
LEASE AND AGREEMENT

between

DORMITORY AUTHORITY OF THE
STATE OF NEW YORK,

as Lessor

and

Greater Southern Tier Board of Education of the Board of Cooperative Educational
Services, Sole Supervisory District, Schuyler, Steuben, Chemung, Tioga, and Allegany
Counties, New York

as Lessee

Dated as of June __, 2023

Record and Return to:
Michael Logan, Esq.,
Dormitory Authority of the
State of New York
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Albany, New York 12207
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LEASE AND AGREEMENT

THIS LEASE AND AGREEMENT, dated as of June __, 2023, is by and between the Dormitory Authority of the State of New York, a public benefit corporation of the State of New York (the “Authority”), and the Greater Southern Tier Board of Education of the Board of Cooperative Educational Services, Sole Supervisory District, Schuyler, Steuben, Chemung, Tioga, and Allegany Counties, New York, a corporation created pursuant to Section 1950(6) of the Education Law (the “BOCES”).

WITNESSETH

WHEREAS, the BOCES is the owner of the Leased Property (defined herein); and

WHEREAS, the BOCES is authorized by the Act (defined herein) when authorized by the voters of the BOCES, to convey to the Authority real property, leasehold interests in real property or rights of easement, the title of which is vested in the BOCES, in relation to the Project (as defined herein) to be erected pursuant to the Act; and

WHEREAS, the Authority is authorized by the Act (i) to acquire, in the name of the Authority, on terms necessary or convenient by purchase, condemnation, gift or devise, real property, leasehold interest in real property or rights of easement in relation to the Project erected pursuant to the Act and (ii) to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip or otherwise provide the Project; and

WHEREAS, the Authority is also authorized by the Act to lease any such Project to the BOCES; and

WHEREAS, the Authority has determined pursuant to the Act to lease the Leased Property from the BOCES and to provide for the financing or refinancing, as applicable, of the cost of the design, acquisition, construction, reconstruction, rehabilitation, improvement, furnishing and equipping of the BOCES school facilities comprising or to comprise the Leased Property by leasing the same to the BOCES pursuant to the terms and conditions of this Agreement (defined herein); and

WHEREAS, pursuant to the Resolution (defined herein), the Authority has authorized the issuance of bonds; and

WHEREAS, the Authority will, pursuant to the Act, provide for the financing or refinancing, as applicable, of the cost of the design, acquisition, construction, reconstruction, rehabilitation, equipping, furnishing and improvement of the Project from the proceeds of the bonds issued pursuant to the Resolution, which bonds shall be payable from State (defined herein) funds payable to the BOCES and assigned by BOCES to the Authority hereunder and rentals to be received from the BOCES pursuant to this Agreement; and

WHEREAS, contemporaneously with this Agreement and the issuance of the Bonds (defined herein), the Authority and the BOCES will enter into an Agreement of Lease, dated as of June __, 2023.

NOW, THEREFORE, the parties hereto mutually agree as follows:

ARTICLE I

DEFINITIONS AND GENERAL PROVISIONS

Section 1.01 Definitions. (a) All terms which are defined in the Resolution which are not defined herein shall have the same meanings, respectively, herein as such terms are given in the Resolution.

(b) In addition, as used herein, unless a different meaning clearly appears from the context:

“Administrative Expenses” means expenses incurred by the Authority in carrying out its duties hereunder and under the Resolution, the BOCES Lease, and any other document, instrument, agreement, law, rule or regulation related to any Leased Property including, without limitation, accounting, administrative, financial advisory and legal expenses incurred in connection with the financing or refinancing and construction of the Project, the fees and expenses of the Trustee, any Paying Agents or any other fiduciaries acting under the Resolution, the fees and expenses of any Facility Provider, the costs and expenses incurred in connection with the determination of the rate at which a Variable Interest Rate Bond is to bear interest and the remarketing of such Bond, the cost of providing insurance with respect to the Leased Property and the Project, judgments or claims payable by the Authority for the payment of which the Authority has been indemnified or held harmless pursuant to Section 4.03 hereof, but only to the extent that moneys in the Construction Fund are not available therefor, and expenditures to compel full and punctual performance of the BOCES Lease, this Agreement, or any document, instrument or agreement related thereto in accordance with its terms.

“Agreement” means this Lease and Agreement, dated as of June __, 2023, by and between the Authority and the BOCES, as from time to time amended or supplemented in accordance with the terms and provisions hereof and of the Resolution.

“Annual Administrative Fee” when used with respect to any Bond Year, means a share of the general overhead and administrative expenditures of the Authority reasonably allocated to the Project for such Bond Year by the Authority in accordance with a formula approved by the Comptroller of the State of New York.

“Authority Fee” means the fee payable to the Authority in the amount of \$[100,000] as compensation for all of the Authority’s internal costs and overhead expenses attributable to an issuance of a Series of Bonds, including the Series 2023 Bonds, excluding Administrative Expenses and the Annual Administrative Fee.

“Basic Rent” means that portion of the Rentals payable pursuant to Section 4.01 (a) hereof.

“BOCES” means the Greater Southern Tier Board of Education of the Board of Cooperative Educational Services, Sole Supervisory District, Schuyler, Steuben, Chemung, Tioga, and Allegany Counties, New York, a body corporate created pursuant to Section 1950(6) of the State Education Law, duly organized and validly existing under the Constitution and the laws of the State of New York.

“BOCES Lease” means that certain Agreement of Lease, dated as of June __ 2023, by and between the BOCES, as lessor, and the Authority, as lessee, as it may be from time to time amended, modified and supplemented.

“Bonds” means any bonds issued under the Resolution, a portion of the proceeds of which shall finance or refinance the Project.

“Contract Documents” means any general contract or agreement for the construction of the Project, notice to bidders, information for bidders, form of bid, general conditions, supplemental general conditions, general requirements, supplemental general requirements, bonds, plans and specifications, addenda, change orders, and any other documents entered into or prepared by or on behalf of the BOCES relating to the construction of the Project, and any amendments to the foregoing.

“Environmental Laws” means the federal, state, county and local statutes, ordinances and regulations, as may be independently applicable or applied to all or any part of the Leased Property by any governmental authority or any permit or approval applicable to all or any part of the Leased Property, pertaining to the protection of human health and the environment, including without limitation, those pertaining to the discharge of pollutants to surface and ground water, emissions to the air and contamination of soil or groundwater by Hazardous Substances.

“Hazardous Substance” means a chemical, waste or material containing or classified as a “hazardous substance,” “hazardous waste” or “toxic substance” as defined in or referred to in any Environmental Law.

“Lease Term” means the duration of the leasehold estate or estates created hereby as specified in Section 2.02.

“Leased Property” means the real property described in Exhibit A hereto, the buildings and improvements situated thereon or from time to time erected thereon and the Personal Property now or hereafter situated on or used in connection therewith (but only to the extent such Personal Property is financed with the proceeds of Bonds) constituting “board of cooperative educational services school facilities” as defined in the Act.

“Permitted Encumbrances” means and includes:

- (i) the lien of taxes and assessments and water and sewer rents and charges which are not yet due and payable;
- (ii) rights reserved to or vested in any municipality or governmental or other public authority to control or regulate or use in any manner any portion of the Leased Property which do not materially impair the use of the Leased Property for the purposes for which it is or may reasonably be expected to be held;
- (iii) minor defects and irregularities in the title to the Leased Property which do not in the aggregate materially impair the use of the Leased Property for the purposes for which it is or may reasonably be expected to be held;
- (iv) easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of such property for the purposes for which it is or may reasonably be expected to be held;
- (v) present or future valid zoning laws and ordinances;

(vi) any purchase money security interests in any Personal Property, other than with respect to Personal Property financed with the proceeds of the Bonds and any replacements thereof;

(vii) all other matters of record and state of title at the commencement date of this Agreement, rights of parties in possession and any state of facts which an accurate survey or physical inspection would show;

(viii) the BOCES Lease;

(ix) those matters referred to in any title insurance policy with respect to the Leased Property and accepted by the Authority; and

(x) such other encumbrances or items to which the BOCES shall have consented in writing signed by an Authorized Officer.

