be registered in the name of the Borrower, or such other person or entity as the Borrower shall designate, or at the direction of the Borrower, shall be canceled by the Bond Registrar. No such purchase of the Bond shall be deemed to be an extinguishment of the debt represented by the Bond unless the Bond is canceled following such purchase.

5. *Qualified Tax-Exempt Obligations*. The Issuer has designated the bonds as qualified tax-exempt obligations to qualify the bonds for the \$10,000,000 exception from the provisions of Section 265(b) of the Internal Revenue Code of 1986 relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations.

6. *Denominations; Transfer; Exchange*. The Bond is issued as a single fully registered Bond without coupons.

A registered owner may transfer this Bond in accordance with the Agreement. First American Bank as Bond Registrar (the "*Bond Registrar*") may require a registered owner, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Agreement.

The Bond Registrar shall not be required to register the transfer of the Bond after notice calling the Bond or portion thereof for redemption has been given to the Purchaser.

7. *Persons Deemed Owners.* The registered owner of this Bond may be treated as the owner of it for all purposes. Any action by the registered owner of this Bond shall be irrevocable and shall bind any subsequent owner of this Bond or the Bond delivered in substitution for this Bond.

8. *Defaults and Remedies.* The Agreement provides that the occurrences of certain events constitute Events of Default. If an Event of Default occurs and is continuing, the Purchaser may declare the principal of all of the Bond to be due and payable immediately. An Event of Default and its consequences may be waived as provided in the Agreement.

9. *No Recourse Against Others.* An officer or employee, as such, of the Issuer shall not have any liability for any obligations of the Issuer or the Borrower under the Bond or the Agreement or for any claim based on such obligation or its creation. Each registered owner by accepting the Bond waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Bond.

10. *Authentication.* This Bond shall not be valid until the Bond Registrar or an authenticating agent signs the certificate of authentication on the other side of this Bond.

**IN WITNESS WHEREOF**, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of the Mayor and attested with the manual or facsimile signature of the Village Clerk all as of the date first above written.

**VILLAGE OF DOWNERS GROVE,  
DUPAGE COUNTY, ILLINOIS**

By: \_\_\_\_\_  
Its: Mayor

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Its: Village Clerk



**CERTIFICATE OF AUTHENTICATION**

FIRST AMERICAN BANK, as Bond Registrar, certifies that this is the Bond referred to in the Agreement.

FIRST AMERICAN BANK, as Bond Registrar

By \_\_\_\_\_  
Authorized Officer

Date of Authentication: \_\_\_\_\_, 2013

**FORM OF ASSIGNMENT**

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond, and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney to transfer the Bond on the books kept for registration and transfer of the within Bond, with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTE: The signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without enlargement or alteration or any change whatsoever.

Signature guaranteed by:

NOTE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever. Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Trustee, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Trustee in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**FORM OF REGISTRATION INFORMATION**

Under the terms of the Agreement, the Bond Registrar will register the Bond in the name of a transferee only if the owner of the Bond (or his duly authorized representative) provides as much of the information requested below as is applicable to such owner prior to submitting this Bond for transfer.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Social Security or Employer

Identification Number: \_\_\_\_\_

If a Trust, Name and Address of

Trustee(s) and Date of Trust: \_\_\_\_\_

**SCHEDULE I**

**PRINCIPAL PAYMENT SCHEDULE**

Principal of the Bond shall be payable in monthly installments on the first day of each month in the amounts shown on the following schedule:

SEE ATTACHED

## **SCHEDULE II**

### **DESCRIPTION OF PROJECT**

The Project consists of providing funds to finance or reimburse the Borrower for the renovation, expansion and equipping of a portion of the educational facility of the Borrower located at 1400 Maple Avenue, Downers Grove, Illinois.