

**\$44,935,000**

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**  
**D'YOUVILLE** **REVENUE BONDS (D'YOUVILLE UNIVERSITY PROJECT),**  
**SERIES 2024A (TAXABLE)**

**Dated: Date of Delivery**

**Due: November 1, 2030**

The Buffalo and Erie County Industrial Land Development Corporation Revenue Bonds (D'Youville University Project), Series 2024A (Taxable), in the aggregate principal amount of \$44,935,000 (the "Bonds"), will be issued by the Buffalo and Erie County Industrial Land Development Corporation (the "Issuer"), pursuant to an Indenture of Trust dated as of August 1, 2024 (the "Indenture") by and between the Issuer and UMB Bank, N.A., a national banking association, as trustee (the "Trustee"). The Bonds are to be issued initially in certificated form in the name of the Bondholder. There will not be a Securities Depository unless the Bonds are transferred to one as provided in the Indenture. The Bonds will be issued in denominations of \$100,000 or any integral multiple of \$5,000 in excess of \$100,000. Interest on the Bonds is payable on May 1 and November 1 of each year, commencing November 1, 2024.

The proceeds of the Bonds are being loaned by the Issuer to D'Youville University, a New York not-for-profit education corporation (the "University"), pursuant to a Loan Agreement dated as of August 1, 2024, between the Issuer and the University (the "Loan Agreement"), and will be applied for the purposes of (i) funding general corporate purposes including replenishing working capital, refinancing an existing line of credit, and funding additional development costs of a new osteopathic medicine program being developed by the University (the "Program"); (ii) funding a capitalized interest fund for the purpose of the payment of a portion of the interest due on the Bonds through May 1, 2025; and (iii) paying the costs of issuance of the Bonds (collectively, the "Project").

The Bonds will be limited obligations of the Issuer, payable solely from and are secured by (a) a pledge and assignment of, payments and other revenues to be received by the Issuer under the Loan Agreement; (b) other moneys pledged therefor under the Indenture; (c) a Pledge and Assignment dated as of August 1, 2024 between the Issuer and the Trustee, pursuant to which the Issuer shall assign certain of its rights (other than certain fees and indemnification payments required to be made to the Issuer) under the Loan Agreement to the Trustee; (d) a Mortgage dated as of August 1, 2024 from the University to the Issuer, which shall be assigned by the Issuer to the Trustee pursuant to an assignment of mortgage dated as of August 1, 2024, pursuant to which the University shall grant to the Trustee a security interest in the Mortgaged Property (as defined therein); and (e) a Pledge and Security Agreement dated as of August 1, 2024 between the University and the Trustee, pursuant to which the University shall grant to the Trustee a security interest in the Gross Revenues (as defined therein). See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein.

**MATURITY SCHEDULE**

\$44,935,000      8.375%      Bonds Due November 1, 2030      Price: 100.00%

On the Maturity Date, outstanding principal of the Bonds and interest accrued but unpaid thereon shall be due and payable.

The Bonds are subject to optional and special mandatory redemption prior to maturity as described herein under "THE BONDS — Redemption and Purchase Prior to Maturity."

*THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR GENERAL REFERENCE ONLY. IT IS NOT INTENDED TO BE A SUMMARY OF ALL FACTORS RELATING TO AN INVESTMENT IN THE BONDS. INVESTORS SHOULD REVIEW THE ENTIRE LIMITED OFFERING MEMORANDUM, INCLUDING IN PARTICULAR THE SECTION ENTITLED "BONDHOLDERS' RISKS," AND THE APPENDICES HERETO BEFORE MAKING ANY INVESTMENT DECISIONS.*

THE BONDS HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE, AND MAY BE OFFERED OR SOLD ONLY TO A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS IN EFFECT ON THE DATE HEREOF (THE "SECURITIES ACT"). THE SALE, PLEDGE OR OTHER TRANSFERS OF THE BONDS ARE SUBJECT TO THE LIMITATIONS HEREIN DESCRIBED. See "THE BONDS — Transfer and Exchange" herein.

Each purchaser or transferee of the Bonds, by purchasing the Bonds, shall be deemed to have represented and agreed that (a) it is a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act, (b) its purchase of the Bonds is for its own account for the purposes of investment and not with a view to resale or other distribution, (c) the purchaser or transferee has received this Limited Offering Memorandum, together with any supplements thereto, and (d) the purchaser or transferee is sufficiently knowledgeable and experienced in financial and business matters so as to be capable of evaluating the merits and risks of the investment represented by the purchase of the Bonds, and is capable of making and has made its own investigation of the Issuer, the University and the Bonds. Any purported transfer in violation of the requirements of the Indenture shall be null and void *ab initio*.

**THE ISSUER HAS NO TAXING POWER. THE BONDS SHALL NEVER CONSTITUTE A DEBT OF THE STATE OF NEW YORK OR ERIE COUNTY, NEW YORK, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, ERIE COUNTY, NEW YORK, OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS, AND NEITHER THE STATE OF NEW YORK NOR ERIE COUNTY, NEW YORK, SHALL BE LIABLE THEREON NOR SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE DULY PLEDGED THEREFOR PURSUANT TO THE INDENTURE.**

*The Bonds are offered when, as and if issued by the Issuer and received receipt by the Underwriter, subject to prior sale, withdrawal or modification of the offer without any notice, and or subject to delivery of the approving opinion of Hodgson Russ LLP, Albany, New York, Bond Counsel. Certain legal matters will be passed upon for the Issuer by Harris Beach PLLC, Buffalo, New York; for the University by Bond Counsel, Schoeneck & King, PLLC, Syracuse, New York; and for the Underwriter by Chapman and Cutler LLP, Chicago, Illinois. It is expected that delivery of the Bonds will be made to the Bondholders on or about August 13, 2024.*

**Loop Capital Markets**

Dated August 1, 2024

## REGARDING USE OF THIS LIMITED OFFERING MEMORANDUM

No dealer, broker, salesman or other person has been authorized by the Issuer, the University or the Underwriter (as such terms are defined herein) to give any information or to make any representations in connection with the issuance of the Bonds other than those contained in this Limited Offering Memorandum and, if given or made, such other information or representations must not be relied upon as having been authorized by the Issuer, the University or the Underwriter. This Limited Offering Memorandum does not constitute an offer to sell or the solicitation of an offer to buy, nor will there be any sale of the Bonds by any person, in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. This Limited Offering Memorandum is not to be construed as a contract with the purchasers of the Bonds.

By acceptance of its duties under the Indenture, the Trustee is not implying that it has reviewed nor has the Trustee actually reviewed this Limited Offering Memorandum, and the Trustee makes no representations as to the information contained herein, including but not limited to the representations as to the financial feasibility of the Project.

The statements and information contained under “INTRODUCTORY STATEMENT — The Issuer,” “THE ISSUER” and “ABSENCE OF MATERIAL LITIGATION — The Issuer” have been obtained from the Issuer. The other statements and information contained herein have been obtained from the University and other sources the University believes to be reliable. No person has been authorized to give any information or to make any representations other than those contained in this Limited Offering Memorandum and, if given or made, such information or representations must not be relied upon as having been authorized by the Issuer, the University or the Underwriter. Neither the delivery of this Limited Offering Memorandum nor any sale hereunder will under any circumstances create any implication that there has been no change in the affairs of the Issuer, the University or any other person described herein since the date hereof.

Except for the section hereof captioned “UNDERWRITING,” the Underwriter did not undertake to verify independently such information and makes no representation or warranty as to the accuracy or completeness of the information contained herein or any other information provided to any prospective investor considering a purchase of the Bonds offered hereby. The Underwriter has not participated in the preparation of, and expressly disclaims any representations respecting any projections that are included in, this Limited Offering Memorandum. In making an investment decision, investors must rely on their own examination of the Issuer, the University and the terms of the offering, including the merits and risks involved.

References to website addresses herein are for informational purposes only and may be in the form of a hyperlink solely for the reader’s convenience. Unless otherwise specified herein, such websites and the information or links contained therein are not incorporated into and are not a part of this Limited Offering Memorandum.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS IN EFFECT ON THE DATE HEREOF (THE “*SECURITIES ACT*”), AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF SECURITIES LAWS OF THE STATES IN WHICH THE BONDS HAVE BEEN REGISTERED OR QUALIFIED, IF ANY, AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS RECOMMENDATIONS THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE BONDS OR THE ACCURACY OR COMPLETENESS OF THE LIMITED OFFERING MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

THE BONDS AND ANY INTEREST OR PARTICIPATION THEREIN MAY ONLY BE INITIALLY PURCHASED BY, AND THEREAFTER TRANSFERRED ONLY TO, A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT. NOTWITHSTANDING ANY OTHER PROVISION OF THE INDENTURE, THE

BONDS MAY NOT BE REGISTERED IN THE NAME OF, OR TRANSFERRED TO, ANY PERSON EXCEPT AN APPROVED BUYER (AS DEFINED HEREIN) IN AUTHORIZED DENOMINATIONS. NO PURPORTED TRANSFER OF ANY INTEREST IN ANY BOND OR ANY PORTION THEREOF MADE IN VIOLATION OF THE INDENTURE SHALL BE GIVEN EFFECT BY OR BE BINDING UPON THE ISSUER OR THE TRUSTEE, AND, IF THE BONDS ARE REGISTERED IN A BOOK-ENTRY ONLY SYSTEM, NO PURPORTED TRANSFER OF ANY BENEFICIAL OWNERSHIP INTEREST IN ANY BOND THAT IS MADE IN VIOLATION OF THE INDENTURE SHALL BE GIVEN EFFECT BY OR BE BINDING UPON THE TRUSTEE. ANY SUCH PURPORTED TRANSFER IN VIOLATION OF THE REQUIREMENTS OF THE INDENTURE SHALL BE NULL AND VOID *AB INITIO* AND VEST IN THE TRANSFEREE NO RIGHTS AGAINST THE ISSUER, THE TRUSTEE OR THE SECURITIES DEPOSITORY, IF ANY. BY ITS OWNERSHIP OF A BOND AND THE REGISTRATION THEREOF IN THE BOND REGISTER, THE HOLDER OF SUCH BOND WILL BE DEEMED TO HAVE REPRESENTED AND AGREED THAT IT SHALL TRANSFER SUCH BOND ONLY IN ACCORDANCE WITH THE TERMS OF THE INDENTURE AND SUCH BOND AND IN COMPLIANCE WITH APPLICABLE LAW. *SEE* “THE BONDS – TRANSFER AND EXCHANGE.”

MOREOVER, EACH PURCHASER OR TRANSFEREE OF THE BONDS, BY PURCHASING THE BONDS, SHALL BE DEEMED TO HAVE REPRESENTED AND AGREED THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT, (B) ITS PURCHASE OF THE BONDS IS FOR ITS OWN ACCOUNT FOR THE PURPOSES OF INVESTMENT AND NOT WITH A VIEW TO RESALE OR OTHER DISTRIBUTION, (C) THE PURCHASER OR TRANSFEREE HAS RECEIVED THIS LIMITED OFFERING MEMORANDUM, TOGETHER WITH ANY SUPPLEMENTS THERETO, AND (D) THE PURCHASER OR TRANSFEREE IS SUFFICIENTLY KNOWLEDGEABLE AND EXPERIENCED IN FINANCIAL AND BUSINESS MATTERS SO AS TO BE CAPABLE OF EVALUATING THE MERITS AND RISKS OF THE INVESTMENT REPRESENTED BY THE PURCHASE OF THE BONDS, AND IS CAPABLE OF MAKING AND HAS MADE ITS OWN INVESTIGATION OF THE ISSUER, THE UNIVERSITY AND THE BONDS.

EACH PROSPECTIVE PURCHASER OF THE BONDS IS RESPONSIBLE FOR ASSESSING THE MERITS AND RISKS OF AN INVESTMENT IN THE BONDS AND MUST BE ABLE TO BEAR THE ECONOMIC RISK OF SUCH INVESTMENT IN THE BONDS.

#### **CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING STATEMENTS IN THIS LIMITED OFFERING MEMORANDUM**

This Limited Offering Memorandum, including the Appendices hereto, contains statements relating to future results that are “forward-looking statements.” When used in this Limited Offering Memorandum, the words “estimate,” “anticipate,” “forecast,” “project,” “intend,” “propose,” “plan,” “expect” and similar expressions identify forward-looking statements. Such forward-looking statements include, among others, certain statements appearing under “THE UNIVERSITY” herein and in APPENDIX A hereto. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material. NEITHER THE ISSUER NOR THE UNIVERSITY PLANS TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ITS EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR.

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## LIMITED OFFERING MEMORANDUM

**\$44,935,000**

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION  
REVENUE BONDS (D'YOUVILLE UNIVERSITY PROJECT),  
SERIES 2024A (TAXABLE)**

### INTRODUCTORY STATEMENT

The purpose of this Limited Offering Memorandum, which includes the cover page and the Appendices hereto, is to provide information in connection with the issuance by the Buffalo and Erie County Industrial Land Development Corporation (the “*Issuer*”) of its Revenue Bonds (D’Youville University Project), Series 2024A (Taxable) in the total principal amount of \$44,935,000 (the “*Bonds*”).

### PURPOSE OF THE BONDS AND SECURITY

The Bonds are being issued pursuant to an Indenture of Trust dated as of August 1, 2024 (the “*Indenture*”), between the Issuer and UMB Bank, N.A., a national banking association, as trustee (the “*Trustee*”). Proceeds of the Bonds will be loaned by the Issuer to D’Youville University (the “*University*”), a New York not-for-profit education corporation, pursuant to a Loan Agreement dated as of August 1, 2024 (the “*Loan Agreement*”) between the Issuer and the University and in consideration of such loan, the University will agree to make payments to the Issuer in such amounts and at such times as are required to provide for timely payment of the principal or redemption price of and interest on the Bonds. The Issuer will assign to the Trustee the Issuer’s rights under the Loan Agreement, except for certain Unassigned rights (as defined therein), pursuant to the Pledge and Assignment dated as of August 1, 2024 (the “*Pledge and Assignment*”) from the Issuer to the Trustee. The University’s obligation to make payments under the Loan Agreement is a direct, general and unconditional obligation of the University, secured as described herein. Capitalized terms used in this Limited Offering Memorandum have the meanings specified herein and in APPENDIX C hereto. Terms not otherwise defined in this Limited Offering Memorandum have the meanings provided in the specific documents.

Certain information regarding the University, together with the University’s most recent audited financial statements, are included in APPENDIX A and APPENDIX B hereto, respectively.

The University will use the proceeds of the Bonds to (i) fund general corporate purposes including replenishing working capital, refinancing an existing line of credit, and funding additional development costs of a new osteopathic medicine program being developed by the University (the “*Program*”); (ii) fund a capitalized interest fund for the purpose of the payment of a portion of the interest due on the Bonds through May 1, 2025; and (iii) pay the costs of issuance of the Bonds (collectively, the “*Project*”).

Operation of an osteopathic medicine program in the United States requires accreditation from the American Osteopathic Association’s Commission on Osteopathic College Accreditation (“*COCA*”), which is designated by the U.S. Department of Education to accredit institutions granting the osteopathic degree. See “V. ACCREDITATION AND AUTHORIZATION OF THE NEW OSTEOPATHIC PROGRAM” in

APPENDIX A hereto. The requirements for accreditation include funding of sufficient escrows to provide for reserves of the Program until the date upon which the University graduates its first class from the Program after COCA grants the University full accreditation (the “*COCA Escrow Requirements*”). See “VI. COCA RESERVE ACCOUNTS” in APPENDIX A hereto. The University has applied for pre-accreditation of the Program and the University expects the application to be considered by COCA in August of 2024. See “V. ACCREDITATION AND AUTHORIZATION OF THE NEW OSTEOPATHIC PROGRAM – ACCREDITATION” in APPENDIX A hereto.

In relation to establishing its new Program, the University has previously deposited funds sufficient to satisfy the COCA Escrow Requirements to (i) that certain reserve account (the “*Teach-Out Reserve Account*”) established pursuant to the Multi-Party Account Agreement dated as of February 9, 2024 (the “*Teach-Out Reserve Depository Agreement*”) among the University, COCA and Wilmington Trust, National Association, as escrow agent (the “*Teach-Out Reserve Depository*”), in order to satisfy the COCA Escrow Requirements with respect to the Teach-Out Reserve Requirement (as defined herein), and (ii) that certain reserve account (the “*Operating Reserve Account*” and, together with the Teach-Out Reserve Account, the “*Reserve Accounts*”) held with Goldman Sachs & Co. LLC (the “*Operating Reserve Depository*”) established as required by the Operating Reserve Fund Account Agreement dated as of February 9, 2024 (the “*Operating Reserve Depository Agreement*” and, together with the Teach-Out Reserve Depository Reserve Agreement, the “*Depository Agreements*”) between the University and COCA, in order to satisfy the COCA Escrow Requirements with respect to the Operating Reserve Requirement (as defined herein). **All funds deposited under the Depository Agreements are required to be and shall remain unencumbered throughout the term of each Depository Agreement and will not secure the Bonds.**

It is the intent of the University to use the funds in the Reserve Accounts, when released upon termination of the Reserve Accounts (the “*Released Funds*”), to secure the Bonds and to repay the principal of the Bonds when due. Pursuant to the Reserve Letters of Instructions (as hereinafter defined), at the time the Bonds are issued, the University will irrevocably instruct the Trustee to deliver to each Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing such Depository to pay to the Trustee, upon termination of respective Reserve Account, all moneys then on deposit in such Reserve Account, to be deposited by the Trustee into the Bond Fund established under the Indenture. Released Funds held in the Bond Fund will be security for the Bonds. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein and “VI. COCA RESERVE ACCOUNTS” in APPENDIX A hereto.

The Bonds also will be secured by (a) all other moneys and securities held from time to time by the Trustee for the owners pursuant to the Indenture, (b) the Mortgage dated as of August 1, 2024 (the “*Mortgage*”) from the University to the Issuer, which shall be assigned by the Issuer to the Trustee pursuant to an assignment of mortgage dated as of August 1, 2024 (the “*Mortgage Assignment*”), pursuant to which the University grants a security interest in certain property of the University that includes three academic buildings, an administrative building and a student apartment complex, as further described herein under “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – THE MORTGAGE” (the “*Mortgaged Property*”), and (c) the Pledge and Security Agreement dated as of August 1, 2024 (the “*Pledge and Security Agreement*”), pursuant to which the University grants to the Trustee a security interest in the Gross Revenues (as defined below) of the University. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein, APPENDIX C – FORM OF THE INDENTURE OF TRUST, APPENDIX D –



FORM OF THE LOAN AGREEMENT, APPENDIX E – FORM OF THE MORTGAGE and APPENDIX F – FORM OF THE PLEDGE AND SECURITY AGREEMENT.

“*Gross Revenues*” means, to the maximum extent permitted by law, all receipts, revenues, income and other money received by or on behalf of the University derived from its operations, including all rights to receive the same, whether in the form of accounts receivable, contracts rights or other rights (including rights under policies of business interruption insurance but not under policies of casualty insurance), and proceeds of such rights, now owned or held or hereafter coming into existence; provided, however, that Gross Revenues shall not include gifts, grants, bequests, donations and contributions restricted at the time of making thereof by the donor or maker thereof as being for certain specific purposes inconsistent with the payments required by the Loan Agreement and the income derived therefrom to the extent required by such restriction.

Pursuant to the Amended and Restated Intercreditor Agreement dated as of August 1, 2024 (the “*Intercreditor Agreement*”) by and among the Trustee, the Series 2020A Trustee (as defined below) and the University, the pledge of, and the security interest in, the Gross Revenues made by and granted by the University pursuant to the Pledge and Security Agreement is intended to be *pari passu* with the pledge of, and the security interest in the Gross Revenues made by and granted by the University pursuant to the Pledge and Security Agreement dated as of September 1, 2020 (the “*Series 2020 Security Agreement*”) by and between the University and U.S. Bank National Association, as trustee (the “*Series 2020 Trustee*”) for the holders of the Issuer’s Revenue Bonds (D’Youville College Project), Series 2020A in the original principal amount of \$34,370,000 (the “*Series 2020A Bonds*”) and its Revenue Bonds (D’Youville College Project), Series 2020B (Taxable) in the original principal amount of \$13,835,000 (the “*Series 2020B Bonds*”) and, together with the Series 2020A Bonds, the “*Series 2020 Bonds*”).

The summaries of and references to all documents, opinions and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary and reference is subject to, and qualified in its entirety by reference to, all of the provisions of such documents, opinions and instruments, including the definitions therein of certain terms. See APPENDIX C – FORM OF THE INDENTURE OF TRUST, APPENDIX D – FORM OF THE LOAN AGREEMENT, APPENDIX E – FORM OF THE MORTGAGE and APPENDIX F – FORM OF THE PLEDGE AND SECURITY AGREEMENT hereto.

LIMITED OFFERING MEMORANDUM

This Limited Offering Memorandum, including the Appendices hereto, contains brief descriptions of the Issuer, the University, the Indenture, the Loan Agreement, the Depository Agreements, the Reserve Letters of Instructions, the Pledge and Assignment, the Pledge and Security Agreement, the Mortgage and other documents executed in connection therewith. Forms of the Indenture, the Loan Agreement, the Mortgage and the Pledge and Security Agreement, are included in APPENDIX C, APPENDIX D, APPENDIX E and APPENDIX F hereto. The summaries of statutes, opinions, and documents contained herein are summaries only and do not purport to be comprehensive or definitive, and are qualified in all respects by reference to the originals or official compilations thereof, copies of which are available during the period of the sale of the Bonds upon reasonable request from the Underwriter (as defined herein). Thereafter, copies of such documents are available from the Trustee upon written request by Bondholders.

An investment in the Bonds is subject to a degree of risk. Prospective investors in the Bonds should carefully consider a degree of the material under “BONDHOLDERS’ RISKS” herein.

## **THE UNIVERSITY**

The University is a Catholic, co-educational, comprehensive liberal arts college located on a 27-acre city campus in Buffalo, New York. Founded in 1908, it was the first college in Western New York to offer baccalaureate degree programs for women. The University educates all students in the liberal arts tradition, providing students with an interdisciplinary education that strengthens skills in problem solving, critical thinking, collaboration, and written, visual, and oral communication. In the Fall 2023 semester, the University served a total of 2,556 students earning bachelor’s, master’s and doctoral degrees in the arts, business, health professions, and the natural and physical sciences. See “APPENDIX A – CERTAIN INFORMATION REGARDING D’YOUVILLE UNIVERSITY” and “APPENDIX B – FINANCIAL STATEMENTS OF D’YOUVILLE UNIVERSITY FOR THE FISCAL YEARS ENDED MAY 31, 2022 AND MAY 31, 2023.”

The University intends to form a separate entity (the “*Management Company*”) owned or controlled by the University for the purpose of constructing and financing new facilities for the Program, and managing the Program. It is expected that the Management Company and the University will enter into a management agreement pursuant to which the Management Company will construct, or lease and renovate, new facilities for the Program, and manage and pay the operating costs of the Program and the University will pay the Management Company a management fee equal to substantially all of the tuition revenues from students in the Program. It is therefore not expected that Program tuition revenues will be available to pay debt service on the Bonds. See “APPENDIX A – CERTAIN INFORMATION REGARDING D’YOUVILLE UNIVERSITY – IX. ANTICIPATED FINANCING STRUCTURE OF THE PROGRAM.”

## **THE ISSUER**

The Issuer was established as a not-for-profit local development corporation of the State pursuant to the purposes and powers contained within Article 14 of the Not-For-Profit Corporation Laws of the State, as amended, and the Resolutions of the Legislature of the County of Erie, New York, Nos. 218 and 295 of 2009, No. 5-3 of 2010 and No. 110 of 2011 (collectively referred to as, the “*Act*”), and pursuant to its certificate of incorporation filed on January 13, 1982, as amended on October 15, 1996, with the authority and power to own, lease and sell personal and real property for the purposes of, among other things, acquiring, constructing and equipping certain projects exclusively in furtherance of the charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest and to issue its revenue bonds in furtherance of the foregoing.

The Act further authorizes the Issuer to lease and sell any or all of its facilities, to issue bonds and to make loans for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of an interest on any such bonds so issued and any agreements made in connection therewith, to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon.

The sole member of the Issuer is the County of Erie, New York (the “*County*”), acting by and through its County Executive. The Issuer currently has seven (7) directors. The persons currently serving as directors of the Issuer are as follows:

NAME	POSITION
Hon. Mark C. Poloncarz	Chair
Denise Abbott	Director
Hon. April Baskin	Director
Hon. Byron W. Brown	Director
Hon. Howard Johnson	Director
Richard Lipsitz	Director
Daniel Castle	Director

The persons currently serving as officers of the Issuer are as follows:

NAME	POSITION
John Cappellino	President and Chief Executive Officer
Beth O’Keefe	Vice President
Mollie Profic	Vice President
Mollie Profic	Treasurer/Chief Financial Officer
Jerry Manhard	Assistant Treasurer
Atiqah Abidi	Assistant Treasurer
Daryl Spulecki	Assistant Treasurer
Beth O’Keefe	Secretary
Jerry Manhard	Assistant Secretary
Carrie Hocieniec	Assistant Secretary

**THE ISSUER HAS NO TAXING POWER. THE BONDS SHALL NEVER CONSTITUTE A DEBT OF THE STATE OR THE COUNTY, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, THE COUNTY OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS, AND NEITHER THE STATE NOR THE COUNTY SHALL BE LIABLE THEREON NOR SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE DULY PLEDGED THEREFOR PURSUANT TO THE INDENTURE.**

The Issuer does not and will not in the future monitor the financial condition or operations of the University or otherwise monitor payment of the Bonds or compliance with the documents relating thereto. The Issuer will rely entirely upon the Trustee and the University to carry out their respective responsibilities under the Indenture and the Loan Agreement.

The Issuer has not prepared or assisted in the preparation of this Limited Offering Memorandum, except the statements under this caption “THE ISSUER” and the caption “LITIGATION—The Issuer,” and except as aforesaid, the Issuer is not responsible for any statements made in this Limited Offering Memorandum. Except for the adoption of resolutions, the holding of a public hearing, and the execution and delivery of documents required to effect the issuance of the Bonds, the Issuer has not otherwise assisted in the public offer, sale or distribution of the Bonds. Accordingly, except as aforesaid, the Issuer

disclaims responsibility for the disclosures set forth in this Limited Offering Memorandum or otherwise made in connection with the offer, sale and distribution of the Bonds.

#### **ESTIMATED SOURCES AND USES OF FUNDS**

Proceeds from the sale of the Bonds will be deposited by the Trustee into the Project Fund, the Capitalized Interest Fund and the Costs of Issuance Fund created under the Indenture.

##### **SOURCES OF FUNDS:**

Principal Amount of the Bonds	\$44,935,000
Total Sources of Funds	<u>\$44,935,000</u>

##### **USES OF FUNDS:**

Working Capital/Program Costs	\$35,000,000
Refinance Line of Credit	5,000,000
Deposit to the Capitalized Interest Fund	2,697,036
Deposit to the Costs of Issuance Fund <sup>(1)</sup>	<u>2,237,964</u>
Total Uses of Funds	<u>\$44,935,000</u>

(1) Includes Underwriter's fee, fees of counsel to the Underwriter, the University, the Issuer and the Trustee and Bond Counsel and miscellaneous fees and expenses.

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## DEBT SERVICE REQUIREMENTS

The following debt service requirements on the Bonds are based on the interest rate indicated on the cover page hereof.

PERIOD ENDING NOVEMBER 1,	PRINCIPAL	INTEREST	SERIES 2020 BONDS	TOTAL <sup>(1)</sup>
2024 <sup>(2)</sup>	--	\$815,383	\$1,857,905	\$2,673,288
2025	--	3,763,306	2,769,642	6,532,948
2026	--	3,763,306	2,759,919	6,523,225
2027	--	3,763,306	2,763,973	6,527,279
2028	--	3,763,306	2,761,195	6,524,501
2029	--	3,763,306	2,761,786	6,525,092
2030	\$44,935,000	3,763,306	2,765,545	51,463,851
2031	--	--	2,802,266	2,802,266
2032	--	--	2,831,011	2,831,011
2033	--	--	2,837,029	2,837,029
2034	--	--	2,840,602	2,840,602
2035	--	--	2,900,602	2,900,602
2036	--	--	2,840,414	2,840,414
2037	--	--	2,836,653	2,836,653
2038	--	--	2,835,448	2,835,448
2039	--	--	2,836,595	2,836,595
2040	--	--	2,834,890	2,834,890
2041	--	--	2,830,333	2,830,333
2042	--	--	2,832,924	2,832,924
2043	--	--	2,827,256	2,827,256
2044	--	--	2,828,532	2,828,532
2045	--	--	2,826,345	2,826,345
2046	--	--	2,825,695	2,825,695
2047	--	--	2,821,379	2,821,379
2048	--	--	2,823,395	2,823,395
2049	--	--	2,821,338	2,821,338
2050	--	--	2,815,206	2,815,206
Total <sup>(1)</sup>	\$44,935,000	\$23,395,220	\$73,229,973	\$143,418,097

(1) Totals may not sum due to rounding.

(2) Includes debt service from the date of issuance of the Bonds to November 1, 2024.

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## THE BONDS

### DESCRIPTION OF BONDS

The Bonds are issued as fully registered Bonds, without coupons, in denominations of \$100,000 and any integral multiple of \$5,000 in excess of \$100,000. The Bonds bear interest at the rate as set forth on the cover page of this Limited Offering Memorandum. Interest on the Bonds will be payable on May 1 and November 1 of each year, commencing November 1, 2024 (each such date, an “*Interest Payment Date*”) and will be paid to the Registered Owners of the Bonds as shown on the Bond Register as of the Regular Record Date. Interest on the Bonds will be computed on the basis of a 360-day year of twelve 30-day months.

The Bonds mature in the amount and on the date as set forth on the cover page of this Limited Offering Memorandum. On the Maturity Date, outstanding principal of the Bonds and interest accrued but unpaid thereon, shall be due and payable.

The principal of any Bond will be payable upon presentation and surrender of such Bond to the Principal Office of the Trustee. The principal of the Bonds will be payable in immediately available funds. Such payments will be made to the Registered Owner of the Bond so delivered, as shown in the Bond Register maintained by the Trustee.

### REDEMPTION AND PURCHASE PRIOR TO MATURITY

The Bonds are subject to redemption prior to maturity as follows:

*Optional Redemption of Bonds.* Bonds shall not be subject to optional redemption prior to maturity.