“Personal Property” means all articles of tangible personal property of every kind and description presently located or hereafter placed on or used in connection with the management or operation of the Leased Property other than those which, by the nature of their attachment to the Leased Property become real property pursuant to applicable law, including all escalators and elevators; all heating, ventilating, and air-conditioning equipment; all appliances, apparatus, machinery, motors, and electrical equipment; all interior and exterior lighting equipment; all telephone, intercom, audio, music, and other sound reproduction and communication equipment; all floor coverings, carpeting, wall coverings, drapes, furniture, trash containers, carts, decorative plants, planters, sculptures, fountains, artwork, and other mall, common area, auditorium and office furnishings; all plumbing fixtures, facilities and equipment; all cleaning, janitorial, lawn, landscaping, disposal, firefighting, sprinkler and maintenance equipment and supplies; all books, records, files, financial and accounting records relating to the ownership, operation or management of the Project; all drawings, plans, and specifications relating to the improvements; and all other personal property whether similar or dissimilar to the foregoing which is now or in the future used in the ownership, operation or management of the Project, including all additions thereto, proceeds received upon voluntary or involuntary disposition thereof, and all renewals or replacements thereof or articles in substitution therefor.

["Plans and Specifications” means the final design for the Project, including a complete set of architectural, structural, HVAC, plumbing, electrical, landscape, and furniture and equipment drawings, specifications, and a shop drawings list which comply with all applicable laws, as well as all required regulatory approvals and utility acceptances, together with any amendments thereto including increasing, decreasing or otherwise modifying the scope of the Project provided that such amendments are approved in writing by the State Education Department and filed with the Authority.]

“Pledged Revenues” means the State moneys payable to the BOCES that are pledged and assigned to the Authority pursuant to Section 4.05 hereof.

“Project” means the financing or refinancing, as applicable, of the costs to construct capital improvements consisting of additions to, and reconstruction of, existing BOCES buildings and facilities including original equipment, machinery, apparatus, appurtenances, site work and incidental construction, reconstruction, improvements and expenses in connection therewith, including but not limited to (i) the construction and equipping of gymnasium/auditorium additions at the Coopers Campus located at 9579 Vocational Drive, Painted Post, NY 14870 and the Wildwood Campus located at 1126 Bald Hill Road, Hornell, NY 14843 and (ii) organizational-wide infrastructure improvements, including the replacement of sewer lines, natural gas, electric, water and network fiber infrastructure at the Coopers Campus and the Wildwood Campus.

“Rentals” means the rent payable hereunder pursuant to Section 4.01 hereof.

“Resolution” means the “Master BOCES Program Lease Revenue Bond Resolution” of the Authority, adopted August 15, 2001, as supplemented and amended, and as supplemented by the Series 2023 Resolution adopted by the Authority on June __, 2023, as from time to time further amended or supplemented by Supplemental Resolutions or Series Resolutions in accordance with the terms and provisions thereof.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neutral 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 Agreement, refer to this Agreement.

ARTICLE II

LEASE OF FACILITIES; TERM OF LEASE; AND ACQUISITION OF LEASED PROPERTY

Section 2.01 Lease of Facilities. The Authority hereby subleases to the BOCES, and the BOCES hereby subleases from the Authority, the Leased Property.

SUBJECT TO the Permitted Encumbrances.

TO HAVE AND TO HOLD the Leased Property for the term set forth herein.

Section 2.02 Term of Lease. The term of this Agreement shall commence on the date on which Bonds of any Series are first issued and delivered by the Authority, and shall terminate on the earliest of (i) the final Bond maturity date, (ii) the date on which no Bonds are Outstanding or (iii) upon the expiration of the term pursuant to the terms of this Agreement or pursuant to law. Notwithstanding the termination of the term of this Agreement, the obligations of the BOCES hereunder shall not terminate and the BOCES shall remain liable for such obligations and damages set forth herein unless and until no Bonds are outstanding and the BOCES has satisfied its obligations hereunder, provided further that Sections 4.03 and 7.09 shall survive such termination.

Section 2.03 Net Lease. This Agreement shall be deemed and construed to be a “net lease,” and the BOCES shall pay absolutely net during the Lease Term the Rentals and all other payments required hereunder, free of all deductions, without abatement, diminution and set-off.

ARTICLE III

CONSTRUCTION OF PROJECT AND ISSUANCE OF BONDS

Section 3.01 Construction of Project. 1. The BOCES agrees that, whether or not there are sufficient moneys available to it under the provisions of the Resolution, the Applicable Series Resolution and hereunder, the BOCES shall complete the acquisition, design, construction, reconstruction, rehabilitation, renovation and improving or otherwise providing and furnishing and equipping of the Project in connection with which the Authority has issued Bonds, substantially in accordance with the Plans and Specifications related thereto as such Plans and Specifications may be amended by the BOCES with the approval of the State Education Department and filed with the Authority. Subject to the conditions hereof, the Authority will, to the extent of moneys available in the Construction Fund, cause the BOCES to be reimbursed for, or pay, any costs and expenses incurred by the BOCES which constitute Costs of the Project provided such costs and

expenses are approved by the Authority, which approval shall not be unreasonably withheld. In order to provide moneys for payment of the Cost of the Project, upon the written request of the BOCES, the Authority may issue additional Series of Bonds.

2. (a) To the extent that moneys are available therefor, moneys in a Construction Fund shall be disbursed from the applicable account thereof as construction of the Project for which such fund was established progresses, but not more frequently than once a month, unless otherwise agreed to in writing by the Authority, in amounts and at the times as shall be requested by the BOCES pursuant to a request for disbursement as hereinafter provided, but not in excess of that needed, in the reasonable judgment of the Authority, to reimburse the BOCES for, or to pay, any costs and expenses constituting Costs of the Project previously paid or then due; provided that the Authority may, in its sole discretion, withhold or delay making any advance in connection with the Project at any time there is pending an action or proceeding, judicial or administrative, challenging the BOCES's right to undertake such Project or any part thereof, or in which there is in issue (i) the validity of any governmental permit, consent or authorization, or the issuance thereof, necessary in connection with such Project or any part thereof, or (ii) the due authorization or validity of the Bonds issued in connection with such Project or any part thereof or the Agreement, unless the BOCES has provided the Authority with the security in such form and amount as may be reasonably required by the Authority.

(b) Prior to making and delivering any certificate required pursuant to subdivision 3 of Section 5.04 of the Resolution to be delivered to the Trustee in connection with payments to be made pursuant to subdivision 3 of Section 5.04 of the Resolution, the BOCES shall have submitted to the Authority, and have received Authority approval with respect to, the form and substance of, the Project budget and shall deliver to the Authority in connection with the delivery of each certificate required pursuant to subdivision 3 of Section 5.04 of the Resolution the following:

(1) a list of invoices, whether paid or unpaid, including, with respect to each invoice, the name of the vendor, a brief description of the goods or services, the amount of the invoice, a description of the building or buildings to which such payment relates, and, if such invoice has been paid, the date paid, the check number and the amount of the payment;

(2) copies of architect's certification(s), if any, relating to the invoices listed pursuant to subsection (b)(1) above;

(3) a reconciliation of the approved budget with funds already disbursed together with funds requested for disbursement currently; all enclosed with

(4) a certificate executed by two (2) Authorized Officers of the BOCES certifying, with respect to items 1, 2 and 3 above, that:

(A) The enclosed architect's certification(s) is (are) a true and correct copy of the architect's certification(s) received by the BOCES for the work to which it relates;

(B) The enclosed reconciliation of the approved budget with funds already disbursed together with funds requested for disbursement currently is true and correct;

(C) Expenses or monies for which payment is requisitioned in the amount of \$_____ have been incurred or expended for items which constitute Costs of the Project, as that term is defined in the

Resolution, which Project has not been modified except as permitted by this Agreement;

(D) Each amount for which payment is sought has not been the basis of any prior disbursement from the Construction Fund;

(E) The payments being requisitioned are within the project budget submitted to and approved by the Authority in accordance with the provisions of Subsection 2(b) of this Agreement, and to the best of the Authorized Officers' knowledge, the Project can be completed within budget;

(F) The BOCES has complied with all provisions of this Agreement, including, but not limited to those related to the use of the Project and the prohibitions against use for sectarian religious instruction or religious worship and certain non tax-exempt purposes contained in Section 7.06 hereof; and

(G) The BOCES will retain all original documentation related to expenditures for items which constitute Costs of the Project for at least seven (7) years after completion of the Project for inspection at any time by the Authority, or any representative of the Authority.

3. The BOCES will receive the disbursements of moneys in each 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.

4. The BOCES shall permit the Authority, authorized representatives, at any time, to enter upon the property of the BOCES, to inspect the Project, and all materials, fixtures and articles used or to be used in construction of the Project, and to examine all Contract Documents. The BOCES shall furnish to the Authority, and its authorized representatives, when requested, copies of such Contract Documents. In the event that, after such inspection or examination, the Authority, in its sole and absolute discretion, decides to engage an independent consultant, such as an accounting firm, or to implement or increase its project management oversight, such action may be taken at the BOCES's expense.

