

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

and

ST. JOHN'S UNIVERSITY, NEW YORK

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LOAN AGREEMENT

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Dated as of June \_\_, 2020

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Dormitory Authority of the State of New York  
St. John's University  
Revenue Bonds, Series 2020A

and

[\$ ]

Dormitory Authority of the State of New York  
St. John's University  
Taxable Revenue Bonds, Series 2020B (Federally Taxable)

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THIS LOAN AGREEMENT, dated as of [June \_\_, 2020] (this “**Loan Agreement**”), is by and between the DORMITORY AUTHORITY OF THE STATE OF NEW YORK, having its principal place of business at 515 Broadway, Albany, New York 12207, a body corporate and politic of the State of New York, constituting a public benefit corporation (the “**Issuer**”), and ST. JOHN’S UNIVERSITY, NEW YORK, a duly organized and validly existing New York not-for-profit corporation, having an office at 8000 Utopia Parkway, Jamaica, New York 11439 (the “**Institution**”).

## RECITALS

WHEREAS, the Issuer was created pursuant to and in accordance with the provisions of Titles 4 and 4B of Article 8 of the Public Authorities Law of the State of New York (the “**State**”), as amended (the “**Act**”); and

WHEREAS, the Institution has requested that the Issuer issue its \$[ ] St. John’s University Revenue Bonds, Series 2020A (the “**Series 2020A Bonds**” or “**Tax-Exempt Bonds**”) and its \$[ ] St. John’s University Revenue Bonds, Series 2020B (Federally Taxable) (the “**Series 2020B Bonds**”) and together with the Series 2020A Bonds, the “**Bonds**”) for the purposes of:

- (A) financing or refinancing the cost of the acquisition, construction, reconstruction, rehabilitation and improvement, or otherwise providing, furnishing and equipping the project as described in Schedule A hereto (the “**Project**”); and
- (B) paying all or a portion of the costs incidental to the issuance of the Bonds; and

WHEREAS, the Issuer is issuing the Bonds pursuant to the terms of the St. John’s University Revenue Bond Resolution, adopted on June 20, 2012 (the “**General Resolution**”) and the series resolutions adopted thereunder on May 6, 2020 (the “**Series 2020 Resolutions**” and together with the General Resolution, the “**Resolution**”); and

WHEREAS, contemporaneously with the issuance of the Bonds, the Issuer is loaning the proceeds of the Bonds to the Institution pursuant to the terms of this Loan Agreement; and

WHEREAS, the Issuer’s rights hereunder (with the exception of **Unassigned Rights** (as defined herein)) are being assigned by the Issuer to the Trustee (as defined herein).

## AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1 Definitions. Unless otherwise defined herein or the context hereof shall clearly indicate a different meaning, all terms which are defined in the Resolution shall have the same meanings, respectively, herein as such terms are given in the Resolution. In addition, as used herein, unless the context hereof shall clearly indicate a different meaning, the following terms shall have the following respective meanings.

**“Annual Administrative Fee”** means the fee payable during each Bond Year for the general administrative and supervisory expenses of the Issuer in the amount or amounts more particularly described in Schedule B hereto, which is made a part hereof, as such Schedule B may be amended, modified or supplemented by the Issuer with the consent of the Institution.

**“Bonds”** shall have the meaning ascribed thereto in the Recitals hereto.

**“Extraordinary Services”** and **“Extraordinary Expenses”** means all services rendered and all fees and expenses incurred by or due to the Trustee or any Paying Agent under the Resolution other than Ordinary Services and Ordinary Expenses, including reasonable fees and disbursements of Trustee’s counsel.

**“Favorable Opinion of Bond Counsel”** means, with respect to any action the occurrence of which requires such an opinion, an unqualified opinion of Bond Counsel to the effect that such action is permitted under the Act and the Resolution and, with respect to any action relating to the Tax-Exempt Bonds, will not impair the exclusion of interest on the Tax-Exempt Bonds from gross income for purposes of federal income taxation.

**“General Resolution”** shall have the meaning ascribed thereto in the Recitals hereto.

**“Governmental Requirements”** means any present and future laws, rules, orders, ordinances, regulations, statutes, requirements and executive orders applicable to the Project, of the United States, the State and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them, now existing or hereafter created, and having or asserting jurisdiction over the Project or any part thereof, including without limitation, those relating to environmental matters.

**“Institution Documents”** means this Loan Agreement and the other documents to which the Institution is a party as set forth in Schedule E hereto.

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

**“Issuer Documents”** means the Resolution, this Loan Agreement and the other documents to which the Issuer is a party as set forth in Schedule F hereto.

“**Liens**” means any mortgage, pledge, lien, charge, security interest or lease in the nature thereof (including any conditional sale agreement, equipment trust agreement or other title retention agreement) or other encumbrance of whatsoever nature that would have a material adverse effect on the ability of the Issuer to enforce its right and remedies under this Loan Agreement or any other Institution Document.

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

“**Loan Repayment Dates**” shall have the meaning ascribed thereto in Schedule D hereto.

“**Loan Repayments**” means the scheduled payments of principal of and interest on the loan to be paid by the Institution pursuant to Section 4.2(a)(iii) hereof.

“**Official Statement**” means an official statement, prospectus, offering circular, offering memorandum or other offering document relating to and in connection with the sale of the Bonds.

“**Ordinary Services**” and “**Ordinary Expenses**” means those services normally rendered and those fees and expenses normally incurred by or due to the Trustee or paying agent, as the case may be, under the Resolution, including reasonable fees and disbursements of counsel for the Trustee.

“**Permitted Disposition**” means any transfer, sale or conveyance in accordance with Section 2.4(j) hereof.

“**Project**” means a “dormitory” as defined in the Act, which may include more than one part, financed in whole or in part from the proceeds of the sale of the Bonds, as more particularly described in Schedule A hereto.

“**Resolution**” shall have the meaning ascribed thereto in the Recitals hereto.

“**Restricted Gift**” means any gift, grant or bequest of money or other property to or for the benefit of the Institution, the use of which has been restricted by the donor or the grantor to paying any cost or expense that constitutes a Cost of the Project.

“**Series Resolution**” shall have the meaning ascribed thereto in the Recitals hereto.

“**Tax Certificate**” means the certificate of the Issuer and the Institution, including the appendices, schedules and exhibits thereto, executed in connection with the issuance of the Bonds in which the Issuer and the Institution make representations and agreements as to arbitrage and compliance with the provisions of Sections 141 through 150, inclusive, of the Internal Revenue Code of 1986, or any similar certificate, agreement or other instrument made, executed and delivered in lieu of said certificate, in each case as the same may be amended or supplemented.

“**Tax-Exempt Bonds**” shall have the meaning ascribed thereto in the Recitals hereto.

“**Unassigned Rights**” means the rights of the Issuer to (a) execute and deliver supplements and amendments to the Resolution and the Loan Agreement, pursuant to Article 7 of the Resolution, (b) be held harmless and indemnified pursuant to Section 7.1 of this Loan Agreement, (c) receive any funds for its own use, whether as administration fees pursuant to Section 4.2 of this Loan Agreement, amounts payable to the Issuer pursuant to Sections 4.2(a)(v), 4.2(b), 4.2(h), 5.6 or 9.2, or indemnification pursuant to Section 7.1 of this Loan Agreement, (d) receive notices, Favorable Opinions of Bond Counsel and other documents as required under this Loan Agreement to be delivered to the Issuer; (e) require the Institution to take actions necessary to comply with Article VIII of this Loan Agreement; and (f) enforce any of the foregoing pursuant to Article IX of this Loan Agreement.

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

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

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

Section 2.1 Representations of Issuer. The Issuer makes the following representations:

(a) Due Organization and Authority. The Issuer is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver and perform each of the Issuer Documents and the other documents contemplated thereby. Each of the Issuer Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Issuer.

(b) No Conflicts. Neither the execution and delivery of any of the Issuer Documents or the other documents contemplated thereby, nor the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Issuer Documents or the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof, the Issuer’s by-laws, as amended, or any statutory restriction or any agreement or instrument to which the Issuer is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Issuer under the terms of the Act or any such law, ordinance, restriction, agreement or instrument.



(c) Enforceability. Each of the Issuer Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditor's rights generally, and subject to usual principles of equity.

Section 2.2 Representations of the Institution. The Institution makes the following representations:

(a) Due Organization and Authority. The Institution is a not-for-profit corporation duly organized and validly existing under the laws of the State, is in good standing under the laws of the State and has full legal right, power and authority to execute, deliver and perform its obligations under each of the Institution Documents and the other documents contemplated thereby. Each of the Institution Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Institution.

(b) Securities Law Status. The Institution is an organization organized and operated: (i) exclusively for educational or charitable purposes; (ii) not for pecuniary profit; and (iii) no part of the net earnings of which inures to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended. The Institution agrees that it shall not perform any act or enter into any agreement which shall adversely affect such status as set forth in clauses (i), (ii) and (iii) of this Subsection.

(c) No Conflicts. Neither the execution and delivery of any of the Institution Documents or the other documents contemplated thereby nor the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Institution Documents or the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Institution's charter or by-laws, as amended, or any corporate restriction or any agreement or instrument to which the Institution is a party or by which it is bound which would have a material adverse effect on the Institution or the transaction, or result in, except as contemplated by the Institution Documents, the creation or imposition of any Lien of any nature upon any of the Property of the Institution under the terms of any such law, ordinance, charter, by-laws, restriction, agreement or instrument.

(d) No Litigation. There is no action, suit, investigation or proceeding pending or, to the knowledge of the Institution, threatened against the Institution or any properties or rights of the Institution before any court, arbitrator or administrative or governmental body which might result in any materially adverse change in the business, condition or operations of the Institution or which might materially adversely affect the ability of the Institution to comply with this Loan Agreement or other Institution Documents.

(e) Compliance with Governmental Requirements. The design, construction, renovation, equipping and operation of the Project and any contracts and agreements relating thereto do conform or will conform with all applicable Governmental Requirements.

(f) Enforceability. Each of the Institution Documents and the other documents contemplated thereby to which the Institution is a party constitutes a valid and binding obligation of the Institution enforceable against the Institution in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditor's rights generally, and subject to general principles of equity.

(g) Warranty of Title. The Institution warrants and represents to the Issuer that (i) it has good and marketable title to the Project, free and clear of liens and encumbrances so as to permit it to have quiet enjoyment and use thereof for purposes hereof and the Institution's programs and (ii) the Institution has such rights of way, easements or other rights in land as may be reasonably necessary for ingress and egress to and from the Project for proper operation and utilization of the Project and for utilities required to serve the Project, together with such rights of way, easements or other rights in, to and over land as may be necessary for construction by the Institution of the Project.