*Special Mandatory Redemption of Bonds.* In the event (i) if the “Candidacy Status” in accordance with COCA Policies and Procedures is terminated for any reason; (ii) the University abandons proceeding with the accreditation of the Program by COCA; (iii) the University fails to obtain “Pre-Accreditation Status” in accordance with the COCA Policies and Procedures on or before January 31, 2025, (iv) if, after the University obtains such Pre-Accreditation Status, such status is terminated for any reason, or (v) if the University fails to obtain full accreditation status in accordance with the COCA Policies and Procedures on or before September 30, 2029, the University shall immediately notify the Trustee, in writing, and all of the Bonds then outstanding shall be subject to mandatory redemption on the earliest practicable Business Day thereafter for which timely notice of redemption may be given at a redemption price equal to 100% of the principal amount of such Bonds, together with unpaid interest accrued thereon to the date of redemption, from amounts deposited by the University with the Trustee.

*Purchase of Bonds.* The University has the right under the Indenture to purchase any of the Bonds that are offered to the University at any price deemed appropriate by the Authorized University Representative. Any purchase of Bonds may be made with or without tender of Bonds and at either public or private sale. Bonds so purchased may, at the option of the University, be delivered to the Trustee for cancellation.

## NOTICE OF REDEMPTION

*General.* The Trustee shall cause notice of any redemption of Bonds to be mailed by first class mail, postage prepaid (except when a Securities Depository is the Registered Owner of all of the Bonds and except for any Person or entity owning or providing evidence of ownership satisfactory to the Trustee of a legal or beneficial ownership in at least \$1,000,000 of principal amount of Bonds who so requests, in which cases, by certified mail, return receipt requested), to the Registered Owners of all Bonds to be redeemed at the registered addresses appearing in the Bond Register. Each such notice shall (i) be mailed at least thirty (30) days prior to the redemption date for the Bonds, (ii) identify the Bonds to be redeemed if less than all Bonds are to be redeemed (specifying the CUSIP numbers, if any, assigned to the Bonds), (iii) specify the redemption date and the redemption price, (iv) state whether the notice is conditional or not as permitted by the provisions of the Indenture described in the following paragraph, and (v) state that on the redemption date the Bonds called for redemption will be payable at the office of the Trustee designated in such notice, that from the redemption date, provided funds have been deposited with the Trustee sufficient for redemption, interest will cease to accrue and that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or on the Bonds, if any; provided, however, that if the Bonds are registered with a Securities Depository, redemption notices will be sent pursuant to the procedures of such Securities Depository. Any failure on the part of a Securities Depository, a direct participant or indirect participant to give such notice to the Owner or any defect therein shall not affect the sufficiency or validity of any proceedings for the redemption of the Bonds. No defect affecting any Bond, whether in the notice of redemption or mailing thereof (including any failure to mail such notice), shall affect the validity of the redemption proceedings for any other Bonds.

*Conditional Notice.* If at the time of mailing of notice of a redemption there shall not have been deposited with the Trustee moneys sufficient to redeem all the Bonds called for redemption, such notice may state that it is conditional, that is, subject to the deposit of the redemption moneys with the Trustee on or prior to the redemption date, and such notice shall be of no effect unless such moneys are so deposited on or prior to the redemption date. If such redemption is not effectuated, the Trustee shall, at the expense of the University, within five days thereafter, give notice in the manner in which the notice of redemption was given that such moneys were not so received and shall rescind the redemption.

## RESTRICTIONS ON OWNERSHIP AND TRANSFER

The Bonds are subject to restrictions on transferability and resale.

Each initial Beneficial Owner of the Bonds shall be a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (a “*Qualified Institutional Buyer*”), that has provided an “Investor Representation Letter” in the form of APPENDIX G hereto (an “*Investor Letter*”) to the Issuer and the Trustee. Thereafter, neither the Bonds nor any legal or beneficial ownership interest in the Bonds may transferred by the Beneficial Owner thereof, except (A) in Authorized Denominations and (B) to any person that is a Qualified Institutional Buyer. Subsequent Beneficial Owners of the Bonds are not required to deliver an “Investor Representation Letter.”

The Trustee shall be entitled to conclusively rely upon any investment letter received by it under the Indenture and shall have no duty to make an independent investigation into whether a Beneficial Owner constitutes a Qualified Institutional Buyer.

## TRANSFER AND EXCHANGE

Notwithstanding any other provision hereof, the Bonds may not be registered in the name of, or transferred to, any person except a Qualified Institutional Buyer (also referred to herein as an “*Approved Buyer*”) in Authorized Denominations. Only (a) Beneficial Owners or (b) the person(s) in whose name(s) the Bonds are registered under the Indenture shall be treated as Holders and shall have the rights of Holders under the Indenture. No purported transfer of any interest in any Bond or any portion thereof made in violation of the provisions of the Indenture summarized under this heading shall be given effect by or be binding upon the Issuer or the Trustee, and, if the Bonds are registered in a book-entry only system, no purported transfer of any beneficial ownership interest in any Bond that is made in violation of the provisions of the Indenture summarized under this heading shall be given effect by or be binding upon the Trustee. **Any such purported transfer in violation of the requirements of the provisions of the Indenture summarized under this heading shall be null and void *ab initio* and vest in the transferee no rights against the Issuer, the Trustee or, if applicable, the Securities Depository.** By its ownership of a Bond and the registration thereof in the Bond Register, the Holder of such Bond will be deemed to have represented and agreed that it shall transfer such Bond only in accordance with the terms of the Indenture and such Bond and in compliance with applicable law. The Trustee has no duty or obligation to confirm that any beneficial owner of the Bonds meets the requirements set forth in the Indenture.

The Bonds will bear a legend to the following effect, unless the Issuer instructs the Trustee otherwise, in writing, in compliance with applicable law:

“THE BONDS EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS SO REGISTERED OR UNLESS IT IS SOLD TO AN “APPROVED BUYER” AS DEFINED IN THE INDENTURE AND PURSUANT TO THE TERMS THEREOF.”

Upon surrender for registration of transfer of any Bond at the Principal Office of the Trustee, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees, one or more new fully registered Bonds of Authorized Denominations for the aggregate principal amount which the Registered Owner is entitled to receive.

At the option of the Owner, Bonds may be exchanged for other Bonds of any other Authorized Denomination, of a like aggregate principal amount and accruing interest at the same interest rate, upon surrender of the Bonds to be exchanged at the Principal Office of the Trustee. Whenever any Bonds are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Bonds which the Bondholder making the exchange is entitled to receive.

All Bonds presented for registration of transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee, duly executed by the owner or by his attorney duly authorized in writing, and such documentation as the Trustee shall reasonably require.



No service charge shall be made to a Bondholder for any exchange or registration of transfer of Bonds, but the Issuer or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

New Bonds delivered upon any registration of transfer or exchange shall be valid obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by the Indenture and shall be entitled to all of the security and benefits thereof to the same extent as the Bonds surrendered.

#### NO ADDITIONAL BONDS

No additional bonds, whether parity or subordinate, may be issued or secured by the Indenture.

### **SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**

#### THE INDENTURE

The Bonds will be issued under and secured by the Indenture. The Indenture provides that all Bonds issued thereunder will be limited obligations of the Issuer, payable solely from the sources identified therein, which, in the case of the Bonds, include: (i) payments required to be made to the Issuer by the University under the Loan Agreement (other than certain fees and indemnification payments required to be paid to the Issuer), and (ii) certain moneys and securities held by the Trustee under the Indenture.

#### THE LOAN AGREEMENT

Under the Loan Agreement, the University will be obligated to make loan payments in amounts necessary to provide for the payment as and when due of the principal or redemption price of, and interest on, the Bonds, and to provide for certain other payments required by the Indenture. Pursuant to the Pledge and Assignment, the Issuer will assign the Loan Agreement, including its right to receive loan payments thereunder (other than certain fees and indemnification payments required to be paid to the Issuer) to the Trustee as security for the Bonds. The Loan Agreement is a general obligation of the University and the full faith and credit of the University is pledged to secure the payments required thereunder. No party other than the University is providing any security for the University's obligations under the Loan Agreement or for the payments due on the Bonds.

#### THE PLEDGE AND ASSIGNMENT

The Pledge and Assignment will assign to the Trustee substantially all of the Issuer's right, title and interest in and to the Loan Agreement (except for certain Unassigned Rights), including all rights to receive Loan Payments (sufficient to pay the principal of, Sinking Fund Payments for, Redemption Price, if any, of and interest on, and all other amounts due on the Bonds as the same become due) to be made by the University pursuant to the Loan Agreement.

## THE PLEDGE AND SECURITY AGREEMENT

Pursuant to the Pledge and Security Agreement, the University will pledge, assign and grant the Trustee a security interest in the Gross Revenues in order to secure the payment of the Bonds. The Series 2020 Bonds shall have a parity lien on Gross Revenues and the University may in the future incur additional indebtedness secured by a parity lien on the Gross Revenues. For additional information regarding the Pledge and Security Agreement, see FORM OF THE PLEDGE AND SECURITY AGREEMENT in APPENDIX F hereto.

Pursuant to the Intercreditor Agreement, the pledge of, and the security interest in, the Gross Revenues made by and granted by the University pursuant to the Pledge and Security Agreement is intended to be pari passu with the pledge of, and the security interest in, the Gross Revenues made by and granted by the University pursuant to the Series 2020 Security Agreement related to the Series 2020 Bonds.

## THE MORTGAGE

To secure (1) the payment of the principal of and interest on the Bonds, according to their tenor and effect, (2) all amounts required to be paid to the Issuer and the Trustee under the Loan Agreement according to its tenor and effect, (3) the payment of all other sums required to be paid under the Indenture and the other Bond Documents, and (4) the performance and observance by the University of all of the covenants, agreements, representations and warranties in the Indenture and the other Bond Documents, the University will grant to the Issuer a mortgage on the Mortgaged Property pursuant to the Mortgage, which shall be assigned by the Issuer to the Trustee pursuant to the Mortgage Assignment. See APPENDIX E – FORM OF THE MORTGAGE hereto.

The Mortgaged Property consists of the following property:

- Parcel A, which totals approximately four (4) acres of land bounded by Connecticut Street, Prospect Avenue, Porter Avenue and Fargo Avenue in the City of Buffalo, New York, includes the following University academic and administrative buildings:
  - Bauer Family Academic Center – 58,110 square feet, originally constructed in 2001, currently used primarily for student support space (IT helpdesk, academic advising, financial aid), and classrooms (primarily Chiropractic/OT/PT programs).
  - D’Youville Academic Center – 88,475 square feet, originally constructed 2010, currently used primarily for doctoral research space, conference room and simulation lab, event/gathering space, and the School of Pharmacy,
  - Koessler Administration Building – 91,000 square feet, originally constructed in 1908, currently used primarily for University administrative offices, admissions, and student support services/student life.

- Dr. Pauline Alt Building – 103,500 square feet, originally constructed in 1966, currently used primarily for the University’s School of Nursing and several floors of “offline” space.
- Parcel B, which totals approximately two (2) acres of land located at the corner of Prospect Avenue and Connecticut Street in the City of Buffalo, New York, is an approximately 90,000 square foot, 40-unit student apartment complex with approximately 175 beds, and surface parking for approximately 117 vehicles, originally constructed in 2015.

The University has not obtained an appraisal of the Mortgaged Property in connection with the issuance of the Bonds.

#### ESTABLISHMENT OF RESERVE ACCOUNTS

In order to comply with certain COCA requirements, the University previously deposited, from its own funds, (i) \$39,600,000 into the Teach-Out Reserve Account pursuant to the Teach-Out Depository Agreement and (ii) \$9,900,000 into the Operating Reserve Account pursuant to the Operating Depository Agreement. **The Bonds shall not be secured by a security interest in the Reserve Accounts or investments therein, which, in accordance with the accreditation requirements of COCA, must remain unencumbered.** See “VI. – COCA RESERVE ACCOUNTS” in Appendix A hereto for further information regarding the Reserve Accounts.

The University intends to use the Released Funds to secure the Bonds and to repay the principal of the Bonds when due. See “—RELEASED FUNDS” below.

#### RELEASED FUNDS

The University intends to use the Released Funds to secure the Bonds and to repay the principal of the Bonds when due. Pursuant to a Letter of Instructions Regarding Teach-Out Reserve Fund dated August 13, 2024 (the “*Teach-Out Reserve Letter of Instructions*”) from the Issuer and the University to the Trustee, and accepted by the Trustee, the University will irrevocably instruct the Trustee to deliver to the Teach-Out Reserve Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing the Teach-Out Reserve Depository to pay to the Trustee, upon termination of the Teach-Out Reserve Depository Agreement, all moneys then on deposit in the Teach-Out Reserve Account, to be deposited by the Trustee into the Bond Fund established under the Indenture. In addition, pursuant to the Letter of Instructions Regarding Operating Reserve Fund dated August 13, 2024 (the “*Operating Reserve Letter of Instructions*” and, together with the Teach-Out Reserve Letter of Instructions, the “*Reserve Letters of Instructions*”) from the Issuer and the University to the Trustee, and accepted by the Trustee, the University has irrevocably instructed the Trustee to deliver to the Operating Reserve Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing the Operating Reserve Depository to pay to the Trustee, upon termination of the Operating Reserve Depository Agreement, all moneys then on deposit in the Operating Reserve Account, to be deposited by the Trustee into the Bond Fund established under the Indenture. Released Funds deposited into the Bond Fund will be security for the Bonds. The University may expend funds in the Reserve Accounts and the money therein may not be available to repay the Bonds. See “BONDHOLDERS’ RISKS – Draws on the Reserve Funds” herein.

The University has covenanted in the Loan Agreement to remit to the Trustee any Released Funds paid to the University and to take all actions necessary to cause all monies on deposit in the Teach-Out Reserve Account and the Operating Reserve Account to be promptly paid to the Trustee upon termination of the Teach-Out Reserve Depository Agreement and the Operating Reserve Depository Agreement. See FORM OF THE LOAN AGREEMENT – Section 5.01 COVENANTS RELATING TO TEACH-OUT RESERVE AND OPERATING RESERVE in APPENDIX D hereto.

#### TRUST ESTATE

To provide for the payment of principal of and interest on the Bonds, and in order to secure the rights of the Bondholders and the performance of the covenants contained in the Bonds, the Loan Agreement and the Indenture, the Issuer will pledge, transfer and assign to the Trustee (except the Unassigned Rights):

- (a) The rights and interests of the Issuer under the Loan Agreement;
- (b) The Trust Revenues (as defined herein) and all rights and interests of the Issuer in the Trust Revenues and the proceeds thereof;
- (c) All Funds created in the Indenture and any proceeds thereof, except for moneys or obligations deposited with or paid to the Trustee for the payment of Bonds that are no longer deemed to be Outstanding under the Indenture, and all Revenues payable to the Trustee by or for the account of the Issuer pursuant to the Loan Agreement and the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture; and
- (d) Any and all other interests in real or personal property, and any proceeds thereof, of every name and nature from time to time hereafter by delivery or by writing of any kind specifically mortgaged, pledged or hypothecated, as and for additional security under the Indenture by the Issuer or by anyone on its behalf or with its written consent in favor of the Trustee, which is authorized to receive any and all such property at any and all times and to hold and apply the same, subject to the terms of the Indenture.

The term “*Trust Revenues*” means (a) Released Funds (provided, in no event shall amounts on deposit in the Reserve Accounts constitute “Trust Revenues” under the Indenture or be in any way subject to the lien of the Indenture until such funds constitute Released Funds); (b) amounts payable to the Trustee pursuant to the Pledge and Assignment and the Mortgage Assignment; (c) amounts payable to the Trustee pursuant to the Pledge and Security Agreement; (d) amounts payable to the Trustee with respect to the principal of and interest on the Bonds (1) on deposit in the Bond Fund, the Capitalized Interest Fund, the Project Fund, or the Costs of Issuance Fund from the proceeds of the Bonds or obligations of the Issuer issued to refund the Bonds or from any other source or (2) paid by the University as Loan Repayments under the Loan Agreement; (e) all receipts of the Trustee credited under the provisions of the Indenture against amounts described in clause (b); and (f) investment income with respect to any moneys held by the Trustee in the Bond Fund, the Capitalized Interest Fund, the Project Fund and the Costs of Issuance Fund.

## LOAN AGREEMENT COVENANTS

The following are brief summaries of certain covenants of the University in the Loan Agreement. For additional information regarding the Loan Agreement, see FORM OF THE LOAN AGREEMENT in APPENDIX D hereto.

*Additional Indebtedness.* The University agrees in the Loan Agreement not to incur or guaranty any Indebtedness other than Permitted Indebtedness. See FORM OF THE LOAN AGREEMENT – Section 5.02 Additional Indebtedness and FORM OF THE INDENTURE OF TRUST– Definition of Permitted Indebtedness, each in APPENDIX D hereto.

*Liens.* The University covenants in the Loan Agreement not to create, assume, or allow any pledge, security interest or lien on Mortgaged Property or the Gross Revenues except for Permitted Encumbrances (as defined in the Loan Agreement). See FORM OF THE LOAN AGREEMENT – Section 5.03 Liens in APPENDIX D hereto.

*Debt Service Coverage Ratio.* The University agrees in the Loan Agreement to maintain a Debt Service Coverage Ratio equal to at least 1:20 to 1:00, which shall be calculated as of May 31st of each Fiscal Year, commencing on May 31, 2025. The University's failure to maintain a Debt Service Coverage Ratio of at least 1:20 to 1:00 for two (2) consecutive Fiscal Years shall constitute an Event of Default under the Loan Agreement.

## INDENTURE FUNDS

The Funds established by the Indenture include the Bond Fund, the Capitalized Interest Fund and the Costs of Issuance Fund.

*Bond Fund.* The Bond Fund shall be in the custody of the Trustee held for the benefit of the Bondholders. Under the Indenture, the University authorizes and directs the Trustee to withdraw money from the Bond Fund sufficient to pay the principal of and interest on the Bonds as the same shall become due and payable.

The Trustee shall make the following deposits into the Bond Fund from the sources identified below:

- (1) Moneys on deposit in the Capitalized Interest Fund, including any investment earnings thereon;
- (2) As received, Revenues and earnings and proceeds of investments of moneys in the Bond Fund;
- (3) Moneys from the Costs of Issuance Fund required to be transferred to the Bond Fund pursuant to the Indenture;

(4) Released Funds paid to the Trustee by the Teach-Out Reserve Depository and the Operating Reserve Depository upon termination of the Teach-Out Reserve and Operating Reserve, respectively;

(5) Amounts received from the University pursuant to the Loan Agreement as the result of insufficient funds in the Bond Fund; and

(6) All other moneys or investments delivered to the Trustee with written direction from the University for deposit into the Bond Fund.

The Trustee shall disburse money in the Bond Fund on the following dates, in the following amounts and in the following order of priority:

(1) To the Owners, on each date on which a payment of interest on Bonds comes due, an amount equal to the interest on all of the Bonds then Outstanding coming due on such date;

(2) To the Owners, on each date on which principal of the Bonds matures or is subject to redemption for as long as any of the Bonds are Outstanding and unpaid, an amount equal to the principal of the Bonds maturing or subject to redemption on such date, plus applicable premium;

(3) To the Owners, on each date on which the Bonds are due by acceleration prior to maturity, the principal amount of Bonds due, plus applicable Premium, plus accrued interest thereon; and

(4) Upon payment in full of all Outstanding Bonds or the defeasance of all Outstanding Bonds pursuant to the Indenture, any remaining balance therein to the University.

*Capitalized Interest Fund.* The Capitalized Interest Fund shall be maintained for the purpose of paying a portion of the interest due on the Bonds through May 1, 2025. The Trustee shall transfer amounts on deposit in the Capitalized Interest Fund to the Bond Fund in accordance with the Indenture in an amount sufficient to pay interest when due on the Bonds.

*Costs of Issuance Fund.* The Costs of Issuance Fund will be maintained for the purpose of paying Costs of Issuance. Upon the earlier of (i) the University's determination that all Costs of Issuance have been paid, as certified to the Trustee by an Authorized University Representative, or (ii) December 31, 2024, the Trustee shall transfer the balance on hand in the Costs of Issuance Fund to the Bond Fund, and the Costs of Issuance Fund shall then be closed.

#### LIMITED OBLIGATION

THE ISSUER HAS NO TAXING POWER. THE BONDS SHALL NEVER CONSTITUTE A DEBT OF THE STATE OF NEW YORK OR ERIE COUNTY, NEW YORK, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK, ERIE COUNTY, NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS,

AND NEITHER THE STATE OF NEW YORK NOR ERIE COUNTY, NEW YORK SHALL BE LIABLE THEREON NOR SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE DULY PLEDGED THEREFOR PURSUANT TO THE INDENTURE.

## **BONDHOLDERS' RISKS**

*The operation of the University is subject to a number of risks and uncertainties, many of which are beyond its control. Such risks may cause actual operating results or financial performance to be materially different from expectations, thereby affecting payments to be made with respect to the Bonds. The following briefly describes certain risks that could affect payments with respect to the Bonds. This discussion of risk factors is not intended to be exhaustive and should be read in conjunction with all other parts of this Limited Offering Memorandum. The order in which the various risk factors are discussed below is not intended to indicate their relative order of importance or likelihood to occur.*

**General.** The Bonds are limited obligations of the Issuer payable solely from amounts to be paid by the University under the Loan Agreement and from other funds available to the Trustee under the Indenture. No representation or assurance can be given that the University will generate sufficient revenues to meet its payment obligations under the Loan Agreement.

Various factors could adversely affect the University's ability to meet its payment obligations under the Loan Agreement. The future financial condition of the University could be adversely affected by, among other things, economic conditions in the areas from which the University traditionally draws students, legislation, regulatory actions, increased competition from other educational institutions, changes in the demand for higher educational services, demographic changes, and litigation. Some of such risk factors are described below.

**Regulatory Requirements and Legislative Actions.** The University is subject to extensive regulation, certification, and accreditation by various federal, state, and local government agencies, such as the United States Department of Education ("USDE") and the New York State Department of Education ("NYDOE"), and by certain private accrediting agencies. These regulatory requirements cover virtually all phases of the University's operations, including educational program offerings, facilities, instructional and administrative staff, administrative procedures, marketing and recruiting, financial operations, payment of refunds to withdrawing students, acquisitions or openings of new schools or programs, addition of new educational programs and changes in corporate structure and ownership. No assurance can be given as to the effect on future operations of existing laws, regulations and standards for certification or accreditation or of any future changes in such laws, regulations, and standards.

Governmental agencies and accrediting agencies periodically revise their requirements and modify their interpretations of existing requirements. The University cannot predict with certainty how the requirements applied by these agencies will be interpreted or implemented or whether it will be able to comply with all such requirements in the future.

If the University fails to comply with applicable regulatory requirements, these agencies could (1) impose monetary fines or penalties; (2) terminate or limit the University's operations or ability to grant degrees; (3) restrict or revoke accreditation; (4) limit, terminate or suspend eligibility to participate in the programs of federal student financial assistance authorized pursuant to the Higher Education Act of 1965,

as amended (“*Title IV Programs*”) or state financial aid programs; (5) require the repayment of funds received under the Title IV Programs or state financial aid programs; (6) require the University to post a letter of credit with USDE; (7) subject the University to heightened cash monitoring by USDE; (8) transfer the University from USDE’s advance system of receiving Title IV Program funds to its reimbursement system, under which an institution must disburse its own funds to students and document the students’ eligibility for Title IV Program funds before receiving such funds from USDE; or (9) subject the University to other civil or criminal penalties. Each of these sanctions could materially adversely affect the University’s operations or financial condition.

For certain accreditation and regulatory requirements specifically related to the Program, see “BONDHOLDERS’ RISKS - *COCA Accreditation of the Program*” and “- *New York State Authorization of the Program Program*” below.

**Competition.** The post-secondary education industry is highly fragmented and increasingly competitive. The University could face additional competition in the future from both private and public educational institutions, as well as for-profit companies that offer comparable services and programs to the population which the University presently serves or will serve in the future. This could include the establishment of new programs (including online programs) and the construction, renovation, or expansion of competing educational institutions, as well as tuition discounting programs of competing educational institutions. An increase in competition could affect the success of the University’s recruiting efforts, or cause the University to reduce its tuition rates and increase its marketing and other recruiting expenses, which could adversely impact the University’s financial condition.

**Tax-Exempt/Nonprofit Status.** The activities of tax-exempt organizations have been subjected to increased scrutiny by federal, state, and local legislative and administrative agencies (including the United States Congress, the Internal Revenue Service (the “*IRS*”), and local taxing authorities). Various proposals either have been considered previously or are presently being considered at the federal, state, and local level which could restrict the definition of tax-exempt status, impose new restrictions on the activities of tax-exempt corporations and/or tax or otherwise burden the activities of such corporations (including proposals to broaden or strengthen federal tax provisions respecting unrelated business income of nonprofit, tax-exempt corporations). There can be no assurance that future changes in the laws, rules, regulations, interpretations, and policies relating to the definition, activities and/or taxation of tax-exempt corporations will not have material adverse effects on the future operations of the University.

Compliance with current and future regulations and rulings of the IRS could adversely affect the ability of the University to charge and collect revenues, finance or incur indebtedness on a tax-exempt basis or otherwise generate revenues necessary to provide for payment of the Bonds. Although the University has covenanted to maintain its tax-exempt status, loss of tax-exempt status by the University would likely have a significant adverse effect on the University.

**Bond Rating.** There is no assurance that the rating and outlook assigned to the Bonds at the time of issuance will not be lowered or withdrawn at any time. A downward revision or withdrawal of such rating or outlook may have a substantial adverse effect on the market price for, and marketability of, the Bonds in secondary market trading of such Bonds in particular.



***Certain Matters Relating to Enforceability of Obligations.*** The remedies available to Bondholders upon an Event of Default under the Indenture or the Loan Agreement are in many respects dependent upon judicial action which is subject to discretion or delay. Under existing law and judicial decisions, including specifically the United States Bankruptcy Code (the “*Bankruptcy Code*”), the remedies specified in the Indenture, the Loan Agreement, the Pledge and Security Agreement, the Pledge and Assignment and the Mortgage, may not be readily available or may be limited. A court may decide not to order specific performance.

The various legal opinions to be delivered concurrently with the original delivery of the Bonds will be qualified as to enforceability of the various legal instruments by, among other things, limitations imposed by bankruptcy, reorganization, insolvency, or other similar laws or legal or equitable principles affecting creditors’ rights.

***Potential Effects of Bankruptcy.*** If the University were to file a petition for relief under the United States Bankruptcy Code (or if such a petition were filed against the University), its revenues and certain of its accounts receivable and other property acquired after the filing would not be subject to the security interest granted under the Security Agreement. The filing would operate as an automatic stay of the commencement or continuation of most judicial or other proceedings against the University and its property, and as an automatic stay of any act or proceeding to enforce a lien on its property. If the bankruptcy court so ordered, the University’s property could be used for the benefit of the University despite the claims of its creditors (including the Trustee acting on behalf of the Bondholders).

In the event of a bankruptcy proceeding involving the University, the Trustee could be treated under the United States Bankruptcy Code as the holder of a secured claim. Among other things, the potential effects of a bankruptcy of the University could be to delay substantially the enforcement of remedies otherwise available to the Trustee and to allow the bankruptcy court, under certain circumstances (1) to substitute other assets of the University for collateral under the Security Agreement, (2) to sell all or part of the collateral under the Security Agreement without application of the proceeds thereof to the payment of the Bonds, (3) to subordinate the rights and liens securing the Bonds to any borrowing approved by the bankruptcy court, (4) to permit the University to cure defaults under the Loan Agreement, (5) to compel termination of the Loan Agreement by payment of an amount determined by the bankruptcy court to be the value of the collateral (even though less than the principal amount of the Bonds outstanding) or (6) to modify the terms of or payments due under the Loan Agreement.

In a bankruptcy proceeding, the University could file a plan for the adjustment of its debts which modifies, under certain circumstances, the rights of creditors generally or the rights of any class of creditors, secured or unsecured. The plan, when confirmed by the court, binds all creditors who had notice or knowledge of the plan and discharges all claims against the debtor provided for in the plan. Except as described below, no plan may be confirmed unless, among other conditions, the plan is in the best interest of creditors, is feasible and has been accepted by each class of claims impaired thereunder.

Each class of claims has accepted the plan if at least two thirds in dollar amount and more than one half in number of the allowed claims of the class that are voted with respect to the plan are cast in its favor. Even if the plan is not so accepted, it may be confirmed if the court finds, among other things, that the plan is fair and equitable with respect to each class of non accepting creditors impaired thereunder and

does not discriminate unfairly. Such an approved plan could limit recoveries by the Bondholders and/or reduce the collateral pledged as security therefor.

***Limitations on Security Interest.*** The security interest in the collateral may not be perfected with respect to items which are in the form of cash and negotiable instruments not in the possession of the Trustee. In addition, certain interests and claims of others may be on a parity with or prior to such security interests, and certain statutes and other provisions may limit the right of the University to grant such security interests. Examples of such claims, interests and provisions include, without limitation (1) statutory liens, (2) rights arising in favor of the United States of America or any agency thereof, (3) prohibitions against assignment contained in federal statutes, (4) constructive trusts, equitable liens or other rights impressed or conferred by any state or federal court in the exercise of its equitable jurisdiction, (5) federal bankruptcy laws affecting amounts earned by the University after institution of bankruptcy proceedings by the University, (6) rights of third parties in revenues not in the possession of the Trustee, including but not limited to the Gross Revenues, including those converted to cash, where a security interest in those revenues can only be perfected by possession, and (7) the requirement that appropriate continuation statements be filed in accordance with the New York Uniform Commercial Code from time to time in effect.

***Economic Conditions and Financial Markets.*** The United States economy is unpredictable. Future economic conditions, which may include an inability to control expenses in periods of inflation, and other conditions, including the availability and affordability of insurance; energy costs; availability of qualified instructors and administrative personnel; technological advances; transportation costs; the capability of management of the University; matters generally affecting the State of New York and the geographic area of the University; and competition from other institutions of higher education, may adversely affect revenues and expenses and, consequently, the ability of the University to generate sufficient revenues to make payments of principal of and interest on the Bonds. **Currently the United States is experiencing high levels of inflation and supply chain issues which may have an impact on the cost of goods and services needed to construct and operate the University.**

An economic downturn has the potential to affect higher education in a number of ways, including (1) a decrease in the funds spent by families on higher education, causing many colleges and universities to increase institutional scholarships, which are funded in part or in whole through an institution's operating budget; (2) fewer eligible students applying to some colleges and universities; and (3) reorganization of and new policies governing various state and federal student loan programs. There is no guaranty that an economic downturn will not have a negative effect on enrollment, or the affordability of education offered by the University.