5. The Authority, in its sole and absolute discretion, may waive, from time to time, any of the conditions set forth in this Section. Any such waiver shall not be deemed a waiver by the Authority of its right to thereafter require compliance with any such condition. Additionally, the Authority, in its sole and absolute discretion, may require that, in addition to the requirements of Section 3.01 (2)(b) hereof, the BOCES also deliver copies of all invoices, paid or unpaid, and copies of the front and back of cancelled checks, if any. The BOCES acknowledges and agrees that disbursements from a 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.

6. The Project shall be deemed to be complete upon delivery to the Authority and the Trustee of a certificate signed by an Authorized Officer of the BOCES, which certificate shall be delivered as soon as practicable after the completion of such Project, or upon delivery to the Trustee and the BOCES of a certificate signed by the Authority and delivered at any time after completion of such Project. Any such certificate shall comply with the requirements of Section 5.04 of the Resolution. The Authority agrees that it will not execute and deliver any such certificate unless the Authority has notified the BOCES in writing that, in the judgment of the Authority, such Project has been completed substantially in accordance with the Plans and Specifications for such Project and the BOCES has failed to execute and deliver the certificate provided

for herein within thirty (30) days after such notice is given. The moneys, if any, remaining in the Construction Fund account established for such Project after such Project has been deemed to be complete, shall be paid as provided in Section 5.04 of the Resolution.

7. Notwithstanding the foregoing, if, on the date a Series of Bonds is issued, the Project in connection with which such Series of Bonds is issued shall have been deemed to be complete as provided herein or otherwise, the provisions hereof relating to the construction of projects shall be inapplicable to the Project.

Section 3.02 Conditions of Bond Closings. Prior to or concurrently with the issuance and delivery of Bonds of a Series to the underwriters or purchasers thereof (the “Closing”), the BOCES shall, as a condition thereto (any of which may be waived in the sole discretion of the Authority), deliver or cause third parties to deliver to the Authority the following documents, in each case satisfactory in form and substance to the Authority and its counsel:

(a) A certificate, dated the date of Closing, of an Authorized Officer of the BOCES to the effect that (i) the representations and warranties of the BOCES contained in this Agreement are true and correct in all material respects on and as of the date of Closing as if such representations and warranties had been made on and as of such date; (ii) no “event of default” under this Agreement has occurred and is continuing nor will an “event of default” under this Agreement occur as a result of the issuance of the Bonds then to be issued; (iii) unless moneys sufficient to pay such Rentals have been provided from the proceeds of the Bonds and are available therefor, attached thereto is a true and correct copy of the budget of the BOCES for the fiscal year of the BOCES in which the Closing occurs, including as an administrative expense an amount sufficient to pay such Rentals; (iv) the Project has been approved by the voters of the BOCES as required by the Act; and (v) as of the date of Closing, the information relating to the BOCES contained in the Official Statement does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading;

(b) The opinion of the chief legal officer of the BOCES or other counsel for the BOCES, dated the date of Closing, substantially in the form set forth in Exhibit B hereto; and

(c) Such additional legal opinions, certificates, instruments and other documents as the Authority or counsel for the Authority reasonably may request, satisfactory in the reasonable judgment of the Authority or counsel for the Authority, as the case may be, to evidence (i) compliance by the BOCES with legal requirements reasonably relating to the transactions contemplated by this Agreement, the Resolution and the Official Statement, (ii) the truth and completeness, as of the date of Closing, of the representations and warranties of the BOCES contained in this Agreement and the certificates or other documents referred to therein and of the statements and information contained in the Official Statement relating to the BOCES and the Project, and (iii) the due performance or satisfaction by the BOCES prior to or concurrently with the Closing of all agreements then to be satisfied relating to the transactions contemplated by this Agreement and the Official Statement.

ARTICLE IV

RENTALS AND OTHER PAYMENTS

Section 4.01 Payment of Rentals. (a) The BOCES shall pay to the Authority the following Basic Rent in the amounts and on the dates as follows:

(i) Subject to subdivision (e) hereof, on each September 1, or if such September 1 is not a Business Day then the next succeeding Business Day, the interest on Outstanding Bonds payable on the next

succeeding February 15 and August 15 and the principal and Sinking Fund Installments of Outstanding Bonds payable by reason of maturity and redemption on the next succeeding August 15;

(ii) Subject to subdivision (e) hereof, on each September 1, or if such September 1 is not a Business Day then the next succeeding Business Day, the amount, if any, as shall have been set forth in the certificate of the Trustee made pursuant to Section 5.08(4) of the Resolution as necessary to restore the Debt Service Reserve Fund to the Debt Service Reserve Fund Requirement; and

(iii) On the fifth Business Day prior to each interest payment date, the amount, if any, necessary to cause the amount on deposit in the Debt Service Fund to equal the amount of principal of and interest payable on the Bonds on such interest payment date.

For purposes of Sections 4.01(a)(i) and (iii) in estimating the interest to accrue on a Variable Interest Rate Bond after the end of the then current rate period, the Authority shall assume that interest will accrue on such Variable Interest Rate Bond from and after the last day of such rate period at a constant rate per annum equal to the rate at which it then bears interest, plus one percent (1%) per annum.

The BOCES shall have the option to make from time to time prepayments in part of payments due as aforesaid of Basic Rent, together with interest accrued and to accrue and premium, if any, to be paid on the Bonds, if such prepayment is to be used for the purchase or redemption of such Bonds. The Trustee shall apply such prepayments in such manner consistent with the provisions of the Resolution as may be specified in writing by the BOCES at the time of making such prepayment.

Subject to the provisions hereof and of the Resolution, the BOCES shall receive a credit against the amount required to be paid by the BOCES pursuant to subparagraph (i) of this Section 4.01 (a) on account of any Sinking Fund Installments if, not less than forty-five (45) days prior to an August 15 on which a Sinking Fund Installment is scheduled to be due, there shall be delivered to the Trustee for cancellation one or more Bonds of the maturity to be so redeemed on such August 15. The amount of the credit shall be equal to the principal amount of Bonds so delivered and cancelled.

(b) The BOCES shall pay to the Authority, as additional rent for the Project, the amounts, and on the dates, as follows:

(i) On the date of delivery of the Bonds, to the extent not paid from the proceeds of the Bonds, the Authority Fee and any Administrative Expenses, as estimated by an Authorized Officer of the Authority, incurred in connection with the issuance of such Bonds;

(ii) On each March 31 or such other date as may be agreed to by the Authority, the Annual Administrative Fee;

(iii) The Administrative Expenses of the Authority, the Trustee and each Paying Agent for the Bonds, within sixty (60) days after notice of the amount thereof is given to the BOCES; and

(iv) The amount determined by an Authorized Officer of the Authority as required to be rebated to the Department of the Treasury of the United States of America in excess of the amount available therefor in the Arbitrage Rebate Fund [on such date or dates as the Authority shall determine].

(c) The Authority shall furnish the BOCES not less than sixty (60) days prior to the date on which a payment is due pursuant to this Section, a statement of the amount, purpose and payment date of each payment required to be made pursuant to this Section. With respect to the payment of Basic Rent pursuant to Section 4.01(a), the amount set forth in such statement shall be net of amounts on deposit in the Debt Service Fund, including the State funds received and such interest earnings thereon, if

any, as of the date of such statement and such statement shall set forth the amount of such State funds received, such interest earnings thereon and amounts still owed to the Authority.

The failure to furnish such statement shall not excuse the BOCES's failure to pay, when due, the Basic Rent payable pursuant to this Section.

(d) In addition to the payments required by this Section 4.01, in the event a Reserve Fund Facility is deposited for all or part of the Debt Service Reserve Fund Requirement in accordance with Section 5.08(b) of the Resolution, the BOCES shall be obligated (i) to make payments to the Trustee to restore the Debt Service Reserve Fund to its requirement so that the Facility Provider may be reimbursed for amounts paid by it pursuant to such Reserve Fund Facility and (ii) to pay the Administrative Expenses of the Authority incurred in connection with such Reserve Fund Facility, including without limitation, amounts necessary to pay fees, expenses and interest payable to the Facility Provider by the Authority in connection with such Reserve Fund Facility. If the Reserve Fund Facility is to be replaced with money pursuant to the third paragraph of Section 5.08(b) of the Resolution, the BOCES shall be obligated to make payments to the Trustee in amounts and at the times that deposits are to be made to the Debt Service Reserve Fund pursuant to such paragraph.

(e) The BOCES shall receive a credit against payment due hereunder equal to the amount of State funds received by the Trustee or the Authority to be applied towards such payment. If the amount of such State funds received by the Trustee or the Authority on September 1 is less than the amount required to be paid hereunder, the Authority shall give notice to BOCES not more than ten (10) days from such September 1. Such notice shall state the amount received by the Trustee and the Authority and the amount still due and payable.