Section 2.3 Covenants of the Institution. The Institution makes the following covenants:

(a) Operation of Project. The Institution shall continue to be duly authorized to do business in the State and will operate all portions of the Project as a facility or facilities of higher education throughout the term of this Agreement.

(b) Pledges and Security Interests. The Institution shall at all times, to the extent permitted by law, defend, preserve and protect all of the rights of the Issuer and the Bondholders under the Resolution against all claims and demands of all persons whomsoever.

(c) Maintenance of Corporate Existence. The Institution shall maintain its corporate existence, will continue to operate as a non-profit educational organization, shall obtain, maintain and keep in full force and effect such governmental approvals, consents, licenses, permits and accreditations as may be necessary for the continued operation of the Institution as a non-profit educational organization providing such programs and services as it may from time to time determine, shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it; provided, however, that if no Event of Default shall be continuing, then, upon prior written notice to the Issuer, the Institution may (i) sell or otherwise transfer all or substantially all of its assets to, or consolidate with or merge into, another organization or corporation which qualifies under Section 501(c)(3) of the Code, or any successor provision of federal income tax law, or (ii) permit one or more corporations or any other organization to consolidate with or merge into it, or (iii) acquire all or substantially all of the assets of one or more corporations or any other organization; provided, further, that in each case (a) the Institution provides a Favorable Opinion of Bond Counsel addressed to the Issuer and the Trustee relating to any such sale, transfer, consolidation, merger or acquisition, (b) the surviving, resulting or transferee corporation, as the case may be, is incorporated under the laws of the State and qualified under Section 501(c)(3) of the Code or any successor provision of federal income tax law, and (c) the surviving, resulting or transferee corporation, as the case may be, assumes in writing all of the obligations of and restrictions on the Institution hereunder and

under the Institution Documents, furnishes to the Issuer a certificate to the effect that upon such sale, transfer, consolidation, merger or acquisition such corporation shall be in compliance with applicable laws, rules and regulations and each of the provisions hereof and shall meet the requirements of the Act and furnishes such other certificates and documents as the Issuer may reasonably request.

(d) Accounts and Records. The Institution shall at all times maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the Institution.

(e) Limitation on Agreements. Except as expressly provided hereby or by the Resolution, the Institution shall not enter into any contracts or agreements or perform any act which may adversely affect any of the assurances, interests or rights of the Issuer or the Bondholders hereunder or under the Resolution.

(f) Information Concerning Institution. (i) The Institution, whenever requested by the Issuer, shall provide and certify or cause to be provided and certified subject to legal restrictions, if any, such information concerning the Institution, its finances and other related topics as the Issuer from time to time reasonably determines to be necessary or desirable, including information reasonably necessary or desirable to enable the Issuer to make any reports or obtain any approvals required by law, governmental regulation or the Resolution to effect any of the transactions contemplated hereby or by the Resolution.

(ii) The Institution shall, if and when requested by the Issuer, provide to the Issuer reports with respect to the status of the construction of the Project. The Institution shall also furnish to the Issuer: (i) annually, not later than 150 days after the end of the Institution's fiscal year, copies of the Institution's audited financial statements and (ii) such other statements, reports and schedules describing the finances, operation and management of the Institution and such other information as the Issuer may from time to time reasonably request.

(iii) The Institution shall deliver to the Issuer each year no later than 150 days after the end of the Institution's fiscal year a Certificate signed by the Treasurer, Chief Financial Officer or the President of the Institution in the form attached hereto as Exhibit B (as such form may from time to time be revised by the Issuer), together with other statistical information required by the Issuer.

(iv) The Institution shall immediately notify the Issuer and the Trustee of the occurrence of any default or any event which with notice and/or lapse of time would constitute a default under this Loan Agreement or any of the other Institution Documents. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Institution and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Institution shall state this fact on the notice.

(v) The Institution shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the Institution, as the Issuer or the Trustee deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Loan Agreement and any rights of the Issuer or the Trustee hereunder or under the Resolution.

(vi) The Institution shall furnish to the Issuer and the Trustee notice of the commencement of any proceeding by or against the Institution commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law.

(g) Compliance with Certain Requirements. The Institution shall comply with (i) all Governmental Requirements which, if not complied with, could adversely affect the Institution, its operations or financial condition or title to its properties in any material respect, and (ii) any requirement of an insurance company providing insurance to the Institution. Anything contained in this paragraph to the contrary notwithstanding, the Institution shall have the right to contest the validity of any Governmental Requirement or the application thereof at the Institution's sole cost and expense. During such contest, compliance with the contested Governmental Requirement may be deferred by the Institution, provided that prior to commencing any action or proceeding, administrative or judicial, contesting the Governmental Requirement, the Institution notifies the Issuer of the Institution's intention to contest such Governmental Requirement and, if the Issuer requests, shall furnish to the Issuer moneys or other security, satisfactory to the Issuer, securing compliance with the contested Governmental Requirement and payment of all interest, penalties, fines, fees and expenses resulting from or in connection with such contest or the failure of the Institution to comply with the contested Governmental Requirement. Any such action or proceeding instituted by the Institution shall be commenced as soon as is reasonably possible after the assertion of the applicability to the Project or any part thereof, of the contested Governmental Requirement by a governmental authority, and shall be prosecuted to final adjudication or other final disposition with reasonable dispatch. Notwithstanding the furnishing of any bond, deposit or other security, the Institution promptly shall comply with any such Governmental Requirement and compliance shall not be deferred if at any time the Project, or any part thereof, to which such contested Governmental Requirement relates, would be in substantial danger by reason of the Institution's noncompliance with such Governmental Requirement of being sold, attached, forfeited, foreclosed, transferred, conveyed, assigned or otherwise subjected to any proceeding, equitable remedy, lien, charge, fee or penalty that would impair (i) the interests or security of the Issuer hereunder or under the Resolution, (ii) the ability of the Issuer to enforce its rights hereunder or thereunder, (iii) the ability of the Issuer to fulfill the terms of any covenants or perform any of its obligations hereunder or thereunder or (iv) the ability of the Institution to fulfill the terms of any covenants or perform any of its obligations hereunder.

(h) Prohibition Against Liens. (i) The Institution, throughout the term of this Loan Agreement, shall not permit or create or suffer to be permitted or created any Lien upon the Project or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Project or any part thereof.

(ii) Notwithstanding the provisions of subsection (i) of this paragraph (h), the Institution may in good faith contest any such Lien and, in such event, the Institution may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless, by the Institution's nonpayment of any such item or items, the Project or any part thereof may be subject to loss or forfeiture, in which event the Institution shall promptly secure payment of all such unpaid items by filing a bond thereby causing such Lien to be removed or by taking such other actions as may be satisfactory to protect the Project. Mechanics' Liens shall be discharged or bonded within ninety (90) days following the Institution's receipt of notice of the filing or perfection thereof.

(i) Restriction on Religious Use. With respect to the Project or any portion thereof, so long as any of the Bonds are outstanding, the Project or portion thereof shall not be used for sectarian religious instruction or as a place of religious worship or in connection with any part of a program of a school or department of divinity for any religious denomination.

(j) Sale of the Project. The Institution shall not transfer, sell or convey any interest in the Project or any part thereof or interest therein, including development rights unless (a) the Institution provides a Favorable Opinion of Bond Counsel addressed to the Issuer and the Trustee relating to such action and (b) the transfer, sale or conveyance is a Permitted Disposition.

### **ARTICLE III**

#### **FINANCING AND REFINANCING OF PROJECT; ISSUANCE OF THE BONDS**

##### **Section 3.1 Financing and Refinancing of Project.**

(a) The Institution agrees, and covenants and warrants to the Issuer that the proceeds of the Bonds will be used to finance and/or refinance the Costs of the Project and other purposes authorized by the Resolution.

(b) The Institution agrees that, whether or not there are sufficient moneys available to it under the provisions of the Resolution and hereunder, the Institution shall complete the acquisition, design, construction, reconstruction, rehabilitation and improving or otherwise providing and furnishing and equipping of the Project, substantially in accordance with the description herein and, if applicable in the Official Statement or other offering document. The Issuer makes no representation, express or implied, that the net proceeds of the Bonds will be sufficient to pay all costs to complete the Project. In the event that the moneys in the Construction Fund are not sufficient to pay in full all costs of the Project, the Institution agrees to pay all such sums as may be in excess of the moneys available therefor and necessary to complete the Project.

##### **Section 3.2 Application of Bond Proceeds.**

(a) Subject to the conditions hereof, the Issuer will, to the extent of moneys available in the Construction Fund, cause the Institution to be reimbursed for, or pay, any costs and expenses incurred by the Institution that constitute Costs of the Project or any Cost of Issuance

reimbursable to the Institution, provided such costs and expenses are approved by an Authorized Officer of the Issuer as follows:

(i) To the extent that moneys are available therefor, moneys in the Construction Fund shall be disbursed as the construction of the Project progresses in amounts as shall be requested by the Institution pursuant to a request for disbursement as hereinafter provided to reimburse the Institution for, or to pay, any costs and expenses constituting Costs of the Project previously paid or then due that were incurred by the Institution in connection with the Project.

(ii) Prior to the Issuer making and delivering any certificate required to be delivered to the Trustee in connection with payments to be made pursuant to Section 5.04(c) of the Resolution for Costs of a Project, other than interest on Outstanding Bonds or any Cost of Issuance reimbursable to the Institution, the Issuer shall have received a certificate of the Institution substantially in the form of Exhibit A hereto.

(b) The Institution will receive the disbursements of moneys in the Construction Fund to be made hereunder, and will hold the right to receive the same, as a trust fund for the purpose of paying the Costs of the Project for which each disbursement was made, and will apply the same first to such payment before using any part thereof for any other purposes.

(c) The Institution shall permit the Issuer and its authorized representatives, at all reasonable times and upon reasonable notice, to enter upon the property of the Institution and the Projects to inspect the Project and all materials, fixtures and articles used or to be used in construction of the Project, and to examine all documents relating thereto. The Institution agrees to retain all original documentation related to expenditures for items which constitute Costs of the Project for at least three (3) years after the last of the Bonds or any related refunding bonds are retired, for inspection at any time by the Issuer or its auditors.

(d) The Institution acknowledges and agrees that disbursements from the Construction Fund are to be made by the Trustee and shall be made in accordance with the Resolution only upon receipt by the Trustee of the documents required by the Resolution to be executed and delivered in connection with such disbursements. The Issuer agrees to provide the Institution, upon request therefor, copies of requisitions, invoices and any related documents detailing payments made from the Construction Fund.