***COCA Accreditation of the Program.*** The development and operation of an osteopathic medical school in the United States requires accreditation from COCA. The Program is not currently accredited by COCA. Status as an accredited institution is not only necessary to ensure the quality and marketability of the Program, but also to allow the University to participate in Title IV Programs. The failure of the University to obtain accreditation and to maintain accreditation for the Program going forward will subject the University to significant oversight and reporting requirements and accreditation proceedings such as a show-cause directive, an action to defer or deny action related to the University's application for a new grant of accreditation or an action to suspend its accreditation. In addition, failure to maintain accreditation would result in the loss of Title IV Program eligibility. Such events and any related claims

brought against the University could have a material adverse impact on the University's business, reputation, operations, and financial condition.

New colleges of osteopathic medicine must proceed through a three-stage process prior to receiving full accreditation from COCA: (1) Applicant Status; (2) Candidate Status; and (3) Pre-Accreditation Status. The University applied for and was granted Applicant Status in June of 2022 and received Candidate Status in February of 2024. The University is working toward Pre-Accreditation Status in accordance with a schedule that will allow for an orderly progression to matriculate its 2025 inaugural class. The University expects the Program will receive full accreditation from COCA after the graduation of its first class in June 2029. If the University fails to achieve full accreditation of the Program by June 2029 or if it loses pre-accreditation status prior to June 2029, the University will be unable to continue offering the Program and will be required to expend funds in the Teach-Out Reserve to provide for alternative choices for students enrolled in the Program. For an overview of the COCA accreditation process, see "ACCREDITATION AND AUTHORIZATION OF THE NEW OSTEOPATHIC PROGRAM" in APPENDIX A hereto.

***New York State Authorization of the Program.*** NYDOE must review, approve and register every curriculum (program) creditable toward a degree at a New York State college or university before the institution may offer the program. The University intends to submit a registration application relating to the Program to the NYDOE on a timely basis. However, obtaining NYDOE approval will be dependent upon compliance with state law requirements and the Program achieving COCA accreditation. If the University cannot obtain NYDOE approval or loses such approval, it would be unable to offer the Program.

***Draws on the Reserve Accounts.*** As described in APPENDIX A under "VI. COCA RESERVE ACCOUNTS," the Depository Agreements have been delivered to satisfy the requirements of COCA that funds will be available to satisfy the Teach-Out Reserve Requirements and the Operating Reserve Requirements. The "Teach-Out Reserve Requirements" are based on COCA's requirements that funds be available if it is necessary to provide for alternative classes for the Program's students upon the occurrence of certain events, as described in APPENDIX A under the heading "V. ACCREDITATION AND AUTHORIZATION OF THE NEW OSTEOPATHIC PROGRAM," and specify such a teach-out plan can be imposed following provisional or final accreditation.

The University may expend funds in the Operating Reserve, with COCA's prior written consent, to pay operating, equipment or construction costs of the Program that the University is unable to cover with its other funds, subject to an obligation to replenish the Operating Reserve. See "VI. COCA RESERVE ACCOUNTS" in APPENDIX A hereto for further information regarding the Teach-Out Reserve and Operating Reserve.

Although the University intends to use funds released from the Reserve Accounts, upon termination of the Reserve Accounts, to repay the principal of the Bonds when due, there is no assurance that funds in the Reserve Accounts will be available for this purpose. **Moreover, the Trustee has no security interest in the Reserve Accounts or investments therein, which, in accordance with the accreditation requirements of COCA, must remain unencumbered.**

In addition, there can be no assurance that other parties will not assert claims against or interests in the Reserve Accounts, without regard to the merit of any such claim or assertion. Examples of such claims, interests, and provisions are: (1) statutory liens, (2) constructive trusts, equitable liens, or other rights impressed or conferred by any state or federal court in the exercise of its equitable jurisdiction, or (3) federal bankruptcy.

***Recognition of Accrediting Agencies by USDE.*** The standards and practices of accrediting agencies such as COCA have become a focus of attention by the Office of Inspector General of the USDE over the last few years. This focus has made the process by which USDE evaluates and recognizes accreditors as a reliable authority concerning the quality of education or training offered by the institutions of higher education or higher education programs they accredit longer and more challenging. If an accreditor such as COCA loses recognition by USDE, the institutions it accredits would have only 18 months to become accredited by another accreditor in order to maintain Title IV Program eligibility. If an institution loses accreditation, or its accreditor loses USDE recognition, it could experience increased operational costs and reduced enrollments. Such event could materially adversely affect the University's business and financial condition.

***Payment of Program Revenues to Management Company.*** The University expects to pay substantially all Program tuition revenues to the Management Company established by the University to manage and operate the Program. See "THE UNIVERSITY" herein, and "ANTICIPATED FINANCING STRUCTURE OF THE PROGRAM" in APPENDIX A hereto. Therefore, revenues of the Program are not expected to be available to pay debt service on the Bonds.

***Construction Risk/Financing Risk for New Program Space.*** The University expects to need approximately 100,000 square feet of additional space for the Program as it grows to its expected full enrollment. The University is currently evaluating space options for the Program, including constructing a potential new building on campus, or leasing or purchasing and renovating existing commercial office space in downtown Buffalo, New York. The University expects that the Management Company to be formed by the University will construct, or lease and renovate, new facilities for the Program. The Management Company will fund the cost of the new facilities from Program tuition revenues paid by the University to the Management Company as a management fee.

Construction of new facilities for the Program are subject to the usual risks associated with construction projects including, but not limited to, delays in the issuance of necessary approvals or permits, strikes, shortages of materials, adverse weather conditions and changes in government regulations affecting, for example, permit requirements, construction standards or building codes. There are also risks associated with the ability of the University and/or the Management Company to finance construction of Program facilities, such as risks that such financing may not be available due to, among other things, the prior pledge of the University's Gross Revenues (which will include Program revenues) to secure the Bonds and the Series 2020 Bonds, the University's financial condition at that time or changes in credit markets, or the cost of such financing may be higher than expected due to increased interest rates or other financing risks. Such events could materially adversely affect the University's business and financial condition.

***Financial Aid.*** A significant percentage of the University's students receive financial support in the form of federally supported loans, and scholarships and grants from the University. There can be no

assurance that the amount of federally supported loans and other financial aid will remain stable or increase in the future. If federally supported loans or other financial aid decreases, there can be no assurance that the University will be able to increase the amount of financial aid it provides or otherwise arrange for alternative financing sources for its students. Any future reduction in the availability of student financial aid would likely reduce enrollment, which could materially adversely affect the University's business and financial condition.

***Financing Programs.*** Certain institutional lending programs that the University may offer students fall under the oversight and enforcement provisions of the Consumer Financial Protection Bureau. If the University, or one of the companies that service its loans, do not comply with Truth in Lending or Fair Debt Collections Practices laws, the University could be subject to substantial fines and other penalties, either of which could have a material adverse effect on the University's operations and financial condition.

***Clinical Rotations.*** As part of certain healthcare curriculums, including the Program curriculum, the University is required to provide its students with clinical experiences. To provide such clinical experiences, the University must compete with other medical schools to develop affiliations with hospitals and other healthcare providers for clinical rotation slots for its students. If the University is unable to obtain, or is delayed in obtaining, a sufficient number of clinical slots, the University may have to limit its enrollments to ensure that each of its students will have the opportunity to complete the clinical portion of their educational program. This could materially adversely affect the University's operations and financial condition.

***Senior Management Team.*** The University is dependent on its current senior management team and the ability to hire, motivate and retain talented management. Loss of key management, and the inability of the University to find comparable qualified replacements, could adversely affect any of the operations or financial results of the University. Competition for seasoned executives in the post-secondary education industry is intense, and there can be no assurance that the University will be able to hire and retain qualified executives and managers, which would adversely affect its business.

***Adequacy of Remedies.*** There can be no assurance that upon an acceleration the amount of money or foreclosure receipts available will be adequate to repay the indebtedness evidenced by the Bonds. Pursuant to the Intercreditor Agreement, the pledge of, and the security interest in, the Gross Revenues made by and granted by the University pursuant to the Pledge and Security Agreement is intended to be pari passu with the pledge of, and the security interest in, the Gross Revenues made by and granted by the University pursuant to the Series 2020 Security Agreement for the holders of the Series 2020 Bonds.

***Nature and Value of the Mortgaged Property; Enforceability of the Mortgage.*** The University will grant the Issuer the mortgage to secure the University's obligations under the Loan Agreement relating to the Bonds, and the Issuer will assign the mortgage to the Trustee as security for the Bonds. The University has not obtained an independent appraisal of the Mortgaged Property in connection with the issuance of the Bonds. Further, the value of the Mortgaged Property at any given time will be directly affected by market and financial conditions which are not in control of the University. Real property values can fluctuate substantially depending on a variety of factors. There is nothing associated with the Mortgaged Property to suggest that its value would remain stable or would not decrease if the general

values of property in the University's geographic area were to decline. Therefore, there is no assurance that the value of the Mortgaged Property will equal or exceed the principal amount of the Bonds upon a sale of the Mortgaged Property following an Event of Default.

All mortgages are subject to delay in enforcement. Even after a foreclosure lawsuit is filed in court, court proceedings may take several months or even years before the Trustee would be able to foreclose on the Mortgage. Even upon foreclosure, because the Mortgaged Property is specifically designed for special purposes, the Trustee or any operating company which may manage or purchase the Mortgaged Property may be limited in its ability to renovate the Mortgaged Property or to manage the operation of the Mortgaged Property significantly differently or better than the University. The Mortgaged Property does not consist of general-purpose buildings and would not be suited for general individual or commercial use. The number of entities that could be expected to purchase the Mortgaged Property in the event of a default by the University is limited, and thus the ability of the Trustee to realize funds from the sale of the Mortgaged Property upon an Event of Default by the University may also be limited. See the description of the Mortgaged Property under the caption "FACILITIES" in APPENDIX A and the FORM OF THE MORTGAGE in APPENDIX D hereto.

***Future Legislation.*** Legislation is periodically introduced in the U.S. Congress and in the New York legislature that could adversely affect the University's financial condition, results of operation and cash flows. Since 2010, the U.S. Congress increased its focus on private sector education institutions, including participation in the Title IV Programs and oversight by the U.S. Departments of Defense and Veterans Administration of tuition assistance for military service members attending private sector colleges. The Senate Health, Education, Labor, and Pensions Committee has held hearings to examine private sector education and other Congressional committees have held hearings regarding, among other things, the standards and procedures of accrediting agencies, credit hours and program length, the portion of federal student financial aid going to private sector institutions, and the receipt of veteran's and military education benefits by students enrolled at private sector institutions. Additionally, from time to time, legislators have requested the Government Accountability Office (the "GAO") to review and make recommendations regarding, among other things, recruitment practices, educational quality, student outcomes, the sufficiency of integrity safeguards against waste, fraud and abuse in the Title IV Programs, and the percentage of private sector institutions' revenue coming from Title IV and other federal funding sources. The GAO released various reports on private sector post-secondary education, the findings from which could influence the development of the Higher Education Act reauthorization and could result in the introduction of legislation with potentially adverse impacts on the University. In addition, concerns generated by Congressional activity may adversely affect enrollment in and revenues of private sector educational institutions. Limitations on the amount of federal student financial aid for which the University's students are eligible under Title IV could materially and adversely affect the University's business and financial condition.

***Amendments to the Bond Documents.*** Certain amendments to the Bond Documents may be made with the consent of the owners of a majority in aggregate principal amount of the outstanding Bonds. Such amendments may adversely affect the security of the Bondholders. See APPENDIX C – FORM OF THE INDENTURE OF TRUST, APPENDIX D – FORM OF THE LOAN AGREEMENT, APPENDIX E – FORM OF THE MORTGAGE and APPENDIX F – FORM OF THE PLEDGE AND SECURITY AGREEMENT.

***Environmental Matters.*** Environmental laws and regulations, both at the federal and state level, are subject to change, and those changes can be made retroactively. The University's operations are subject to ongoing compliance with all applicable environmental governmental regulations. If any of these regulations were to change, it could cost the University significantly more to comply with them. Costs incurred by the University with respect to environmental liability, or any interruption of operations caused as a result of conditions affected by environmental compliance at the University, could also adversely impact the University's financial condition and operations.

***Cybersecurity Risk.*** In the course of its operations, the University collects and stores personally identifiable information, including, but not limited to, social security numbers, educational records, and financial information. The University also develops, maintains and/or stores intellectual property, such as research data. Like all institutions of higher education, the University could be subject to cyber intrusion through hacking, malware, or email scams. Cyber intrusion could lead to (1) data breaches requiring breach notification, (2) an inability to access information systems or data, (3) loss of intellectual property and data, (4) harm to the University's brand or reputation, (5) safety impacts, or (6) financial loss. Because cyber threat techniques are continuously evolving and may be difficult to detect, the University may be unable to anticipate these techniques or implement adequate preventative measures. In addition, no assurance can be given that any insurance coverages maintained by the University would be sufficient to cover all losses and liabilities results from data breaches or other cybersecurity issues.

***Public Health Emergency.*** There can be no assurance that a public health emergency, including a pandemic similar to the COVID-19 pandemic, will not occur in the future. If and to the extent a public health emergency occurs, no assurance can be given as to the effects of such public health emergency on the University and its enrollment or operations. Any such future public health emergency could materially adversely affect the University's operations and financial condition.

***Lack of Marketability for the Bonds.*** The Underwriter is not obligated and does not intend to make a market for the Bonds. It is doubtful that there will be a secondary market for the Bonds, and the absence of such a market for the Bonds could result in investors not being able to resell the Bonds should they need to or wish to do so.

In addition, pursuant to the Indenture, the Bonds and any interest or participation therein may only be owned by and transferred to "Qualified Institutional Buyers" as defined in Rule 144A under the Securities Act of 1933, as amended (the "*Securities Act*").

***Other Possible Risk Factors.*** Additional factors may affect future operations of the University to an extent that cannot be determined at this time. These factors include, among others, the following:

- (1) Risks in connection with employees, including strikes and other related work actions, contract disputes, difficulties in recruitment or retention, discrimination claims, personal tort actions, work related injuries, exposure to hazardous materials, interpersonal torts, risks related to benefit plans, and other risks that may flow from the relationships between employer and employee or between students and employees.

- (2) Increased costs and decreased availability of public liability insurance.

(3) Changes in the demand for higher education in general or for programs offered by the University in particular.

(4) Cost and availability of energy.

(5) High interest rates, which could prevent borrowing for needed capital expenditures.

(6) A decrease in student loan funds or other aid or government subsidies that permits many students from the United States and Canada, the opportunity to pursue higher education.

(7) An increase in the costs of health care benefits, retirement plan, or other benefit packages offered by the University to its employees and retirees.

(8) A significant decrease in the value of the University's investments caused by market or other external factors, or changes in the unrestricted portion of the University's long-term investments, including decreases in unrestricted net assets due to provisions of the New York Prudent Management of Institutional Funds Act ("*NYPMIFA*") or other changes in accounting or regulatory guidance.

(9) Claims presently unknown to the University.

(10) Withdrawal of any current exemptions from local real estate taxes, business privilege taxes and similar impositions.

(11) Reduced future University revenues as a result of a need to increase tuition discounting to attract students.

(12) Poor financial operating performance by the University in the future and future deficits as a result of increased future expenses.

(13) Increasing costs of compliance with government regulations, including accommodations for students with disabilities or special needs, and the costs of compliance with any future changes in such regulations.

(14) Reduced ability to attract future annual operating contributions or capital campaign contributions, that may limit future projects or the ability to address any deferred maintenance and/or the support of expenses related to faculty salaries, tuition discounting or additional programs.

(15) Reduced availability of qualified faculty to teach the programs offered by the University.

(16) An inability to attract or retain students, resulting in enrollment losses and reduced revenues.



(17) A downgrade in the University's bond rating or rating outlook to a level which prevents the University from being able to borrow at affordable rates in the future.

(18) Immigration reform, restrictions on the ability of foreign students to work at institution of higher education and international events generally.

(19) An interruption in University operations due to facility damage from a natural disaster or other catastrophic event.

## **TAX MATTERS**

### **OPINION OF BOND COUNSEL**

In the opinion of Hodgson Russ LLP, Bond Counsel, interest on the Bonds is not excludable from gross income for federal income tax purposes and is not exempt under existing law from personal income taxes imposed by the State of New York or any political subdivision thereof (including the City of New York).

Bond Counsel expresses no opinion regarding any other state or local tax consequences related to the ownership or disposition of, or the receipt or accrual of interest on, the Bonds. Interest on the Bonds may or may not be subject to state or local income taxes in jurisdictions other than the State of New York under applicable state or local tax laws. Bond Counsel expresses no opinion, however, as to the tax treatment of the Bonds under other state or local jurisdictions.

**ALL PROSPECTIVE PURCHASERS OF THE BONDS SHOULD CONSULT WITH THEIR TAX ADVISORS IN ORDER TO UNDERSTAND THE IMPLICATIONS OF THE CODE AS TO THE TAX CONSEQUENCES OF PURCHASING OR HOLDING THE BONDS.**

### **GENERAL**

The following discussion summarizes certain United States ("U.S.") federal tax considerations generally applicable to holders of the Bonds that acquire the Bonds in the initial offering. The discussion below is based upon laws, regulations, rulings, and decisions in effect and available on the date hereof, all of which are subject to change, and any such change could have retroactive effect. Prospective investors should also note that no rulings have been or are expected to be sought from the Internal Revenue Service (the "IRS") with respect to any of the U.S. federal income tax consequences discussed below, and no assurance can be given that the IRS will not take contrary positions. Further, the following discussion does not deal with all U.S. federal income tax consequences applicable to any given investor, nor does it address the U.S. federal income tax considerations applicable to categories of investors some of which may be subject to special taxing rules (regardless of whether or not such persons constitute U.S. Holders), such as certain U.S. expatriates, financial institutions, real estate investment trusts, regulated investment companies, insurance companies, tax-exempt organizations, dealers or traders in securities or currencies, partnerships, S corporations, estates and trusts, persons holding the Bonds as a hedge against currency risks or as a position in a "straddle" for tax purposes, or investors whose "functional currency" is not the U.S. dollar. Furthermore, it does not address (i) alternative minimum tax consequences or (ii) the indirect

effects on persons who hold equity interests in a holder. In addition, this summary generally is limited to investors that acquire the Bonds pursuant to this initial offering for the issue price that is applicable to such Bonds (i.e., the price at which a substantial amount of the Bonds are sold to the public) and who will hold the Bonds as “capital assets” within the meaning of Section 1221 of the Code.

As used herein, “U.S. Holder” means a beneficial owner of a Bond that for U.S. federal income tax purposes is an individual citizen or resident of the United States, a corporation or other entity taxable as a corporation created or organized in or under the laws of the United States or any state thereof (including the District of Columbia), an estate the income of which is subject to U.S. federal income taxation regardless of its source or a trust where a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons (as defined in the Code) have the authority to control all substantial decisions of the trust (or a trust that has made a valid election under U.S. Treasury Regulations to be treated as a domestic trust).

As used herein, “Non-U.S. Holder” generally means a beneficial owner of a Bond (other than a partnership) that is not a U.S. Holder. If a partnership holds Bonds, the tax treatment of such partnership or a partner in such partnership generally will depend upon the status of the partner and upon the activities of the partnership. Partnerships holding Bonds, and partners in such partnerships, should consult their own tax advisors regarding the tax consequences of an investment in the Bonds (including their status as U.S. Holders or Non-U.S. Holders).

#### U.S. HOLDERS

*Interest on The Bonds.* Payments of interest on the Bonds will be included in gross income for U.S. federal income tax purposes by a U.S. Holder as ordinary income at the time the interest is paid or accrued in accordance with the U.S. Holder’s regular method of accounting for tax purposes, provided such interest is “qualified stated interest,” as defined below.

*Original Issue Discount.* The following summary is a general discussion of the U.S. federal income tax consequences to U.S. Holders of the purchase, ownership and disposition of bonds issued with original issue discount (“OID Bonds”) for U.S. federal income tax purposes. The following summary is based upon final Treasury regulations (the “OID Regulations”) released by the Internal Revenue Service (“IRS”) under the original issue discount provisions of the Code.

For U.S. federal income tax purposes, original issue discount is the excess of the stated redemption price at maturity of a bond over its issue price, if such excess equals or exceeds a specified de minimis amount (generally 1/4 of 1% of the bond’s stated redemption price at maturity (i) multiplied by the number of complete years to its maturity from its issue date or, (ii) in the case of a bond providing for the payment of any amount other than qualified stated interest (as defined below) prior to maturity, multiplied by the weighted average maturity of such bond). The issue price of each maturity of substantially identical bonds equals the first price at which a substantial amount of such maturity of bonds has been sold (ignoring sales to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The stated redemption price at maturity of a bond is the sum of all payments provided by the bond other than “qualified stated interest” payments. The term “qualified stated interest” generally means stated interest that is unconditionally payable in cash or property (other than debt instruments of the issuer) at least annually at a single fixed rate.

A U.S. Holder of an OID Bond must include original issue discount in income as ordinary interest for U.S. federal income tax purposes as it accrues under a constant yield method in advance of receipt of the cash payments attributable to such income, regardless of such U.S. Holder's regular method of tax accounting. In general, the amount of original issue discount included in income by the initial U.S. Holder of an OID Bond is the sum of the daily portions of original issue discount with respect to such OID Bond for each day during the taxable year (or portion of the taxable year) on which such U.S. Holder held such OID Bond. The "daily portion" of original issue discount on any OID Bond is determined by allocating to each day in any accrual period a ratable portion of the original issue discount allocable to that accrual period. An "accrual period" may be of any length and the accrual periods may vary in length over the term of the OID Bond, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs either on the final day of an accrual period or on the first day of an accrual period. The amount of original issue discount allocable to each accrual period is generally equal to the difference between (i) the product of the OID Bond's adjusted issue price at the beginning of such accrual period and its yield to maturity (determined on the basis of compounding at the close of each accrual period and appropriately adjusted to take into account the length of the particular accrual period) and (ii) the amount of any qualified stated interest payments allocable to such accrual period. Original issue discount allocable to a final accrual period is the difference between the amount payable at maturity (other than a payment of qualified stated interest) and the adjusted issue price at the beginning of the final accrual period. Special rules apply for calculating original issue discount for an initial short accrual period. The "adjusted issue price" of an OID Bond at the beginning of any accrual period is the sum of the issue price of the OID Bond plus the amount of original issue discount allocable to all prior accrual periods minus the amount of any prior payments on the OID Bond that were not qualified stated interest payments. Under these rules, U.S. Holders generally will have to include in income increasingly greater amounts of original issue discount in successive accrual periods.

A U.S. Holder who purchases an OID Bond for an amount that is greater than its adjusted issue price as of the purchase date and less than or equal to the sum of all amounts payable on the OID Bond after the purchase date, other than payments of qualified stated interest, will be considered to have purchased the OID Bond at an "acquisition premium." Under the acquisition premium rules, the amount of original issue discount which such U.S. Holder must include in its gross income with respect to such OID Bond for any taxable year (or portion thereof in which the U.S. Holder holds the OID Bond) will be reduced (but not below zero) by the portion of the acquisition premium properly allocable to the period.

U.S. Holders may generally, upon election, include in income all interest (including stated interest, acquisition discount, original issue discount, de minimis original issue discount, market discount, de minimis market discount, and unstated interest, as adjusted by any amortizable bond premium or acquisition premium) that accrues on a debt instrument by using the constant yield method applicable to original issue discount, subject to certain limitations and exceptions. This election will generally apply only to the debt instrument with respect to which it is made and may be revoked only with the consent of the IRS.

*Premium.* If a U.S. Holder purchases a Bond for an amount that is greater than the sum of all amounts payable on such Bond after the purchase date, other than payments of qualified stated interest, such U.S. Holder will be considered to have purchased such Bond with "amortizable bond premium" equal in amount to such excess. A U.S. Holder may elect to amortize such premium using a constant yield method over the remaining term of such Bond and may offset interest otherwise required to be included in

respect of such Bond during any taxable year by the amortized amount of such premium for the taxable year. Bond premium on a Bond held by a U.S. Holder that does not make such an election will decrease the amount of gain or decrease the amount of loss otherwise recognized on the disposition of such Bond. However, if a Bond may be optionally redeemed after the U.S. Holder acquires it at a price in excess of its stated redemption price at maturity, special rules will apply that could result in a deferral of the amortization of a portion of the bond premium until later in the term of such Bond (as discussed in more detail below). Any election to amortize bond premium applies to all taxable debt instruments acquired by the U.S. Holder on or after the first day of the first taxable year to which such election applies and may be revoked only with the consent of the IRS.

The following rules apply to any Bond that may be optionally redeemed after the U.S. Holder acquires it at a price in excess of its stated redemption price at maturity. The amount of amortizable bond premium attributable to such Bond is equal to the lesser of (1) the difference between (A) such U.S. Holder's tax basis in the Bond and (B) the sum of all amounts payable on such Bond after the purchase date, other than payments of qualified stated interest or (2) the difference between (X) such U.S. Holder's tax basis in such Bond and (Y) the sum of all amounts payable on such Bond after the purchase date due on or before the early call date, described below, other than payments of qualified stated interest. If a Bond may be redeemed on more than one date prior to maturity, the early call date and amount payable on the early call date that produces the lowest amount of amortizable bond premium, is the early call date and amount payable that is initially used for purposes of calculating the amount pursuant to clause (2) of the previous sentence. If an early call date is not taken into account in computing premium amortization and the early call is in fact exercised, a U.S. Holder will be allowed a deduction for the excess of the U.S. Holder's tax basis in the Bond over the amount realized pursuant to the redemption. If an early call date is taken into account in computing premium amortization and the early call is not exercised, the Bond will be treated as "reissued" on such early call date for the call price. Following the deemed reissuance, the amount of amortizable bond premium is recalculated pursuant to the rules of this section "Premium." The rules relating to a Bond that may be optionally redeemed are complex and, accordingly, prospective purchasers are urged to consult their own tax advisors regarding the application of the amortizable bond premium rules to their particular situation.

*Disposition of Bonds.* Except as discussed above, upon the sale, exchange, redemption or retirement of a Bond, a U.S. Holder generally will recognize taxable gain or loss equal to the difference between the amount realized on the sale, exchange, redemption or retirement (other than amounts representing accrued and unpaid interest) of such Bond and such U.S. Holder's adjusted tax basis in such Bond. A U.S. Holder's adjusted tax basis in a Bond generally will equal such U.S. Holder's initial investment in the Bond increased by accrued market discount, if any, if the U.S. Holder has included such market discount in income, and decreased by the amount of any payments, other than qualified stated interest payments, received and amortizable bond premium taken with respect to such Bond. Such gain or loss generally will be long-term capital gain or loss if the Bond has been held by the U.S. Holder at the time of disposition for more than one year. If the U.S. holder is an individual, long-term capital gain will be subject to reduced rates of taxation. The deductibility of capital losses is subject to certain limitations.

#### NON-U.S. HOLDERS

A Non-U.S. Holder who is an individual or corporation (or an entity treated as a corporation for U.S. federal income tax purposes) holding Bonds on its own behalf will not be subject to U.S. federal

income tax on payments of principal of, or premium (if any), or interest (including original issue discount, if any) on Bonds, unless the Non-U.S. Holder is a bank receiving interest described in Section 881(c)(3)(A) of the Code. To qualify for the exemption from taxation, the Withholding Agent, as defined below, must have received a statement from the individual or corporation that:

- (a) is signed under penalties of perjury by the beneficial owner of the Bonds,
- (b) certifies that the owner is not a U.S. holder, and
- (c) provides the beneficial owner's name and permanent residence address.

A "Withholding Agent" is the last U.S. payor (or non-U.S. payor who is a qualified intermediary, U.S. branch of a foreign person or withholding foreign partnership) in the chain of payment prior to payment to a non-U.S. holder (which itself is not a Withholding Agent). Generally, this statement is made on an IRS Form W-8BEN ("W-8BEN"), which is effective for the remainder of the year of signature plus three full calendar years thereafter, unless a change in circumstances makes any information on the form incorrect. Notwithstanding the preceding sentence, a Form W-8BEN with a U.S. taxpayer identification number will remain effective until a change in circumstances makes any information on the form incorrect, provided the Withholding Agent reports at least annually to the beneficial owner on IRS Form 1042-S. The beneficial owner must inform the Withholding Agent within 30 days of any change and furnish a new Form W-8BEN. A Non-U.S. Holder that is not an individual or corporation (or an entity treated as a corporation for U.S. federal income tax purposes) holding Bonds on its own behalf may have substantially increased reporting requirements. In particular, in the case of Bonds held by a foreign partnership or foreign trust, the partners or beneficiaries rather than the partnership or trust will be required to provide the certification discussed above, and the partnership or trust will be required to provide certain additional information.

A Non-U.S. Holder of Bonds whose income from such Bonds is effectively connected with the conduct of a U.S. trade or business generally will be taxed as if the holder were a U.S. Holder, provided the holder furnishes to the Withholding Agent a Form W-8ECI.

Certain securities clearing organizations and other entities that are not beneficial owners may be able to provide a signed statement to the Withholding Agent. In that case, however, the signed statement may require a copy of the beneficial owner's Form W-8BEN (or substitute form).

Generally, a Non-U.S. Holder will not be subject to U.S. federal income tax on any amount that constitutes capital gain upon retirement or disposition of Bonds, unless the Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of the retirement or disposition of such Bonds, and that gain is derived from sources within the United States. Certain other exceptions may apply, and a Non-U.S. Holder in these circumstances should consult his or her tax advisor.

#### INFORMATION REPORTING AND BACKUP WITHHOLDING

Interest paid on the Bonds will be subject to information reporting to the IRS in a manner similar to interest paid on taxable obligations. Such reporting requirement causes the payment of interest on the

Bonds to be subject to backup withholding if such interest is paid to beneficial owners who (a) are not “exempt recipients,” and (b) either fail to provide certain identifying information (such as the beneficial owner’s taxpayer identification number) in the required manner or have been identified by the IRS as having failed to report all interest and dividends required to be shown on their income tax returns. Generally, individuals are not exempt recipients, whereas corporations and certain other entities generally are exempt recipients. Amounts withheld under the backup withholding rules from a payment to a beneficial owner would be allowed as a refund or credit against such beneficial owner’s federal income tax liability provided the required information is furnished to the IRS.

#### DEFEASANCE

Under the terms of the Indenture, the Bonds may be legally defeased prior to their stated maturity. Prospective purchasers of the Bonds should be aware that, for U.S. federal income tax purposes, any such legal defeasance will be treated as a taxable exchange of such Bonds on which gain or loss, if any, will be recognized without any corresponding receipt of cash. In addition, after a Bond could differ from the timing and character of the amounts that would have been includible in gross income in respect of such Bonds had the legal defeasance not occurred. Prospective purchasers of the Bonds should consult their own tax advisors with respect to the more detailed consequences to them of a legal defeasance, including the applicability and effect of tax laws other than U.S. federal income tax laws.