The Authority shall notify the BOCES of the receipt of any payment of State funds by the Authority or the Trustee after September 1 no more than ten (10) days after receipt of such funds, which notice shall state the amount received by the Trustee and the Authority and the amount still due and payable. If the amount of State funds received by the Trustee or the Authority by January 1 of each year is less than the amount of interest payable on the Bonds on February 15, the BOCES shall pay to the Trustee by January 15 the difference between the amount of State funds received and the interest payable on the Bonds on February 15. If the amount of State funds received by the Trustee or the Authority by July 1 of each year, after the application of the amounts necessary to make the interest payments due on the preceding February 15, is less than the amount of principal and interest payable on the Bonds on August 15, the BOCES shall pay to the Trustee by July 15 the difference between the amount of State funds received and the principal and interest payable on the Bonds on August 15.

If on January 1 of each year the amount of moneys on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Fund Requirement, the BOCES shall pay to the Trustee by January 15 the difference between the amount of State funds received and the amount of money to make up the deficiency in the Debt Service Reserve Fund and satisfy the Debt Service Reserve Fund Requirement. If on July 1 of each year the amount of moneys on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Fund Requirement, the BOCES shall pay to the Trustee by July 15 the difference between the amount of State funds received and the amount of money to make up the deficiency in the Debt Service Reserve Fund and satisfy the Debt Service Reserve Fund Requirement.

Section 4.02 Direction as to Payment of Rentals. The Basic Rent shall be paid by the BOCES, when due, to the Trustee for deposit in accordance with Section 5.05 of the Resolution. The additional rent payable pursuant to Section 4.01 (b) hereof and interest on the Rentals payable pursuant to Section 4.01(d) hereof shall be paid by the BOCES, when due, to the Authority.

Section 4.03 Indemnification of Authority and Limitation on Liability. (a) Both during the Lease Term and thereafter, the BOCES, to the extent permitted by law, hereby releases the Authority and each director, officer and employee of the Authority from claims for damages or liability arising from or out of the design, acquisition, construction, reconstruction, rehabilitation, improvement, or use of the Leased Property pursuant hereto. Both during the Lease Term and thereafter, the BOCES, to the extent permitted by law, shall indemnify and hold the Authority and each member, officer and employee of the Authority harmless against any and all liabilities, losses, costs, damages or claims, and shall pay any and all judgments or expenses of any and all kinds or nature and however arising, imposed by law, including interest thereon, which it or any of them may sustain, be subject to or be caused to incur by reason of any claim, action, suit, charge or proceeding arising (1) from or out of the design, acquisition, construction, reconstruction, rehabilitation, improvement or use of the Leased Property (including the Project), pursuant hereto, based upon: personal injury, death, or damage to property, whether real, personal or mixed; or upon or arising out of contracts entered into by the Authority, or (2) upon or arising out of the Authority's ownership of a leasehold estate of the Leased Property or the leasing thereof to the BOCES; or (3) upon or arising out of the acquisition of the Leased Property, or upon or arising out of an allegation that an official statement, prospectus, placement memorandum or other offering document prepared in connection with the sale and issuance of Bonds contained an untrue or misleading statement of a material fact obtained from the BOCES relating to the BOCES or the Project, or omitted to state a material fact relating to the BOCES or the Project necessary in order to make the statements made therein in light of the circumstances under which they were made not misleading; provided, however, that neither the Authority nor a member, officer or employee of the Authority shall be released, indemnified or held harmless from any claim for damages, liability, loss, cost, damage, judgment or expense arising out of the gross negligence or willful misconduct of the Authority, such member, officer or employee.

(b) The Authority agrees to give the BOCES prompt notice in writing of the assertion of any claim or the institution of each such suit, action or proceeding and to cooperate with the BOCES in the investigation of such claim and the defense, adjustment, settlement or compromise of any such action or proceeding. The Authority shall not settle any such suit, action or proceeding without the prior written consent of counsel to the BOCES.

(c) Except as provided in paragraph (d) of this Section 4.03, the BOCES, at its own cost and expense, shall defend any and all suits, actions or proceedings which may be brought or asserted against the Authority, its members, officers or employees for which the BOCES is required to indemnify the Authority or hold the Authority harmless pursuant to paragraph (a) of this Section 4.03, but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for herein from its obligation to defend the BOCES, the Authority and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy.

(d) The Authority and each member, officer or employee thereof shall, at the cost and expense of the BOCES, be entitled to employ separate counsel in any action or proceeding arising out of any alleged act or omission which occurred or is alleged to have occurred while the member, officer or employee was acting within the scope of his or her employment or duties in connection with the design, acquisition, construction, reconstruction, rehabilitation, improvement, financing or use of the Project, and to conduct the defense thereof, in which (i) the counsel to the BOCES determines, based on his or her investigation and review of the facts and circumstances of the case, that the interests of such person and the interests of the BOCES are in conflict, or in the event such counsel determines that no conflict exists, a court of competent jurisdiction subsequently determines that such person is entitled to employ separate counsel, or (ii) such person may have an available defense which cannot as a matter of law be asserted on behalf of such person by the BOCES or by counsel employed by it or (iii) such person may be subject to criminal liability, penalty or forfeiture or (iv) the BOCES has consented to the employment of separate counsel; provided, however, that the BOCES shall not be liable for attorneys' fees of separate counsel so retained or any other expenses incurred in connection with the defense of an action or proceeding described in clause (iii) of this paragraph,

unless the member, officer or employee shall have prevailed on the merits or such action or proceeding was dismissed or withdrawn, or an adverse judgment was reversed upon appeal, and such action or proceeding may not be recommenced; Attorney's fees of separate counsel retained in accordance with this paragraph shall be paid only upon the audits of an appropriate BOCES officer.

Section 4.04 Nature of Obligations of the BOCES. Except as hereinafter provided in this Section, the obligation of the BOCES to pay Rentals and to pay all other amounts provided for herein and to perform its obligations hereunder shall be absolute and unconditional, and such Rentals and other amounts shall be payable without any rights of set-off, recoupment or counterclaim it might have against the Authority, the Trustee or any other person and whether or not any or all of the Project is used or occupied or available or suitable for use or occupancy and whether or not the BOCES Lease is in effect. If the BOCES shall have paid all amounts required hereby and continues to pay the same when due, it shall not be precluded from bringing any action it may otherwise have against the Authority; provided, however, that the BOCES shall not as a result of the BOCES's failure to pay any Administrative Expenses or Annual Administrative Fee be precluded from bringing any such action if the amount thereof is disputed or is being contested by the BOCES in good faith.

The BOCES will not terminate this Agreement (other than such termination as is provided for hereunder) or be excused from performing its obligations hereunder for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of any Leased Property, or the taking by eminent domain of title to or the right of temporary use of all or any part of any Leased Property, or the failure of the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agreement.

This Agreement is a general obligation of the BOCES and any successor thereto. Any payment required to be made by the BOCES to the Authority pursuant hereto shall be deemed an administrative expense within the meaning of section nineteen hundred fifty of the Education Law of the State.

Section 4.05 Pledge by BOCES. The BOCES hereby assigns and pledges to the Authority a sufficient portion of any and all public funds to be apportioned or otherwise to be made payable by the State to the BOCES, to cover the payments required hereunder and directs and acknowledges that such amounts shall be paid directly to the Trustee as provided in the Act and Section 3609-d of the Education Law of the State. Such assignment and pledge shall be irrevocable and shall continue until the date on which the liabilities of the Authority and the Project have been discharged and the Bonds issued therefor have been paid or such Bonds have otherwise been discharged. The BOCES agrees that it will not create or suffer to be created any pledge or assignment of the public funds mentioned in this Section to be apportioned or otherwise payable by the State (including pledges or assignments to secure subsequent Series of Bonds) unless such other pledge or assignment is subordinate to the pledge and assignment made to the Authority pursuant to this Section.

Section 4.06 Nature of Obligations of the Authority. The cost and expense of the performance by the Authority of any of its obligations hereunder shall be limited to the availability of the proceeds of Bonds issued for such purposes or from other funds received by the Authority hereunder and available for such purposes.

Section 4.07 Assignment of Payments by Authority. It is understood that all payments by the BOCES hereunder (except payments pursuant to Sections 4.01(b), 4.01(d) and 4.03 hereof) and the Authority's interest in the Pledged Revenues are to be pledged by the Authority to the Trustee pursuant to the Resolution and the BOCES consents thereto.

Except as provided in this Section, the Authority shall not assign this Agreement or any payments hereunder without the prior written consent of the BOCES. Except as contemplated herein, the Authority shall not sell or otherwise encumber its interest in any of the Leased Property.