### Section 3.3 Certificates of Completion; Completion by Institution.

(a) The Project shall be deemed to be complete upon delivery to the Issuer and the Trustee of a certificate signed by an Authorized Officer of the Institution, which certificate shall be substantially in the form attached hereto as Exhibit C and shall be delivered as soon as practicable after the completion of the Project. Any such certificate shall comply with the requirements of Section 5.04 of the Resolution. The moneys, if any, remaining in the Construction Fund after such Project has been deemed to be complete shall be paid as provided in Section 5.04 of the Resolution. The Institution agrees to complete the renovation, construction, equipping and furnishing of the Project on or before five years from date of

issuance of the Bonds unless the Institution provides a Favorable Opinion of Bond Counsel addressed to the Issuer and the Trustee relating to the extension of the completion date to a subsequent completion date or permitting an application of funds then on deposit in the Construction Fund in a manner other than as required under Section 5.04 of the Resolution.

(b) The Issuer makes no warranty, either express or implied, as to the condition, design, operation, merchantability or fitness, or title to, the Project or that it is or will be suitable for the Institution's purposes or needs.

## ARTICLE IV

### LOAN PROVISIONS

Section 4.1 Loan of Bond Proceeds. The Issuer hereby agrees to loan the proceeds of the Bonds to the Institution in accordance with the provisions of this Loan Agreement. Such Bond proceeds shall be disbursed to the Institution in accordance with the provisions of Section 3.2 hereof and of the Resolution.

Section 4.2 Loan Payments and Other Amounts Payable.

(a) Except to the extent that moneys are available therefor under the Resolution or hereunder, including moneys in the Debt Service Fund (other than moneys required to pay the Redemption Price or purchase price of Outstanding Bonds theretofore called for redemption or contracted to be purchased, plus interest accrued to the date of redemption or purchase), and excluding interest accrued but unpaid on investments held in the Debt Service Fund, the Institution hereby unconditionally agrees to pay, so long as Bonds are Outstanding from its general funds or any other moneys legally available to it:

(i) On or before the date of delivery of the Bonds, the Issuer Fee agreed to by the Issuer and the Institution in connection with issuance of the Bonds;

(ii) On or before the date of delivery of the Bonds, such amount, if any, as is required, in addition to the proceeds of such Bonds available therefor, to pay the Costs of Issuance of the Bonds, and other costs in connection with the issuance of the Bonds;

(iii) On each Loan Repayment Date, Loan Repayments in the amount determined in the manner set forth in Schedule D, subject to adjustment from time to time as a result of events including, but not limited to, prepayment.

(iv) On or before any Redemption Date, the amount required to pay the Redemption Price or purchase price of such Bonds, together with the amount of any fees or expenses charged or incurred by the Issuer to effectuate the redemption or defeasance of such Bonds;

(v) On December 10 of each Bond Year one-half (1/2) of the Annual Administrative Fee payable during such Bond Year in connection with the Bonds, and on June 10 of each Bond Year the balance of the Annual Administrative Fee payable during such Bond Year; provided, however, that the Annual Administrative Fee with respect to

the Bonds payable during the Bond Year during which such Annual Administrative Fee became effective shall be equal to the Annual Administrative Fee with respect to the Bonds multiplied by a fraction the numerator of which is the number of calendar months or parts thereof remaining in such Bond Year and the denominator of which is twelve (12);

(vi) Promptly upon demand by the Issuer or the Trustee, the difference between the amount on deposit in the Arbitrage Rebate Fund available to be rebated in connection with the Tax-Exempt Bonds or otherwise available therefor under the Resolution and the amount required to be rebated to the Department of the Treasury of the United States of America in accordance with the Code in connection with the Bonds;

(vii) Promptly after notice from the Issuer, but in any event not later than fifteen (15) days after such notice is given, the amount set forth in such notice as payable to the Issuer (A) for the Issuer Fee then unpaid, (B) to reimburse the Issuer for payments made by it pursuant to paragraph h hereof and any expenses or liabilities incurred by the Issuer pursuant to Section 4.2(b), 5.6, 7.1 or 9.2 hereof, (C) to reimburse the Issuer for any external costs or expenses incurred by it attributable to the issuance of the Bonds or the financing or construction of a Project, including but not limited to any fees or other amounts payable by the Issuer under a Remarketing Agreement, a Credit Facility or a Liquidity Facility, (D) for the costs and expenses incurred by the Issuer to compel full and punctual performance by the Institution of all the provisions hereof or of the Resolution in accordance with the terms thereof and (E) for the fees and expenses of the Trustee and any paying agent in connection with performance of their duties under the Resolution; and,

(viii) Promptly upon demand by the Trustee, (a copy of which shall be furnished to the Issuer), all amounts required to be paid by the Institution as a result of an acceleration pursuant to Section 9.1 hereof.

(b) In addition to the Loan Payments pursuant to Section 4.2(a) hereof, throughout the Loan Term, the Institution shall pay to the Issuer as additional loan payments, within fifteen (15) days of the receipt of demand therefor, an amount equal to the sum of the out-of-pocket expenses of the Issuer actually incurred (i) by reason of the Issuer's financing of the Project, or (ii) in connection with the carrying out of the Issuer's duties and obligations under the Issuer Documents, the payment of which is not otherwise provided for under this Loan Agreement; or (iii) on account of any payments made by the Issuer for the purpose of fulfilling the Institution's obligations under this Loan Agreement, including, but not limited to, Section 5.6 hereof.

(c) In addition, the Institution shall pay as additional loan payments within fifteen (15) days after receipt of a written demand therefor the Ordinary Expenses and Extraordinary Expenses payable by the Issuer to the Trustee pursuant to and under the Resolution.

(d) Subject to the provisions hereof and of the Resolution, the Institution shall receive a credit against the amount required to be paid by the Institution during a Bond Year pursuant to paragraph (a)(iii) of this Section on account of any Sinking Fund Installments if, prior to the date notice of redemption is given pursuant to the Resolution with respect to Bonds to be redeemed



through any Sinking Fund Installments during the next succeeding Bond Year, either (i) the Institution delivers to the Trustee for cancellation one or more Bonds and maturity to be so redeemed or (ii) the Trustee, at the written direction of the Issuer, has purchased one or more Bonds of the maturity to be so redeemed from amounts on deposit in the Debt Service Fund in accordance with subdivision Section 5.06(c) of the Resolution during such Bond Year. The amount of the credit shall be equal to the principal amount of the Bonds so delivered.

(e) The Issuer hereby directs the Institution, and the Institution hereby agrees, to make the payments required by paragraphs (a)(iii), (a)(iv), (a)(vi), and (a)(viii) of this Section directly to the Trustee for deposit and application in accordance with Section 5.05 of the Resolution, the payments required by paragraphs (a)(ii) and (a)(vii)(E) of this Section directly to the Trustee for deposit in the Construction Fund or other fund established under the Resolution, as directed by the Issuer, and the payments required by paragraphs (a)(i), (a)(v), (a)(vii)(A),(B),(C) and (D) and (b) of this Section directly to the Issuer.

(f) Notwithstanding any provisions herein to the contrary (except as otherwise specifically provided for in this subdivision), all moneys paid by the Institution to the Trustee pursuant hereto or otherwise held by the Trustee (other than moneys received by the Trustee pursuant to paragraphs (a)(ii) (a)(vi) and (a)(vii)(E)) shall be applied in reduction of the Institution's indebtedness to the Issuer hereunder, first, with respect to interest and, then, with respect to the principal amount of such indebtedness, but only to the extent that, with respect to interest on such indebtedness, such moneys are applied by the Trustee for the payment of interest on Outstanding Bonds, and, with respect to the principal of such indebtedness, such moneys have been applied to, or are held for, payments in reduction of the principal amount of Outstanding Bonds and as a result thereof Bonds have been paid or deemed to have been paid in accordance with Section 12.01(b) of the Resolution. Except as otherwise provided in the Resolution and the preceding sentence of this paragraph (f), the Trustee shall hold such moneys in trust in accordance with the applicable provisions of the Resolution for the sole and exclusive benefit of the Holders of Bonds, regardless of the actual due date or applicable payment date of any payment to the Holders of Bonds.

(g) The Issuer, for the convenience of the Institution, may, in its sole discretion, furnish to the Institution statements of the due date, purpose and amount of payments to be made pursuant hereto. Neither the failure to furnish such statements nor any error contained in such statements shall excuse non-payment of the amounts payable hereunder at the time and in the manner provided hereby.

(h) The Issuer shall have the right in its sole discretion to make on behalf of the Institution any payment required pursuant to this Section which has not been made by the Institution when due. No such payment by the Issuer shall limit, impair or otherwise affect the rights of the Issuer under Article VII hereof arising out of the Institution's failure to make such payment and no payment by the Issuer shall be construed to be a waiver of any such right or of the obligation of the Institution to make such payment.

Section 4.3 Obligations of Institution Hereunder Unconditional. The Loan Agreement and the obligations of the Institution to make payments hereunder are general obligations of the Institution. The obligations of the Institution to make payments or cause the same to be made

hereunder shall be absolute and unconditional and the amount, manner and time of making such payments shall not be decreased, abated, postponed or delayed for any cause or by reason of the happening or non-happening of any event, irrespective of any defense or any right of set-off, recoupment or counterclaim which the Institution may otherwise have against the Issuer, the Trustee or any Holder of Bonds for any cause whatsoever including, without limiting the generality of the foregoing, failure of the Institution to complete the Project or the completion thereof with defects, failure of the Institution to occupy or use the Project, any declaration or finding that the Bonds are or the Resolution is invalid or unenforceable or any other failure or default by the Issuer or the Trustee; provided, however, that nothing herein shall be construed to release the Issuer from the performance of any agreements on its part herein contained or any of its other duties or obligations, and in the event the Issuer shall fail to perform any such agreement, duty or obligation, the Institution may, subject to the provisions of Section 11.9 hereof, institute such action as it may deem necessary to compel performance or to recover damages for the Issuer's willful misconduct.

Section 4.4 Payment of Additional Moneys in Prepayment of Bonds. The Institution, if it is not then in default hereunder, shall have the right to make voluntary payments in any amount to the Trustee provided that the Institution has given the Issuer written notice of its intention to make any such voluntary payment at least two (2) business days prior to making the payment. In the event of a voluntary payment, the amount so paid shall be deposited in the Debt Service Fund and applied in accordance with Section 5.06 of the Resolution or held by the Trustee for the payment of Bonds in accordance with Section 12.01(b) of the Resolution. Upon any voluntary payment by the Institution, the Issuer agrees to direct the Trustee in writing to purchase or redeem Bonds in accordance with the Resolution or to give the Trustee irrevocable instructions in writing in accordance with Section 12.01(b) of the Resolution with respect to such Series of Bonds; provided, however, that in the event such voluntary payment is sufficient to pay all amounts then due hereunder and under the Resolution, including the purchase or redemption of all Bonds Outstanding, or to pay or provide for the payment of all Bonds Outstanding in accordance with Section 12.01(b) of the Resolution, the Issuer agrees, in accordance with the instructions of the Institution, to direct the Trustee in writing to purchase or redeem all Bonds Outstanding, or to cause all Bonds Outstanding to be paid or to be deemed paid in accordance with Section 12.01(b) of the Resolution.