#### FUTURE LEGISLATION OR OTHER POST-ISSUANCE EVENTS

Bond Counsel’s engagement with respect to the Bonds ends with the issuance of the Bonds.

#### CERTAIN ERISA CONSIDERATIONS

The Employee Retirement Income Security Act of 1974, as amended (“ERISA”), imposes certain fiduciary obligations and prohibited transaction restrictions on employee pension and welfare benefit plans subject to Title I of ERISA (“ERISA Plans”). Section 4975 of the Code imposes essentially the same prohibited transaction restrictions and some of the general fiduciary standards on tax-qualified retirement plans described in Section 401(a) and 403(a) of the Code, which are exempt from tax under Section 501(a) of the Code, other than governmental and church plans referred to below (“*Qualified Retirement Plans*”), and on individual retirement accounts described in Section 408 of the Code (“IRAs” and, collectively with Qualified Retirement Plans, “*Tax-Favored Plans*”). Governmental plans (as defined in Section 3(32) of ERISA) and, if no election has been made under Section 410(d) of the Code, church plans (as defined in Section 3(33) of ERISA), are not subject to ERISA requirements and are not subject to the requirements of Section 4975 of the Code. Accordingly, assets of such plans may be invested in the Bonds without regard to ERISA and the Code considerations described below, but may be subject to similar provisions of applicable federal and state law (the “*Similar Law*”). Moreover, fiduciaries of non-U.S. benefit plans should determine the effect of foreign laws on the acquisition of the Bonds.

Fiduciaries of plans covered by ERISA and Tax-Favored Plans should determine if the acquisition and retention of the Bonds satisfy ERISA’s general fiduciary obligations, including those of investment prudence and diversification and the requirement that a plan’s investment be made in

accordance with the documents governing the plan. In addition, Section 406 of ERISA and Section 4975 of the Code prohibit a broad range of transactions involving assets of ERISA Plans and Tax-Favored Plans and entities whose underlying assets include plan assets by reason of ERISA Plans or Tax-Favored Plans investing in such entities (collectively, “*Benefit Plans*”) and persons who have certain specified relationships to the Benefit Plans (“*Parties in Interest*” or “*Disqualified Persons*”), unless a statutory or administrative exemption is available. Certain Parties in Interest (or Disqualified Persons) that participate in a prohibited transaction may be subject to a penalty (or an excise tax) imposed pursuant to Section 502(i) of ERISA or Section 4975 of the Code and parties may be liable for losses suffered by plan investors if prohibited transactions occur unless a statutory or administrative exemption is available.

The acquisition or holding of Bonds by or on behalf of a Benefit Plan could be considered to give rise to a prohibited transaction if the Issuer or the Trustee, or any of their respective affiliates, is or becomes a Party in Interest (or a Disqualified Person) with respect to such Benefit Plan. In such case, certain exemptions from the prohibited transaction rules could be applicable depending on the type and circumstances of the plan fiduciary making the decision on behalf of a plan to acquire a Bond. Included among these exemptions are Prohibited Transaction Class Exemption (“*PTCE*”) 96-23, regarding transactions effected by certain “in house asset managers”; PTCE 90-1, regarding investments by insurance company pooled separate accounts; PTCE 95-60, regarding transactions effected by “insurance company general accounts”; PTCE 91-38, regarding investments by bank collective investment funds; and PTCE 84-14, regarding transactions effected by independent “qualified professional asset managers.” In addition, Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code generally provide for a statutory exemption from the prohibited transaction rules for certain transactions between Benefit Plans and persons who are Parties in Interest (or Disqualified Persons) solely by reason of providing services to such Benefit Plans or that are affiliated with such service providers, provided generally that such persons are not fiduciaries (or affiliates of fiduciaries) with respect to the “Plan Assets” of any Benefit Plan involved in the transaction and that certain other conditions are satisfied.

Any ERISA Plan fiduciary considering whether to purchase Bonds on behalf of an ERISA Plan should consult with its counsel regarding the applicability of the fiduciary responsibility and prohibited transaction provisions of ERISA and Section 4975 of the Code to such investment and the availability of any of the exemptions referred to above. Persons responsible for investing the assets of plans that are not ERISA Plans should seek similar counsel with respect to the effect of any applicable law.

By acquiring the Bonds (or interest therein), each purchaser thereof (and if the purchaser is a Benefit Plan, its fiduciary) is deemed to represent and warrant that either (i) it is not acquiring such Bonds (or interests therein) with the assets of a Benefit Plan, governmental plan or church plan or (ii) the acquisition of such Bonds (or interests therein) will not give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a violation of Similar Law.

## **RATING**

S&P Global Ratings, a Standard & Poor’s Financial Services LLC business (“*Standard & Poor’s*”) has assigned the rating of “BBB-” to the Bonds with a stable outlook. Such rating and outlook reflects only the view of such organization, and an explanation of the significance of such rating and outlook may be obtained from Standard & Poor’s. A rating is not a recommendation to buy, sell or hold securities. There is no assurance that any rating or outlook will continue for any given period of time or

that the rating will not be revised downward or withdrawn entirely by the rating agency if in the judgment of such rating agency circumstances so warrant. Neither the Underwriter, the Issuer, nor the University has undertaken any responsibility either to bring to the attention of the holders of the Bonds any proposed change in or withdrawal of a rating or outlook of the Bonds or to oppose any such proposed change or withdrawal. A downward revision or withdrawal of such rating or revision of an outlook may have a substantial adverse effect on the market price of the Bonds in the secondary market.

### **CERTAIN LEGAL MATTERS**

Certain legal matters incident to the authorization, issuance and sale of the Bonds will be passed upon by Hodgson Russ LLP, Albany, New York, Bond Counsel, whose approving opinion will be printed on or delivered with the Bonds. Certain legal matters will be passed upon for the Issuer by Harris Beach PLLC, Buffalo, New York; for the University by Bond, Schoeneck & King, PLLC, Syracuse, New York; and for the Underwriter by Chapman and Cutler LLP, Chicago, Illinois.

The various legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinion as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or the future performance of the parties to the transaction. In addition, the rendering of an opinion does not guarantee the outcome of any legal dispute that may arise out of the transaction.

### **ABSENCE OF MATERIAL LITIGATION**

#### **THE ISSUER**

To the knowledge of the Issuer, there is no material litigation pending or threatened against the Issuer concerning the validity of the Bonds or any proceedings of the Issuer taken with respect to the issuance thereof.

#### **THE UNIVERSITY**

There is not now pending nor, to the knowledge of the University, threatened any litigation or any proceeding before any governmental agency against or affecting the University, or which questions the right or ability of the University to use the proceeds of the Bonds in accordance with the Indenture and the Loan Agreement, the right of the University to enter into the Loan Agreement, the Mortgage, the Pledge and Assignment, the Pledge and Security Agreement or the Reserve Letters of Instructions, or the right of the University to perform under such documents or any other documents to which the University is a party.

### **FINANCIAL STATEMENTS**

The financial statements of the University as of May 31, 2023 and May 31, 2022, and for the years then ended, included in this Limited Offering Memorandum, have been audited by Lumsden & McCormick, LLP, the University's independent auditors, as stated in their report appearing in



APPENDIX B hereto. Lumsden & McCormick, LLP, have not been engaged to perform and have not performed, since the date of its report included in APPENDIX B, any procedures on the financial statements addressed in that report. Lumsden & McCormick, LLP also has not performed any procedures relating to this Limited Offering Memorandum.

## UNDERWRITING

Loop Capital Markets LLC, as underwriter (the “*Underwriter*”), has agreed pursuant to a Purchase Contract with the Issuer to purchase all of the Bonds, if any are purchased, at a purchase price equal to \$44,935,000. The Underwriter’s compensation for its services with respect to the Bonds will be paid in the form of a fee in the amount of \$900,000. Pursuant to the Purchase Contract, the Borrower has agreed to indemnify the Underwriter and the Issuer against certain civil liabilities, including certain liabilities under the federal securities laws to the extent permitted by applicable law.

The Underwriter and its affiliates are full services financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. The Underwriter and its affiliates have provided, and may in the future provide, a variety of these services to the Issuer and the University and to persons and entities with relationships with the Issuer or the University, for which they have received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the Underwriter and its affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the Issuer or the University (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the Issuer or the University, as applicable. The Underwriter and its affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

The Underwriter intends to offer the Bonds at the offering prices stated on the cover page hereof to Qualified Institutional Buyers, as further described under the heading “THE BONDS — Restrictions on Ownership and Transfer” herein. The Underwriter reserves the right to join with dealers and other underwriters in offering the Bonds to Qualified Institutional Buyers and as further described under the heading “THE BONDS — Restrictions on Ownership and Transfer” herein. The Underwriter may offer and sell Bonds to certain dealers (including dealers depositing Bonds into investment trusts) at prices lower than the public offering prices. In connection with this offering, the Underwriter may over allot or effect transactions which stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

## **CONTINUING DISCLOSURE**

The Issuer has determined that no financial or operating data concerning the Issuer is material to any decision to purchase, hold or sell the Bonds and the Issuer will not provide any such information. In accordance with the requirements of Rule 15c2-12 (the “Rule”) promulgated by the U.S. Securities and Exchange Commission (the “SEC”), the University has undertaken all responsibilities for any continuing disclosure to Bondholders as provided below, and the Issuer shall have no liability with respect to such disclosures.

The Bonds are exempt from the ongoing disclosure requirements of the Rule. However, the University is agreeing in the Loan Agreement to provide to the Trustee the following financial information and operating data related to the University by not later than one hundred twenty (120) days after the close of each fiscal year, commencing with the fiscal year ending May 31, 2024: (i) audited financial statements; (ii) operating information in the form included in Appendix A of this Limited Offering Memorandum under the table heading “CERTAIN OPERATING INFORMATION” with comparative information for the preceding fiscal year; and (iii) financial information in the form included in Appendix A of this Limited Offering Memorandum under the table heading “FINANCIAL STATEMENTS” with comparative information for the preceding fiscal year, unless such information is available in the audited financial statements. The University is also agreeing to provide to the Trustee unaudited financial information on a quarterly basis, such unaudited financial information to consist of a consolidated balance sheet and a consolidated statement of operations of the University and all persons required to be combined or consolidated with the University in accordance with accounting principles generally accepted in the United States of America by not later than sixty (60) days after the close of each of the first three fiscal quarters of each fiscal year, commencing with the fiscal quarter ending August 31, 2024.

## **MISCELLANEOUS**

The references herein to the Indenture, the Loan Agreement, the Pledge and Security Agreement, the Intercreditor Agreement, the Mortgage, the Depository Agreements, the Reserve Letters of Instructions, the Pledge and the Assignment and certain other agreements are brief summaries of certain provisions thereof. Such summaries do not purport to be complete and are subject to, and qualified in their entirety by reference to, all of the provisions of such agreements. Copies of such documents are on file at the offices of the Issuer and at the Principal Office of the Trustee. Copies of such documents are available during the period of the sale of the Bonds upon reasonable request from the Underwriter. Thereafter, copies of such documents are available from the Trustee upon written request by Bondholders.

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The University has reviewed the information contained herein that relates to it, its properties and operations, and has approved all such information for use within this Limited Offering Memorandum. The delivery of this Limited Offering Memorandum has been duly authorized by the University.

D'YOUVILLE UNIVERSITY

By: /s/ Nicholas Fiume

Name: Nicholas Fiume

Its: Chief Financial Officer

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## **APPENDIX A**

### **CERTAIN INFORMATION REGARDING D'YOUVILLE UNIVERSITY**

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## I. INTRODUCTION

D'Youville University (*"D'Youville"* or the *"University"*) is an independent institution of higher education that offers baccalaureate and graduate programs to students of all faiths, cultures, and backgrounds. Located in Buffalo, New York, D'Youville honors its Catholic heritage and the spirit of St. Marguerite D'Youville by providing academic, social, spiritual, and professional development in programs that emphasize leadership and service. D'Youville teaches students to contribute to the world community by leading compassionate, productive, and responsible lives.

The University was founded by the Grey Nuns, which came to Buffalo in August of 1857. The nuns heeded the call to offer education to young women and laid the cornerstone of Holy Angels Academy, now the University's Koessler Administration Building, on August 4, 1872. In 1908, the Grey Nuns built a new wing on Prospect Avenue and applied to the State Legislature for college charter. Despite opposition from those that believed women did not belong in higher education, the request was granted. In September 1908, nine young women formed the first freshman class, and D'Youville, named in honor of the Grey Nuns foundress – St. Marguerite D'Youville, became the first college in Western New York to offer baccalaureate degrees to women.

Today, the University educates all students in the liberal arts tradition, providing students with an interdisciplinary education that strengthens skills in problem solving, critical thinking, collaboration, and written, visual, and oral communication. For the Fall 2023 semester, D'Youville served a total of 2,549 students earning bachelor's, master's and doctoral degrees in the arts, business, health professions, nursing, and the natural and physical sciences. D'Youville is classified by the Carnegie Foundation as a Doctoral/Professional University. D'Youville has received various accolades. D'Youville was reclassified by the Carnegie Commission on Higher Education from a regional college to National University rankings. In 2022, *U.S. News & World Report* ranked D'Youville in the following categories: Best Nursing Schools, Doctor of Nursing Practice; Best Nursing Schools, Master's; Best in Occupational Therapy; Best Online Bachelor's Programs; Best Online MBA Programs; Best in Pharmacy; Best in Physical Therapy; Best in Physician Assistant Programs.

The University is in the process of establishing a new graduate school of osteopathic medicine (the "Osteopathic Program"). The Osteopathic Program initially will be located on pre-existing space on the University's campus. It is anticipated that additional program space of approximately 100,000 square feet will be required as the Osteopathic Program grows to its full expected enrollment of 720 in Fall 2030. The University is currently evaluating space options for the Osteopathic Program, including a potential new building on campus or leasing and renovating existing commercial office space in downtown Buffalo, New York to include a large lecture hall, gross anatomy lab, advanced simulation space, and various faculty office, student lounge and support services space. The Osteopathic Program is preparing for an anticipated initial class of approximately 90 students to matriculate for the Fall 2025 semester, with enrollment growing to approximately 720 by Fall 2030.

The Osteopathic Program was granted “Applicant Status” by Commission on Osteopathic College Accreditation (“COCA”) of the American Osteopathic Association (“AOA”) during June 2022 and proceeded to “Candidate Status” in February 2024. The Osteopathic Program is working toward “Pre-Accreditation Status” in accordance with a schedule that will allow for an orderly progression to matriculate its 2025 inaugural class in August, 2025. See “ACCREDITATION AND AUTHORIZATION OF THE NEW OSTEOPATHIC COLLEGE” below.

## II. STRATEGIC PLAN

Beginning in 2018, with a strategic plan entitled “D’Youville Playbook: Creating a Compelling Future,” The University has adopted a perpetual strategic planning process, with regular campus workshops, ideation sessions and Trustee input contributing to annual revised “Playbooks”

The current strategic plan is built around three priorities:

- ENRICHING EDUCATIONAL EXCELLENCE in an equitable and inclusive environment. This includes fostering and maintaining robust academic programs, revising and updating our General Education Program and enhancing the student learning experience.
- ENHANCING THE STUDENT EXPERIENCE to ensure that it serves as an intellectual incubator for educational excellence and consequential student development. This includes implementing a work-college model, strengthening the University’s athletic programs and augmenting the University’s strategic partnerships.
- EXPANDING OPPORTUNITY AND COMMUNITY IMPACT to set in motion the necessary steps to achieve sustained prosperity to bolster community contribution. This includes the University’s Catholic heritage, community engagement recognition, diversity, equity and inclusion, professional development, fundraising and advancement and a campus master plan.

The three priorities are complemented by a category of “Moonshots” – Mounting ambitious, exploratory and ground-breaking projects that embody the unique identity (“brand”) of D’Youville and distinguish it from other local or comparable institutions of higher learning.

The “Moonshots” included the \$30 million Health Professions HUB (“HUB”), which opened in June 2021. The multi-use facility seeks to connect our varied health professions programs with meeting the needs of D’Youville’s neighborhood in Buffalo’s West Side – a recognized healthcare desert with a growing immigrant and refugee population. The HUB includes a University affiliated pharmacy, a learning kitchen used by the University’s dietetics program to engage with the community through cooking classes and food distribution in partnership with the local food bank, a rehabilitation and wellness center, a community clinic operated by Catholic Health (a non-profit health care system headquartered in Buffalo, New York), state of the art simulation space, and various spaces available to the community for meetings and gatherings.

As part of the strategic plan, as the next “Moonshot,” the University is establishing the Osteopathic Program. See “THE NEW OSTEOPATHIC PROGRAM” below.

### III. EXISTING DEPARTMENTS AND PROGRAMS

#### A. Academic Programs and Degrees

The University offers bachelor’s through doctorate and master’s level degree programs. The University’s academic programs are organized into the following four schools: School of Arts, Sciences and Education, School of Pharmacy, School of Health Professions, and School of Nursing.

#### **Traditional Programs**

The University offers:

AREAS OF STUDY:	DEGREES:
15 Majors	20 Bachelor’s
4 Schools	13 Master’s
	10 Doctoral, Professional

The following is a listing of the undergraduate baccalaureate degree programs offered by the University:

Accelerated (BSN)	Nursing (BSN Completion for Registered Nurses
Biochemistry (BS)	RN-to-BSN)* (Accelerated RN)
Biology (BA, BS)	Nutrition and Dietetics (BS)
Business Management (BS)*	Occupational Therapy (BS)
Chemistry (BS)	Pharmaceutical Sciences (BSPS)
Exercise and Sports Studies (BS)	Psychology (BA)*
Health Humanities (BA, BS)	Physical Therapy (BS)
Healthcare Studies (BPS)	Physician Assistant (BS)
Marketing (BS)*	Pre-Pharmacy
Nursing (BSN)	Sports and Fitness Management (BS)

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\* Offered in-person and online.

The following is a listing of the graduate and professional degree programs offered by the University:

### **Master's Degrees**

Anatomy (MS)	Nursing Education with Clinical Focus (MSN)*
Business Administration (MBA)*	Nursing Management & Quality Leadership (MSN)*
Biology/Anatomy (MS)	Occupational Therapy (MS)
Family Nurse Practitioner (MSN)*	Physician Assistant (MS)
Fine Arts (MFA)	Psychiatric Mental Health Nurse Practitioner (MSN)*
Health Services Administration (MS)	Speech-Language Pathology (MS)
Nutrition and Dietetics (MS)	

### **Doctoral/Professional Degrees**

Doctor of Chiropractic (DC)	Doctor of Nursing Practice (DNP)
Doctor of Education (EdD)	<i>Family Nurse Practitioner*</i>
<i>Educational Leadership</i>	<i>Psychiatric Mental Health Nurse Practitioner*</i>
<i>Health Administration</i>	<i>Family Nurse Practitioner</i>
<i>Health Professions Education*</i>	Doctor of Physical Therapy (DPT)
Doctor of Pharmacy (PharmD)*	Doctor of Occupational Therapy (OTD)
Doctor of Clinical Psychology (psyD)	

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*\* Offered in-person and online.*

The University also offers combined, dual and sequential degree programs for the following areas of study:

- Biology (BA or BS) + Anatomy (MS), 5-Year
- Business Management (BS +MBA), 5-Year
- Marketing (BS + MBA), 5-year
- Nutrition and Dietetics (BS + MS), 5-Year
- Occupational Therapy (BS + MS), 5-Year
- Physician Assistant (BS + MS), 4.5-Year
- Sports and Fitness Management / Business Administration (BS/MBA), 5-Year
- Biology (BS) + Chiropractic (DC), 7-Year
- Physical Therapy (DPT) + 2 (BS options), 6-Year

Post-baccalaureate certificates are also offered at the University for the following program and are registered with the State of New York: Clinical Research Associate, Family Nurse Practitioner\*, Psychiatric Mental Health Nurse Practitioner, Health Services Administration\*, Long-Term Care Administration\*, Medical Ethics\*, Nursing and Health-Related Professions, and Orthopedic Physical Therapy.

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*\* Offered in-person and online.*

## B. Investments in Health Professions

### **Interprofessional Education and Simulation Center**

The Interprofessional Education and Simulation Center (the “*Center*”) is a learning experience for students majoring in eight healthcare professions at D’Youville, including the following:

#### *Undergraduate*

Nursing (BSN)

#### *Graduate*

Family Nurse Practitioner (MS)

Psychiatric Mental Health Nurse Practitioner (MS)

Occupational Therapy (MS)

Speech Language Pathology (MS)

#### *Combined*

Nutrition & Dietetics (BS+MS)

Occupational Therapy (BS+MS)

Physician Assistant (BS+MS)

#### *Doctoral*

Chiropractic (DC)

Pharmacy (PharmD)

Physical Therapy (DPT)

The philosophy of the Center is to assure that healthcare graduates from the University can truly function on a holistic, integrated team focused on high-quality, patient-centered care. The goal of the Center is to assure that D’Youville graduates recognize the unique, complementary contributions of each member of the healthcare team.

The Center prepares students to work as part of a collaborative healthcare team in a simulated clinical setting, with skilled actors playing patients. The curriculum is designed by D’Youville faculty and emulates real-life patient scenarios, in a controlled environment. The actors follow scripts and with scenarios spanning the arc of care — from recovery to after-care and ongoing or developing complications. Skilled instructors guide students every step of the way.

The University’s faculty live stream the sessions so that students can view interaction with the patient, debrief as a group and share insights from different clinical perspectives. Discussions focus on building the kind of teamwork that a healthcare professional actually encounters on a regular basis. These sessions are offered in the spring and fall semesters.

The Center is funded by grants from J. Warren Perry and Charles Donald Perry Memorial Fund of the Community Foundation of Greater Buffalo. This grant supports innovative, sustainable projects that encourage institutional collaboration and benefit Western New York.

### **Health Professions HUB**

In 2021, the University has recently added a new building, the HUB, a strategic partnership with Catholic Health and the State of New York to address critical workforce needs.

Currently, the City of Buffalo is a health professional shortage area that is projected to demand an additional 10,000 required healthcare professionals by 2024. Training and giving skills to an underserved workforce is vital to helping grow the economy in impoverished neighborhoods.

Nearly 50% have unmet healthcare needs on Buffalo's West Side with one of the State's highest chronic disease rates.

D'Youville is uniquely positioned due to its innovative educational offerings that allow it to upskill and upscale the health professions workforce and improve the health of the region. The goal of the HUB is to grow jobs, eliminate provider shortage, and create a living-wage ecosystem in the community. To focus on improving lives while reducing healthcare costs through community-based interdisciplinary clinical care and education.

### C. Accreditation and Affiliations

The University is accredited by the Middle States Commission on Higher Education, a regional accrediting body recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation. D'Youville also has the following additional programmatic accreditation and certifications:

- The Department of Business has received specialized accreditation for its business programs through the International Accreditation Council for Business Education (IACBE).
- The Doctor of Chiropractic degree program is awarded programmatic accreditation by the Council on Chiropractic Education.
- D'Youville's Coordinated Program in Dietetics has been granted continuing accreditation by the Accreditation Council for Education in Nutrition and Dietetics of the Academy of Nutrition and Dietetics (ACEND). This is the American Dietetic Association's accrediting agency for education programs that prepare students for careers as registered dietitians. The five-year dietetic program (three-year pre-professional and two-year coordinated program) is also approved and registered by the New York State Education Department.
- The baccalaureate degree in nursing, the master degree, Doctor of Nursing Practice, and the post-graduate Advance Practice Registered Nurse certificate are accredited by the Commission on Collegiate Nursing Education.
- The occupational therapy degree program is fully approved and registered by the New York State Education Department. It is accredited by the Accreditation Council for Occupational Therapy Education ("ACOTE") of the American Occupational Therapy Association. You must graduate from an ACOTE-accredited program to be eligible to sit for the national certification examination administered by the National Board for Certification in Occupational Therapy.
- The School of Pharmacy's Doctor of Pharmacy program is accredited by the Accreditation Council for Pharmacy Education.

- The Physician Assistant department is accredited by the Accreditation Review Commission on Education for the Physician Assistant (“ARC-PA”). It accredits programs nationally through a peer review process that includes documentation and periodic site visit evaluation. By defining the standards for Physician Assistant education, ARC-PA goals are to encourage sound educational practices and innovation by programs, and to stimulate continuous self-study and improvement.
- The Doctor of Physical Therapy program is registered by the New York State Department of Education. It is accredited by the Commission on Accreditation in Physical Therapy Education. This is the only accreditation agency recognized by the U.S. Department of Education and the Council for Higher Education Accreditation to accredit entry-level physical therapists at the master’s and doctoral degree levels.

#### D. Athletics

D’Youville offers 19 sports and has recently, in July 2023, been approved for final transition to full NCAA Division II membership as part of the East Coast Conference. Men’s varsity sports include baseball, basketball, cross country, lacrosse, soccer and volleyball. Women’s varsity sports include basketball, bowling, crew, cross country, field hockey, lacrosse (North Eastern Athletic Conference or “NEAC”), soccer, softball, tennis, track and field, volleyball and wrestling. Both men and women can participate in co-educational golf.

Along with the University’s membership transition, the University has completed a full athletic identity rebranding effort and are now known as the “D’Youville Saints.” D’Youville athletics has received academic achievement awards with the Allegheny Mountain Collegiate Conference such as the Institutional Peak Performer Award (highest percentage of student athletes over a 3.2 GPA of all conference members) and in 2023 the NCAA Presidents' Award for Academic Excellence for achieving an Academic Success Rate (defined as the percentage of students graduating within six years of initial enrollment) of 90% or higher. The University’s men’s basketball, cross country and tennis programs have received the Team Peak Performer Award as well. The University’s athletic department is determined to offer a diverse experience to student-athletes to ensure that the student-athletes leave the University as compassionate leaders that never refuse to serve.

#### IV. THE NEW OSTEOPATHIC PROGRAM

In the United States health care system, there are two types of fully licensed physicians: (1) medical doctors (“MDs”) and (2) doctors of osteopathy (“DOs”). In most ways, MDs and DOs are trained and practice medicine similarly. Both DOs and MDs (1) are trained in the same basic four-year medical science curriculum necessary to becoming a fully qualified doctor, (2) must pass the medical licensing board examinations and complete clinical clerkships and residencies before becoming fully licensed practitioners, and (3) are subject to a unified accreditation system for graduate medical education and residency programs. Once qualified, both DOs and MDs can prescribe medication, practice in all specialties of medicine and surgery and have identical professional rights and responsibilities.

However, due to osteopathic medicine's focus on the whole person, the relationship of the body's nerves, muscles, bones and organs, and the body's innate ability to heal itself, DOs are trained in some special areas in which MDs are not. Osteopathic medical colleges' training places more emphasis on treating patients holistically and focuses on preventative medical techniques. DOs focus on prevention by gaining a deeper understanding of a patient's lifestyle and environment, rather than just treating symptoms, and consider options to complement pharmaceuticals and surgery. For this reason, most DOs spend additional hours on, among other studies such as anatomy and physiology, nutrition, and muscle manipulation. By contrast, the MD model has historically been more focused on specialized rather than general medicine with additional hours often spent on, among other subjects, surgery, systems, research, and pharmacology. Additionally, osteopathic students receive training in Osteopathic Manipulative Treatment ("*OMT*"), a technique whereby practitioners use their hands to diagnose injury and illness and encourage their patients' bodies' natural tendency toward self-healing; MD training does not.

While the percentage of DO practitioners in specialized medicine has steadily increased, the University anticipates that the holistic approach of the osteopathic curriculum will cause DO graduates to favor general medicine and family practice specialties. The American Osteopathic Association estimates that approximately 56% of DO graduates select the field of primary care (family medicine, internal medicine, pediatrics and osteopathic manipulative medicine), compared with less than 30% of MD graduates. Additionally, DOs are significantly overrepresented as practitioners in small towns, rural areas, and underserved communities. By contrast, the American Osteopathic Association estimates that over 60% of MDs elect to enter specialized medicine with the large majority practicing in urban and suburban areas of the country.

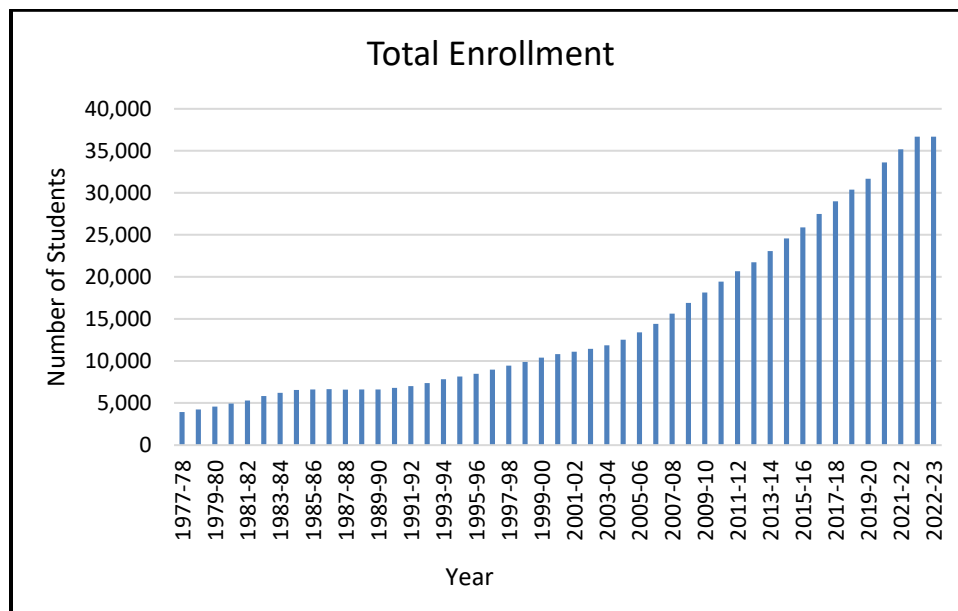
Osteopathic medicine is one of the fastest-growing health care professions in the country. For the 2023-24 academic year, COCA, the accrediting agency for colleges of osteopathic medicine ("*COMs*") recognized by the U.S. Department of Education, has accredited 41 osteopathic (DO) medical schools in the United States, which offer instruction at 66 teaching locations. According to the AOA's 2023 Osteopathic Medical Profession Report (the "*AOA Report*"), there are approximately 149,000 DOs in the United States, representing an increase of more than 30% since 2018. Additionally, according to statistics published in 2023 by the American Medical Association, practicing osteopathic physicians represent approximately 11% of all physicians in the United States who spend the majority of their time in direct patient care. The growth in the osteopathic profession offers one solution to the shortage of physicians in the United States. Statistics from the Association of American Medical Colleges reveal that the United States may see a shortage of between 37,000 and 124,000 physicians by 2034, including gaps in both primary care and non-primary care specialties. However, the AOA Report demonstrates osteopathic physicians may alleviate the shortage, with approximately 57% of DO graduates selecting the field of primary care (family medicine, internal medicine, and pediatrics). Further, DOs are significantly overrepresented as practitioners in small towns, rural, and underserved communities, thus alleviating the geographical gap in medical services across the United States.