ARTICLE V

OPERATION AND MAINTENANCE; INSURANCE; DAMAGE; DESTRUCTION AND CONDEMNATION

Section 5.01 Operation, Maintenance and Repair. During the Lease Term, the BOCES shall be responsible for, and pay all costs of, operating the Leased Property, maintaining the same in condition suitable and sufficient for the use for which they are intended, and making all necessary repairs and replacements, interior and exterior, structural and nonstructural.

The BOCES is responsible for the overall supervision of the Leased Property, for the overhead and general administrative costs of the BOCES which are incurred because of the Leased Property and for the integration of the operation of the Leased Property into the BOCES's educational program.

Section 5.02 Utilities, Taxes and Governmental Charges. The BOCES will pay or cause to be paid all charges for water, electricity, light, heat or power, sewage, telephone and other utility service, rendered or supplied upon or in connection with the Leased Property during the Lease Term.

In addition, the BOCES shall (i) pay, or make provision for payment of, all lawful taxes and assessments (other than those which are the basis of a Permitted Encumbrance), including income, profits, property or excise taxes, if any, or other municipal or governmental charges, levied or assessed by any federal, state or any municipal government upon the Authority or the BOCES with respect to or upon the Leased Property or any part thereof or upon any payments hereunder when the same shall become due; (ii) not create or suffer to be created any lien or charge upon the Leased Property or any part thereof, except Permitted Encumbrances, or upon the payments in respect thereof pursuant hereto; and (iii) pay or cause to be discharged or make adequate provision to satisfy and discharge, within sixty (60) days after the same shall come into force, any lien or charge upon the Leased Property or any part thereof, except Permitted Encumbrances, or upon any payments hereunder and all lawful claims or demands for labor, materials, supplies or other charges which, if unpaid, might be or become a lien upon any payments hereunder.

The Authority shall cooperate fully with the BOCES in the payment of taxes or assessments and in the handling and conduct of any prospective or pending litigation with respect to the levying of taxes or assessments on the Leased Property and will, to the extent it may lawfully do so, permit the BOCES to litigate in any such proceeding in the name and behalf of the Authority.

Section 5.03 Additions, Enlargements and Improvements. The BOCES shall have the right at any time and from time to time during the Lease Term, at its own cost and expense, to make such additions, alterations, modifications, enlargements, improvements and expansions to, or repairs, reconstruction and restorations of, the Project (collectively, the "Alterations") as the BOCES shall deem necessary or desirable in connection with any permitted use thereof; provided, however, that no Alteration which requires structural change of the Project, or which modifies or changes any aspect or feature thereof designed or intended to protect the life or provide for the safety of the occupants of the Project, shall be made by the BOCES without the prior written consent of an Authorized Officer of the State Education Department. The cost of any such additions, enlargements, improvements, expansions, repairs, reconstruction or restorations shall be promptly paid or discharged so that the Project shall at all times be free of liens for labor and materials supplied thereto other than Permitted Encumbrances. All additions, enlargements, improvements and expansions to, or repairs, reconstruction and restorations of,

the Project on the Leased Property shall be and become a part of the Project and the property leased to the BOCES hereunder.

Section 5.04 Additional Rights of BOCES. The Authority agrees that the BOCES shall have the right, option and privilege of erecting, installing and maintaining at its own cost and expense such standard office partitions, railings, doors, gates, counters, lighting fixtures, towers (together with all necessary guy wires and anchors), gasoline or natural gas storage tanks and pumps, signs and such other equipment, machinery, furniture and other items of personal property in or upon the Project as may in BOCES's judgment be necessary for its purposes. It is further understood and agreed that anything erected or installed under the provisions of this Section shall be and remain the personal property of BOCES and shall not become part of the Project, and may be removed, altered or otherwise changed, without any consent of the Authority upon or before the termination hereof; provided, however, should such removal, alteration or change cause any damage to the Project, such damage shall be repaired by the BOCES.

Section 5.05 Insurance.

1. The BOCES shall, in accordance with the requirements of this Section 5.05, procure and maintain, or cause to be procured and maintained, to the extent reasonably obtainable, from responsible insurers, insurance of the type and in the amounts customarily and reasonably maintained by educational institutions providing services similar to those provided by the BOCES. All policies of insurance required by this section shall be primary to any insurance maintained by the Authority.

2. The BOCES shall, with respect to the Leased Property and the Project, at the times specified in the following paragraphs, procure and maintain, or cause to be procured and maintained, to the extent reasonably obtainable, from responsible insurers acceptable to the Authority, the following insurance:

(a) with respect to any building the construction of which shall not have been completed (and until insurance is procured pursuant to paragraph (b) of this subdivision), all risk builders' risk insurance against direct physical loss or damage, or with respect to the acquisition and installation of equipment or machinery, in lieu of all risk builders' risk, an installation floater on an all risk basis. The amount of such insurance shall be on a one hundred percent (100%) completed value basis on the insurable portion;

(b) at all times (except during a period when builders' risk insurance is in effect as required by paragraph (a) of this subdivision 2), all risk property insurance against direct physical loss or damage to the Leased Property and the Project in an amount not less than one hundred percent (100%) of the replacement value thereof (such replacement value to be determined on the basis of replacement costs without allowance for depreciation), exclusive of excavations and foundations and similar property normally excluded under New York standard forms; provided, however, that the inclusion of the Leased Property and the Project under a blanket insurance policy or policies of the BOCES insuring against the aforesaid hazards in an amount aggregating at least one hundred percent (100%) of the insurable value of the insured property, exclusive of excavations and foundations and similar property normally excluded under New York standard forms, shall constitute complete compliance with the provisions of this paragraph with respect to the Project; provided further, that in any event, each such policy shall be in an amount sufficient to prevent the BOCES and the Authority from becoming co-insurers under the applicable terms of such policy;

(c) at all times, statutory workers' compensation insurance, covering loss resulting from injury, sickness, disability or death of employees and employer's liability insurance with limits of at least \$1,000,000 for each accident, each sickness, and aggregate occupational illness or sickness;

(d) at all times, applicable statutory disability benefits;

(e) at all times, commercial general liability insurance protecting the Authority and the BOCES against loss or losses from liabilities arising from bodily injury of persons or damage to the property of others caused by accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of injury to persons or property damage with \$2,000,000 policy aggregate, excluding liability imposed upon the Authority or the BOCES by any applicable workers' compensation law;

(f) commencing with the date on which the Leased Property and the Project or any part thereof is completed or first occupied, or any equipment, machinery, fixture or personal property covered by comprehensive boiler and machinery coverage is accepted, whichever occurs earlier, insurance providing comprehensive boiler and machinery coverage in an amount considered adequate by the Authority, which insurance may include deductible provisions approved by the Authority; and

(g) each other form of insurance which the BOCES is required by law to provide and such other kinds of insurance in such amounts as from time to time may be reasonably required by the Authority.

3. Any insurance procured and maintained by the Authority or the BOCES pursuant to this Section, including any blanket insurance policy, may include deductible provisions reasonably satisfactory to the Authority and the BOCES. In determining whether or not any insurance required by this Section is reasonably obtainable or if the deductible on any such insurance is a reasonable deductible, the Authority may rely solely and exclusively upon the advice and judgment of any insurance consultant chosen by the BOCES and approved by the Authority, and any such decision by the Authority, based upon such advice and judgment, shall be conclusive.

4. No provision of this Section shall be construed to prohibit the BOCES from self-insuring against any risk at the recommendation of any insurance consultant chosen by the BOCES and approved by the Authority provided, however, that self-insurance plans shall not cover property, plant and equipment. The BOCES shall also cause an annual evaluation of such self-insurance plans to be performed by an independent insurance consultant. The BOCES shall provide adequate funding of such self-insurance if and to the extent recommended by such insurance consultant and approved by the Authority.

5. Each policy maintained by the BOCES pursuant to subdivision 2 of this Section shall provide that the insurer writing such policy shall give at least thirty (30) days' notice in writing to the Authority of the cancellation or non-renewal or material change in the policy unless a lesser period of notice is expressly approved in writing by the Authority. The BOCES, not later than July 15 of each year, shall provide to the Authority and the Insurer certificate(s) of insurance describing all policies of insurance maintained as of June 30 by the BOCES pursuant to this Section stating with respect to each such policy (i) the insurer, (ii) the insured parties or loss payees, (iii) the level of coverage, and (iv) such other information as the Authority may have reasonably requested.

6. All policies of insurance shall be open to inspection by the Authority and the Trustee or their representatives at all reasonable times. If any change shall be made in any such insurance, a description and notice of such change shall be furnished to the Authority and the Trustee at the time of such change. The BOCES covenants and agrees not to make any change in any policy of

insurance which would reduce the coverages or increase the deductible thereunder without first securing the prior written approval of the Authority.