Section 4.5 Rights and Obligations of the Institution upon Prepayment of Bonds. In the event the Bonds shall have been paid in full prior to the termination of this Loan Agreement, or provision for such payment shall have been made in accordance with the Resolution, the Issuer, at the sole cost of the Institution, shall deliver to the Institution appropriate terminations, discharges or releases of any security interest relating to the Project or under the Resolution.

Section 4.6 Security Interest. The Institution acknowledges that the payments by the Institution under this Loan Agreement are pledged as security for payment of the principal of, and Redemption Price of and interest on the Bonds. The security interest referred to in this Section shall (except with respect to the Issuer's Unassigned Rights) be assigned by the Issuer to the Trustee pursuant to Section 4.7 hereof.

Section 4.7 Assignment to Trustee and Institution Consent. The Issuer shall pledge and assign its rights to and interest in this Loan Agreement, and in all amounts payable by the

Institution to the Trustee pursuant to Section 4.2 hereof and all other provisions of this Loan Agreement (other than Unassigned Rights and except for the moneys and investments from time to time in the Rebate Fund), to the Trustee as security for the payment of the principal of, and premium, if any, and interest on the Bonds. The Institution hereby acknowledges and consents to such pledge and assignment by the Issuer. Notwithstanding the foregoing, (1) all indemnities herein contained shall, subsequent to such pledge and assignment, continue to run to the Issuer for its benefit; and (2) both the Trustee and the Issuer shall each have the right to enforce Events of Default arising from violations of Article 8 of this Loan Agreement.

Section 4.8 Financing Statements. The Institution shall file, or cause to be filed, all UCC Financing Statements required to be filed on the date of issuance of the Bonds. The Institution further hereby irrevocably appoints the Trustee as the Institution's lawful attorney-in-fact and agent, to prepare and execute any UCC-1 Financing Statements or UCC-3 Amendments or Assignments on the Institution's behalf in accordance with the requirements of the Resolution to protect the Issuer's and the Trustee's security interests in payments made pursuant to this Loan Agreement and any assignment thereof, and on the Institution's behalf, to file such Financing Statements in any appropriate public office. The Institution shall be responsible for the reasonable costs incurred by the Trustee and the Issuer in filing all continuation statements hereunder.

## **ARTICLE V**

### **MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE**

#### Section 5.1 Maintenance and Modifications of Project by Institution.

(a) The Institution agrees that, throughout the term hereof, it shall, at its own expense, hold, operate and maintain the Project in a careful, prudent and economical manner, and keep the same, with the appurtenances and every part and parcel thereof, in good repair, working order and safe condition and shall from time to time make all necessary and proper repairs, replacements and renewals so that at all times the operation of the Project may be properly and advantageously conducted. The Institution shall have the right to remove or replace any type of fixtures, furnishings and equipment in the Project which may have been financed by the proceeds of the sale of the Bonds provided that such fixtures, furnishings and equipment continue to be used for purposes permitted under the Tax Certificate or as otherwise permitted in a Favorable Opinion of Bond Counsel delivered by the Institution to the Issuer and the Trustee.

(b) The Institution further agrees that it shall pay at its own expense all extraordinary costs of maintaining, repairing and replacing the Project except insofar as funds are made available therefor from proceeds of insurance, condemnation or eminent domain awards.

Section 5.2 Use and Control of the Project. Subject to the rights, duties and remedies of the Issuer hereunder, the Institution shall have sole and exclusive control and possession of and responsibility for (i) the Project, (ii) the operation of the Project and supervision of the activities conducted therein or in connection with any part thereof and (iii) the maintenance, repair and replacement of the Project; provided, however, that, except as otherwise limited hereby, the foregoing shall not prohibit use of the Project by persons other than the Institution or

its students, staff or employees in furtherance of the Institution's corporate purposes, if such use will not adversely affect the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes.

Section 5.3 Liens, Utilities and Access. The Institution warrants, represents and covenants that the Project (i) is and will be kept free from any encumbrances, liens or commitments of any kind, (ii) is and will be serviced by all necessary utilities (including, to the extent applicable, without limitation, electricity, gas, water, sewer, steam, heating, air conditioning and ventilation) and (iii) to the extent applicable, has and will have its own separate and independent means of access, apart from any other property owned by the Institution or others; provided, however, that such access may be through common roads or walks owned by the Institution used also for other parcels owned by the Institution.

Section 5.4 Taxes, Assessments and Utility Charges. The Institution shall pay when due at its own expense, and hold the Issuer harmless from, all taxes, assessments, water and sewer charges and other impositions, if any, which may be levied or assessed upon the Institution or any of its property. The Institution shall file exemption certificates as required by law. The Institution agrees to exhibit to the Issuer within ten (10) days after written demand by the Issuer, certificates or receipts issued by the appropriate authority showing full payment of all taxes, assessments, water and sewer charges and other impositions; provided, however, the Institution may, in good faith, contest any such taxes, assessments and other charges. In the event of any such proceedings, the Institution shall pay such taxes, assessments or other charges so contested, or, at its option, allow the same to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Project nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings, and (ii) the Institution shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings.

Section 5.5 Insurance Required.

(a) The Institution agrees to maintain or cause to be maintained insurance with insurance companies or by means of self-insurance, insurance of such type, against such risks and in such amounts as are customarily carried by private colleges and universities located in the State of a nature similar to that of the Institution, which insurance shall include property damage, fire and extended coverage, public liability and property damage liability insurance in amounts estimated to indemnify the reasonably anticipated damage, loss or liability, subject to reasonable deductible provisions. The Institution shall at all times also maintain worker's compensation coverage and disability benefits insurance coverage as required by the laws of the State.

(b) If the Issuer shall so request in writing, the Institution shall provide to the Issuer summaries or other evidence of its insurance coverage and shall obtain endorsements reasonably requested by the Issuer.

(c) In the event the Institution fails to provide the insurance required by this Section, the Issuer may elect at any time thereafter to procure and maintain the insurance required by this

Section at the expense of the Institution. The policies procured and maintained by the Issuer shall be open to inspection by the Institution at all reasonable times.

Section 5.6 Right of Issuer to Pay Taxes, Insurance Premiums and Other Charges. If the Institution fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, assessment or other governmental charge required to be paid by Section 5.4 hereof, (ii) to maintain any insurance required to be maintained by Section 5.5 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Project or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Project or any part thereof (unless contested or bonded in accordance with the provisions of Section 2.4(h) hereof), or (v) to pay any other amount or perform any act hereunder required to be paid or performed by the Institution hereunder, the Issuer may pay or cause to be paid such tax, assessment or other governmental charge or the premium for such insurance or any such other payment or may perform any such act. No such payment shall be made or act performed by the Issuer until at least ten (10) days shall have elapsed since written notice shall have been given by the Issuer to the Institution and the Trustee), and in the case of any tax, assessment or governmental charge or the amounts specified in clauses (iii), (iv) and (v) hereof, no such payment shall be made in any event if the Institution is contesting the same in good faith and diligently prosecuting the same unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Issuer shall affect or impair any rights of the Issuer hereunder or of the Trustee under the Resolution arising in consequence of such failure by the Institution. The Institution shall, on demand, reimburse the Issuer for any amount so paid or for expenses or costs incurred in the performance of any such act by the Issuer pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Issuer at the per annum rate of ten percent (10%).

## ARTICLE VI

### DAMAGE, DESTRUCTION AND CONDEMNATION

Section 6.1 Damage or Condemnation. (a) Any insurance, condemnation or eminent domain proceeds received by the Institution shall either be: (i) applied to the cost of replacing, repairing, rebuilding, restoring or relocating the Project; (ii) paid to the Trustee for deposit to the Debt Service Fund and applied to the purchase or redemption of Outstanding Bonds; or (iii) used for any other purpose for which the Institution provides a Favorable Opinion of Counsel to the Issuer and the Trustee.

(b) All such repair, replacement, rebuilding, restoration or relocation of the Project (or such portion thereof) shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements and shall be promptly and fully paid for by the Institution in accordance with the terms of the applicable contracts.

(c) If any portion of the Project shall be damaged or destroyed (in whole or in part) at any time during the term of this Loan Agreement: (i) there shall be no abatement or reduction in the amounts payable by the Institution under this Loan Agreement (whether or not such portion

of the Project is replaced, repaired, rebuilt, restored or relocated); and (ii) the Issuer shall have no obligation to replace, repair, rebuild, restore or relocate the Project or any portion of the Project.

## ARTICLE VII

### INDEMNITY AND OTHER COVENANTS

#### Section 7.1 Indemnity By Institution.

(a) To the extent permitted by law, the Institution hereby releases and agrees to hold harmless, defend and indemnify the Issuer and its members, officers, officials, counsel, consultants, agents and employees from and against all, and agrees that the Issuer and its members, officers, officials, counsel, consultants, agents and employees shall not be liable for any, (i) liabilities, suits, actions, claims, demands, damages, losses, expenses and costs of every kind and nature resulting from any action taken in accordance with, or permitted by, the Loan Agreement, any other Issuer Documents, or arising therefrom or incurred by reason thereof or arising from or incurred by reason of the financing of the Project (but excluding any loss, damage or liability which may arise as a result of the willful misconduct, or intentional misrepresentation of the Issuer and its members, officers, officials, counsel, consultants, agents and employees), or (ii) loss or damage to property or any injury to or death of any or all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the presence on, in or about the premises of such Project of any person; including in each case, without limiting the generality of the foregoing, causes of action and attorneys' fees and other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing and including any loss, damage or liability which may arise as a result of the negligence (but excluding any loss, damage or liability which may arise as a result of the willful misconduct or intentional misrepresentation) of any party so indemnified by the Institution, and to deliver at the request of the Issuer any further instrument or instruments in form satisfactory to the Issuer as in the reasonable judgment of the Issuer may be necessary to effectuate more fully the provisions of this paragraph (a); provided, however, that (i) the indemnity provided in this sentence shall be effective only to the extent of any loss or liability that may be sustained by the Issuer in excess of net proceeds received from any insurance carried by the Institution with respect to such loss or liability and (ii) the Issuer and the Institution shall each provide waiver of rights of subrogation against the other in any insurance coverage obtained relating to the Project. The indemnity provided for such parties by this paragraph (a) shall be in addition to and not limited by any of the provisions of paragraph (b) of this Section or of Section 5.6 hereof; provided, however, that, to the extent the Issuer receives indemnification pursuant to such Sections, the Issuer shall not be entitled to additional indemnification pursuant to this paragraph (a).