Each year, COMs across the United States provide enrollment and graduate data via the Annual Osteopathic Medical School Questionnaire prepared by American Association of Colleges of Osteopathic Medicine ("*AACOM*"). Applicant data was compiled from the information entered



by applicants into the AACOM Application Service (“AACOMAS”) application (note that since 2000, applicant numbers have not included applicants for University of North Texas Health Sciences Center at Fort Worth, Texas College of Osteopathic Medicine, which does not use the AACOMAS to process applications, but receives its applications through the Texas Medical & Dental Schools Application Service).

The table below displays the growth in enrollment in osteopathic medical schools from 1977-78 through 2022-23.<sup>1</sup> According to AACOM, approximately 36,678 students were enrolled in the 2022-23 school year in osteopathic medical schools.



According to AACOM, first-year enrollment for the 2022-23 school year is 10,152 students, representing an increase of approximately 4% when compared to first-year enrollment for academic year 2020-21. Additionally, AACOM reports 23,488 individual applicants applied during the 2022-23 school year, representing an increase of 780 (3.43%) individual applicants when compared to the 2020-21 application cycle.

## V. ACCREDITATION AND AUTHORIZATION OF THE NEW OSTEOPATHIC PROGRAM

*Accreditation, Generally.* As practiced in the United States today, accreditation is a process by which institutions and programs voluntarily submit to an extensive peer-based evaluation of their compliance with accepted standards for educational quality. Higher education in the United States relies on accreditation to ensure quality and to foster a culture of continuous improvement. Accreditation offers a mark of distinction for academic programs and institutions, signaling high quality and a commitment to excellence.

<sup>1</sup> American Association of Colleges of Osteopathic Medicine, Applicant, Enrollment and Graduates 1977-78 – 2023-24 (October 3, 2023), <https://www.aacom.org/searches/reports/report/applicants-enrollment-and-graduates-1977-78--2023-24>.

There are two distinct types of accreditation in higher education:

1. Institutional accreditation reviews academic and organizational structures of a college or university as a whole.
2. Programmatic (specialized and professional) accreditation conducts an in-depth assessment of specialized or professional programs at a college, university or independent institutions.

The Secretary of the United States Department of Education (“USDE”) recognizes accrediting agencies to ensure that these agencies are, for the purposes of the Higher Education Act of 1965, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.

*COCA Accreditation Overview.* COCA is the only accrediting agency for pre-doctoral osteopathic medical education and is recognized by the USDE. COCA is recognized as both (1) an institutional accrediting agency for free-standing COMs and (2) a programmatic accrediting agency for COMs that exist within larger institutions with a regional accreditor.

Through accreditation, COCA provides assurance to osteopathic medical students and graduates, the medical profession, health care institutions, and the public that: (1) educational programs culminating in the award of the DO degree meet reasonable, generally-accepted, and appropriate national standards for educational quality; and (2) graduates of such programs have a complete and valid educational experience sufficient to prepare them for the next stage of their training. Accreditation from COCA signifies that a COM has met or exceeded COCA standards for educational quality. Programs judged by COCA to meet national standards of quality are designated as “accredited” for a usual term of seven (7) years.

*COCA Accreditation Standards.* The procedures COCA uses in its accreditation process are published in its “Accreditation of Colleges of Osteopathic Medicine: COCA Policies and Procedures (Effective August 24, 2023)” and its standards for educational program quality are published in its “Accreditation of Colleges of Osteopathic Medicine: COM New & Developing Accreditation Standards (Effective September 26, 2023)” and “Accreditation of Colleges of Osteopathic Medicine: COM Continuing Accreditation Standards (Effective September 26, 2023).” Each of these documents are publicly available on the COCA website ([www.aoacoca.org](http://www.aoacoca.org)). COCA meets in regular session three times a year, in the months of August, December, and April to review COMs and make accreditation decisions. The review of COMs and accreditation actions occur in closed session. A portion of each COCA meeting is devoted to procedural items and is held in open session to allow public input into these issues.

COCA’s accreditation standards are organized around twelve standards, and within each standard are “core elements.” COCA considers such elements to be critical to maintain the educational quality of the program. The University will follow COCA’s most recently released standards. The University intends to complete all requirements for each standard in order to matriculate the first class of students as early as August 2025.

The Revised Standards are as follows:

*Standard 1: Mission and Governance:* A COM must have a written statement of mission and goals for the osteopathic medical education program, conduct ongoing planning and assessment, and have written bylaws that describe an effective organizational structure and governance processes. In the conduct of all internal and external activities the COM must demonstrate integrity through its consistent and documented adherence to fair, impartial, and effective processes, policies, and practices.

*Standard 2: Leadership and Administration:* A COM must have leadership and senior administrative staff with the knowledge, skills, time, and support necessary to achieve the goals of the osteopathic medical education program and to ensure the functional integration of all programmatic components.

*Standard 3: Finances:* A COM must have sufficient financial resources readily available to meet the needs of the COM and to achieve the COM mission, consistent with its projected and authorized student class size.

*Standard 4: Facilities:* A COM must have sufficient physical facilities, equipment, and resources for clinical, instructional, research, and technological functions at all locations/campuses of the COM. These resources must be readily available and accessible across all COM locations to meet its needs, the needs of the students consistent with the approved class size, allowing the COM to achieve its mission.

*Standard 5: Learning Environment:* A COM must ensure that its educational program at all teaching locations occur in professional, respectful, non-discriminatory, culturally sensitive, and intellectually stimulating academic and clinical environments. The COM must also promote students' attainment of the osteopathic core competencies required of future osteopathic physicians.

*Standard 6: Curriculum:* The faculty of a COM must define how the students will achieve the educational program objectives, including osteopathic core competencies, and is responsible for the detailed design and implementation of the components of a curriculum that enables its students to achieve those competencies and objectives. Educational program objectives are statements of the knowledge, skills, behaviors, and attitudes that osteopathic medical students are expected to demonstrate as evidence of their achievement prior to successful completion of the program. The faculty of a COM must periodically and regularly review and revise the COM's curriculum and evaluate the COM's educational program to ensure that the quality of the program meets the current standards of osteopathic core competencies and that students achieve all program objectives and participate in required clinical training experiences and environments.

*Standard 7: Faculty and Staff:* The faculty members at a COM must be qualified through their education, training, experience, and continuing professional development and provide the leadership and support necessary to attain the institution's educational, research, and service goals. A COM must ensure that its medical education program includes a comprehensive, fair, and uniform system of formative and summative medical student assessment and protects medical

students' and patients' safety by ensuring that all persons who teach, supervise, and/or assess medical students are adequately prepared for those responsibilities.

*Standard 8: Research and Scholarly Activity:* A COM must demonstrate a commitment to research and scholarly activity through its budgetary processes, support of faculty research (including the establishment of a research infrastructure, including an office of research, faculty and personnel to assist students in research and peer review through publication or grant application), and inclusion of its students in research throughout all four years of the osteopathic medical education

*Standard 9: Students:* A COM must establish and publish admission requirements for potential applicants to the osteopathic medical education program and must develop and apply effective policies and procedures for medical student selection and enrollment consistent with the COM's mission, vision, and values. A COM must develop and implement policies and procedures as well as provide the human and physical resources required to support and promote health and wellness in order to meet and advance the physical, emotional, mental, career, academic and professional needs of its students, faculty, and staff. All osteopathic medical students of the COM have the same rights to and must receive comparable services.

*Standard 10: Graduate Medical Education (GME):* The faculty of a COM must ensure that the curriculum provides content of sufficient breadth and depth, to prepare students for entry into a graduate medical education program for the subsequent practice of medicine. The COM must strive to develop graduate medical education to meet the needs of its graduates within the defined service area, consistent with the mission of the COM.

*Standard 11: Program and Student Assessment and Outcomes:* A COM must define and assess both programmatic and individual student outcomes, including attainment of osteopathic core competencies and skills, to ensure GME readiness, including its DEI mission, vision, and goals. A COM must use the data from programmatic and individual outcomes to continuously improve all aspects of the COM and to meet its mission.

*Standard 12: Institutional Accreditation:* For any COM that is not affiliated with a parent institution, the COCA may serve as both institutional and programmatic accreditor. When COCA serves as the institutional accreditor, the COM must demonstrate that it is compliant with this standard and its supporting elements. A COM may not add another program of study in addition to the osteopathic medicine program while the COCA serves as its institutional accreditor.

*COCA Accreditation Process.* New and developing COMs proceed through a 3-stage process prior before reaching full COCA accreditation: (1) Applicant Status, (2) Candidate Status, and (3) Pre-Accreditation Status, each as described below.

1. Applicant Status is the initial step in seeking COCA accreditation. This status is offered without rights or privileges of accreditation and does not establish or imply recognition by COCA.

The University was granted "Applicant Status" in June 2022.

2. Candidate Status is the second step in seeking COCA accreditation. An applicant for Candidate Status must submit a “Candidate Status Self Study” along with a “Feasibility Study” that assesses the viability of the proposed new Osteopathic Program. The Feasibility Study must be developed in partnership with a professional nationally known external business consulting firm. The Osteopathic Program Dean and administrative team must play an integral role in the development of these documents. An application for Candidate Status must also be accompanied by a non-refundable application fee.

Candidate Status may be granted to COMs that demonstrate the planning and resources necessary to be expected to be able to proceed to Pre-Accreditation Status within two (2) years. Candidate Status will be reviewed annually via submitted written reports until the COM achieves Pre-Accreditation Status. If the COM has not been able to proceed to Pre-Accreditation Status within 24 months of the granting of Candidate Status, the Candidate Status will be withdrawn. A COM holding Candidate Status cannot recruit, accept applications from, or admit prospective students.

COCA accepted the University’s Feasibility Study and awarded the University “Candidate Status” in February 2024.

3. Pre-Accreditation Status is the third step in seeking COCA accreditation. Pre-Accreditation Status may be granted to COMs who have achieved Candidate Status and meet COCA’s standards for Pre-Accreditation Status. One such standard is that an applicant must demonstrate the existence of unencumbered reserve funds escrowed until graduation of the first class of students. See “COCA RESERVE ACCOUNTS” below for more information regarding the reserve fund requirements. Additionally, COMs must submit a “Pre-Accreditation Self-Study” and non-refundable application fee at least 18 months prior to the anticipated matriculation of the first class of students. COCA will conduct a pre-accreditation on-site visit to ensure the accuracy of the submitted Pre-Accreditation Self-Study. This on-site visit will occur within 60 to 90 days of receipt of the Pre-Accreditation Self-Study. Following receipt of the visiting COCA team’s report, the request for the Pre-Accreditation Status will be considered by COCA at its next regularly scheduled meeting.

The University submitted its Pre-Accreditation Self Study shortly after the receipt of “Candidate Status” on February 9, 2024 – meeting the required 18 months prior to anticipated matriculation of students in August 2025.

Upon the receipt of Pre-Accreditation Status, the applicant COM has the right and privilege to solicit applications and admit students, offer medical instruction within the approved osteopathic medical curriculum, and announce its Pre-Accreditation Status. Pre-Accreditation Status may not be designated as “Accreditation” until the COM has received “Accreditation” from COCA. A COM with Pre-Accreditation Status will be allowed to matriculate the first class at 50% of the approved class size and the second class at not greater than 75% of the approved class size. The third class may be enrolled at not greater than 100% of the approved class size.

Pre-Accreditation Status will be for a period of time not to exceed five (5) years. Pre-Accreditation Status will be awarded to become effective no earlier than July 1 of the calendar

year prior to the matriculation of the first class of students. If COCA makes a decision to award Pre-Accreditation Status at a meeting that occurs prior to the effective date specified above, the Candidate Status will remain until the effective date of Pre-Accreditation Status. During this interim period, the COM's Candidate Status will be stated as: "Candidate Status with permission to recruit, but not to admit students or offer instruction."

Pre-Accreditation Status will be reviewed annually via submitted written reports until the COM achieves Accreditation. An on-site visit will occur during the first year of class offerings. COMs holding Pre-Accreditation status will undergo a "comprehensive accreditation" visit to be scheduled prior to March 31 of the second year of education. Pre-Accreditation status will expire following COCA's grant of Accreditation status to the COM. If the COM has not been able to proceed to Accreditation status within five (5) years of the granting of Pre-Accreditation Status, the Pre-Accreditation Status will be withdrawn. A teach-out agreement will then be implemented (see "*Teach-Out Plans and Agreements*" below).

The University has completed a Pre-Accreditation Self Study, which was submitted to COCA on February 9, 2024 and which was included on the agenda of COCA's April 2024 board meeting. Subsequent to the board meeting, COCA staff has advised the University that a site visit will be scheduled in late June or early July 2024, with consideration of the University's Pre-Accreditation status expected at the August 2024 COCA board meeting.

*COCA Accreditation Status Determination and Monitoring.* Accreditation Status is the highest level of accreditation awarded and confers all rights and privileges of accreditation. Accreditation is granted when the COM meets the accreditation standards or has a sound overall educational program, despite a limited number of accreditation standards that are out of compliance. In the event a COM fails to meet any standard or element, COCA will specify the standard(s) and element(s) that are not met and will monitor the COM via progress reporting at specified intervals. The COM must provide documentation of compliance with the standards, including all elements, within 24 months or sooner as determined by COCA. COCA will specify procedures for monitoring compliance, which may include an on-site visit within two years.

The following are the possible COCA accreditation status decisions:

Accreditation with Exceptional Outcome: A COM is compliant with all standards and meets all elements. For COMs with this status, accreditation will be granted for ten (10) years.

Accreditation: A COM is compliant with all standards. However, there may be unmet elements that must be addressed through progress reporting. For COMs with this status, accreditation will be granted for seven (7) years.

Accreditation with Heightened Monitoring: A COM is compliant with all but three or fewer standards and ongoing monitoring will occur via progress reporting. For schools with this status, accreditation will be granted for four (4) years.

Accreditation with Warning: A COM is complaint with all but five or fewer standards and ongoing monitoring will occur via progress reporting. For schools with this status, accreditation

will be granted for two (2) years. COCA will specify the accreditation standard(s) not being met and specify the procedures for monitoring compliance. Accreditation with warning status, once final, is public and COCA will notify all interested parties, including the USDE.

Accreditation with Probation: A COM is not compliant with more than five standards. For COMs with this status, the accreditation will be granted for no more than one (1) year. COCA will specify the accreditation standard(s) that are not met and will specify the procedures for monitoring compliance. Accreditation with Probation status is public, and COCA will notify all interested parties, including the USDE. A COM placed on Accreditation with Probation must submit a written teach-out plan (See “*Teach-Out Plans and Agreements*” below) to COCA within ninety (90) days of receipt of an Accreditation with Probation decision. At any time during the period a COM has Accreditation with Probation status, COCA may require that COM to show cause why accreditation should not be denied or withdrawn. COCA will state, in writing, its reasons for taking this action. The COM will have 30 days in which to respond. COCA will take action upon the COM's response within thirty 30 days after its receipt.

Withdrawal of Accreditation: The quality of a COM's educational program is compromised, and the COM was unable to come into compliance with all standards within the allotted timeframe.

An educational program leading to the DO degree, once accredited, remains accredited until the program voluntarily terminates its accreditation status or COCA terminates the program's accreditation through a formal accreditation action. Renewal of Accreditation Status is subject to an on-site visit.

COCA regularly monitors accredited programs through review of written annual reports, progress reports, self-study reports, and on-site evaluations. Failure to submit the required report by the due date may jeopardize the COM's accreditation status.

For programs in one of the continuing accreditation statuses, COCA accreditation staff will contact the institution approximately 12 months prior to the anticipated date of a routine accreditation visit to establish specific dates for the on-site review. If COCA directs an on-site visit and the COM refuses to permit the visit to occur, COCA will reduce the COM's status to Accreditation with Probation. If the COM already has a status of Accreditation with Probation, COCA will withdraw accreditation for reasons of non-compliance with the policies and procedures of accreditation.

*Teach Out Plans and Agreements.* A “Teach-Out Agreement” is the written agreement an accredited COM provides for the equitable treatment of its students to complete their program of study, if the COM stops offering its educational program before all students enrolled in that program complete their program of study. A “Teach-Out Plan” is a written plan developed by an institution that provides for the equitable treatment of a COM, if that COM or a branch campus or additional location that provides 100% of at least one program, stops offering its educational program before all students enrolled in that program complete their program of study. This plan may include, if required by COCA, a “teach-out agreement” between COMs.

COCA requires a COM for which it has granted Pre-Accreditation Status or Accreditation to submit a Teach-Out Plan to COCA for approval upon the occurrence of any of the following events:

- The Secretary of USDE notifies COCA that the Secretary has initiated an emergency action against an institution, in accordance with HEA, or an action to limit, suspend or terminate an institution participating in any Title IV, HEA program, in accordance with the HEA, and that a Teach-Out Plan is required;
- COCA acts to withdraw, terminate, or suspend the provisional accreditation or accreditation of the COM;
- The COM notifies COCA that it intends to cease operations entirely or close a location that provides 100% of at least one program; or
- A state licensing or authorizing agency notifies COCA that an institution's license or legal authorization to provide an educational program has been or will be revoked.

COCA may require a COM to which it has granted pre-accreditation or accreditation to enter into a Teach-Out Agreement as part of its Teach-Out Plan. A COM may enter into a Teach-Out Agreement with another institution *provided* that it meets COCA's requirements for such an agreement, including a plan for the equitable treatment of students, and a demonstration by the recipient COM (i) that it has necessary experience, resources, and support services to provide an educational program that is of acceptable quality and is reasonably similar in its content, structure, and scheduling to that of the institution that is ceasing operations either entirely or at one of its locations, and (ii) that, during the period of the Teach-Out Agreement, it will remain stable, carry out its mission, and meet all obligations to its existing students.

In the event that a COM having any accreditation status from COCA closes without a Teach-Out Plan or Agreement, COCA will work with USDE and the appropriate state agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

## VI. COCA RESERVE ACCOUNTS

In order to gain Pre-Accreditation Status from COCA, an applicant must demonstrate the existence of a minimum segregated, unencumbered reserve funds escrowed until graduation of the first class of students after COCA grants full accreditation. Specifically, COCA's accreditation standards relating to finances require that an "Escrowed Reserve Fund" (i.e., Teach-Out Reserve Fund) and Operating Reserve Fund be funded before the full COCA Board considers the decision to award Pre-Accreditation Status to the University. These reserve fund requirements are expected to remain in place until (i) graduation of the first class of students, (ii) Accreditation status has been granted, and (iii) the COCA governing board has authorized the release of such funds.

COCA's requirements for the Teach-Out Reserve Fund and the Operating Reserve Fund are summarized below:



Teach-Out Reserve Fund	A proposed COM must demonstrate the existence of a minimum segregated, unencumbered reserve fund escrowed until one year after graduation of the first class of students after COCA grants full accreditation and equal to the greater cash value of (1) \$30,000,000; or (2) tuition multiplied by the approved number of students for the COM multiplied by four years (the “Teach-Out Reserve Required Amount”). An increase in tuition will require recalculation of the escrow amount and an increase in the amount of the escrowed funds. The Teach-Out Reserve Fund must not be borrowed or pledged funds and must be 100% wholly owned assets of the COM or its parent institution.
Operating Reserve Fund	A proposed COM must demonstrate the existence of a minimum operating reserve fund until graduation of the first class of students and equal to one-quarter (1/4) of the amount of the minimum segregated, unencumbered Teach-Out Reserve Fund (the “Operating Reserve Required Amount”). The minimum operating reserve fund must not be borrowed or pledged funds and must be 100% wholly owned assets of the COM or its parent institution.

In February, 2024, the University deposited funds sufficient to satisfy COCA’s Teach-Out Reserve Fund and Operating Reserve Fund requirements into (i) a reserve account (the “*Teach-Out Reserve*”) held by Wilmington Trust, National Association (the “*Teach-Out Reserve Depository*”), established pursuant to the Multi-Party Account Agreement dated as of February 9, 2024 (the “*Teach-Out Reserve Depository Agreement*”) by and among COCA, the University, and the Teach-Out Reserve Depository, and (ii) a reserve account (the “*Operating Reserve*”) held by Goldman Sachs & Co. LLC (the “*Operating Reserve Depository*”), established as required by the Operating Reserve Fund Account Agreement dated as of February 9, 2024 (the “*Operating Reserve Depository Agreement*”) by and between the University and COCA.

*The Teach-Out Reserve Depository Agreement.* Pursuant to the Teach-Out Reserve Depository Agreement, amounts on deposit in the Teach-Out Reserve and all investments therein shall remain segregated and unencumbered escrowed reserve funds for the purpose of supporting the accreditation process of the University until the Termination Date (as described below).

Until the Termination Date, the Teach-Out Reserve Depository shall not permit any funds to be withdrawn from the Teach-Out Reserve without the prior written approval of an authorized representative of COCA in the form attached to the Teach-Out Reserve Depository Agreement and shall disregard any instructions from the University with respect to the Teach-Out Reserve and dispositions of funds therein other than instructions that are specifically permitted under the Teach-Out Reserve Depository Agreement. The University irrevocably covenants in the Teach-Out Reserve Depository Agreement that the monies held in the Teach-Out Reserve up to the Teach-Out Reserve Requirement shall be used solely to pay teach out costs of students enrolled in the University’s Osteopathic Program in accordance with COCA’s rules and regulations (the “*Teach-Out Requirements*”). In the event that COCA determines in its reasonable discretion that a withdrawal from the Teach-Out Reserve is necessary under the Teach-Out Requirements, an authorized representative of COCA shall provide instructions in the form attached to the Teach-Out Reserve Depository Agreement to the Teach-Out Reserve Depository. The Teach-Out

Reserve Depository shall disburse the amount set forth in the instructions as provided by COCA within two (2) business days after receipt of the instructions.

The “*Termination Date*” is defined in the Teach-Out Reserve Depository Agreement to mean the first to occur of the below:

- (a) the date upon which the University graduates its first class from the Osteopathic Program after COCA grants the University full accreditation;
- (b) the date on which all of the amounts held in the Teach-Out Reserve have been withdrawn pursuant to the Teach-Out Reserve Agreement; or
- (c) upon delivery to the Teach-Out Reserve Depository of written notice by the University and COCA that the Teach-Out Reserve Depository Agreement is terminated.

*The Operating Reserve Depository Agreement.* The University irrevocably covenants in the Operating Reserve Depository Agreement that the monies held in the Operating Reserve shall be used solely to pay the University’s operating, equipment, or construction costs of the Osteopathic Program in accordance with COCA’s rules and regulations. The University may, from time to time, withdraw from the Operating Reserve amounts necessary to pay such costs and expenses with COCA’s prior written approval.

In accordance with COCA’s rules and regulations, the University irrevocably agrees in the Operating Reserve Depository Agreement that if amounts on deposit in the Operating Reserve are less than the Operating Reserve Required Amount, then the University will deposit in the Operating Reserve an amount sufficient to increase the balance in such account to the Operating Reserve Required Amount by the later of the end of the fiscal year in which the Operating Reserve is reduced below the Operating Reserve Required Amount or one-hundred eighty (180) days from the date on which the Operating Reserve is reduced below the Operating Reserve Required Amount.

The Operating Reserve Depository Agreement will remain in effect for the same effective period as the Teach-Out Reserve Depository Agreement as described above.

*Investment of Funds.* The Depository Agreements allow for the respective Depository Accounts to be invested in any one or more of the following: (i) a series of laddered negotiable FDIC-insured certificates of deposit with an average maturity not to exceed one (1) year in a commercial bank having a combined capital and surplus of at least \$10,000,000,000.00 at all times; (ii) a money market fund rated AAAm/Aaa-mf; (iii) Tier 1 money market instruments (iv) a short duration fixed income bond fund with an average debt rating of at least A- and no high yield debt obligations or a separately managed account consisting of fixed income securities with similar characteristics; (v) corporate bonds rated A3/A- or better (vi) U.S Treasury and Agency securities along with Treasury Inflation Protected Securities (TIPS) instruments; or (vii) such other investments as may be specifically approved in a writing duly executed by the University and COCA of the types described in the preceding clauses. Average credit quality of the portfolio will be A3/A- or better. Note that ratings are at the time of purchase. Each Depository shall be entitled

to sell or redeem any such investments (including any interest that accrues on any such investments) only as necessary to make any payments or distributions required under each respective Depository Agreement or to invest the portfolio as appropriate in similar investments.

As indicated above, funds in the Teach-Out Reserve and the Operating Reserve must remain unencumbered, and do not secure the payment of principal of or interest on the Bonds.

## VII. THE FACILITY FOR THE NEW OSTEOPATHIC PROGRAM

As part of its feasibility study for the Osteopathic Program, the University identified facility requirements for the program. As the Osteopathic Program is a new program at an existing higher education institution, significant portions of the identified needed facilities are already in place, including library, student support services areas, dining locations, fitness facilities, lab, classroom and office space. Within its “Pre-accreditation Self Study,” the University identified that pre-existing space is adequate to support the start-up and early enrollment of the Osteopathic Program. It is anticipated that additional program space of approximately 100,000 square feet will be required as the Osteopathic Program grows to its full expected enrollment of 720 in Fall 2030. The University is currently evaluating space options for the program, including a potential new building on campus, or leasing or purchasing and renovating existing commercial office space in downtown Buffalo, New York to include a large lecture hall, gross anatomy lab, advanced simulation space, and various faculty office, student lounge and support services space. The financing of a new or renovated facility will be through a special purpose entity formed to manage the operations of the Osteopathic Program, as described in section IX below.

## VIII. AFFILIATION AGREEMENTS

Clinical rotations represent a vital piece of any medical school curriculum. In order to provide supervised clinical experience for medical students, medical schools and area hospitals and clinics enter into affiliation agreements to provide students with an appropriate learning environment. As of May 2024, the University has entered into affiliation agreements with several local and regional hospital systems and healthcare entities to provide the required clinical rotations.

## IX. ANTICIPATED FINANCING STRUCTURE OF THE PROGRAM

As discussed above in Section VII above, the Osteopathic Program is expected to require approximately 100,000 square feet of additional program space as it grows to full enrollment. Additionally, program expenses are expected to exceed program revenues during the first three years of the program. To provide for the facility and early working capital needs, following receipt of Pre-Accreditation status, the University intends to form a management company for the Osteopathic Program (“Management Company”). Management Company is expected to be either a limited liability company wholly-owned by the University or a not-for-profit corporation owned or controlled by the University. The University anticipates entering into a management agreement with Management Company whereby the University will pay the Management Company a management fee equal to substantially all of the University’s tuition revenue from students in the Osteopathic Program, and the Management Company will pay the operating costs of the

Osteopathic Program. Therefore, the revenues of the Osteopathic Program are not expected to be available to pay the debt service on the Bonds. See “BONDHOLDERS’ RISKS – PAYMENT OF PROGRAM REVENUES TO MANAGEMENT COMPANY” in the front part of this Limited Offering Memorandum.

The Management Company is anticipated to obtain its own debt financing secured only by the revenues of Management Company, which will consist primarily of the management fees paid by the University described above, and its property interest in the planned program space. See “BONDHOLDERS’ RISKS – CONSTRUCTION RISK/FINANCING RISK FOR NEW PROGRAM SPACE.” The University does not anticipate providing any guarantee of the debt of Management Company. The University may, however, guarantee the Management Company’s obligations under leases of space for the Osteopathic Program.

## X. GOVERNANCE

### A. Board of Trustees

The Board of Trustees (the “*Board*”) is the governing body of the University. The Bylaws of the University (the “*Bylaws*”) require a Board of no fewer than 15 and no more than 25 full voting members. Board members serve three-year terms. The Board is currently comprised of 19 members. Members of the Board serve without pay or other compensation for Board service. The Executive Committee of the Board consists of the Chair and Vice Chair of the Board, the Secretary and the past Chair of the Board (if either is still a trustee), the Chairs of the various standing committees, the President.

The Board holds its annual meeting each May at the call of the Chairperson. The majority of the entire Board of Trustees shall constitute a quorum. Members can be present or participating by telephone, videoconference or other technological means by which all trustees may hear each other, and the majority vote of those present or participating is sufficient for any decision except as specifically limited by the Bylaws of the University. The Board has full governance authority for the University. The Board elects its Chair, Vice Chair, Secretary, and such other officers as it may from time to time require, performing such functions as the Board shall designate. The Board also appoints the President. Further, the Board discusses the financial condition, future and action plans of the University, and approves the annual budget submitted by the President. The Governance Committee is responsible for the nomination of new Board members. In addition, there are several committees within the Board that meet throughout the year.

The following is a listing of the members of the Board for academic year 2023-2024, their current principal business or professional affiliation, and their year of appointment to the Board.

MEMBER	DATE JOINED	AFFILIATION
Joseph J. Cozzo, <i>Chairperson</i>	2017	President/CEO and Chairman of Buffalo Speech & Hearing Center
Dolores Prezyna EdD, ‘70, ‘14, <i>Co-Chair</i>	2017	Retired administrator, Frontier CSD
Bart McGloin, ’87, <i>Secretary</i>	2021	Partner, Dopkins & Company, LLP
Jamel C. Perkins, <i>Past Chair</i>	2010	Global Technology Executive, Sodexo

MEMBER	DATE JOINED	AFFILIATION
Dr. Lorrie Clemo	2017	President, D'Youville University
Melissa Agnes	2021	CEO, The Crisis Ready Institute
Andrew Belden '07, '10, '20, '22	2023	Medical Appeals Supervisor, Centene Corporation
Abeer Eddib	2023	Physician/Attending Urogynecologist for Kaleida Health
Ofo Ezeugwu	2021	Founder and CEO, WhoseYourLandLord
Gretchen Fierle	2015	Retired Senior VP, Marketing & Community Relations
Sister Julia Lanigan '73	2018	Grey Nun of Sacred Heart
Joyce Markiewicz '80	2021	President & CEO, Catholic Health
Sister Mary McCarrick	2015	Diocesan Director, Catholic Charities of Buffalo
Stephen Mercurio	2015	President, The McGuire Group
Carl J. Montante	2020	President & Managing Director, Uniland
Blair Severn	2018	Chairman and Co-Creator of Enabling Ideas
Matthew Shriver '87	2022	VP of Administration and Chief Financial Officer, YMCA Buffalo
Patti Stephen	2022	Executive Director, Buffalo Prep
Rev. Msgr. Robert Zapfel, STD	2020	Vicar Forane, Noth Erie Vicariate of Catholic Diocese of Buffalo, Bishop's Representative for Healthcare

## B. Administration

The University is administered on a day-to-day basis by the President and her council. The President is appointed by the Board. The administrative officers are appointed by the President and serve at the pleasure of the President. The following is a listing of University officers and a brief biography of each.