7. All policies of insurance required pursuant to subdivision 2 of this Section, other than policies of workers' compensation insurance, shall include the Authority and the BOCES, and, to the extent that such proceeds are required to be paid to the Trustee hereunder or pursuant to the Resolution, the Trustee, as additional insureds or as loss payee as appropriate.

8. In the event the BOCES fails to provide the insurance required by subdivision 2 of this Section, the Authority may elect at any time thereafter to procure and maintain the insurance required by this Section at the expense of the BOCES. The policies procured and maintained by the Authority shall be open to inspection by the BOCES at all reasonable times, and, upon request of the BOCES, a complete list describing such policies as of the June 30 preceding the Authority's receipt of such request shall be furnished to the BOCES by the Authority.

Section 5.06 Damage or Destruction. The BOCES agrees to notify the Authority and the Trustee immediately in the case of damage to or destruction of the Leased Property or any portion thereof in an amount exceeding \$100,000 resulting from fire or other casualty. The Authority agrees that the net proceeds of any insurance relating to such damage or destruction, not exceeding \$100,000, may be paid directly to the BOCES.

In the event the Leased Property or any portion thereof is damaged or destroyed by fire or other casualty and the damage or destruction is estimated to exceed \$100,000, the net proceeds of any insurance shall be initially paid directly to the Authority for deposit and application as hereby provided. The BOCES shall within one hundred eighty (180) days after such damage or destruction determine whether or not to repair, reconstruct, restore or improve the Leased Property and give written notice of such determination to the Authority. If the BOCES elects to repair, reconstruct, restore or improve the Leased Property it shall proceed forthwith to repair, reconstruct, restore or improve the Leased Property to substantially the same condition as it existed prior to the event causing such damage or destruction. So long as the BOCES is not in default under Section 8.01(a) hereof, any net proceeds of insurance relating to such damage or destruction received by the Authority shall be deposited to the credit of the Construction Fund and applied to payment of the costs of such repairs, reconstruction, restoration or improvement in the same manner and upon the same conditions as set forth in the Resolution for the payment of the Costs of the Project from the Construction Fund.

It is further understood and agreed that in the event the BOCES shall elect to repair, reconstruct, restore or improve the Leased Property, the BOCES shall complete the repairs, reconstruction, restoration or improvement of the Leased Property.

In the event the BOCES elects not to repair, reconstruct, restore or improve the Leased Property, the net proceeds of any insurance shall be paid to the Authority, as a prepayment of the Rentals hereunder, for deposit to the Debt Service Fund and application to the redemption of Outstanding Bonds or for payment to the Trustee, to be held by the Trustee, in trust, pursuant to Section 12.01 of the Resolution for the payment of Outstanding Bonds in accordance with the written instructions of an Authorized Officer of the Authority.

Section 5.07 Condemnation. The Agreement and the interest of the BOCES shall terminate as to the Project or portion thereof on Leased Property and the Leased Property appertaining thereto condemned or taken by eminent domain when title thereto vests in the party condemning or taking the same (hereinafter referred to as the "termination date"). The BOCES hereby irrevocably assigns to the Authority all right, title and interest of the BOCES in and to any net proceeds of any award, compensation or damages (hereinafter referred to as an "award"), payable in connection with any such

condemnation or taking during the Lease Term. Such net proceeds shall be initially paid to the Authority for deposit and application as hereinafter provided.

In the event of any such condemnation or taking the BOCES shall within ninety (90) days after the termination date therefor determine whether or not to repair, reconstruct, restore or improve such Project and give written notice of such determination to the Authority. If the BOCES elects to repair, reconstruct, restore or improve such Project, so long as the BOCES is not in default under Section 8.01(a) hereof, any such net proceeds received by the Authority shall be deposited to the credit of the Construction Fund and be applied to finance the costs of such repairs, reconstruction, restoration or improvements in the same manner and upon the same conditions set forth in the Resolution for the payment of the Costs of the Project from the Construction Fund.

In the event the BOCES elects not to repair, reconstruct, restore or improve such Project, the award shall be paid to the Authority, as a prepayment of the Rentals hereunder, for deposit to the Debt Service Fund and application to the redemption of Outstanding Bonds or for payment to the Trustee, to be held by the Trustee, in trust, pursuant to Section 12.01 of the Resolution for the payment of Outstanding Bonds in accordance with the written instructions of an Authorized Officer of the Authority.

The Authority shall cooperate fully with the BOCES in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project on Leased Property or any part thereof and will, to the extent it may lawfully do so, permit the BOCES to litigate in any such proceeding in the name and behalf of the Authority. In no event will the Authority voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceedings with respect to the Project on Leased Property or any part thereof without the written consent of the BOCES.

Section 5.08 Condition of Premises. Immediately upon the availability of any part of the Project for use by the BOCES, the BOCES shall become thoroughly familiar with the physical condition of such part of the Project. The Authority makes no representations whatever in connection with the condition of the Project, and the Authority shall not be liable for any defects therein.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

The BOCES hereby represents and warrants as of the date of execution and delivery hereof as follows:

Section 6.01 Legal Entity. The BOCES is a body corporate created pursuant to Section 1950 of the State Education Law, duly created and validly existing under the Constitution and laws of the State.

Section 6.02 Legal Authority. The BOCES has the good right and lawful authority and power to execute and deliver this Agreement, to perform the obligations and covenants contained herein and to consummate the transactions contemplated hereby.

Section 6.03 Due Authorization. The BOCES has duly authorized by all necessary actions the execution and delivery hereof, the performance of its obligations and covenants hereunder, and the consummation of the transactions contemplated hereby. A referendum of the voters was conducted on March 22, 2022 in which the voters approved a proposition regarding the Project and the entering into of any and all agreements to effectuate the financing, all in accordance with the provisions of the State Education Law. The BOCES has complied with all requirements of law required of the BOCES in order to permit the Authority to finance or refinance, as applicable, the Project.

Section 6.04 Validity and Enforceability. This Agreement constitutes a legal, valid and binding obligation of the BOCES, enforceable against the BOCES in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to the enforcement of creditors' rights generally or the availability of any particular remedy.

Section 6.05 No Conflict. This Agreement, the execution and delivery hereof and the consummation of the transactions contemplated hereby (i) do not and will not in any material respect conflict with, or constitute on the part of the BOCES a breach of or default under (a) any existing law, administrative regulation, judgment, order, decree or ruling by or to which it or its revenues, properties or operations are bound or subject or (b) any agreement or other instrument to which the BOCES is a party or by which it or any of its revenues, properties or operations are bound or subject which conflict, breach or default would adversely affect in any material respect the ability of the BOCES to perform its obligations hereunder or the validity or enforceability of this Agreement and (ii) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the BOCES's revenues, properties or operations which lien, charge or encumbrance could reasonably be expected to adversely affect in any material respect the ability of the BOCES to perform its obligations hereunder or the validity or enforceability of this Agreement.

Section 6.06 Consents and Approvals. All consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission, which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the BOCES of its obligations hereunder or the consummation of the transactions contemplated hereby, have been duly obtained and are in full force and effect; provided, however, the BOCES makes no representation or warranty as to any consents, approvals, authorizations, orders, filings, registrations or declarations that may be required by any federal or state securities law.

Section 6.07 No Defaults. The BOCES is not in breach of or default under any agreement or other instrument to which the BOCES is a party or by or to which it or its revenues, properties, or operations are bound or subject, or any existing administrative regulation, judgment, order, decree, ruling or other law by or to which it or its revenues, properties, or operations are bound or subject, which breach or default could reasonably be expected to adversely affect in any material respect the ability of the BOCES to perform its obligations hereunder or the validity or enforceability of this Agreement; and no event has occurred and is continuing that with the passage of time or the giving of notice, or both, would constitute, under any such agreement or instrument, such a breach or default material to such transactions.

Section 6.08 No Litigation. Except as set forth in an official statement, prospectus, placement memorandum or other similar offering document prepared in connection with the issuance and sale of Bonds, no action, suit, proceeding or investigation, in equity or at law, before or by any court or governmental agency or body, is pending or, to the best knowledge of the BOCES, threatened wherein an adverse decision, ruling or finding would adversely affect in any material respect the transactions contemplated hereby or the validity or enforceability hereof.

ARTICLE VII

SPECIAL COVENANTS

The BOCES and the Authority each covenant with the other party hereto as follows:

Section 7.01 BOCES's Right to Possession. Except as otherwise provided herein, the BOCES shall be entitled to sole possession of the Project during the Lease Term subject to the terms of the BOCES Lease.