(b) The Institution agrees, to the extent permitted by law, to indemnify, defend and hold harmless the Issuer, any member, officer, official, employee, counsel, consultant and agent of the Issuer against any and all losses, claims, damages, liabilities or expenses whatsoever, joint or several, insofar as such losses, claims, damages, liabilities or expenses (or actions in respect thereof) are caused by, arise out of or are based upon any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact in the Official Statement or other offering document (other than any information certified by Issuer or

the Purchasers), or any amendment thereof or supplement thereto, relating to the Bonds offered for sale thereby, or caused by, arising out of or based upon any omission or alleged omission from such an official statement, or any amendment thereof or supplement thereto, of any material fact in the Official Statement (other than any information certified by Issuer or the Purchasers) necessary in order to make the statements made therein in the light of the circumstances under which they were made not misleading.

(c) In case any action shall be brought in respect of which indemnity may be sought against the Institution pursuant to this Section, any person seeking indemnity hereunder shall promptly notify the Institution in writing, and the Institution shall promptly assume the defense thereof, including the employment of counsel and the payment of all expenses; provided, however, that the Institution shall have the right to negotiate and consent to settlement and that it shall be the duty of such person to cooperate with the Institution in asserting such defense and in reaching such settlement. Any such person shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such person unless the employment of such counsel has been specifically authorized by the Institution. The Institution shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Institution or if there be a final judgment for the plaintiff in any such action with or without the Institution's consent, the Institution agrees to indemnify and hold harmless such person from and against any loss or liability by reason of such settlement or judgment in accordance with this Section.

(d) In the event that the Issuer is notified in writing that the Bonds or any transaction pertaining thereto is the subject of any Internal Revenue Service or Securities and Exchange Commission investigation, suit or order, it shall promptly give notice thereof to the Institution. In the event that the Institution is notified in writing that the Bonds or any transaction pertaining thereto is the subject of any Internal Revenue Service or Securities and Exchange Commission investigation, suit or order, it shall promptly give notice thereof to the Issuer. Upon the occurrence of such an event, the Institution and the Issuer shall fully cooperate with one another and participate in all aspects of the conduct of the response thereto. The Institution shall be responsible for the payment of all costs incurred by the Issuer (including, but not limited to, attorneys and other professional fees) in connection with any such investigation.

Section 7.2 Right to Inspect Project. The Issuer and the Trustee and the duly authorized agents of either of them shall have the right at all reasonable times upon prior written notice to the Institution to inspect the Project.

Section 7.3 Reliance by Trustee. The Trustee shall be entitled to rely on any instructions given by the Institution pursuant to the terms hereof and the Institution shall indemnify the Trustee for the consequences of all actions taken pursuant to any such instructions provided that the Trustee, at the time the instructions were given, reasonably believed in good faith that such instructions were genuine and signed by an Authorized Officer of the Institution; provided however, that any instructions given by the Institution pursuant to this Section 7.3 shall relate only to this Loan Agreement and shall not constitute instructions to the Trustee to act or refrain from acting under the Resolution (which latter instructions may be given only by the parties authorized to do so under the Resolution in the manner provided therein).

Section 7.4 Limitation On Issuer Rights. As long as no Event of Default has occurred and is continuing, and no event has occurred that, with the giving of notice or lapse of time, or both, would constitute an Event of Default, the Issuer shall not, without the prior written direction of the Institution (i) change the dates on which an Option Bond is to be tendered for purchase or the period during which a Variable Interest Rate Bond shall bear interest at a particular rate, (ii) convert a Variable Interest Rate Bond to bear interest at a fixed rate to its maturity, (iii) elect or direct the redemption of Bonds pursuant to Section 4.02 of the Resolution, or (iv) amend or modify the dates on or Redemption Price at which a Variable Interest Rate Bond after its conversion to bear interest at a fixed rate to the maturity date thereof may be redeemed at the election or direction of the Issuer in accordance with Section 4.02 of the Resolution.

Section 7.5 Compliance with Resolution. The Institution hereby approves of and agrees to the provisions of the Resolution. The Institution agrees to do all things within its power in order to enable the Issuer to comply with all requirements and to fulfill all covenants of the Resolution which require the Institution to comply with requests or obligations so that the Issuer will not be in default in the performance of any covenant, condition, agreement or provision of the Resolution.

Section 7.6 Investment of Funds. The Institution hereby acknowledges that the Issuer shall direct the investment of moneys held under the Resolution as provided therein and that no representation or warranty has been made by the Issuer with respect to interest rates on, or the amount to be earned as a result of, any such investment. The Issuer shall regularly consult with the Institution regarding any investments of funds being held in the Construction Fund. Neither the Issuer nor the Trustee shall have any liability arising out of or in connection with the making of any investment authorized by the provisions of Article VI of the Resolution in the manner provided therein, for any depreciation in value of any investment or for any loss, direct or indirect, resulting from any such investment. The Issuer hereby agrees that it shall direct the making of investments as permitted by the Resolution as soon as practicable when moneys are legally available therefor.

Section 7.7 Payment to Institution. The Issuer shall, as soon as practicable after receipt of moneys paid to the Issuer by the Trustee pursuant to Section 12.01 of the Resolution (other than Section 12.01(e) thereof), pay such moneys to the Institution after deducting therefrom the amount, if any, then owed to the Issuer by the Institution pursuant hereto.

## **ARTICLE VIII**

### **TAX MATTERS**

Section 8.1 Representations of Institution. The Institution represents and warrants that (i) it is an organization described in Section 501(c)(3) of the Code and it is not a “private foundation” as defined in Section 509 of the Code; (ii) it has received a letter from the Internal Revenue Service to that effect; (iii) such letters has not been modified, limited or revoked; (iv) it is in compliance with all terms, conditions and limitations, if any, contained in such letter; (v) the facts and circumstances which form the basis of such letter continue substantially to exist as represented to the Internal Revenue Service; (vi) it is not aware of any action, pending or



threatened, that calls its status as represented in clause (i) into question; and (vii) it is exempt from federal income taxes under Section 501(a) of the Code.

Section 8.2 Covenants of Institution. The Institution covenants and agrees that it shall not perform any act or enter into any agreement or omit to take any action that would adversely affect its status as an organization described in Section 501(c)(3) of the Code and shall conduct its operations in a manner which conforms to the standards necessary to qualify the Institution as a charitable organization within the meaning of Section 501(c)(3) of the Code or any successor provisions of federal income tax law.

Section 8.3 Tax Exemption.

(a) The Issuer and the Institution covenant that they (i) will comply with the provisions of the Code required to preserve the exclusion from gross income of interest on the Tax-Exempt Bonds for Federal income tax purposes, and (ii) shall not take or omit to take any action if such action or omission would cause the interest in the Tax-Exempt Bonds to be includable in gross income under Section 103 of Code.

(b) Partly in furtherance of the foregoing, the Issuer and the Institution are entering into a Tax Certificate with respect to matters of federal tax law pertaining to the Tax-Exempt Bonds. The Tax Certificate, including the amendment provisions thereof, will be treated as incorporated by reference herein. The Issuer and the Institution each covenant that it will not take any action or fail to take any action which would cause any of its representations contained in the Tax Certificate to be untrue and shall comply with all its covenants contained in the Tax Certificate, unless the Issuer or the Institution, as applicable, provides the other party with a Favorable Opinion of Bond Counsel relating to the taking or failing to take such action or the failing to comply with its covenants under the Tax Certificate.

(c) Except with a Favorable Opinion of Bond Counsel addressed to the Issuer and the Trustee, neither the Institution nor any related party to the Institution (as defined in Treas. Reg. § 1.150-1(b)) shall purchase any of the Tax-Exempt Bonds in an amount related to the obligation represented by this Loan Agreement.

(d) [The Institution shall engage a rebate analyst to calculate rebate amount and shall retain in the Institution's possession, so long as required by the Code, copies of all documents, reports and computations made by the rebate analyst in connection with the calculation of earnings and the rebate of all or a portion thereof to the Department of the Treasury of the United States of America, which shall be subject at all reasonable times to the inspection of the Issuer and its agents and representatives, any of whom may make copies thereof. Upon written request therefor from the Issuer, the Institution shall as soon as practicable provide the Issuer with a copy of any such document, report or computation. The Institution shall also provide the Issuer with a copy of all documents or reports to be filed with the Department of Treasury of the United States of America relating to the rebate of earnings and absent manifest error, the Issuer agrees to

execute and to file the necessary forms with the Department of Treasury of the United States of America.]

[The Issuer shall calculate rebate amount and shall retain in the Issuer's possession, so long as required by the Code, copies of all documents, reports and computations made by the rebate analyst in connection with the calculation of earnings and the rebate of all or a portion thereof to the Department of the Treasury of the United States of America, which shall be subject at all reasonable times to the inspection of the Institution and its agents and representatives, any of whom may make copies thereof. Upon written request therefor from the Institution, the Issuer shall as soon as practicable provide the Institution with a copy of any such document, report or computation. The Issuer shall also provide the Institution with a copy of all documents or reports filed with the Department of Treasury of the United States of America relating to the rebate of earnings.]

(e) The provisions of this Section 8.3 shall survive the termination of the Loan Agreement or defeasance of the Bonds.

#### Section 8.4 Restricted Gifts.

(a) The Institution agrees that it shall deliver to the Issuer a certificate of an Authorized Officer of the Institution satisfactory to an Authorized Officer of the Issuer setting forth and representing (i) the amount of Restricted Gifts theretofore received in connection with the Project, (ii) that all of such amount has been or will be spent on the Project or will be otherwise applied in a manner for which the Institution provides a Favorable Opinion of Bond Counsel addressed to the Issuer and the Trustee; (iii) that such amount shall not be reimbursed from the proceeds of the sale of the Bonds, (iv) whether the Institution reasonably expects to receive while Bonds are Outstanding any additional Restricted Gifts, and (v) such other matters as may be required to determine whether issuance of the Bonds will comply with the requirements of the Code.

(b) If, prior to completion of construction of the Project, the Institution receives any Restricted Gift therefor, the Institution shall, to the extent not inconsistent with the terms of such Restricted Gift, to the extent such moneys will exceed the amount necessary to complete the Project, pay such amount to the Trustee for deposit to the Debt Service Fund (consistent with the requirements of the Tax Certificate, if any) or apply such amount in a manner for which Institution provides a Favorable Opinion of Bond Counsel addressed to the Issuer and the Trustee. If, after completion of the construction of the Project, the Institution receives any Restricted Gift, the Institution shall deliver a like amount to the Trustee for deposit to the Debt Service Fund (consistent with the requirements of the Tax Certificate, if any) or apply such amount in a manner for which the Institution provides the Issuer and the Trustee with a Favorable Opinion of Bond Counsel.