**Lorrie Clemo, PhD, President.** Dr. Clemo became the President of the University in 2017. Dr. Clemo is the first president from outside the Grey Nuns in the 108-year history of the University, and her inauguration was the first for the school in 38 years. Dr. Clemo has more than 25 years of experience teaching undergraduates, conducting research, and serving the community.

Dr. Clemo began her career as a research assistant at Binghamton University. She received full faculty tenure in the public policy and administration program at SUNY Oswego, and after 20 years of service she participated in an American Council on Education Fellowship and grew into the role of Provost and Vice President.

Dr. Clemo holds a Bachelor of Arts degree in Political Science from LeMoyne College and Master of Arts and Ph.D. degrees in Political Science and Public Policy Analysis from Binghamton University.

**Joggeshwar (Jogy) Das, Executive Vice President & Senior Advisor to the President.** Dr. Das joined D'Youville as the Vice President for Institutional Effectiveness and Planning in September of 2017, and was promoted into his current role in 2023.

In this role Dr. Das is responsible for providing high quality, efficient, and effective service and support to the campus community. In addition, he oversees the University's essential resources: its people, facilities, financial assets, systems and information and data.

Dr. Das provides leadership for Offices of Assessment, Accreditation, and Institutional Research helping with planning and resources; Talent, Culture & Human Resources; Academic & Career Advisement; Student Persistence & Accessibility Services; Strategic Enrollment Management and Admissions; International Student Services & Global Engagement; and Title III Grant.

Prior to joining D'Youville, Dr. Das served as Associate Dean in the School of Education for the State University of New York at Oswego from 2011 to 2017, and prior to that worked for 25 years at The Ohio State University, serving in multiple positions including, Assistant Director of Undergraduate Programs at the Fisher College of Business School, Director of Undergraduate and Graduate services, and Manager for Quality Data Reporting for the College of Education.

Dr. Das earned Bachelor of Science degree (Honors) in Anthropology and Master of Science degree in Cultural Anthropology from the University of Delhi. Additionally, he earned a Master of Arts degree and a Bachelor of Arts degree in Anthropology from The Ohio State University. He earned his doctorate (Ed.D.) from D'Youville University.

**Nicholas Fiume, CPA, Acting Chief Financial Officer.** Mr. Fiume is a partner with regional accounting firm Dopkins & Company LLP, where he leads the firm's healthcare and not-for-profit practices. Through a contractual arrangement between the University and Dopkins & Company, Mr. Fiume has been the acting Chief Financial Officer of the University since March 2021. Mr. Fiume directly oversees the University's Financial Reporting, Treasury, Purchasing, Planning & Analysis, Student Accounts and Student Financial Aid functions.

Mr. Fiume is a Certified Public Accountant in New York, and a member of the American Institute of Certified Public Accountants and New York State Society of Certified Public Accountants. Prior to his current roles with D'Youville and Dopkins & Company, Mr. Fiume spent 16 years in the healthcare audit practice of Deloitte & Touche LLP. Mr. Fiume holds a Bachelor of Science degree in Accounting from Canisius University.

Mr. Fiume is chairman of the board of trustees of St. Mary's High School in Lancaster, New York, a member of the audit committee of the Catholic Diocese of Buffalo, a director and chair of the audit committee of Our Lady of Victory Charities, and a member of the finance committee of Feedmore Western New York.

**Shawn Cannon, DO, Founding Dean – Proposed D'Youville University College of Osteopathic Medicine.** Dr. Cannon was named as the Founding Dean of the Osteopathic Program in June 2022 and has been focused on building a team and plan to execute an exciting vision for the Osteopathic Program.

Prior to joining D'Youville, Dr. Cannon was the Chief Academic Officer, Stony Brook Southampton Hospital. He started his medical studies at NYIT-College of Osteopathic Medicine,

in an accelerated program. He earned his Bachelor of Science degree and D.O. degrees in seven years. From there he studied medicine at the University Hospital for the Albert Einstein College of Medicine, Montefiore Medical Center in the City of New York. At Montefiore, he served as chief resident in the Department of Social Internal Medicine. He is a board-certified osteopathic internist with sub-specialty boards in Hospice and Palliative Medicine.

He is also an active member of the American Osteopathic Association of Addiction Medicine and the American Society of Addiction Medicine. He is currently serving on the Board of the American Osteopathic Directors of Medical Education as it transitions into an assembly of the AACOM. He founded the Residency Program in Social Medicine at Southampton Hospital to ensure medical students and residents were being educated in the fields of medicine that are acutely affecting citizens of the United States.

## XI. FACULTY

### A. Faculty

ACADEMIC YEAR	FULL-TIME FACULTY	PART-TIME FACULTY	PERCENT TENURED <sup>1</sup>
2023-24	142	0	60%
2022-23	160	3	59%
2021-22	171	5	74%
2020-21	157	4	75%
2019-20	179	5	44%

<sup>1</sup> Based on reported information from the Integrated Postsecondary Education Data System; percentage tenured reflects count of full-time faculty with tenure or tenure track.

### B. Retirement Plans

The University maintains contributory, defined-contribution pension plans (the “Plans”) covering substantially all employees through two service providers (TIAA-CREF and VALIC/AIG). The University contributes an amount ranging from 3% to 7% of an eligible employee’s compensation, with the percentage dependent on the employee’s contribution percentage. The University contributed \$1,472,527 and \$1,439,356 to the Plans for the years ended May 31, 2023 and 2022. The University’s policy is to fund retirement plan costs as accrued.

## XII. CERTAIN OPERATING INFORMATION

### A. Enrollment and Admission

Certain operating data of the University, including headcount, full-time equivalent, applications and enrollment data for academic years 2019-2020 through 2023-2024, are summarized in the table below:

FALL SEMESTER	2019	2020	2021	2022	2023
<i>Head Count</i>					
Undergraduate	1,609	1,475	1,113	1,145	1,280
Graduate	942	848	912	789	778
Professional	497	462	311	336	361
Non-Traditional			275	252	130
TOTAL HEADCOUNT	3,048	2,785	2,611	2,522	2,549
<i>Full-Time Equivalent (FTE)</i>					
Undergraduate	1,322	1,234	1,179	1,185	1,223
Graduate	584	551	489	386	394
Professional	492	392	377	357	375
TOTAL FTE	2,398	2,177	2,045	1,928	1,992
<i>Applications and Enrollment Data</i>					
<b>Traditional Undergraduate Division</b>					
Applications Received	1,448	1,755	1,889	1,998	1,961
Applications Accepted	1,262	1,467	1,711	1,897	1,848
% Accepted	87%	84%	91%	95%	94%
Enrolled	224	262	249	298	240
% Enrolled	18%	18%	15%	16%	13%
Mean SAT Score*	1105	1045			
Mean ACT Score	22	21			
First to Second Year Retention Rate	81%	74%	85%	86%	83%
<b>Transfer Students</b>					
Applications Received	744	779	1,100	678	759
Applications Accepted	371	424	390	312	377
Enrolled	167	146	178	127	189
<b>Graduate &amp; Professional**</b>					
Applications Received	717	1,110	1,010	958	1,019
Applications Accepted	610	828	550	604	650
Enrolled	296	422	220	278	353

\* SAT Methodology changed in 2017; however, all scores reported out of 1600 to reflect Math and Reading section scoring.

\*\* Combines in-person and online cohorts.



Total headcount enrollment in Fall 2023 was 2,549 whereas total headcount enrollment in Fall 2019 was 3,048, a 16% decrease during the period. See “MANAGEMENT’S DISCUSSION AND ANALYSIS” below for more information regarding this decline.

## B. Tuition, Fees and Financial Aid

The following table summarizes the University’s annual costs of tuition, room and board, and fees for the last five academic years, as well as changes established for 2023-2024:

	<u>2019-20</u>	<u>2020-21</u>	<u>2021-22</u>	<u>2022-23</u>	<u>2023-24</u>
Undergraduate Tuition, Room and Board (full year)					
Tuition	\$27,040	\$27,986	\$28,968	\$29,980	\$32,400
Room & Board	<u>12,652</u>	<u>13,095</u>	<u>11,075</u>	<u>11,660</u>	<u>12,400</u>
TOTAL TUITION AND ROOM AND BOARD(1)	\$39,692	\$41,081	\$40,043	\$41,640	\$44,800
Graduate Tuition(2)					
Tuition (on per credit hour basis)	\$ 994	\$ 1,029	\$1,065	\$1,102	\$1,180
Tuition (per semester, full time)	\$ 8,946	\$ 9,261	\$9,585	\$9,918	\$10,620

(1) Students are charged incremental fees for specific services or courses, but they are not included in this schedule.

(2) Billed to students on a per credit hour basis. Full-time graduate assumes 9 credit hours per semester.

The following table summarizes the University's total gross tuition, financial aid, and net tuition revenue for the last five fiscal years:

(DOLLARS IN THOUSANDS)	Fiscal Year Ending May 31,				
	2019	2020	2021	2022	2023
Student tuition and fees	\$72,968	\$72,280	\$71,038	\$70,441	\$73,350
Less: Scholarships and grants	(17,974)	(18,101)	(19,585)	(20,220)	(21,887)
Net tuition and fees	\$54,994	\$54,179	\$51,453	\$50,221	\$51,643
Tuition Discount (%)	24.6%	25.0%	27.6%	28.7%	29.8%

(DOLLARS IN THOUSANDS)	Fiscal Year Ending May 31,				
	2019	2020	2021	2022	2023
Financial Aid Source					
Institutional	\$17,974	\$18,101	\$19,585	\$20,220	\$21,887
Federal	39,313	39,966	34,598	31,607	32,269
State	2,003	2,015	2,009	2,098	2,007
TOTAL FINANCIAL AID	\$59,290	\$60,082	\$56,192	\$53,925	\$56,163

### C. Housing

The following table presents the University's historical and current student housing supply and demand:

	Fiscal Year Ending May 31,				
	2019	2020	2021	2022	2023
Beds (capacity) *	412	429	433	453	463
Beds (demand)**	290	292	282	440	444
Demand %	70.4%	66.8%	73%	97.1%	95.9%

\* 36 beds in Madonna Hall came online during the fiscal year ending May 31, 2024, bringing the total to 499.

\*\* Demand is average of Fall and Spring semester occupancy.

The University offers four housing options, Marguerite Hall, Madonna Hall, 222 Connecticut Apartment Complex, and Bush Lofts. All campus housing is co-educational.

Marguerite Hall is a twelve-story traditional dormitory residence for first- and second-year students with capacity of 306 beds.

Madonna Hall is a four-story building on the main campus in the process of conversion into a traditional dormitory residence for undergraduate students. One floor with a capacity of 36

beds came online for the 2023-24 academic year. Two additional floors with 60 beds (bringing building capacity to 96) are expected to come online for Fall 2024.

222 Connecticut Apartment Complex is a four-story facility primarily for third and fourth year students with a capacity of 175 beds in four-person apartments. Bush Lofts is a 24 bed facility consisting of one and two bedroom luxury apartments. Bush Lofts is owned and was developed by a third-party and leased to the University. Tenants at Bush Lofts are primarily graduate students.

#### D. Fundraising

The University annually solicits gifts, grants, and bequests for both current operating purposes and other institutional priorities. Sources of support include alumni, parents, friends, private foundations, and corporations. The following table includes the contributions without donor restriction which consist of gifts, grants, and bequests received by the University for the last five fiscal years.

	Fiscal Year Ending May 31,				
	2019	2020	2021	2022	2023
Contributions without donor restriction*	\$1,208,229	\$1,283,050	\$1,434,157	\$4,196,725	\$1,493,756

\* Inclusive of cash, stock, gifts-in-kind, estate commitments.

\*\* Unaudited, internally prepared.

The University has been the beneficiary of substantial gifts and grants from national and local foundations as well as corporate donors to support capital projects, new programs, and current operations. The University completed its last capital comprehensive campaign, *The D'Youville Campaign*, in 2017, exceeding its \$20.0 million goal. The campaign contributed to the partial funding the following campus projects:

- Dr. Charles and Mary Schweitzer Bauer School of Arts, Sciences and Education Building;
- Acquisition and renovation of Dobson Field;
- Roche Center for Mission Integration; and
- Student Support and Scholarship.
- Funding for renovations of administrative, student support and athletic spaces across campus.

Additionally, a limited campaign was conducted in support of the HUB which raised \$4.7 million from private individuals and foundations and attracted \$10.2 million in government funding.

The University is now in the planning stage of a \$30 million campaign to support the development and operation of the Osteopathic Program.

There can be no assurance that the total amount of gifts, grants, and bequests received by the University will remain stable or increase in the future. Future economic and other conditions, and actions by the federal government, including changes in regulations affecting the tax treatment of such contributions, may affect the level of giving in the future.

### XIII. ENDOWMENT

The primary financial objective of the University's investment portfolio is to provide a sustainable level of revenue distribution in support of the University's operating budget while preserving the purchasing power of the remaining investment assets by providing a real rate of return in excess of the rate of inflation. It is the overall objective of the University to maximize long-term investment returns within prudent limitations for each particular pool of investment assets. The University retains Goldman Sachs as its endowment investment advisor since 2021. The endowment includes both donor-restricted endowment funds and funds designated by the Board to function as endowments ("*Board-Designated Endowment Funds*"). As required by accounting principles generally accepted in the United States of America ("*GAAP*"), net assets associated with endowment funds, including Board-designated endowment funds, are classified and reported based on the existence or absence of donor-imposed restrictions.

The composition of net assets by type of endowment fund as of May 31, 2019 through 2023 was:

(DOLLARS IN THOUSANDS)	As of May 31,				
	2019	2020	2021	2022	2023
Board Designated Endowment Funds	\$23,470	\$23,577	\$37,517	\$33,475	\$32,477
Accumulated Earnings on Perpetual Endowment	10,578	10,764	6,085	3,496	2,911
Perpetual Endowment	15,544	15,742	15,940	16,134	16,325
<b>TOTAL ENDOWMENT FUNDS</b>	<b>\$49,492</b>	<b>\$50,083</b>	<b>\$59,542</b>	<b>\$53,105</b>	<b>\$51,713</b>

Subsequent to May 31, 2023, the University Board of Trustees authorized the use of the University's long term investments (including the Board-Designated Endowment Funds) to support the development of the Osteopathic Program. As of February 29, 2024, the University has spent approximately \$50 million for a combination of program operating costs, facility development and the deposit into the Teach-Out Reserve Fund and the Operating Reserve Fund for use as described under the caption "COCA Reserve Accounts" above (including all of the Board Designated Endowment Funds). \$16.2 million of the proceeds of the Bonds will be used to replenish the Board-Designated Endowment Funds.

The University has adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of funding to programs and other items supported by its endowment while seeking to maintain the purchasing power of the endowment. Endowment assets include those assets of donor-restricted endowment funds the University must hold in perpetuity or for donor-specified periods, as well as those of Board-designated endowment funds. Under the

University's policies, endowment assets are invested in a manner that is intended to produce modest long-term growth without undue exposure to risk and volatility.

The University's Investment Policy was approved in 2013 and maintains certain spending standards for each type of fund managed:

- *Restricted Endowment Gifts and Grants.* Spending for the designated purpose will be a maximum of 5.0% for all restricted funds of the trailing twenty quarter average market value of each restricted fund's portfolio as of May 31st; and
- *Quasi-Endowment (Endowment without Donor Restriction).* Spending of these funds will be at the discretion of the Board of Trustees.

Restricted endowment gifts and grants include both permanently and temporarily restricted endowment assets while the quasi-endowment is comprised of long-term investments designated by the Board of Trustees as endowment. For the Fiscal Years Ended May 31, 2022 and 2023, the University's spending rate was approximately 5%. In establishing this policy, the University considered the long-term expected return on its endowment. This is consistent with the University's objective to maintain the purchasing power of endowment assets held in perpetuity or for a specified term, as well as to provide additional real growth through new gifts and investment return.

The Investment Policy also places limitations on bank deposits in order to reduce counterparty exposure. The University has curated a list of approved lenders and has limits on maximum levels of deposits held with those respective institutions.

#### XIV. INVESTMENTS

The University's investments, at fair value, as of May 31, 2021 through 2023, are as follows:

	As of May 31,		
	2021	2022	2023
Investments			
U.S Government Securities	\$ 535,588	\$ -	\$ -
Equities	61,635,497	45,643,406	46,264,127
Fixed income	8,940,578	33,572,578	23,006,825
Real estate funds	1,336,709	-	-
Money market funds	22,062,289*	4,574,179	4,602,404
TOTAL INVESTMENTS	<u>\$94,510,661</u>	<u>\$83,790,163</u>	<u>\$73,873,356</u>

\* Includes cash on hand from donations remaining from *The D'Youville Campaign* and from the limited campaign in support of the HUB, used for capital improvements across campus and for the construction of the HUB.

## XV. COMPETITION

The University competes with other colleges and universities for qualified applicants. The following chart compares the University's Tuition and Room and Board charges with selected competing colleges and universities for the 2023-2024 academic year, which begins with Fall 2020.

PRIMARY BENCHMARKS	FY 2023-24 FIRST-YEAR TUITION, ROOM AND BOARD CHARGES (ESTIMATED)		
	FIRST-YEAR TUITION (FALL 2023)	ROOM AND BOARD	ESTIMATED COST OF ATTENDANCE
St. Bonaventure University	\$38,950	\$14,000	\$53,950
Niagara University	\$37,190	\$13,973	\$51,163
Daemen College	\$33,054	\$13,470	\$46,524
D'Youville University	\$32,400	\$12,400	\$44,800
Canisius University	\$31,100	\$14,530	\$45,630

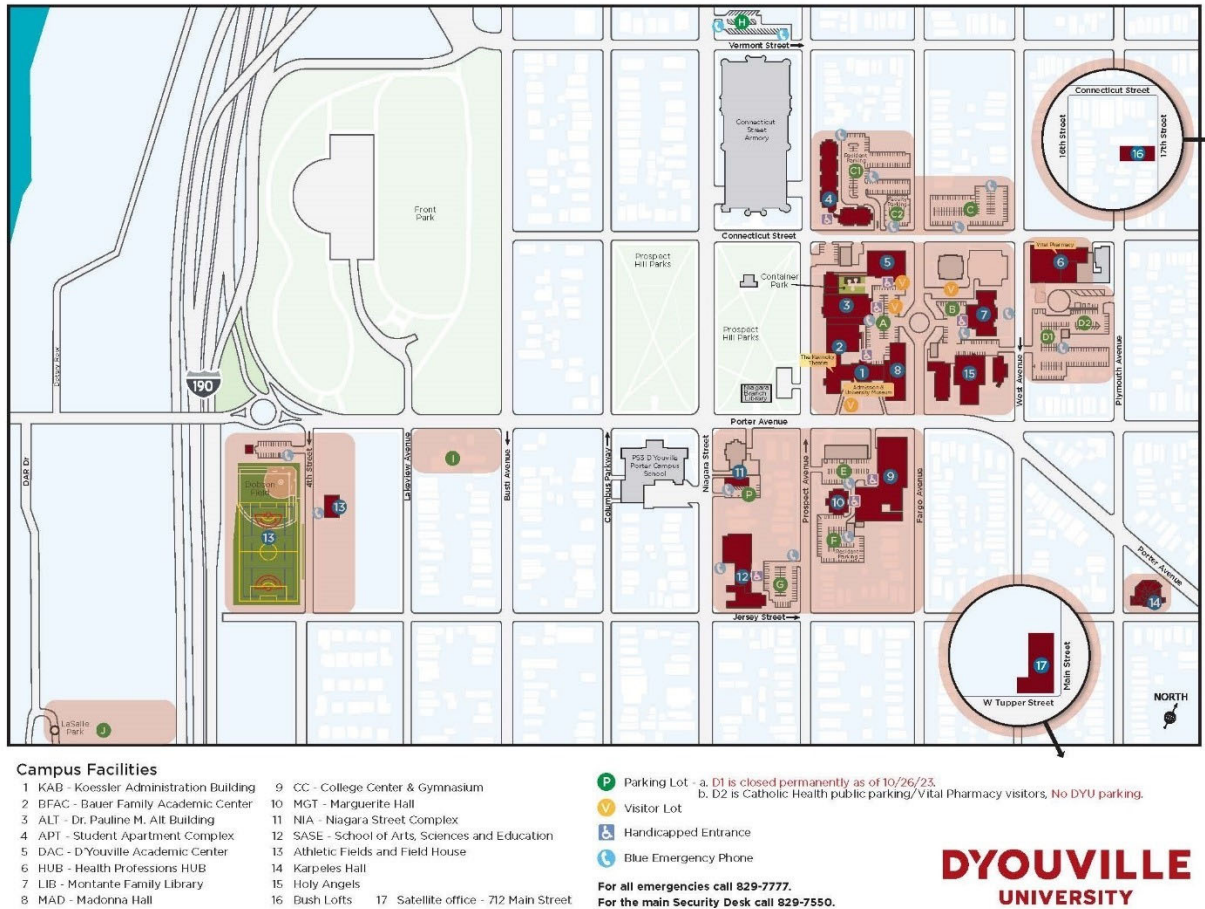
Source: D'Youville University and respective institutions' websites. Does not include mandatory fees.

## XVI. FACILITIES

### A. Campus

The University's 27-acre campus city campus located in Buffalo's diverse and historic Prospect Park/Lower West Side neighborhood, just blocks away from the Peace Bridge and approximately 1 mile from downtown Buffalo. It includes approximately 900,000 gross square feet of building space, approximately 600 parking spaces, and housing capacity for 499 students. The insured value for the University's property and contents is approximately \$250 million. A map of the University's campus follows.

The buildings identified on the map as 1 through 5 (Koessler Administration Building, Bauer Family Academic Center, Dr. Pauline M. Alt Building, Student Apartments Complex, and D'Youville Academic Center) are included in the mortgage securing the Bonds.



The following table presents the University's book value of its capital assets from May 31, 2019 through 2023:

	PROPERTY, PLANT & EQUIPMENT				
	2019	2020	2021	2022	2023
Land and improvements	\$ 9,079,338	\$ 9,086,754	\$ 9,086,754	\$ 9,086,754	\$ 9,086,754
Buildings and building improvements	99,579,483	101,105,101	104,575,561	135,890,582	138,831,503
Equipment	17,356,070	19,296,095	22,340,359	25,107,588	26,450,533
Library holdings	9,159,123	9,159,123	9,159,123	9,159,123	9,159,123
Construction in progress	562,145	6,589,421	28,048,312	-	10,708,370
TOTAL PROPERTY AND EQUIPMENT	135,736,159	145,236,494	173,210,109	179,244,047	194,236,283
Less: accumulated depreciation	(40,727,576)	(44,417,914)	(48,548,687)	(53,725,840)	(59,742,387)
TOTAL PROPERTY AND EQUIPMENT, NET	\$ 95,008,583	\$ 100,818,580	\$ 124,661,422	\$ 125,518,207	\$ 134,493,896

## B. The Mortgaged Property

The Mortgaged Property consists of the following properties on the University's campus:

Approximately four (4) acres of land bounded by Connecticut Street, Prospect Avenue, Porter Avenue and Fargo Avenue, which includes the following University academic and administrative buildings:

- Bauer Family Academic Center – 58,110 square feet, originally constructed in 2001, currently used primarily for student support space (IT helpdesk, academic advising, financial aid), and classrooms (primarily Chiropractic/OT/PT programs).
- D'Youville Academic Center – 88,475 square feet, originally constructed 2010, currently used primarily for doctoral research space, conference room and simulation lab, event/gathering space, and the School of Pharmacy,
- Koessler Administration Building – 91,000 square feet, originally constructed in 1908, currently used primarily for University administrative offices, admissions, and student support services/student life.
- Dr. Pauline Alt Building – 103,500 square feet, originally constructed in 1966, currently used primarily for the University's School of Nursing and several floors of "offline" space.

Approximately two (2) acres of land located at the corner of Prospect Avenue and Connecticut Street, on which is located an approximately 90,000 square foot, 40-unit student apartment complex with approximately 175 beds, and surface parking for approximately 117 vehicles, originally constructed in 2015.

## C. Technology

*Network:* The University has an extensive, redundant campus wide fiber network. Additionally, wireless connectivity is available in every building and virtually every green space on campus. Power over Ethernet is available at every distribution point. The campus was recently upgraded to 10 GB internet speeds.

*Data Center:* The University has a fully functioning data center facility within every building on Campus. The data center has dedicated UPS, PDU, HVAC, and power generation. The University also has an active, warm Disaster Recovery site at SASA Hall in Buffalo, New York, which can provide access to Tier 1 applications in the event of a disaster within 15 minutes.

*Instructional Technology:* Various levels of technology are available in all classrooms and the library provides both in-house and remote accessibility.

*System Infrastructure:* The University utilizes a mix of blade/virtual and physical servers to provide service for many applications. Data resides on a local storage and cloud infrastructure.



A digital signage program is also in place. The University relies on a mix of on-premise and cloud solutions.

*Telephones:* The University utilizes a physical and VoIP phone system that has centralized multi-channel business integrations and business processes.

*Enterprise Resource Planning (ERP)/Learning Management System (LMS):* The University has a fully integrated ERP system that is incorporated in all aspects of the University.

*Cyber Security Strategy:* The University takes a multi-prong approach to protecting the assets of the University from a cyber-attack/breach knowing that a mix of technology and human education provides the safest computing environment.

*Cyber Security Infrastructure/Technology:* The University has a series of physical and virtual firewalls to block unauthorized access while permitting outbound communication. In addition to the firewalls, the University employs endpoint protection and inbound/outbound email defense and log reporting all endpoints for intrusion and threat detection. The University also incorporated a Security Partner to conduct “outside” virtual attacks and response.

*Cyber Security Policies:* The University has a full Incident Response Program that is employed in the event of an attack/breach. Each summer, a tabletop exercise is enacted to ensure all parties are refreshed from their duties. The University has a contract with third party vendor that monitors and reports on cyber security risks and breaches. Additionally, as a component of the University’s spectrum of insurance, the University has cybersecurity insurance.

*Security Awareness Program:* The University has a robust Security Awareness Program where users are trained and tested periodically on a myriad of potential breach activities to ensure faculty and staff are practicing safe computing practices.

#### D. Other Recent and Proposed Improvements to Capital Facilities

The University has undertaken the following general campus improvements in the past three fiscal years:

- New construction initiatives which directly impact the student experience
- New administrative space designs and buildouts
- Classroom, laboratory and learning space upgrades
- Student Residential housing and dining upgrades and renovations
- Athletic and recreation facilities upgrades
- Community space renovations including the Kavinoky Theatre
- General campus improvements including deferred maintenance

The University has proposed commencing various capital projects in the current fiscal year which represent a total net capital cost of \$2.9 million. These projects include improvements to enhance student enrollment, human health and safety, revenue generation and cost savings, master planning, mission critical infrastructure, and other design services.

## XVII. FINANCIAL STATEMENTS

The following selected financial information for the fiscal years ended May 31, 2019 through 2023 has been derived from the audited financial statements of the University for such years. The following selected financial information as of and for the eleven months ended April 30, 2024 and 2023 is derived from the unaudited internal financial statements of the University and includes all adjustments, consisting of normal recurring adjustments, that management considers necessary for a fair presentation on a basis consistent with the audited financial statements. The operating results for the eleven months ended April 30, 2024 are not necessarily indicative of the results that may be reflected for the entire fiscal year ending May 31, 2024. The data should be read in conjunction with the consolidated financial statements, related notes, and other financial information included in Appendix B.