Section 7.02 Quiet Enjoyment. The BOCES, upon paying the Rentals and the other payments required hereunder and observing and performing all the terms, covenants, and conditions on the BOCES's part to be observed and performed, may peaceably and quietly have, hold and enjoy the Leased Property, subject to all the terms and provisions hereof.

Section 7.03 Right of Inspection. Upon prior reasonable notice, the BOCES will permit the Authority and the authorized agents and representatives of the Authority to enter the Leased Property at all times during usual business hours for the purpose of inspecting the same.

Section 7.04 Assignment by BOCES. The BOCES will not sell, sublease or otherwise dispose of or encumber its interest in the Project except as provided in Section 7.07 hereof. This Agreement may not be assigned in whole or in part by the BOCES.

Section 7.05 Use of Project. The BOCES agrees that the Project shall be occupied or used only by or for students, members of the faculty, staff and personnel, officers and employees of the BOCES, and the district superintendent of schools, in each case in connection with their respective duties, functions and responsibilities relating to the operation of the Project, or, on a temporary basis, by or for individuals connected with educational activities; provided, however, that any occupancy or use of the Project which is from time to time authorized or permitted by the provisions of the Education Law of the State relating to boards of cooperative educational services shall be deemed to be authorized or permitted by this Section.

Section 7.06 Restrictions on Religious Use. The BOCES agrees that with respect to any Project or portion thereof, so long as such Project or portion thereof exists and unless and until such Project or portion thereof is sold for the fair market value thereof, such Project or any 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; provided, however, that the foregoing restriction shall not prohibit the free exercise of any religion and shall not restrict or inhibit compliance with the Equal Access Act, 20 U.S.C. Sections 4071-4074; and, further provided, however, that if at any time hereafter, in the opinion of Bond Counsel, the then applicable statutory and/or case law would permit the Project or a portion thereof to be used without regard to the above stated restriction, said restriction shall not apply to such Project and each portion thereof. The Authority and its agents may conduct such inspections as the Authority deems necessary to determine whether the Project or any portion of real property thereof financed by Bonds is being used for any purposed proscribed hereby. The BOCES hereby further agrees that prior to any disposition of any portion of the Project for less than fair market value, it shall execute and record in the appropriate real property records an instrument subjecting, to the satisfaction of the Authority, the use of such portion of such Project to the restriction that (i) so long as such portion of such Project (and, if included in such Project, the real property on or in which such portion of such Project is situated) shall exist and (ii) until such portion of such Project is sold or otherwise transferred to a person who purchases the same for the fair market value thereof at the time of such sale or transfer, such portion of such Project shall not be used for sectarian religious instruction or as a place of religious worship or used in connection with any part of the program of a school or department of divinity of any religious denomination. The instrument containing such restriction shall further provide that such restriction may be enforced at the instance of the Authority or the Attorney General of the State, by a proceeding in any court of competent jurisdiction, by injunction, mandamus or by other appropriate remedy. The instrument containing such restriction shall also provide that if at any time thereafter, in the opinion of Bond Counsel, the then applicable statutory and/or case law would permit such portion of such Project, or, if included in such Project, the real property on or in which such portion is situated, to be used without regard to the above stated restriction, then said restriction shall be without any force or effect. For the purposes of this Section an involuntary transfer or disposition of the Project or a portion thereof, upon foreclosure or otherwise, shall be considered a sale for the fair market value thereof.

Section 7.07 Sale; Subletting. No Leased Property shall be sold by the BOCES, or any other person or entity succeeding to any of their respective interests, without the prior written consent of the Authority, accompanied by an opinion of Bond Counsel to the effect that such sale would not adversely affect the exclusion of the interest on any of the Bonds from gross income for federal income tax purposes.

No Leased Property shall be sublet by the BOCES, or any other person or entity succeeding to any of their respective interests without the prior written consent of the Authority, accompanied by an opinion of Bond Counsel to the effect that such sublease would not adversely affect the exclusion of the interest on any of the Bonds from gross income for federal income tax purposes.

The sale or subletting of Leased Property shall not reduce the Rentals payable hereunder and shall not otherwise affect the obligations of the BOCES hereunder.

Section 7.08 Cooperation by the BOCES. The BOCES, whenever requested by the Authority, shall provide and certify, or cause to be provided and certified, in form satisfactory to the Authority, such information concerning the BOCES, the operations and finances of the BOCES and such other matters that the Authority reasonably considers necessary to enable it to amend or supplement an official statement or other disclosure document prepared in connection with the sale of Bonds, or to enable the Authority to make any reports which, in the opinion of counsel acceptable to the BOCES, is required by law or regulations of any governmental authority.

Section 7.09 Covenant not to Affect the Tax Exempt Status of the Bonds. The BOCES, so long as it leases the Project and Leased Property hereunder, (i) will take no action, or permit any action to be taken, or omit to take any action, with respect to the Project or any Project which will adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation; (ii) will not invest or otherwise use “gross proceeds” of the Bonds in a manner which would cause any Bond (other than a Bond designated as federally taxable) to be an “arbitrage bond” within the meaning of Section 148 of the Code, and any proposed or final regulations thereunder as are applicable to any Bond; and (iii) will not, nor will any “related person,” as defined in Section 147(a)(2) of the Code, pursuant to an arrangement, formal or informal, purchase Bonds (other than Bonds designated as federally taxable) in an amount related to the amount of any obligation to be acquired by the Authority from the BOCES.

Section 7.10 Environmental Quality Review and Historic Preservation. The BOCES covenants that it shall comply or cause there to be complied with the provisions of all Environmental Laws, including, but not limited to, the provisions of Article 8 of the Environmental Conservation Law and any rules and regulations promulgated pursuant thereto and with the provisions of the Historic Preservation Act of 1980 of the State applicable to the Project, the alteration or expansion of the Project or additions thereto. The BOCES will cooperate with and provide assistance to the Authority in the performance of its duties as lead agency, including the preparation and provision of such documents as may be reasonably requested of the BOCES as are necessary to enable the Authority to comply with such laws.

Section 7.11 Budget. The BOCES shall include all amounts payable hereunder in its annual budget as “administrative expenses.” The BOCES hereby agrees to prepare annually a budget and to take all available action to require that the component school districts which comprise the BOCES shall annually include in the budget of such school district such school district’s allocable share of the BOCES’s administrative expenses and other costs to be paid by such school district to such BOCES and to obtain the payment of such amounts to the BOCES. Such budget of the BOCES and the budget of each component school district shall each be prepared in accordance with, and shall include at least the items mentioned in, Sections 1950 and 1951 of the Education Law of the State. The BOCES hereby agrees, at the request of the Authority, to promptly file with the Authority and the Trustee a copy of the annual

budget of the BOCES. The BOCES further agrees to file with the Comptroller of the State of New York, as required by Section 30 of the General Municipal Law, the report of its financial condition, such report to be filed within sixty (60) days after the close of the fiscal year of the BOCES or within the time period permitted by the Comptroller pursuant to Section 30 of the General Municipal Law.

Section 7.12 Limitation of Authority Rights. The Authority shall not, without the prior written consent of the BOCES, (i) call any Bond for redemption prior to maturity, other than through the application of mandatory Sinking Fund Installments, (ii) purchase any Bond, other than pursuant to Section 5.07(4) of the Resolution, (iii) 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 or (iv) convert a Variable Interest Rate Bond to bear interest at a fixed rate to its maturity.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default. An “event of default” or a “default” shall mean, whenever they are used herein, any one or more of the following events:

(a) Failure by the BOCES to pay or cause to be paid when due the Rentals to be paid hereunder which failure continues for a period of seven (7) days after payment thereof was due;

(b) Failure by the BOCES to pay or to cause to be paid when due any other payment required to be made hereunder which failure continues for a period of thirty (30) days after payment thereof was due, provided that written notice thereof shall have been given to the BOCES not less than thirty (30) days prior to the due date thereof;

(c) Failure by the BOCES to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraphs (a) and (b) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the BOCES by the Authority or such longer period, as is required to cure such default, if by reason of the nature of such failure the same cannot be remedied within such thirty (30) day period and the BOCES has within such thirty (30) day period commenced to take appropriate actions to remedy such failure and is diligently pursuing such actions;

(d) Any representation or warranty of the BOCES contained herein shall have been at the time it was made untrue in any material respect; or

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

Section 8.02 Remedies. Whenever any event of default referred to in Section 8.01 hereof shall have happened and be continuing, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the BOCES hereunder.

Section 8.03 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 8.04 Waiver and Non-Waiver. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No delay or omission by the Authority to exercise any right or power accruing upon default shall impair any right or power or shall be construed to be a waiver of any such default or acquiescence therein. In particular, failure of the Authority to provide the notices specified herein at the time specified shall not preclude the Authority from subsequently filing such notices.