(c) The Institution represents, warrants and covenants that it has expended or will expend on the Project, from sources other than proceeds of the issuance of the Bonds, an amount equal to the amount of Restricted Gifts received and reasonably expected to be received by it in the future from pledges or otherwise and no such moneys will be pledged as collateral for the

Bonds or is otherwise expected to be used to pay the principal of or interest on the Bonds. For purposes of this paragraph, it is understood that the Institution may name all or part of the Project in honor of a donor or donors in recognition of pledges, contributions or services of the donor or donors that are unrelated to the Costs of the Project, and amounts pledged or contributed by the donor or donors for purposes unrelated to the Costs of the Project will not be considered to have been raised for purposes of constructing or equipping the Project.

## **ARTICLE IX**

### **EVENTS OF DEFAULT AND REMEDIES**

#### Section 9.1 Events of Default and Remedies.

(a) As used herein the term “Event of Default” shall mean:

(i) the Institution shall default in the timely payment of any amount payable pursuant to Section 4.2 hereof or the payment of any other amounts required to be delivered or paid by or on behalf of the Institution in accordance herewith and the Resolution, and such default continues for a period in excess of seven (7) days; or

(ii) the Institution defaults in the due and punctual performance of any other covenant herein contained (other than those designated in subparagraph (i) hereof) or breaches any representation made herein and such default continues for thirty (30) days after written notice requiring the same to be remedied shall have been given to the Institution by the Issuer or the Trustee; provided, however, that, if in the determination of the Issuer such default cannot be corrected within such thirty (30) day period but can be corrected by appropriate action, it shall not constitute an Event of Default if corrective action is instituted by the Institution within such period and is diligently pursued until the default is corrected and in any event, not to exceed ninety (90) days; or

(iii) as a result of any default in payment or performance required of the Institution hereunder or any other Event of Default hereunder, whether or not declared, continuing or cured, the Issuer shall be in default in the payment or performance of any of its obligations under the Resolution or an “event of default” (as defined in the Resolution) shall have been declared under the Resolution so long as such default or event of default shall remain uncured or the Trustee, a Provider or Holders of the Bonds shall be seeking the enforcement of any remedy under the Resolution as a result thereof; or

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

foregoing or (G) shall admit in writing its inability to pay its debts generally as they become due; or

(v) a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the Institution, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Institution, or any petition for any such relief shall be filed against the Institution and such petition shall not be dismissed or stayed within ninety (90) days; or

(vi) the charter or certificate of incorporation of the Institution or any license necessary to operate the Project shall be suspended or revoked; or

(vii) a petition to dissolve the Institution shall be filed by the Institution with the legislature of the State, the Attorney General of the State or other governmental authority having jurisdiction over the Institution; or

(viii) an order of dissolution of the Institution shall be made by the legislature of the State or other governmental authority having jurisdiction over the Institution, which order shall remain undismissed or unstayed for an aggregate of thirty (30) days; or

(ix) a petition shall be filed with a court having jurisdiction for an order directing or providing for the sale, disposition or distribution of all or substantially all of the property belonging to the Institution which petition shall remain undismissed or unstayed for an aggregate of ninety (90) days; or

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

(xi) a final judgment for the payment of money, at least one million dollars (\$1,000,000) of which is not covered by insurance or reserves set aside by the Institution, shall be rendered against the Institution and at any time after forty-five (45) days from the entry thereof, (A) such judgment shall not have been discharged or paid, or (B) the Institution shall not have taken and be diligently prosecuting an appeal therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, and shall not have caused, within forty-five (45) days, the execution of or levy under such judgment, order, decree or process or the enforcement thereof to have been stayed pending determination of such appeal.

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

(i) declare all sums payable by the Institution hereunder immediately due and payable;

(ii) withhold any and all payments, advances and reimbursements from the proceeds of Bonds or the Construction Fund or otherwise to which the Institution may otherwise be entitled hereunder and apply any such proceeds or moneys for such purposes as are authorized by the Resolution;

(iii) maintain an action against the Institution hereunder to recover any sums payable by the Institution or to require its compliance with the terms hereof; and

(iv) take any action necessary to enable the Issuer to realize on its Liens hereunder or by law, and any other action or proceeding permitted by the terms hereof or by law.

(c) All rights and remedies herein given or granted to the Issuer are cumulative, non-exclusive and in addition to any and all rights and remedies that the Issuer may have or may be given by reason of any law, statute, ordinance or in equity or otherwise, and no failure to exercise or delay in exercising any remedy shall effect a waiver of the Issuer's right to exercise such remedy thereafter, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(d) At any time before the entry of a final judgment or decree in any suit, action or proceeding instituted on account of any Event of Default or before the completion of the enforcement of any other remedies hereunder, the Issuer may annul any declaration made or action taken pursuant to paragraph (b) of this Section and its consequences if such Events of Default shall be cured. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereto.

(e) Notwithstanding any assignment of this Agreement to the Trustee, the Issuer reserves the right to direct the Trustee to take any actions authorized by clauses (ii), (iii) and (iv) of subsection (b) hereof as shall be necessary to enforce the Issuer's Unassigned Rights.

Section 9.2 Agreement to Pay Attorneys' Fees and Other Expenses. In the event the Institution should default under any of the provisions of this Loan Agreement and the Issuer or the Trustee should employ attorneys or other professionals or incur other out-of-pocket expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Institution herein contained (or in the case of the Trustee under the Resolution), the Institution shall, on demand therefor, pay the reasonable fees of such attorneys or other professionals and such other reasonable out-of-pocket expenses so incurred to the Issuer or the Trustee.

Section 9.3 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE X

### TERMINATION OF LOAN AGREEMENT

Section 10.1 Termination. The Loan Agreement shall remain in full force and effect until no Bonds are Outstanding and until all other payments, expenses and fees payable hereunder by the Institution shall have been made or provision made for the payment thereof; provided, however, that Section 7.8 and 9.2 hereof and the liabilities and the obligations of the Institution to provide reimbursement for or indemnification against expenses, costs or liabilities made or incurred pursuant to Sections 4.2(a)(vii), 4.2(b), 4.2(c), 4.2(h), 5.6, and 7.1 hereof shall nevertheless survive any such termination. Upon such termination, an Authorized Officer of the Issuer shall deliver such documents as may be reasonably requested by the Institution to evidence such termination and the discharge of its duties hereunder, and the release or surrender of any security interests granted by the Institution to the Issuer pursuant hereto.

Section 10.2 Payments To The Institution. The Issuer shall, as soon as practicable after receipt of moneys paid to the Issuer by the Trustee pursuant to Section 12.01 of the Resolution (other than Section 12.01(e) thereof), pay such moneys to the Institution after deducting therefrom the amount, if any, then owed to the Issuer by the Institution pursuant hereto.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1 Notices. (a) All notices, certificates and other communications hereunder shall be in writing and shall be addressed as follows or to such other address as any party may specify in writing to the other:

To the Issuer:

Dormitory Authority of the  
State of New York  
515 Broadway  
Albany, New York 12207  
Attention: Executive Director  
With a copy to General Counsel

To the Institution:

St. John's University, New York  
8000 Utopia Parkway  
Jamaica, New York 11439  
Attention: Vice President for Finance

With a copy to: General Counsel and Secretary at:

St. John's University, New York

8000 Utopia Parkway  
Jamaica, New York 11439  
Attention: General Counsel

To the Trustee:

The Bank of New York Mellon  
101 Barclay Street, Floor 7W  
New York, New York 10286  
Attention: Christine Conway, Vice President  
Telephone: (212) 815-2745

All notices or other communications hereunder shall be sufficiently given if given by any of the following means: personal delivery, deposit in the United States mail using certified mail, postage prepaid, return receipt requested, private courier or overnight delivery service which provides evidence of delivery, postage or other charges prepaid, or by telecopy or other electronic means which produces evidence of transmission. A duplicate copy of each notice, certificate and other written communication given hereunder by either the Issuer or the Institution to the other shall also be given to the Trustee, and a duplicate copy of each notice, certificate and any other written communication given hereunder by either the Trustee or the Issuer to the other shall also be given to the Institution, at the addresses herein set forth or provided for.

(b) Any notice, Favorable Opinion of Bond Counsel or other document delivered to the Issuer as provided in this Agreement neither requires nor implies that the Issuer is under any obligation to take any action with respect thereto.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 11.3 Severability. In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.4 Amendments, Changes and Modifications. The Loan Agreement may be amended only in accordance with Section 7.11 of the Resolution and each amendment shall be made by an instrument in writing signed by an Authorized Officer of the Institution and the Issuer, an executed counterpart of which shall be filed with the Trustee.

Section 11.5 Execution of Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.6 Applicable Law; Venue. This Loan Agreement shall be governed by and construed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles. Any action arising hereunder shall be filed and maintained in a state or federal court of competent jurisdiction located in the State in either Albany County or New York County.

Section 11.7 Further Assurances. The Institution, at any and all times, shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights and moneys, securities, funds and security interests hereby or by the Resolution pledged, assigned or granted, or intended so to be, or which the Institution may hereafter become bound to pledge, assign or grant.

Section 11.8 Disclaimer Of Personal Liability. No recourse shall be had against or liability incurred by any member, director, trustee, officer, official, counsel, consultant, employee or agent of the Issuer or of the Institution or any person executing the Loan Agreement for any covenants and provisions hereof or for any claims based thereon.

Section 11.9 No Recourse; Special Obligation. (a) The obligations and agreements of the Issuer contained herein and in any other instrument or document executed by the Issuer in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Issuer, and not of any member, officer, director, agent or employee of the Issuer in his or her individual capacity, and the members, officers, directors, agents and employees of the Issuer shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Issuer contained herein and therein shall not constitute or give rise to an obligation of the State or any other public corporation other than the Issuer, and no public corporation other than the Issuer shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Issuer, but rather shall constitute limited obligations of the Issuer payable solely from the revenues of the Issuer derived and to be derived from the Loan Agreement (except for revenues derived by the Issuer with respect to the Unassigned Rights). The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Loan Agreement, the Bonds or the Resolution, except only to the extent amounts are received for the payment thereof from the Institution under this Loan Agreement (except for revenues derived by the Issuer with respect to the Unassigned Rights), and except as may result solely from the Issuer's own willful misconduct.