	Fiscal Year Ending May 31,					April 30,
	2019	2020	2021	2022	2023	2024
<b>ASSETS</b>						
Cash and Cash Equivalents	\$ 19,823,028	\$ 18,217,618	\$ 20,466,939	\$ 10,705,855	\$ 6,079,958	\$ 4,620,531
Short-Term investments	-	-	6,250,347	8,004,168	1,505,581	440,229
Student accounts receivable, net	5,642,074	5,891,349	6,826,579	8,617,526	11,692,978	11,965,333
Contributions receivable, net	991,985	1,692,408	1,992,193	7,263,634	1,741,957	1,509,415
Other current assets	3,086,177	2,721,258	1,741,504	2,563,411	2,869,806	2,319,509
COCA Operating Reserve	-	-	-	-	-	9,903,123
COCA Teachout Escrow	-	-	-	-	-	40,029,755
Long-term investments	64,413,131	81,698,013	88,260,314	75,785,995	72,367,775	19,110,613
Loans to students, net	2,870,817	2,530,891	3,098,204	3,386,828	3,984,923	4,811,798
Loan receivable	-	13,932,900	13,932,900	13,932,900	13,932,900	13,932,900
Property and equipment, net	95,008,583	100,818,580	124,661,422	125,518,207	134,493,896	147,368,705
Interest rate swap asset	-	-	-	-	-	-
<b>TOTAL ASSETS</b>	<b>\$191,835,795</b>	<b>\$227,503,017</b>	<b>\$267,230,402</b>	<b>\$255,778,524</b>	<b>\$248,669,774</b>	<b>\$256,011,911</b>
<b>LIABILITIES &amp; NET ASSETS</b>						
<b>Liabilities:</b>						
Short-term borrowings	\$ -	\$ -	\$ -	\$ -	\$2,500,000	\$ 5,000,000
Accounts payable and accrued liabilities	5,386,009	6,711,948	9,758,747	9,546,960	12,634,983	15,971,225
Deferred revenue	7,250,119	6,947,107	6,392,408	6,845,355	6,856,012	3,800,395
Refundable advances	-	2,075,507	3,192,183	1,412,290	1,222,782	531,925
Long-term debt	35,531,725	64,927,108	75,534,034	71,397,861	65,126,241	64,147,601
Interest rate swap liability	124,737	706,618	-	-	-	-
U.S. Government loan funds refundable	2,629,683	2,527,761	3,196,809	3,133,409	3,089,764	2,935,496
<b>TOTAL LIABILITIES</b>	<b>\$ 50,922,273</b>	<b>\$ 83,896,049</b>	<b>\$ 98,074,181</b>	<b>\$ 92,335,875</b>	<b>\$ 91,429,782</b>	<b>\$92,386,642</b>
<b>Net Assets:</b>						
Net assets without donor restrictions	\$110,617,454	\$110,794,628	\$123,959,692	\$130,490,418	\$128,492,067	\$134,256,353
Net assets with donor restrictions						
Program	14,751,819	17,070,416	30,531,415	16,772,441	12,369,886	12,742,817
Perpetuity	15,544,249	15,741,924	15,939,750	16,133,542	16,325,353	16,536,441
Non-controlling interest in consolidated subsidiary	-	-	(1,274,636)	46,248	52,686	89,658
<b>TOTAL NET ASSETS</b>	<b>\$140,913,522</b>	<b>\$143,606,968</b>	<b>\$169,156,221</b>	<b>\$163,442,649</b>	<b>\$157,239,992</b>	<b>\$163,625,269</b>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<b>\$191,835,795</b>	<b>\$227,503,017</b>	<b>\$267,230,402</b>	<b>\$255,778,524</b>	<b>\$248,669,774</b>	<b>\$256,011,911</b>

	Fiscal Year Ending May 31,					Eleven Months Ended April 30,	
	2019	2020	2021	2022	2023	2023	2024
REVENUES WITHOUT DONOR RESTRICTIONS							
Student tuition and fees	\$ 72,968,355	\$ 72,280,171	\$ 71,038,439	\$ 70,440,765	\$ 73,530,125	\$ 68,899,221	\$ 77,287,030
Scholarships and grants	(17,973,613)	(18,101,099)	(19,585,197)	(20,219,588)	(21,887,284)	(20,516,485)	(23,378,999)
Net tuition and fees	54,994,742	54,179,072	51,453,242	50,221,177	51,642,841	48,382,736	53,908,031
Contributions	1,208,229	1,283,050	1,434,157	4,196,725	1,493,756	1,074,122	1,044,485
Government grants and appropriations	1,631,265	2,489,900	6,283,393	13,616,310	2,990,546	2,165,930	3,668,805
Pharmacy revenue	-	-	98,299	2,744,235	1,161,936	1,049,962	2,252,551
Auxiliary Enterprises, net of discounts	3,804,262	3,501,501	2,306,706	3,447,885	4,382,947	4,186,266	4,873,289
Investment income designated for current operations	1,241,985	1,496,040	616,527	1,327,695	2,155,610	2,478,916	2,482,238
Insurance Recovery	-	-	-	-	5,472,573	-	-
Other	858,255	1,208,575	426,590	2,787,333	1,731,368	7,143,527	5,260,062
Net assets released from restrictions	891,880	1,568,449	1,147,649	10,050,658	5,403,209	2,518,857	3,048,277
TOTAL REVENUES WITHOUT DONOR RESTRICTIONS	\$ 64,630,618	\$ 65,726,587	\$ 63,766,563	\$ 88,392,018	\$ 76,434,786	\$ 69,000,316	\$ 76,537,738
EXPENSES WITHOUT DONOR RESTRICTIONS							
Instruction	\$ 32,435,635	\$ 30,592,929	\$ 33,956,078	\$ 34,548,748	\$ 30,998,573	\$ 27,965,254	\$ 28,072,493
Academic support	6,575,895	7,564,666	5,777,240	10,925,202	12,088,199	10,408,568	11,482,970
Student services	10,256,356	10,128,140	8,078,774	13,748,255	13,439,797	11,283,318	12,331,778
Public services	831,427	871,327	1,312,345	4,379,555	3,947,959	3,994,548	4,995,055
Institutional support	11,665,785	11,751,431	9,735,402	10,201,026	10,343,384	8,802,261	9,617,520
Auxiliary enterprises	4,919,839	4,671,563	4,576,995	5,639,780	6,744,144	7,269,225	8,136,446
TOTAL EXPENSES WITHOUT DONOR RESTRICTIONS	\$ 66,684,937	\$ 65,580,056	\$ 63,436,834	\$ 79,442,566	\$ 77,562,056	\$ 69,723,174	\$ 74,636,262
Change in net assets from unrestricted operating activities	\$ (2,054,319)	\$ 146,531	\$ 329,729	\$ 8,949,452	\$(1,157,270)	\$(722,858)	\$ 1,901,476
NONOPERATING ACTIVITIES WITHOUT DONOR RESTRICTIONS							
Investment income (loss) in excess of amounts designated for current operations	\$ (1,004,940)	\$ 602,524	\$ 10,860,531	\$ (1,097,852)	\$ (834,643)	\$ (302,118)	\$ 3,899,782
Net change in market value of interest rate swap	(541,898)	(581,881)	108,190	-	-	-	-
Contributions	-	10,000	-	-	-	-	-
Change in net assets from nonoperating activities without donor restrictions	(\$ 1,546,838)	\$ 30,643	10,968,721	\$ (1,097,852)	\$ (834,643)	\$ (302,118)	\$ 3,899,782
Change in net assets without donor restrictions	(\$ 3,601,157)	\$ 177,174	\$ 11,298,450	\$ 7,851,600	\$ (1,991,913)	\$ (1,024,976)	\$ 5,801,258
Net assets without donor restrictions - beginning of year	\$114,218,611	\$110,617,454	\$110,794,628	\$122,685,056	\$130,536,666	\$130,536,666	\$128,544,753
Capital Contribution	-	-	-	10	-	-	-
Net assets without donor restrictions - end of year	\$110,617,454	\$110,794,628	\$122,685,056	\$130,536,666	\$128,544,753	\$129,511,690	\$134,346,011

## XVIII. MANAGEMENT’S DISCUSSION AND ANALYSIS

### A. Financial Reporting and Basis of Consolidation

The University maintains consolidated financial records for each fiscal year ending May 31 and follows the accrual method of accounting. The consolidated financial statements of the University are audited annually by independent auditors appointed by the Board of Trustees and include the accounts and transactions of the University, 301 Connecticut, LLC (301 Connecticut), 301 Connecticut Holdings, Inc. (Holdings), and Vital Services, LLC (Vital).

Vital is a retail pharmacy which both serves the campus and surrounding community and provides clinical placement opportunities for students in the University’s School of Pharmacy. A minority equity interest in Vital is held by another entity controlled by the practicing pharmacists who manage the pharmacy.

301 Connecticut and Holdings were formed as part of a New Market Tax Credits structure to finance construction of the HUB. The entities are structured to break even – with debt service requirements met by the receipt of rent from the University, Vital, and Catholic Health (a third-party), all of whom occupy space in the HUB, and receipt of interest and principal from notes receivable.

The details of the consolidated balance sheets and statement of activities are included in the audited Consolidated Financial Statements with Additional Information on pages 17-18 of the audited consolidated financial statements attached as Appendix B to the Official Statement.

### B. Annual Operating and Capital Budgeting Process

An annual operating budget is prepared in order to estimate revenue and expenses for the University. The operating budget is initially prepared by University management based primarily upon (a) enrollment projections and tuition rates previously approved by the University Board of Trustees, (b) an anticipated spending rate of 5% of a 20 quarter rolling average of the long-term investment portfolio, (c) projections of utility and maintenance costs, and (d) input from academic and administrative departments on personnel and program needs. The University’s policy is to set an operating budget in which revenues exceed expenses by a small margin (typically 1-2% of revenues) after providing for depreciation, interest and an allowance for strategic initiatives. The operating budget excludes grant and major gift activity.

The operating budget is reviewed annually in detail by the Finance Committee of the Board of Trustees and approved by the full Board of Trustees during March or April each year, prior to the commencement of the next fiscal year on June 1.

Separate from the operating budget, the University also prepares an annual capital budget to address campus improvements and major maintenance items. While the capital budget may vary from year to year based upon identified needs, the budget is developed to target an average over time approximating annual depreciation expense – with a goal of maintaining the average condition of the campus and physical plant. The budget is set considering the level of depreciation

expense provided for in the operating budget, overall University cash flow projections, and the availability of long-term investments restricted or designated for facility improvement. To provide lead time for procurement, the capital budget is typically reviewed by the Finance Committee of the Board of Trustees and approved by the Board of Trustees in November or December each year for the fiscal year commencing the following June.

C. Summary of Revenue and Expenses Eleven Months Ended April 30, 2023 and 2024

*Net Tuition and Fees* – Increased 11.4% from \$48.4 million for the eleven months ended April 30, 2023 to \$53.9 million for the eleven months ended April 30, 2024. Full-time equivalent enrollment increased 3.3% from 1,928 in Fall 2022 to 1,992 in Fall 2023. This increase was augmented by increased tuition rates. Fee revenue year over year reflects an approximately \$0.6 million increase in the *Bookready* program, which provides textbooks and course materials to students, which is offset by approximately \$1.6 million of program related expenses included in Academic Support. Net tuition and fees for the eleven months ended April 30, 2024 also reflects approximately \$0.4 million of Pharmacy student tuition and fees for the Summer Trimester not included in the prior year. The Pharmacy program is transitioning from an eight semester four year program to a nine trimester three year program.

*Auxiliary Enterprises* – Primarily consists of room and board charges and increased 16.4% from \$4.2 million for the eleven months ended April 30, 2023 to \$4.9 million for the eleven months ended April 30, 2024. Increased demand for student housing is driven by a requirement for most freshman undergraduate students to live on campus and the University's move to NCAA Division II athletic programs – which has increased the number of out-of-state students attending. For the Fall 2023 semester, an additional 36 beds were brought online in Madonna Hall.

*Government Grants and Appropriations* – The increase seen in Government Grants and Appropriations for the eleven months ended April 30, 2023 and 2024 was due to an increased institutional focus on grant applications. Most grant activity is cost reimbursement, thus contributing to expense increases.

*Pharmacy Revenue* – The increase seen in Pharmacy Revenue for the eleven months ended April 30, 2023 and 2024 was due to sales volume at the Vital Pharmacy in the Health Professions HUB. The increase in related cost of sales is reflected in Public services expense.

*Net assets released from restrictions* – For the eleven months ended April 30, 2024 and 2023, net assets released from restrictions primarily relates to assets restricted for plant improvement. Other categories of donor restricted net assets are generally recorded as of the fiscal year end in May.

*Operating Expenses* – Operating Expenses increased 7.0% from \$69.7 million for the eleven months ended April 30, 2023 to \$74.6 million for the eleven months ended April 30, 2024. Approximately \$1.1 million, \$1.5 million and \$1.2 million of the increase relates to the *Bookready* program, grant activity and pharmacy cost of sales, respectively, as discussed above. Operating expenses related to the development of the osteopathic program increased approximately \$0.7

million (from approximately \$1.0 million to \$1.7 million) year over year. Other expense increases relate to general inflation.

*Balance Sheet Changes.* The statement of financial position as of April 30, 2024, reflects the February 2024 use of long-term investments to establish the COCA required Operating Reserve Fund of \$9,900,000 and Teach-Out Reserve Fund of \$39,600,000.

Accrued expenses at April 30, 2024 are approximately \$3.3 million above May 31, 2023 largely due to expenses related to the osteopathic program development.

Approximately \$1.7 million of student accounts receivable at April 30, 2024 is related to the Pharmacy program summer term. The Pharmacy program is in transition from a four year, 8 semester program to a three year, 8 trimester program, causing increased summer enrollment. The decrease in deferred revenue is likewise related to increased recognition of Pharmacy tuition due to the trimester schedule.

#### D. Summary of Revenue and Expenses Fiscal Years 2019 Through 2023

*Net Tuition and Fees* – Declined 6.2% from \$55.0 million for the year ended May 31, 2019 to \$51.6 million for the year ended May 31, 2023. Tuition and fees are a factor of enrollment and tuition rates. Full-time equivalent enrollment declined 21.2% from 2,446 in Fall 2018 to 1,928 in Fall 2022. This decline was partially offset by increased tuition rates – in part due to a University strategy to decrease the level of discounting on graduate and doctoral degree programs. Enrollment was significantly impacted by the COVID-19 pandemic, with student attrition from Spring 2020 to Fall 2020 and Fall 2020 to Spring 2021 significantly above trend and the closure of the Canada-United States border impacting cross-border enrollment (the University is located approximately a half mile from the Peace Bridge between Buffalo, New York and Fort Erie, Ontario). Full-time equivalent enrollment began to improve for Fall 2023, rising 3.3% to 1,992.

*Auxiliary Enterprises* – Primarily consists of room and board charges and increased 15.2% from \$3.8 million for the year ended May 31, 2019 to \$4.4 million for the year ended May 31, 2023. The increase is due to an investment in additional housing capacity (412 to 463 beds) and increased occupancy rates (70.4% to 95.9%). Increased demand for student housing is driven by a requirement for most freshman undergraduate students to live on campus and the University's move to NCAA Division II athletic programs – which has increased the number of out-of-state students attending. For 2021 and prior years, auxiliary enterprises included minor revenues of an on campus theater, parking fees and certain other activities which were included in other revenue for 2022 and later years.

*Government Grants and Appropriations* – The increase seen in Government Grants and Appropriations for the years ended May 31, 2021 and 2022 was due to the significant COVID-19 related aid received and government grants related to the construction of the HUB (which opened in June 2021). The \$3.0 million for the year ended May 31, 2023 reflects a normal level of activity and a 83.3% increase from \$1.6 million for the year ended May 31, 2019. The increase reflects an institutional focus on encouraging research in the University's health-related doctoral programs.

*Pharmacy Revenue* – Reflects the operations of Vital, which commenced with the opening of the HUB in 2021.

*Net assets released from restrictions* – The significant increase in net assets released from restrictions during the year ended May 31, 2022 reflects the release of donations and grants for the construction of the HUB, which opened during June 2021. For the year ended May 31, 2023, approximately \$3.8 million of the net assets released from restrictions related to funds restricted for physical plant – including repairs needed after a December 2022 blizzard.

*Operating Expenses* – The table below presents operating expenses, in thousands of U.S. dollars, on a functional basis:

	YEAR ENDED MAY 31,				
	2019	2020	2021	2022	2023
Salaries and benefits	\$41,792	\$39,536	\$35,112	\$40,810	\$37,746
Contractual services	9,464	8,337	7,070	12,417	13,720
Advertising and marketing	796	612	693	1,773	1,820
Utilities	860	909	983	1,529	2,361
Technology	884	1,528	1,698	1,916	3,482
Minor equipment	748	2,609	3,218	1,124	292
Travel and conference	1,144	852	221	966	1,192
Supplies	1,603	1,203	899	3,132	2,216
Maintenance	181	-	-	-	-
Printing	255	238	213	291	90
Insurance	688	888	941	1,273	1,482
Depreciation and impairment	3,362	3,690	4,131	5,177	6,017
Interest	1,078	1,233	1,232	2,318	2,590
Student activities	1,264	1,256	1,153	1,548	2,143
HEERF – payments to students	-	772	1,001	2,608	-
Other	2,568	1,917	4,873	2,561	2,442
Total operating expenses	\$66,687	\$65,580	\$63,438	\$79,443	\$77,593

The year ended May 31, 2021, and to a lesser extent the year ended May 31, 2020, reflect austerity and avoided expenses during the COVID-19 pandemic.

The decrease in salaries and benefits over the five year period is a result of both a decrease in the size of the full-time faculty based upon decreased full-time equivalent enrollment and the strategic outsourcing of certain functions, including campus security, maintenance and housekeeping. Such outsourcing, in part, contributes to the increase in contractual services expense. Contractual services also includes the impact of the Bookready program, whereby the University began including the cost of books and course materials in student tuition and fees.

The significant increase in technology costs for the year ended May 31, 2023 reflects certain costs of recovery from a blizzard in December 2022 which caused substantial damage to network equipment and a ransomware attack in February 2023.



The Higher Education Emergency Relief Fund (“*HEERF*”) was a government COVID-19 relief program which included aid for students which was passed through the University.

#### E. Fundraising and Institutional Advancement

Excluding contributions to a capital campaign for the construction of the HUB, contributions by alumni and friends of the University have ranged from \$1.2 to \$1.5 million over the past five years.

In addition to such unrestricted giving, the University’s Institutional Advancement function has focused on increasing foundation and government grants to support program and research activities.

The University is in the planning stage of a \$30 million capital campaign to support the planned Osteopathic Program.

#### F. Capital Plans

Other than development of the Osteopathic Program, the University does not presently have any major capital plans outside of its normal annual capital budget. Over the next five years, the University does expect to conduct routine capital upgrades (replacement of roofs, HVAC systems, etc.) as needed, information technology upgrades and interior space renovations within its normal annual capital budget. The annual capital budget is expected to be between \$3.0 to \$5.0 million per year over the next five years.

#### G. Liquidity

As of May 31, 2023, the University had \$7.6 million of cash and short term investments on hand and \$16.5 million of long term investments which were neither bond reserve funds, donor restricted nor Board-Designated Endowment Funds. The University also had \$51.7 million in its endowment as of May 31, 2023. See also “ENDOWMENT” above. Additionally, the University had a \$5.0 million line of credit with KeyBank National Association, all of which was drawn at April 30, 2024.

Subsequent to May 31, 2023, the University Board of Trustees authorized the use of the University’s long term investments (including the Board-Designated Endowment Funds) to support the development of the Osteopathic Program. As of February 29, 2024, the University has spent approximately \$50 million for a combination of program operating costs, facility development and the deposit into the Escrowed Reserve Fund and the Operating Reserve Fund for use as described under the caption “COCA Reserve Accounts” above. The University used all of its Board Designated Endowment Funds (\$32.7 million) and \$16.5 million of long-term investments which are neither donor restricted, board designated as endowment, or reserve funds as the funding source of the \$50 million, with the remainder coming from its long-term investments and cash. The proceeds of the Bonds will be used for general corporate purposes which will

include replenishing \$16.2 million of Board-Designated Endowment Funds, paying down line of credit (\$5 million) and additional development costs of the Osteopathic Program.

#### XIX. Property and Liability Insurance

The University maintains comprehensive insurance coverage on its assets. Buildings, other real property, and equipment are insured on a replacement cost value basis with a \$25,000 deductible on buildings, contents, and equipment. For the current policy year, campus buildings and business personal property are insured for a blanket, aggregate amount of \$250 million building/\$25 million business personal property.

Business interruption insurance that protects the University against loss of income is carried up to the full policy limit of \$14.6 million.

Personal injury and property damage liability coverage is provided under a comprehensive general liability policy with loss limits of \$1 million per occurrence and an incremental umbrella policy with aggregate loss limits of \$10 million. These policies are considered by the University to be similar to those carried by similar universities and businesses.

Employment Practices Liability is also carried with loss limits of \$1 million per occurrence/\$2 million aggregate.

Cyber coverage insurance is carried for a \$1 million aggregate limit.

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**APPENDIX B**

**FINANCIAL STATEMENTS OF D'YOUVILLE COLLEGE  
FOR THE FISCAL YEARS ENDED MAY 31, 2022 AND MAY 31, 2023**

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**D'YOUVILLE UNIVERSITY**  
**CONSOLIDATED FINANCIAL STATEMENTS**  
**WITH ADDITIONAL INFORMATION**

**MAY 31, 2023**

## INDEPENDENT AUDITORS' REPORT

The Board of Trustees  
D'Youville University and Affiliates

### Opinion

We have audited the accompanying consolidated balance sheets of D'Youville University and Affiliates (the University) as of May 31, 2023 and 2022, and the related consolidated statements of activities, functional expenses, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the University as of May 31, 2023 and 2022, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America (GAAP).

### Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the University, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with GAAP; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the University's ability to continue as a going concern for one year after the date the financial statements are issued.

### Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the University's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the University's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

#### **Additional Information**

Our audits were conducted for the purpose of forming an opinion on the financial statements as a whole. The additional information is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audits of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with GAAP. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

A handwritten signature in blue ink that reads "Lumsden & McCormick, LLP". The signature is written in a cursive, flowing style.

September 15, 2023

## D'YOUVILLE UNIVERSITY AND AFFILIATES

## Consolidated Balance Sheets

May 31,	2023	2022
<b>Assets</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 6,079,958	\$ 10,705,855
Investments for short-term purposes (Note 3)	1,505,581	8,004,168
Student accounts receivable, net	11,692,978	8,617,526
Contributions and grants receivable (Note 2)	1,198,155	6,474,680
Financial aid and other receivables	2,869,806	2,563,411
	<b>23,346,478</b>	<b>36,365,640</b>
Contributions and grants receivable, noncurrent (Note 2)	543,802	788,954
Investments for long-term purposes (Note 3)	72,367,775	75,785,995
Loans to students, net (Note 4)	3,984,923	3,386,828
Property and equipment, net (Note 5)	134,493,896	125,518,207
New Market Tax Credit loan receivable (Note 6)	13,932,900	13,932,900
	<b>\$ 248,669,774</b>	<b>\$ 255,778,524</b>
<b>Liabilities and Net Assets</b>		
<b>Current liabilities:</b>		
Short-term borrowings (Note 7)	\$ 2,500,000	\$ -
Current portion of long-term debt (Note 8)	1,095,608	1,734,174
Accounts payable and accrued liabilities	12,634,983	9,546,960
Deferred revenue	6,856,012	6,845,355
Refundable advances	1,222,782	1,412,290
	<b>24,309,385</b>	<b>19,538,779</b>
Long-term debt (Note 8)	64,030,633	69,663,687
U.S. government loan funds refundable (Note 4)	3,089,764	3,133,409
<b>Net assets:</b>		
Without donor restrictions	128,492,067	130,490,418
Noncontrolling members' interest in subsidiary entities	52,686	46,248
	<b>128,544,753</b>	<b>130,536,666</b>
With donor restrictions		
Time or purpose (Note 10)	12,369,886	16,772,441
Perpetual endowment (Note 11)	16,325,353	16,133,542
	<b>157,239,992</b>	<b>163,442,649</b>
	<b>\$ 248,669,774</b>	<b>\$ 255,778,524</b>

See accompanying notes.



## D'YOUVILLE UNIVERSITY AND AFFILIATES

**Consolidated Statement of Activities**

For the year ended May 31, 2023

	Without Donor Restrictions	With Donor Restrictions		Total
		Time or Purpose	Perpetual Endowment	
Operating revenue:				
Tuition and fees, net of scholarships and grants of \$21,887,284	\$ 51,642,841	\$ -	\$ -	\$ 51,642,841
Room and board, net of waivers of \$404,136	4,382,947	-	-	4,382,947
Revenue from students	56,025,788	-	-	56,025,788
Government grants and appropriations	2,990,546	-	-	2,990,546
Private contributions	1,493,756	705,730	-	2,199,486
Pharmacy revenue	1,161,936	-	-	1,161,936
Investment income designated for current operations	2,155,610	964,920	-	3,120,530
Insurance recovery (Note 5)	5,472,573	-	-	5,472,573
Other	1,731,368	-	-	1,731,368
Net assets released from restrictions	5,403,209	(5,403,209)	-	-
Total operating revenue	76,434,786	(3,732,559)	-	72,702,227
Operating expenses:				
Instruction	30,998,573	-	-	30,998,573
Academic support	12,088,199	-	-	12,088,199
Student services	13,439,797	-	-	13,439,797
Community services	3,947,959	-	-	3,947,959
Auxiliary enterprises	6,774,144	-	-	6,774,144
Institutional support	10,343,384	-	-	10,343,384
Total operating expenses	77,592,056	-	-	77,592,056
<b>Change in net assets from operating activities</b>	<b>(1,157,270)</b>	<b>(3,732,559)</b>	<b>-</b>	<b>(4,889,829)</b>
Nonoperating activities:				
Investment income (loss) in excess of amounts designated for current operations	(834,643)	(669,996)	3,067	(1,501,572)
Endowment gift income	-	-	188,744	188,744
<b>Total nonoperating activities</b>	<b>(834,643)</b>	<b>(669,996)</b>	<b>191,811</b>	<b>(1,312,828)</b>
Total change in net assets	(1,991,913)	(4,402,555)	191,811	(6,202,657)
Net assets - beginning of year	130,536,666	16,772,441	16,133,542	163,442,649
Net assets - end of year	\$ 128,544,753	\$ 12,369,886	\$ 16,325,353	\$ 157,239,992

See accompanying notes.

## D'YOUVILLE UNIVERSITY AND AFFILIATES

## Consolidated Statement of Activities

For the year ended May 31, 2022

	Without Donor Restrictions	With Donor Restrictions		Total
		Time or Purpose	Perpetual Endowment	
Operating revenue:				
Tuition and fees, net of scholarships and grants of \$20,219,588	\$ 50,221,177	\$ -	\$ -	\$ 50,221,177
Room and board, net of waivers of \$394,414	3,447,885	-	-	3,447,885
Revenue from students	53,669,062	-	-	53,669,062
Government grants and appropriations	13,616,310	-	-	13,616,310
Private contributions	4,196,725	293,285	-	4,490,010
Pharmacy revenue	2,744,235	-	-	2,744,235
Investment income designated for current operations	1,327,695	1,027,703	-	2,355,398
Other	2,787,333	-	-	2,787,333
Net assets released from restrictions	10,050,658	(10,050,658)	-	-
Total operating revenue	88,392,018	(8,729,670)	-	79,662,348
Operating expenses:				
Instruction	34,548,748	-	-	34,548,748
Academic support	10,925,202	-	-	10,925,202
Student services	13,748,255	-	-	13,748,255
Community services	4,379,555	-	-	4,379,555
Auxiliary enterprises	5,639,780	-	-	5,639,780
Institutional support	10,201,026	-	-	10,201,026
Total operating expenses	79,442,566	-	-	79,442,566
<b>Change in net assets from operating activities</b>	<b>8,949,452</b>	<b>(8,729,670)</b>	<b>-</b>	<b>219,782</b>
Nonoperating activities:				
Investment loss in excess of amounts designated for current operations	(1,097,852)	(5,029,304)	(6,034)	(6,133,190)
Endowment gift income	-	-	199,826	199,826
<b>Total nonoperating activities</b>	<b>(1,097,852)</b>	<b>(5,029,304)</b>	<b>193,792</b>	<b>(5,933,364)</b>
Total change in net assets	7,851,600	(13,758,974)	193,792	(5,713,582)
Net assets - beginning of year	122,685,056	30,531,415	15,939,750	169,156,221
Capital contributions	10	-	-	10
Net assets - end of year	\$ 130,536,666	\$ 16,772,441	\$ 16,133,542	\$ 163,442,649

See accompanying notes.

D'YOUVILLE UNIVERSITY AND AFFILIATES

**Consolidated Statement of Functional Expenses**

For the year ended May 31, 2023

	Program Services						Institutional Support	Total
	Instruction	Academic Support	Student Services	Community Services	Auxiliary Enterprises			
Salaries and benefits	\$ 21,940,221	\$ 4,102,618	\$ 4,467,309	\$ 1,848,376	\$ 1,209,411	\$ 4,178,549	\$	37,746,484
Contractual services	3,344,248	1,450,799	2,904,427	499,996	2,764,564	2,755,780		13,719,814
Advertising and marketing	376,206	-	1,258,070	2,379	16,899	166,139		1,819,693
Utilities	865,064	302,375	293,700	83,890	554,272	261,798		2,361,099
Technology	36,407	3,246,333	2,947	842	8,640	187,172		3,482,341
Minor equipment	199,235	2,267	5,155	75,300	6,848	3,348		292,153
Travel and conferences	99,740	131,169	735,742	78,106	3,013	144,107		1,191,877
Supplies	287,117	16,039	717,628	931,436	113,089	150,249		2,215,558
Printing	78	-	41,186	-	4,554	44,128		89,946
Insurance	296,804	106,259	590,062	41,510	183,513	263,479		1,481,627
Depreciation and impairment	1,846,852	1,113,659	627,029	229,581	1,183,334	1,016,092		6,016,547
Interest	948,002	584,425	178,296	5,418	551,986	321,387		2,589,514
Student activities	143,310	106,004	1,164,510	31,226	149,952	548,234		2,143,236
Other	615,289	926,252	453,736	119,899	24,069	302,922		2,442,167
Total	\$ 30,998,573	\$ 12,088,199	\$ 13,439,797	\$ 3,947,959	\$ 6,774,144	\$ 10,343,384	\$	77,592,056

See accompanying notes.

D'YOUVILLE UNIVERSITY AND AFFILIATES

**Consolidated Statement of Functional Expenses**

For the year ended May 31, 2022

	Program Services					Institutional Support	Total
	Instruction	Academic Support	Student Services	Community Services	Auxiliary Enterprises		
Salaries and benefits	\$ 26,179,285	\$ 4,231,825	\$ 4,000,701	\$ 1,773,216	\$ 684,200	\$ 3,940,925	\$ 40,810,152
Contractual services	2,566,354	1,944,400	2,355,747	657,233	2,042,431	2,850,498	12,416,663
Advertising and marketing	351,050	-	1,247,240	51,529	18,864	103,824	1,772,507
Utilities	548,661	218,665	186,277	56,327	353,287	166,043	1,529,260
Technology	179	1,646,912	-	-	2,129	266,849	1,916,069
Minor equipment	433,826	486,745	39,016	41,895	60,832	61,862	1,124,176
Travel and conferences	31,953	90,384	520,719	112,570	5,143	205,214	965,983
Supplies	712,916	98,961	588,990	1,093,881	312,609	324,953	3,132,310
Printing	20,680	17,394	62,905	404	7,072	182,697	291,152
Insurance	279,934	82,864	448,172	40,766	173,040	247,805	1,272,581
Depreciation	1,698,734	1,082,243	576,741	216,910	1,088,430	514,095	5,177,153
Interest	1,043,458	120,698	196,249	-	607,567	349,612	2,317,584
Student activities	251,754	18,025	469,761	103,518	260,386	444,587	1,548,031
HEERF - student aid	-	-	2,608,367	-	-	-	2,608,367
Other	429,964	886,086	447,370	231,306	23,790	542,062	2,560,578
<b>Total</b>	<b>\$ 34,548,748</b>	<b>\$ 10,925,202</b>	<b>\$ 13,748,255</b>	<b>\$ 4,379,555</b>	<b>\$ 5,639,780</b>	<b>\$ 10,201,026</b>	<b>\$ 79,442,566</b>

See accompanying notes.

# D'YOUVILLE UNIVERSITY AND AFFILIATES

## Consolidated Statements of Cash Flows

For the years ended May 31,	2023	2022
<b>Operating activities:</b>		
Change in net assets	\$ (6,202,657)	\$ (5,713,582)
Adjustments to reconcile change in net assets to net cash flows from operating activities:		
Depreciation and impairment	6,016,547	5,177,153
Net realized and unrealized losses on investments	1,526,289	5,849,657
Contributions for long-term investment	(188,744)	(199,826)
Changes in operating assets and liabilities:		
Student accounts receivable, net	(3,075,452)	(1,790,947)
Contributions and grants receivable, net	5,595,421	(5,297,617)
Financial aid and other receivables	(306,395)	(821,907)
Accounts payable and accrued liabilities	556,402	(211,787)
Deferred revenue	10,657	978,523
Refundable advances	(189,508)	(2,305,469)
<b>Net operating activities</b>	<b>3,742,560</b>	<b>(4,335,802)</b>
<b>Investing activities:</b>		
Property and equipment expenditures	(12,460,615)	(5,742,627)
Proceeds from sale of investments	9,276,957	9,063,300
Purchases of investments	(886,439)	(4,192,459)
Loans to students, net	(598,095)	(288,624)
<b>Net investing activities</b>	<b>(4,668,192)</b>	<b>(1,160,410)</b>
<b>Financing activities:</b>		
Net proceeds from issuance of short-term borrowings	2,500,000	-
Principal repayments of long-term debt	(6,271,620)	(4,427,484)
Proceeds from contributions for long-term investment	115,000	226,002
Change in government grants refundable	(43,645)	(63,400)
Capital contributions	-	10
<b>Net financing activities</b>	<b>(3,700,265)</b>	<b>(4,264,872)</b>
Change in cash and cash equivalents	(4,625,897)	(9,761,084)
Cash and cash equivalents - beginning of year	10,705,855	20,466,939
Cash and cash equivalents - end of year	\$ 6,079,958	\$ 10,705,855

See accompanying notes.