ARTICLE IX

MISCELLANEOUS

Section 9.01 Surrender of Possession. At the termination of the term of any leasehold in a Leased Property, the BOCES agrees to surrender possession of such Leased Property and Project peacefully and promptly to the Authority in the condition in which the Leased Property is at such time, "AS IS", "WHERE IS" (including, without limitation, the results of any wear and tear or damages caused by condemnation, or by fire or other casualty).

Section 9.02 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the BOCES, the Authority and their respective successors and assigns, subject, however, to the provisions of Sections 7.05, 7.07 and 7.10 hereof.

Section 9.03 Severability. In the event any one or more of the covenants, stipulations, promises, obligations and agreements herein on the part of the Authority or the BOCES to be performed should be contrary to law, then such covenant or covenants, stipulation or stipulations, promise or promises, obligation or obligations, or agreement or agreements shall be null and void, shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, obligations and agreements herein contained and shall in no way affect the validity or enforceability of the other provisions hereof.

Section 9.04 Amendments, Changes and Modifications. This Agreement may be amended, changed or modified in any respect provided that each amendment, change or modification is in writing signed by an Authorized Officer of the Authority and of the BOCES; provided, however, that no amendment, change or modification shall take effect unless and until (i) if the consent of Holders of Outstanding Bonds is required by Section 7.10 of the Resolution, there shall have been filed with the Trustee the written consents of the Holders of the percentages of Outstanding Bonds specified in Section 7.10 of the Resolution, (ii) if the consent of the Trustee is required by Section 7.10 of the Resolution, the Trustee shall have consented thereto and (iii) an executed copy of such amendment, change or modification, certified by an Authorized Officer of the Authority, shall have been filed with the Trustee.

Section 9.05 Amounts Remaining under Resolution. It is agreed by the parties hereto that any amounts remaining in any fund or account created under the Resolution, upon termination of the Lease Term, as provided herein, after payment in full of the Bonds (or provision for payment thereof

having been made in accordance with the provisions of the Resolution) and the fees, charges and expenses of the Trustee and paying agents and the Authority in accordance herewith and with the Resolution, shall belong to and be paid to the BOCES.

Section 9.06 Compliance with Resolution. The BOCES hereby approves of and agrees to the provisions of the Resolution. Upon request of the Authority, the BOCES agrees to do all reasonable things within its power in order to enable the Authority to comply with all requirements and to fulfill all covenants of the Resolution which require the BOCES to comply with requests or obligations so that the Authority will not be in default in the performance of any covenant, condition, agreement or provision of the Resolution.

Section 9.07 Investment of Moneys. The BOCES hereby acknowledges that the Authority may in its sole discretion invest or direct the investment of certain moneys held under the Resolution as provided therein and that no representation or warranty has been made by the Authority with respect to interest rates on, or the amount to be earned as a result of, any such investment. Neither the Authority 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.

Section 9.08 Disclaimer of Personal Liability. No recourse shall be had against or liability incurred by any member of the Authority or any officer or employee of the Authority or of the BOCES, or any person executing this Agreement for any covenants and provisions hereof or for any claims based thereon.

Section 9.09 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.10 Headings. The headings preceding the text of the several Articles and Sections hereof and the exhibits appended hereto and any table of contents appended hereto or to copies hereof shall be solely for convenience of reference and shall not constitute a part hereof nor shall they affect its meaning, construction or effect.

Section 9.11 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 Authority:

Dormitory Authority of the
State of New York
515 Broadway
Albany, New York 12207
Attention: Managing Director, Public Finance and Portfolio Monitoring
With a copy to General Counsel

To the BOCES:

[GST BOCES]
9579 Vocational Drive

Painted Post, New York 14870
Attention: District Superintendent

With a copy to:

Ferrara Fiorenza PC
5010 Campuswood Dr.
East Syracuse, New York 13057
Attention: [Colleen W. Heinrich], Esq.

To the Trustee:

The Bank of New York Mellon
240 Greenwich Street, 7th Floor
New York, New York 10286
Attention: Craig Wenzler, Vice President

With a copy to:

Paparone Law PLLC
30 Broad Street, 14th Floor, #1482
New York, New York 10004
Attention: Melissa E. Paparone, Esq.

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 Authority or the BOCES 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 Authority to the other shall also be given to the BOCES, at the addresses herein set forth or provided for.

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

Section 9.12 Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State of New York.

Section 9.13 Intent of the Parties. It is the intent of the Authority and the BOCES that in accordance with the Act this Agreement is entered into for the purpose of facilitating the financing or refinancing, as applicable, of the cost of the design, acquisition, construction, reconstruction, rehabilitation, improvement, furnishing and equipping, as applicable, of the Project financed or refinanced with Bond proceeds and the payment of such Bonds. Further, it is also the intent of the Authority and the BOCES to execute this Agreement prior to the issuance of such Bonds in order for the parties to avail themselves of the protections afforded by subdivision 12 of Section 1689 of the Public Authorities Law.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Authority and the BOCES have caused this instrument to be executed by their duly authorized officers, all as of the day and year first above written.

The Authority:

DORMITORY AUTHORITY OF THE STATE
OF NEW YORK

By: _____
Authorized Officer

The BOCES:

GREATER SOUTHERN TIER BOARD OF
EDUCATION OF THE BOARD OF
COOPERATIVE EDUCATIONAL SERVICES,
SOLE SUPERVISORY DISTRICT,
SCHUYLER, STEUBEN, CHEMUNG,
TIOGA, AND ALLEGANY COUNTIES, NEW
YORK

By: _____
Authorized Officer

DRAFT

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the ____ day of _____ in the year 2023 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(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

DRAFT

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the ____ day of _____ in the year 2023 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(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

DRAFT

EXHIBIT A

Description of Leased Property

DRAFT

EXHIBIT B

Opinion of Counsel to the BOCES

The opinion of the chief legal officer of the BOCES or other counsel for the BOCES shall be to the effect that

- (i) the BOCES is a corporation of the State of New York, duly organized and existing under Section 1950(6) of the State Education Law;
- (ii) the BOCES has the right, lawful authority and power to execute, make and deliver the Agreement and all of the other documents relating to the authorization, sale and issuance of the Bonds to which it is a party or to which by the signature of its Authorized Officer it has approved (collectively, the “BOCES Documents”), and to perform its obligations and covenants in such BOCES Documents;
- (iii) the BOCES has duly authorized by all necessary actions the execution and delivery of the BOCES Documents and the performance of its obligations and covenants thereunder;
- (iv) the BOCES Documents are legal, valid and binding obligations of the BOCES enforceable against the BOCES in accordance with their terms, except to the extent that the enforceability may be limited by bankruptcy, insolvency, reorganization or other laws relating to the enforcement of creditors’ rights generally, by equitable principles generally or by the availability of any particular remedy;
- (v) the execution and delivery of the BOCES Documents and the performance of its obligations thereunder, to the best knowledge of such counsel, do not and will not conflict with, or constitute on the part of the BOCES a breach of or default under any existing law, administrative regulation, judgment, order, decree, ruling, mortgage, agreement indenture or instrument by or to which it or its revenues, properties or operations are bound or subject which conflict, breach or default would have a material adverse effect on the BOCES’s ability to perform its obligations under the BOCES Documents;
- (vi) all consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the BOCES of its obligations under the BOCES Documents have been duly obtained and are in full force and effect;
- (vii) except as disclosed in the Official Statement, to the knowledge of counsel no action, suit, proceeding or investigation, in equity or at law, before or by any court or governmental agency or body, is pending or, to the best knowledge of such counsel, threatened wherein an adverse decision, ruling or finding might materially adversely affect the transactions contemplated by the BOCES Documents;

- (viii) the BOCES has duly authorized inclusion in the Official Statement of the information provided by the BOCES and contained therein and the information contained therein related to the BOCES, the Project, the **refunding** plan and the sources and uses of funds and, after reasonable investigation, no facts have come to such counsel's attention which would lead such counsel to believe that as of the date of the Official Statement and the date of its distribution, such information (with the exception of financial and statistical information included therein, as to which no opinion need be expressed, is or was not true and correct in all material respects or contains or contained any untrue statement of a material fact or omits or omitted to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading;
- (ix) to the knowledge of counsel, based solely on our review of the title insurance policy of the BOCES, the BOCES has good and insurable title to the Leased Property; and
- (x) the Lease Agreement creates in favor of the Authority a security interest in the rights of the BOCES in the Pledged Revenues as security for the BOCES's obligations under the Lease Agreement and such security interest will be perfected upon proper filing of the UCC financing statements to the extent perfection may be accomplished by filing a UCC financing statement.