(c) No order or decree of specific performance with respect to any of the obligations of the Issuer hereunder shall be sought or enforced against the Issuer unless (1) the party seeking such order or decree shall first have requested the Issuer in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Issuer shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Issuer an amount or undertaking sufficient to cover such reasonable fees and



expenses, and (3) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Issuer and its members, officers, directors, agents and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Issuer, furnish to the Issuer satisfactory security to protect the Issuer and its members, officers, directors, agents and employees against all liability expected to be incurred as a result of compliance with such request.

Section 11.10 Actions by the Issuer. Any time the Issuer is permitted or directed to act pursuant to this Loan Agreement, such action may be taken by an Authorized Officer of the Issuer.

Section 11.11 Table of Contents and Section Headings not Controlling. The Table of Contents and the headings of the several Sections in this Loan Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Loan Agreement.

Section 11.12 Effective Date. This Loan Agreement shall be delivered and effective on the date on which the Bonds were first issued and delivered to the purchasers thereof.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the Issuer and the Institution have caused this Loan Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**DORMITORY AUTHORITY OF STATE OF  
NEW YORK**

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

Name:

Title:

Signature Page 1 of 2  
Loan Agreement

**ST. JOHN'S UNIVERSITY**

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

Name:

Title:

Signature Page 2 of 2  
Loan Agreement

## SCHEDULE A

### PROJECT DESCRIPTION

The Project consists of:

(a) the refunding of a portion of the \$\_\_\_\_\_ outstanding principal amount of the Dormitory Authority of the State of New York St. John's University Revenue Bonds, Series 2008B (Letter of Credit Secured) (the "Series 2008B Bonds"), the proceeds of which were used to finance:

(i) the construction and equipping of residence halls located at the Queens Campus of the University;

(ii) the acquisition and installation of various information technology equipment and systems for the Queens Campus and Other Campuses;

(iii) the renovation of existing facilities and acquisition of equipment and other general campus improvements at the Queens Campus and Other Campuses; and

(iv) construction of a parking facility at the Queens Campus;

which was initially financed by the St. John's University Insured Revenue Bonds, Series 2001B;

(i) the construction and equipping of residence halls located at the Queens Campus of the University;

(ii) the construction and equipping of a new 40,000 square foot athletic field house on the Queens Campus; (ii) the renovation and equipping of St. Albert's Hall on the Queens Campus to include new science laboratories and faculty and administrative offices to support the University's science master plan; and

(iii) the acquisition and installation of information technology equipment and systems, the renovation and equipping of other existing facilities and the construction and equipping of new facilities throughout the University's various campuses;

which was initially financed by the St. John's University Insured Revenue Bonds, Series 2005B;

(i) the refunding of a portion of the Authority's Outstanding St. John's University Insured Revenue Bonds, Series 1996;

which was initially financed by the St. John's University Insured Revenue Bonds, Series 2005C; and

(ii) the construction and equipping of sixteen new, three-story townhouses with approximately 310 beds for students and current and former faculty, staff and administrative personnel;

(iii) the renovation and equipping of St. Vincent Hall to accommodate approximately 180 student beds and administrative offices;

(iv) the construction and equipping of a new academic building to accommodate new classroom space, faculty offices and meeting rooms;

(v) the construction of a student center to accommodate a café, lounge, student life office, and meeting and conference rooms;

(vi) the construction of approximately 226 new parking spaces on the roof deck of an existing parking garage;

(vii) the construction of approximately 110 new parking spaces at the existing ROTC site;

(viii) site improvements to the proposed facilities as well as realignment of existing internal roadways or construction of new internal access roads to accommodate the new construction; and

(ix) the construction of other general improvements and the acquisition and installation of equipment and systems throughout the Queens campus and/or one or more of the other campuses;

which was initial financed by the St. John's University Insured Revenue Bonds, Series 2005C.

(b) to pay, as a cost associated with the refunding of the Series 2008B Bonds, any amounts payable by the Authority in connection with the termination of any interest rate exchange agreement related to or associated with the Series 2008B Bonds;

(c) [new money project description]; and

(d) [the refunding of a portion of the \$\_\_\_\_\_ outstanding principal amount of the Dormitory Authority of the State of New York St. John's University Revenue Bonds, Series \_\_\_\_\_, the proceeds of which were used to finance: [insert description]

**SCHEDULE B  
ANNUAL ADMINISTRATIVE FEE**

**SCHEDULE C  
ISSUER FEE**

The Issuer Administrative Fee is the lesser of \$100,000 or the sum of the following:

- (1) For the first three (3) full Bond Years, 0.xx% (xxx basis points) of the total principal amount of the new money fixed rate portion (\$XX,000,000 at initial issuance) of the Bonds Outstanding during which the Annual Administrative Fee is payable and for the remaining Bond Years, 0.xx% (xx basis points) of the total principal amount of the fixed rate principal amount of the Bonds Outstanding during which the Annual Administrative Fee is payable. The lower fee bracket will apply if the borrower is reimbursed for all new money proceeds at the closing.
- (2) For the first three (3) full Bond Years, 0.xx% (xxx basis points) of the total principal amount of the new money variable rate portion (\$XX,000,000 at initial issuance) of the Bonds Outstanding during which the Annual Administrative Fee is payable and for the remaining Bond Years, 0.xx% (xx basis points) of the total principal amount of the variable rate principal amount of the Bonds Outstanding during which the Annual Administrative Fee is payable.
- (3) 0.xx% (xx basis points) of the total principal amount of the fixed rate refunding portion \$XX,000,000 at initial issuance) of the Bonds Outstanding during which the Annual Administrative Fee is payable.
- (4) 0.xx% (xx basis points) of the total principal amount of the variable rate refunding portion (\$XX,000,000 at initial issuance) of the Bonds Outstanding during which the Annual Administrative Fee is payable.
- (5) For purposes of (3) and (4) above, variable rates that are not reset for periods of five or more years, the fixed rate fees described in (3) above will apply.

Provided, however, that the Institution shall in no event be obligated to pay more in one calendar year than the then-applicable maximum Annual Administrative Fee, if any, as set forth in Issuer's fee structure, as adopted by Issuer's Board.



## **SCHEDULE D**

### **LOAN REPAYMENTS**

“Loan Repayment Date” means [the \_\_\_ day of each month, commencing on [insert date first payment due] [the date occurring [5] Business Days immediately preceding each date on which the payment of interest is due on the Bonds]

[Loan Repayments due on each Loan Repayment Date shall be in an amount equal to a proportionate share of the interest on the Outstanding Bonds coming due on the next succeeding interest payment date and a proportionate amount of the principal and Sinking Fund Installments, if any, payable on the Outstanding Bonds on the next succeeding principal payment date [as more particularly set forth in the debt service schedule included as part of this Schedule D, subject to adjustment from time to time as a result of events, including but not limited to, prepayment(s) and interest rate adjustment(s), if applicable].]

[Loan Repayments due on each Loan Repayment Date shall be in an amount equal to the total amount of principal, Sinking Fund Installments, if any, and interest payable on the Outstanding Bonds on the next interest payment date [as more particularly set forth in the debt service schedule included as part of this Schedule D, subject to adjustment from time to time as a result of events, including but not limited to, prepayment(s) and interest rate adjustment(s), if applicable].]



**SCHEDULE E**

**INSTITUTION DOCUMENTS**

Loan Agreement

Continuing Disclosure Agreement

**SCHEDULE F**  
**ISSUER DOCUMENTS**

Resolution

Loan Agreement

Assignment

Bond Purchase Agreement

Continuing Disclosure Agreement

## EXHIBIT A

### REQUEST FOR DISBURSEMENT OF PROCEEDS OF THE ST. JOHN'S UNIVERSITY REVENUE BONDS, SERIES 2020

This certificate is delivered by St. John's University (the "Institution") pursuant to the Loan Agreement dated as of [June \_\_, 2020] (the "Loan Agreement") by and between the Dormitory Authority of the State of New York (the "Authority") and the Institution in connection with the disbursement of proceeds of the above-referenced Bonds (the "Bonds") issued under St. John's University Revenue Bond Resolution, adopted June 20, 2012, as amended or supplemented and the Series 2020A Resolution Authorizing Up To \$\_\_\_\_\_ St. John's University Revenue Bonds, and the Series 2020B Resolution Authorizing Up To \$\_\_\_\_\_ St. John's University Revenue Bonds, each adopted May 6, 2020 (collectively, the "Resolution"). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement or the Resolution, as applicable.

- A. The undersigned is an Authorized Officer of the Institution.
  - B. Expenses or monies for which payment is requisitioned in the amount of \$\_\_\_\_\_ have been incurred or expended for capital items which constitute Costs of the Project. The Project has not been modified except as permitted by the Loan Agreement.
  - C. Expenses or monies for which payment is requisitioned in the amount of \$\_\_\_\_\_, corresponding to the enclosed list of invoices and detail provided with respect thereto, have been incurred or expended for items which constitute Costs of Issuance, as that term is defined in the Resolution,
  - D. No amount for which payment is being requisitioned hereby has been the basis of any prior disbursement from the Construction Fund established in connection with the Bonds.
  - E. The Institution has complied with all provisions of the Loan Agreement and the tax certificate executed by the Institution in connection with the issuance of the Bonds, including, but not limited to those related to the use of the Project, prohibitions against use for sectarian religious instruction or religious worship and certain non tax-exempt purposes, and timing of the expenditures for which reimbursement is being requested.
  - F. The Institution will retain all original documentation related to expenditures for items which constitute Costs of the Project for at least three (3) years (or such longer requirements as may be applicable for the Institution) after the last of the Bonds or any related refunding bonds are retired, for inspection at any time by the Authority or its auditors.
- The payment should be transmitted electronically using the following banking instructions:

Bank Name:  
Bank ABA #:  
Bank Account #:  
Bank Account Name:

- The reimbursement should be sent via check to:  
Address:

The undersigned attests to the accuracy of the representations made hereunder and acknowledges the Authority will be relying upon them.

*Facsimile signature shall constitute original signature for purposes of this reimbursement.*

\_\_\_\_\_  
(Signature of Authorized Officer)

**EXHIBIT B**

**ANNUAL CERTIFICATE OF COMPLIANCE  
For the Fiscal Year Ending in {Insert Year}**

**Re: St. John’s University  
St. John’s University Revenue Bonds, Series 2020A  
St. John’s University Revenue Bonds, Series 2020B (Federally Taxable) (collectively,  
the “Bonds”)**

The undersigned hereby certifies as follows:

I am an Authorized Officer of St. John’s University (hereinafter referred to as the “Institution”), who has knowledge of, or is in a position to obtain information in regards to, the terms, conditions and covenants contained in the documents associated with the bonds to which the Institution is a party (hereinafter referred to as the “Bond Documents”). The Bond Documents may include, but are not limited to, any or all of the following:

Loan Agreement(s)	Mortgage(s)
Reimbursement Agreement(s)	Tax Certificate(s)
Master Trust Indenture and Supplemental Indentures	
General Resolution, Series Resolution and Bond Series Certificate	
Bond Purchase and Continuing Covenants Agreement(s)	
Continuing Disclosure Agreement(s)	

I understand that the Institution is responsible for ensuring compliance with its obligations under the Bond Documents. By virtue of my position at the Institution, I would be aware, or would expect to be made aware, of any breach, or of any action or omission that could constitute, with the passage of time, a breach by the Institution under any of the Bond Documents.

To the best of my knowledge, having made reasonable inquiry, there is no outstanding breach of any of the terms, conditions or covenants contained in the Bond Documents, and the Institution is fully in compliance with all of its obligations under the Bond Documents. To the extent that the Institution believes that there has been a breach or the Institution is not in compliance, the Institution has contacted its counsel, conducted reasonable diligence, and/or obtained DASNY’s consent, as applicable, to confirm compliance or to resolve noncompliance.

I understand that this Certificate will be relied upon by DASNY and bond counsel, in complying with DASNY’s post-issuance tax compliance policies and procedures.

St. John’s University

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

Name:  
Title:

**EXHIBIT C**

**PROJECT COMPLETION CERTIFICATE**  
**Relating to**  
**St. John's University Revenue Bonds, Series 2020A**  
**St. John's University Revenue Bonds, Series 2020B (Federally Taxable)**  
**(collectively, the "Bonds")**

The undersigned hereby certifies, pursuant to Section 3.3(a) of the Loan Agreement dated as of [June \_\_, 2020] (the "Loan Agreement") between the St. John's University (the "Institution") and the Dormitory Authority of the State of New York (the "Authority") that construction of the Project has been substantially completed and there are no remaining Costs of the Project to be paid from proceeds of the Bonds. The Institution further acknowledges and agrees that any proceeds of the Bonds remaining in the Construction Fund are subject to application as provided in the Resolution. Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Loan Agreement.

St. John's University

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

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

TO

THE BANK OF NEW YORK MELLON,  
AS TRUSTEE

ASSIGNMENT

WITH

ACKNOWLEDGMENT

THEREOF BY

ST. JOHN'S UNIVERSITY, NEW YORK

DATED AS OF JUNE \_\_, 2020

RELATING TO THE DORMITORY AUTHORITY OF THE  
STATE OF NEW YORK ST. JOHN'S UNIVERSITY  
REVENUE BONDS, SERIES 2020A AND SERIES 2020B  
(FEDERALLY TAXABLE) ISSUED BY THE DORMITORY  
AUTHORITY OF THE STATE OF NEW YORK IN THE  
AGGREGATE PRINCIPAL AMOUNT OF \$\_\_\_\_\_.



## ASSIGNMENT

THIS ASSIGNMENT dated as of June \_\_, 2020 (the "Assignment") is from the DORMITORY AUTHORITY OF THE STATE OF NEW YORK, having its principal place of business at 515 Broadway, Albany, New York 12207, a body corporate and politic of the State of New York, constituting a public benefit corporation (the "Issuer") to THE BANK OF NEW YORK MELLON, a national banking association duly organized and existing under the laws of the United States, having an office for the transaction of business located at 240 Greenwich St., 7th Fl West, New York, New York 10286-0001 (the "Trustee") for the Issuer's St. John's University Revenue Bonds, Series 2020A in the aggregate principal amount of \$[ ] (the "**Series 2020A Bonds**") and St. John's University Revenue Bonds, Series 2020B (Federally Taxable) in the aggregate principal amount of \$[ ] (the "**Series 2020B Bonds**", and together with the Series 2020A Bonds, the "**Bonds**") issued pursuant to the terms of the St. John's University Revenue Bond Resolution, adopted on June 20, 2012 (the "**General Resolution**") and the series resolutions adopted thereunder on June \_\_, 2020 (the "**Series 2020 Resolutions**" and together with the General Resolution, the "**Resolution**"). The proceeds of the Bonds were loaned to St. John's University, New York (the "Institution") by the Issuer pursuant to a loan agreement, dated as June \_\_, 2020 (the "Loan Agreement"), by and between the Issuer and the Institution.

For value received, the receipt of which is hereby acknowledged, the Issuer hereby assigns, transfers and sets over to the Trustee all of the Issuer's right, title and interest in any and all moneys due or to become due to the Issuer and any and all other rights and remedies of the Issuer (except for the "Unassigned Rights," as defined in the Loan Agreement, and moneys payable to the Issuer pursuant to the Unassigned Rights) under or arising out of the Loan Agreement, provided, however, that the assignment made hereby shall not permit the amendment of the Loan Agreement without the prior written consent of the Issuer. Issuer further reserves unto itself the right to direct the Trustee to take any actions authorized by clauses (ii), (iii), and (iv) of subsection 9.1(b) of the Loan Agreement as shall be necessary to enforce the Issuer's Unassigned Rights. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

The Trustee shall have no obligation, duty or liability under the Loan Agreement, nor shall the Trustee be required or obligated in any manner to fulfill or perform any obligation, covenant, term or condition of the Issuer thereunder or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times except as provided in the Resolution. The Issuer shall at all times remain liable to observe and perform all of its covenants and obligations under the Loan Agreement in accordance with the terms and limitations thereof.

The Issuer hereby irrevocably constitutes and appoints the Trustee its true and lawful attorney, with power of substitution for the Issuer and in the name of the Issuer or in the name of the Trustee or otherwise, for the use and benefit of the holders of the Bonds, to ask, demand, require, receive, collect, compromise, compound and give discharges and releases of all claims for any and all moneys due or to become due under or arising out of the Loan Agreement (except

for claims relating to moneys due or to become due with respect to the Unassigned Rights) and to endorse any checks and other instruments or orders in connection therewith, and, if any Event of Default specified in the Loan Agreement or any other Institution Document shall occur, (A) to settle, compromise, compound and adjust any such claims (except for claims arising pursuant to the Unassigned Rights), (B) to exercise and enforce any and all claims, rights, powers and remedies of the Issuer under or arising out of the Loan Agreement (except for rights of the Issuer relating to, and moneys payable pursuant to, the Unassigned Rights), (C) to file, commence and prosecute any suits, actions and proceedings at law or in equity in any court of competent jurisdiction to collect any such sums assigned to the Trustee hereunder and to enforce any rights in respect thereto and all other claims, rights, powers and remedies of the Issuer under or arising out of the Loan Agreement (except for rights of the Issuer relating to, and moneys payable pursuant to, the Unassigned Rights), and (D) generally to sell, assign, transfer, pledge, make any agreement with respect to and otherwise deal with any of such claims, rights, powers and remedies as fully and completely as though the Trustee were the absolute owner thereof for all purposes, and at such times and in such manner as may seem to the Trustee to be necessary or advisable in its absolute discretion.

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

This Assignment is made without any representation or warranty whatsoever by the Issuer and upon the express condition, understanding and agreement that this Assignment is made without recourse to the Assignor, for any cause whatsoever, express or implied, by the Assignee, or by any successor to the interest of the Assignee in the Loan Agreement.

All moneys due and to become due to the Trustee under or pursuant to the Loan Agreement shall be paid directly to the Trustee at 240 Greenwich St., 7th Floor West, New York, New York 10286-0001, or at such other address as they Trustee may designate to the Institution and the Issuer in writing from time to time.

This Assignment shall be binding upon the Issuer and its successors and assigns and shall inure to the benefit of the Trustee and its successors and assigns as trustee under the Resolution.

[signature page follows]

IN WITNESS WHEREOF, the Issuer has duly executed this Assignment as of the day and year first above written.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

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

*[Signature page to Assignment]*

[Issuer Acknowledgement, if applicable]

STATE OF NEW YORK            )  
  )        SS.:  
COUNTY OF ALBANY         )

On the \_\_ day of June, in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared [        ], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

*[Signature Page to Assignment]*

ACCEPTANCE

THE BANK OF NEW YORK MELLON, as trustee (the “Trustee”) hereby accepts the foregoing assignment dated as of June \_\_, 2020 (the “Assignment”).

IN WITNESS WHEREOF, the Trustee has duly executed this Acceptance as of June \_\_, 2020.

THE BANK OF NEW YORK MELLON,  
as Trustee

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

*[Signature Page to Assignment]*

[Trustee Acknowledgement, if applicable]

STATE OF NEW YORK                    )  
  )        SS.:  
COUNTY OF [            ]            )

On the \_\_\_ day of June in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared [            ] personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

*[Signature Page to Assignment]*

ACKNOWLEDGMENT BY INSTITUTION OF ASSIGNMENT OF  
RIGHTS UNDER LOAN AGREEMENT

ST. JOHN'S UNIVERSITY (the "Institution") hereby acknowledges receipt of notice of the assignment by the DORMITORY AUTHORITY OF THE STATE OF NEW YORK. (the "Issuer") to THE BANK OF NEW YORK MELLON, as trustee (the "Trustee") of certain of the Issuer's rights and remedies under a loan agreement dated as of June \_\_, 2020 (the "Loan Agreement") by and between the Issuer and the Institution, which assignment is dated as of June \_\_, 2020 (the "Assignment") from the Issuer to the Trustee and which Assignment includes the right to collect and receive all amounts payable by the Institution under the Loan Agreement (except for rights of the Issuer and moneys payable pursuant to the "Unassigned Rights", as defined in the Loan Agreement). The Institution, intending to be legally bound, hereby agrees with the Trustee (A) to pay directly to the Trustee all sums due and to become due to the Issuer from the Institution under the Loan Agreement (except for moneys payable pursuant to the Unassigned Rights), without set-off, counterclaim or deduction for any reason whatsoever, except as otherwise provided in the Loan Agreement, (B) to perform for the benefit of the Trustee all of the duties and undertakings of the Institution under the Loan Agreement (except for duties and obligations relating to the Unassigned Rights), and (C) that the Trustee shall not be obligated by reason of the Assignment or otherwise to perform or be responsible for the performance of any of the duties, undertakings or obligations of the Issuer under the Loan Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Institution has caused this Acknowledgment to be duly executed as of June \_\_, 2020.

ST. JOHN'S UNIVERSITY

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

Name:

Title:

*[Signature Page to Acknowledgement by Institution of Assignment of  
Rights under the Loan Agreement]*



[Institution acknowledgement, if applicable]

STATE OF NEW YORK                     )  
   )       SS.:  
COUNTY OF [     ]                     )

On the \_\_\_ day of June, in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared [       ], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

*[Signature Page to Acknowledgement by Institution of Assignment of  
Rights under the Loan Agreement]*