## Notes to Consolidated Financial Statements

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### 1. Summary of Significant Accounting Policies

#### Nature of Organization

D'Youville University (D'Youville) is a private university in Buffalo, New York offering undergraduate, graduate, doctoral, and continuing education programs primarily in health sciences, liberal arts, and business. D'Youville teaches its students to contribute to the world community by becoming leaders in their academic fields of study. D'Youville is primarily funded by tuition and fees charged to its students for programs offered. The consolidated financial statements include the activity of D'Youville, 301 Connecticut, LLC, (301 Connecticut), 301 Connecticut Holdings, Inc. (Holdings), and Vital Services, LLC (Vital Services) (collectively, the University). All significant intercompany balances and transactions have been eliminated in consolidation.

301 Connecticut was organized exclusively to finance and construct a health professions academic and community services building (the HUB) on the D'Youville campus, and to facilitate a New Markets Tax Credit (NMTC) transaction to provide funding for the HUB's construction (Note 9). The managing member (with 94.99% ownership) of 301 Connecticut is NYC HUB, LLC (NYC), whose sole member is D'Youville. Holdings is a C-corporation whose 200 shares of issued stock are owned by D'Youville. Holdings holds a non-controlling interest in 301 Connecticut. As such, D'Youville effectively has a 95% membership interest in 301 Connecticut.

Vital Services is a retail pharmacy located within the HUB which supports the educational goals of D'Youville and provides pharmacy services to surrounding neighborhoods. D'Youville, initially the sole member, amended and restated the operating agreement in March 2021 to include Unity RX Pharmacy LLC (Unity) as a member and manager. At May 31, 2023, Unity maintains a 20% equity interest in Vital Services.

#### Subsequent Events

The University has evaluated events and transactions for potential recognition or disclosure in the financial statements through September 15, 2023, the date the financial statements were available to be issued.

#### Cash and Cash Equivalents

Cash and cash equivalents include amounts on deposit with financial institutions and investments in money market funds. Cash and cash equivalents in financial institutions potentially subjects the University to concentrations of credit risk since balances may exceed federally insured limits at various times during the year.

#### Investments

Investments for short-term purposes include funds that management considers available for operations. All investments are measured at fair value on a recurring basis as determined by quoted prices in active markets.

#### Property and Equipment

Property and equipment is stated at cost, or fair market value at the time of donation, net of accumulated depreciation. Depreciation is computed using the straight-line method over estimated useful asset lives. Maintenance and repairs are charged to operations as incurred; significant improvements are capitalized.

#### Debt Issuance Costs

Debt issuance costs are incurred on specific debt transactions and are netted against the related debt on the balance sheet. These costs are amortized to interest expense over the life of the debt.

#### Net Assets

The University classifies its net assets into two net asset categories for reporting purposes: without donor restrictions and with donor restrictions, according to the absence or existence of donor-imposed restrictions. Net assets with donor restrictions include net assets whose use is limited by donors to a specific purpose or time period, and perpetual endowment net assets which are donor gifts maintained in perpetuity with earnings used in accordance with donor stipulations.

## **Revenue Recognition**

### ***Revenue from students***

The University's operating revenue is derived primarily from tuition, fees, and room and board charged to students. Tuition, fees, and room and board are charged at established rates depending on the program and residential facility the student selects. Tuition scholarships awarded by the University represent a reduction in the student's total cost of attendance and offset tuition revenue. The University awards both need-based and merit-based scholarships. Revenue from students is earned over the applicable academic term.

The University bills tuition, fees, and room and board in advance of the academic term. Receivables from students are recognized when there is an unconditional right to consideration. Receivables are reported net of an allowance for doubtful accounts based upon a review of outstanding receivables, historical collection information and existing economic conditions. Past due receivables are reviewed monthly and are written off when they are determined to be uncollectible. The University records deferred revenue equal to the amounts billed for which the University has not yet satisfied its performance obligations, which primarily include tuition and room deposits for future academic terms.

### ***Contributions and Grants***

Contributions, including government grants and appropriations, are reported at fair value at the date the contributions or pledges are received. Contributions are reported as restricted support if they are received with donor stipulations that limit the use of the donated assets, or if they are designated support for future periods. When a donor restriction expires, net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statement of activities as net assets released from restrictions. Contributions received with donor-imposed restrictions that are met in the same reporting period are shown as support without donor restrictions.

When significant, unconditional promises to give that are expected to be collected in future years are recorded at the present value of estimated future cash flows using a discount rate applicable to the year in which the pledge is received. Amortization of the discount is included in contributions revenue. Certain government grants are expense reimbursement grants. Under these grants, revenue is reported as expenses are incurred. Amounts received in advance of expenses incurred are reported as refundable advances.

In response to COVID-19, the University was awarded approximately \$10.4 million in certain higher education emergency relief funding (HEERF), of which \$5,427,000 is recorded as revenue in 2022. No amounts were recognized in 2023, as the University used all funding in prior years.

### ***Pharmacy Revenue***

Pharmacy revenue includes sales of pharmaceuticals, COVID-19 testing, and vaccinations. Pharmacy revenue is recognized at the time of sale.

### ***Functional Expense Allocations***

The University's cost of providing its services has been summarized on a functional basis in the statements of functional expenses. Accordingly, certain costs have been allocated among programs and supporting services benefited. These costs include payroll taxes and benefits which are allocated as a percentage of total salaries, and other facilities related expenses such as utilities, insurance, depreciation, housekeeping, security and interest, which are allocated based on square footage. Included in institutional support are the University's estimated fundraising expenses for the years ended May 31, 2023 and 2022 which total \$1,278,000 and \$1,028,000.

### ***Nonoperating Activities***

Endowment gift income and investment income earned on investments held for long-term purposes in excess of the University's spending policy are classified as nonoperating activities in the accompanying statements of activities. All other activities are considered operating.

### ***Tax Status***

The University is a 501(c)(3) corporation exempt from income taxation under §501(a) of the Internal Revenue Code. Holdings is a C Corporation and is taxed as a separate entity. 301 Connecticut and Vital Services are partnerships not subject to income taxes; each member will separately report its allocated share of activity in those organizations. NYC is considered a disregarded entity for tax purposes.

### ***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

## 2. Contributions and Grants Receivable

	2023	2022
Private contributions	\$ 877,302	\$ 1,113,291
Government grants	864,655	6,150,343
	<u>\$ 1,741,957</u>	<u>\$ 7,263,634</u>
	2023	2022
Amounts receivable in less than 1 year	\$ 1,198,155	\$ 6,474,680
Amounts receivable in 1 to 5 years	566,618	671,676
Amounts receivable in more than 5 years	100,000	223,605
	<u>1,864,773</u>	<u>7,369,961</u>
Present value adjustment	(122,816)	(106,327)
	<u>\$ 1,741,957</u>	<u>\$ 7,263,634</u>

Conditional promises to give are not recorded as revenue until such time as the conditions are substantially met and totaled \$950,000 at May 31, 2023 and 2022.

## 3. Investments

	2023	2022
Equities	\$ 46,264,127	\$ 45,643,406
Fixed income	23,006,825	33,572,578
Cash and money market funds	4,602,404	4,574,179
	<u>\$ 73,873,356</u>	<u>\$ 83,790,163</u>

Included above at May 31, 2023 and 2022 are \$1,505,581 and \$8,004,168 of investments held for short-term purposes. The remaining investments are held for long-term purposes, including endowment purposes and scholarships. Bond reserve funds totaling \$4,162,476 and \$4,139,303 at May 31, 2023 and 2022 are included in long-term investments.

## 4. Loans to Students

The University makes unsecured loans to students based on financial need. Student loans are funded through Federal government loan programs or institutional resources.

At May 31, 2023 and 2022, student loans consisted of the following:

	2023	2022
Federal government programs	\$ 4,511,444	\$ 3,873,824
Institutional programs	309,179	348,704
	<u>4,820,623</u>	<u>4,222,528</u>
Less allowance for doubtful amounts	835,700	835,700
	<u>\$ 3,984,923</u>	<u>\$ 3,386,828</u>

The University participates in the Federal Perkins, Nursing, Graduate Nursing, and Nurse Faculty revolving loan programs. The availability of funds for loans under these programs is dependent on reimbursements to the pool from repayments on outstanding loans. Funds originally advanced by the Federal government, as well as a proportionate share of interest and fees earned on the loans, are refundable to the government when the University discontinues participation in the loan programs and are recorded as U.S. government loan funds refundable on the balance sheets.

Allowances for doubtful amounts are established based on prior collection experience and current economic factors which, in management's judgment, could influence the ability of loan recipients to repay the amounts per the loan terms.

## 5. Property and Equipment

	2023	2022
Land and improvements	\$ 9,086,754	\$ 9,086,754
Buildings and improvements	138,831,503	135,890,582
Equipment	26,450,533	25,107,588
Library holdings	9,159,123	9,159,123
Construction in progress	10,708,370	-
	<u>194,236,283</u>	<u>179,244,047</u>
Less accumulated depreciation	59,742,387	53,725,840
	<u>\$ 134,493,896</u>	<u>\$ 125,518,207</u>

Construction in progress in 2023 consists primarily of renovations of the Koessler Administration Building (KAB) (approximately \$6,500,000), architectural and engineering design for a planned building project (approximately \$1,500,000) and other campus renovations (approximately \$2,700,000).

In December 2022, a severe winter storm significantly damaged several campus buildings. As a result, the University recognized an impairment loss of \$500,000 in 2023 and incurred approximately \$7,500,000 in restoration expenses, of which approximately \$6,500,000 is included in construction in progress at May 31, 2023. Nonrecurring insurance proceeds of \$5,472,573 were received and recorded as income in the 2023 statement of activities. Additionally, the University is pursuing reimbursement of certain costs by the Federal Emergency Management Agency (FEMA). Potential FEMA reimbursement and unreceived insurance recoveries have not been recorded in these financial statements.



## 6. New Market Tax Credit Loan Receivable

As part of the New Market Tax Credit (NMTC) transaction more fully described in Note 9, D'Youville loaned \$13,932,900 to Twain Investment Fund 447, LLC (Twain LLC). Interest only payments at 3.647% are received annually for seven years beginning December 15, 2020. Failure to exercise the put and call option related to the NMTCs as described in Note 9 will result in payments of interest and principal sufficient to amortize the outstanding principal amount over the remaining term of the loan on a level payment basis beginning December 2027. The loan is secured by Twain LLC's equity interest in Brownfield Revitalization 65, LLC (BR 65) and URP Subsidiary CDE 38, LLC (URP).

## 7. Short-Term Borrowings

D'Youville has available a \$5,000,000 bank demand line of credit with interest payable at the overnight SOFR rate plus 1.75% or term SOFR rate plus 1.75%, and secured by pledged revenues. The line is subject to the usual terms and conditions applied by the bank for working capital financing, and is annually reviewed and renewed. Amounts outstanding under the line of credit totaled \$2,500,000 on May 31, 2023. There were no amounts outstanding at May 31, 2022.

## 8. Long-Term Debt

	2023	2022
Key Government Finance, Inc. promissory note, obtained by D'Youville to fund the leveraged loan in connection with the HUB NMTC transaction (Note 9), paid in full in April 2023.	\$ -	\$ 5,252,505
QLICI loans (4) as detailed in Note 9, annual interest payments at 2.7542% per annum for the seven-year tax NMTC period beginning December 2020, monthly principal and interest payments due beginning December 2027. Loans mature January 2050, are secured by assets of 301 Connecticut, and guaranteed by D'Youville.	18,650,000	18,650,000
\$34,370,000 Tax-Exempt Series 2020A revenue bonds payable, secured by pledged revenues and debt service reserve funds, interest only payable bi-annually from May 2021 to May 2031 at 4% per annum, annual principal and interest payments due beginning May 2032 with loans maturing in May 2051. Balance includes premium of \$850,345 and \$966,300 at May 31, 2023 and 2022 with amortization through the call date in November 2030.	35,220,345	35,336,300
\$13,835,000 Taxable Series 2020B revenue bonds payable, secured by pledged revenues and debt service reserve funds, interest only payable bi-annually through May 2021 at 3.35-4.40% per annum, callable in November 2030, annual principal and interest payments due beginning May 2022 with loans maturing in May 2034.	12,155,000	13,035,000
Equipment finance loans, secured by related equipment.	227,075	291,311
	66,252,420	72,565,116
Less unamortized debt issuance costs	1,126,179	1,167,255
Less current portion	1,095,608	1,734,174
	<u>\$ 64,030,633</u>	<u>\$ 69,663,687</u>

Gross principal payments due on the outstanding term debt are as follows:

2024	\$ 1,095,608
2025	1,131,483
2026	1,172,852
2027	1,120,956
2028	1,165,965
Thereafter	60,565,556
	<u>\$ 66,252,420</u>

## 9. HUB Project

The HUB was completed and placed into service in July 2021 and is operated by 301 Connecticut.

Funding for the HUB included grants, capital campaign donations, other contributions, tax credits, revenue bonds (Note 8) and financing available through the federal NMTC program and New York State Brownfield Redevelopment Tax Credits (BRTCs).

### *New Market Tax Credits*

The NMTC program offers a seven-year, 39% federal tax credit for Qualified Equity Investments (QEI) made through investment vehicles known as Community Development Entities (CDEs). CDEs use capital derived from tax credits and leveraged loans to make Qualified Low-Income Community Investment (QLICI) loans to or investments in businesses and projects under favorable economic terms. To earn the tax credit, the QEI must remain invested in the CDEs for a seven-year period and satisfy certain restrictions related to project use and reporting.

The University entered into a NMTC transaction with U.S. Bancorp Community Development Corporation (USBCDC). As part of this transaction, Twain LLC was established with an equity contribution of \$6,069,375 from USBCDC, its sole member and investor, and a leveraged loan of \$13,932,900 from D'Youville, the proceeds of which were used by Twain LLC to make QEIs in exchange for a 99.99% membership interest in BR 65 and URP (CDEs). Neither D'Youville or 301 Connecticut controls or has an economic interest in the assets of either Twain LLC or the CDEs.

The CDEs used the investment proceeds to make QLICI loans to 301 Connecticut totaling \$18,650,000 (Note 8).

Pursuant to a Put and Call Agreement, USBCDC is allowed to put its ownership interest for \$1,000 at any time during the six-month period beginning January 2027, the end of the seven year tax compliance period. If USBCDC does not exercise the put option within this period, the University can exercise a call option to purchase the interest of the QEI at an appraised market value, as determined by mutual agreement among the parties or qualified independent appraiser, for a subsequent six month period. Exercising of the option agreement after the seven year compliance period will effectively give the University control over the outstanding loans receivable and payable, at which point it could elect to extinguish the debt and entities related to the NMTC structure.

### *New York State Brownfield Tax Credits*

The University entered into a Brownfield Site Cleanup Agreement with the New York Department of Environmental Conservation whereby it agreed to perform certain remedial clean up and site preparation with respect to the HUB project to qualify for approximately \$4.9 million BRTCs.

Pursuant to an operating agreement, NY Brownfield Fund, LLC (NYBF) had a 99% interest in the profits, losses and BRTCs prior to the flip date of December 1, 2021. Additionally, NYBF was required to donate \$.79 for every dollar of BRTCs, and D'Youville received contributions of \$719,000 and \$3,289,166 in 2021 and 2022. NYBF exercised its option to put its ownership interest in 301 Connecticut for \$1,000 on December 1, 2021; consequently, DYC and CHS now have a 95% and 5% interest in 301 Connecticut, respectively.

### *Lease Agreements*

D'Youville is the fee title holder of property located at 301 Connecticut Street, Buffalo, New York (HUB Property) and 301 Connecticut maintains a leasehold interest in the HUB Property. The lease is an absolute net lease whereby 301 Connecticut is responsible for payment of all costs, expenses and obligations related to the HUB Property.

Effective July 2021, D'Youville and 301 Connecticut entered into a twenty-year sublease agreement for approximately 77% of the leasable space of the HUB. Intercompany annual base rent is as follows:

Years 1-6	\$	341,504
Years 7-10		725,696
Years 11-15		864,432
Years 16-20		907,654

Effective July 2021, 301 Connecticut entered into a twenty-year sublease agreement (plus five year renewal option) with an unrelated party. In addition to base rent, the lessee will pay its pro-rata share of essentially all direct and indirect expenses of operations and pay \$157,166 annually for ten years to amortize build-out costs. Annual base rent is as follows:

Years 1-5	\$	163,456
Years 6-10		171,629
Years 11-15		180,210
Years 16-20		189,200

## 10. Time or Purpose Restricted Net Assets

Time or purpose restricted net assets at May 31, 2023 and 2022 are held for the following purposes:

	2023	2022
Institutional support	\$ 5,959,589	\$ 10,548,519
Accumulated unappropriated earnings on endowment funds held in perpetuity	2,910,825	3,496,391
Scholarships/programs	3,499,472	2,727,531
	<u>\$ 12,369,886</u>	<u>\$ 16,772,441</u>

## 11. Perpetual Endowment Net Assets

Perpetual endowment net assets as of May 31, 2023 and 2022 represent the accumulated principal of donor-restricted endowment gifts which are to be invested in perpetuity, the income and gains from which are expendable in accordance with donor stipulations.

The University has adopted investment and spending policies for endowment assets that attempt to provide a reasonable stream of funding to programs supported by its endowment while seeking to maintain the purchasing power of its endowment assets. Endowment assets include those assets of donor-restricted funds that the University must hold in perpetuity or for donor-specified periods. The University has a policy to appropriate for distribution each year up to a maximum of 5% of the trailing 20 quarter average market value of each restricted fund's portfolio as of May 31<sup>st</sup>. The University expects its endowment funds, over time, to provide an average rate of return of at least 300 basis points greater than the rate of inflation as measured by the consumer price index (CPI) on the entire portfolio over a seven to ten-year period. Actual returns in any given year may vary from this amount.

The University's Board of Trustees has interpreted the New York State Prudent Management of Institutional Funds Act (NYPMIFA) as requiring the preservation of the fair value of the original gift as of the gift date of donor-restricted endowment funds, absent explicit donor stipulations to the contrary. As a result of this interpretation, the University classifies as perpetual endowment net assets (a) the original value of gifts donated to the perpetual endowment, (b) the original value of subsequent gifts to the perpetual endowment, and (c) accumulations to the perpetual endowment made in accordance with the direction of a donor gift instrument at the time the accumulation is added to the fund. Investment earnings, including interest, dividends, realized gains, and appreciation, are classified as time or purpose restricted net assets, except those earnings that are classified as perpetual endowment pursuant to the donor's intent to have their endowment reach a specific dollar value.

These amounts are appropriated for expenditure by the University in a manner consistent with the standard of prudence prescribed by NYPMIFA.

In accordance with NYPMIFA, the University considers the following factors to appropriate or accumulate donor-restricted endowment earnings:

- 1) Duration and preservation of the fund
- 2) Purposes of the University and the fund
- 3) General economic conditions
- 4) Possible effect of inflation and deflation
- 5) Expected total return from income and appreciation of investments
- 6) Other resources of the University
- 7) Where appropriate and circumstances would otherwise warrant, alternatives to expenditure of the endowment fund, giving due consideration to the effect that such alternatives may have on the University
- 8) Investment policy of the University

Endowment assets are monitored by management and the Board of Trustees. The University's endowment asset activity for the years ended May 31, 2023 and 2022 is as follows:

2023				
	Without Donor Restriction	Accumulated Earnings on Perpetual Endowment	Perpetual Endowment	Total
Endowment May 31, 2022	\$ 33,475,139	\$ 3,496,391	\$ 16,133,542	\$ 53,105,072
Investment return	443,988	260,356	3,067	707,411
Contributions	-	-	188,744	188,744
Appropriations	(1,442,559)	(845,922)	-	(2,288,481)
Endowment May 31, 2023	\$ 32,476,568	\$ 2,910,825	\$ 16,325,353	\$ 51,712,746

2022				
	Without Donor Restriction	Accumulated Earnings on Perpetual Endowment	Perpetual Endowment	Total
Endowment May 31, 2021	\$ 37,517,124	\$ 6,084,707	\$ 15,939,750	\$ 59,541,581
Investment return (loss), net	(2,436,000)	(1,560,613)	(6,034)	(4,002,647)
Contributions	-	-	199,826	199,826
Appropriations	(1,605,985)	(1,027,703)	-	(2,633,688)
Endowment May 31, 2022	\$ 33,475,139	\$ 3,496,391	\$ 16,133,542	\$ 53,105,072

In September 2023, the Board of Trustees redesignated one half of the endowment without donor restriction, with these funds now designated towards the development of a new educational program at the University.

## 12. Retirement Plan

The University maintains contributory, defined-contribution pension plans (the Plans) covering substantially all employees. The University contributes an amount ranging from 3% to 7% of an eligible employee's compensation, with the percentage dependent on the employee's contribution percentage. The University contributed \$1,472,527 and \$1,439,356 to the Plans for the years ended May 31, 2023 and 2022. The University funds retirement costs as accrued.

## 13. Cash Flows Information

Net cash flows from operating activities reflect cash payments for noncapitalized interest for the years ended May 31, 2023 and 2022 of \$2,591,970 and \$2,505,247.

Noncash investing and financing activities totaling \$291,311 for equipment obtained through term financing is excluded from the 2022 statements of cash flows.

The 2023 statement of cash flows exclude property and equipment additions included in accounts payable totaling \$2,531,621.

## 14. Commitments

In 2016, the University entered into a ten-year payment agreement with its founding religious order which has provided over one-hundred years of service to the institution. The estimated net present value of the payments, totaling \$457,684 and \$612,840 at May 31, 2023 and 2022, is recorded as a liability in these financial statements. The University is permitted, upon written notice, to reduce such payments based on financial viability.

## 15. Contingencies

The University receives financial assistance from federal and state agencies in the form of grants. The expenditure of grant funds generally requires compliance with the terms and conditions specified in the agreements and are subject to audit by grantor agencies. Any disallowed claims resulting from such audits could become a liability of the University. Based on prior experience, management expects such amounts, if any, to be immaterial.

The University is involved in various legal proceedings which, in the opinion of management, will not have a material adverse effect upon the financial position of the University.

## 16. Financial Assets Available for Operating Purposes

The University obtains financial assets generally through revenues from students, contributions, and pharmacy revenue. The financial assets are acquired throughout the year to help meet the University's cash needs for general expenditures. If necessary, the University also has access to the following:

- A \$5,000,000 bank demand line of credit (Note 7).
- Investments not subject to donor restrictions totaling approximately \$45,000,000. Although the University does not intend to spend from these assets other than amounts appropriated as part of its annual budget approval, the assets could be made available if necessary through approval by the Board of Trustees (see amounts included below).

The University's financial assets available within one year of the balance sheet date to meet cash needs for general expenditures consist of the following items not subject to donor restrictions at May 31, 2023 and 2022:

	<b>2023</b>	2022
Cash and cash equivalents	<b>\$ 6,079,958</b>	\$ 10,705,855
Student accounts receivable	<b>11,692,978</b>	8,617,526
Contributions receivable – current	<b>1,198,155</b>	6,474,680
Other receivables	<b>842,730</b>	651,401
Investments	<b>45,178,117</b>	50,884,180
	<b><u>\$ 64,991,938</u></b>	<u>\$ 77,333,642</u>

## D'YOUVILLE UNIVERSITY AND AFFILIATES

**Additional Information**  
**Consolidating Balance Sheet**

May 31, 2023

	D'Youville University	301 Connecticut, LLC	Vital Services, LLC	Eliminations	Totals
<b>Assets</b>					
<b>Current assets:</b>					
Cash and cash equivalents	\$ 4,049,767	\$ 1,737,865	\$ 292,326	\$ -	\$ 6,079,958
Investments for short-term purposes	1,505,581	-	-	-	1,505,581
Student accounts receivable, net	11,692,978	-	-	-	11,692,978
Contributions and grants receivable	1,198,155	-	-	-	1,198,155
Financial aid and other receivables	16,196,904	1,567,672	124,543	(15,019,313)	2,869,806
	34,643,385	3,305,537	416,869	(15,019,313)	23,346,478
Contributions and grants receivable, noncurrent	543,802	-	-	-	543,802
Investments for long-term purposes	72,367,775	-	-	-	72,367,775
Loans to students, net	3,984,923	-	-	-	3,984,923
Property and equipment, net	106,704,341	27,433,953	355,602	-	134,493,896
Right of use asset - leases	8,653,143	-	176,521	(8,829,664)	-
Investment in subsidiaries	589,077	-	-	(589,077)	-
New Market Tax Credit loan receivable	13,932,900	-	-	-	13,932,900
	\$ 241,419,346	\$ 30,739,490	\$ 948,992	\$ (24,438,054)	\$ 248,669,774
<b>Liabilities and Net Assets</b>					
<b>Current liabilities:</b>					
Short-term borrowings	\$ 2,500,000	\$ -	\$ -	\$ -	\$ 2,500,000
Current portion of long-term debt	1,095,608	-	-	-	1,095,608
Current portion of lease liabilities	341,504	-	24,102	(365,606)	-
Accounts payable and accrued liabilities	13,442,942	13,789,673	83,328	(14,680,960)	12,634,983
Deferred revenue	6,856,012	-	-	-	6,856,012
Refundable advances	1,222,782	-	-	-	1,222,782
	25,458,848	13,789,673	107,430	(15,046,566)	24,309,385
Long-term debt	45,380,633	18,650,000	-	-	64,030,633
Lease liabilities	8,649,323	-	153,088	(8,802,411)	-
U.S. government loan funds refundable	3,089,764	-	-	-	3,089,764
<b>Net assets:</b>					
Without donor restrictions	130,092,853	(1,700,183)	688,474	(589,077)	128,492,067
Noncontrolling members' interest in subsidiary entities	52,686	-	-	-	52,686
	130,145,539	(1,700,183)	688,474	(589,077)	128,544,753
With donor restrictions:					
Time or purpose	12,369,886	-	-	-	12,369,886
Perpetual endowment	16,325,353	-	-	-	16,325,353
	158,840,778	(1,700,183)	688,474	(589,077)	157,239,992
	\$ 241,419,346	\$ 30,739,490	\$ 948,992	\$ (24,438,054)	\$ 248,669,774

## D'YOUVILLE UNIVERSITY AND AFFILIATES

**Additional Information**  
**Consolidating Statement of Activities**

For the year ended May 31, 2023

	Without Donor Restrictions	With Donor Restrictions		D'Youville University Total	301 Connecticut, LLC	Vital Services, LLC	Eliminations	Consolidated Total
		Time or Purpose	Perpetual Endowment					
Operating revenue:								
Tuition and fees, net of scholarships and grants	\$ 51,642,841	\$ -	\$ -	\$ 51,642,841	\$ -	\$ -	\$ -	\$ 51,642,841
Room and board, net of waivers	4,382,947	-	-	4,382,947	-	-	-	4,382,947
Revenue from students	56,025,788	-	-	56,025,788	-	-	-	56,025,788
Government grants and appropriations	2,990,546	-	-	2,990,546	-	-	-	2,990,546
Private contributions	1,493,756	705,730	-	2,199,486	-	-	-	2,199,486
Pharmacy revenue	-	-	-	-	-	1,161,936	-	1,161,936
Investment income designated for current operations	2,155,610	964,920	-	3,120,530	-	-	-	3,120,530
Insurance recovery	5,472,573	-	-	5,472,573	-	-	-	5,472,573
Other	1,296,637	-	-	1,296,637	1,838,455	-	(1,403,724)	1,731,368
Net assets released from restrictions	5,403,209	(5,403,209)	-	-	-	-	-	-
Total operating revenue	74,838,119	(3,732,559)	-	71,105,560	1,838,455	1,161,936	(1,403,724)	72,702,227
Operating expenses:								
Instruction	31,526,801	-	-	31,526,801	-	-	(528,228)	30,998,573
Academic support	10,394,684	-	-	10,394,684	1,805,551	-	(112,036)	12,088,199
Student services	13,619,137	-	-	13,619,137	-	-	(179,340)	13,439,797
Community services	2,231,291	-	-	2,231,291	-	1,802,477	(85,809)	3,947,959
Auxiliary enterprises	7,112,595	-	-	7,112,595	-	-	(338,451)	6,774,144
Institutional support	10,503,244	-	-	10,503,244	-	-	(159,860)	10,343,384
Total operating expenses	75,387,752	-	-	75,387,752	1,805,551	1,802,477	(1,403,724)	77,592,056
<b>Change in net assets from operating activities</b>	(549,633)	(3,732,559)	-	(4,282,192)	32,904	(640,541)	-	(4,889,829)
Nonoperating activities:								
Investment income (loss) in excess of amount designated for current operations	(834,643)	(669,996)	3,067	(1,501,572)	-	-	-	(1,501,572)
Endowment gift income	-	-	188,744	188,744	-	-	-	188,744
<b>Total nonoperating activities</b>	(834,643)	(669,996)	191,811	(1,312,828)	-	-	-	(1,312,828)
<b>Total change in net assets</b>	(1,384,276)	(4,402,555)	191,811	(5,595,020)	32,904	(640,541)	-	(6,202,657)
Net assets - beginning of year	131,529,815	16,772,441	16,133,542	164,435,798	(1,733,087)	1,329,015	(589,077)	163,442,649
Net assets - end of year	\$ 130,145,539	\$ 12,369,886	\$ 16,325,353	\$ 158,840,778	\$ (1,700,183)	\$ 688,474	\$ (589,077)	\$ 157,239,992

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## **APPENDIX C**

### **FORM OF THE INDENTURE OF TRUST**

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INDENTURE OF TRUST

by and between

BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION  
andappC

UMB BANK, N.A.,  
as Trustee

RELATING TO REVENUE BONDS (D'YOUVILLE UNIVERSITY  
PROJECT), SERIES 2024A (TAXABLE) IN THE AGGREGATE PRINCIPAL  
AMOUNT OF \$44,935,000 ISSUED BY BUFFALO AND ERIE COUNTY  
INDUSTRIAL LAND DEVELOPMENT CORPORATION.

Dated as of August 1, 2024

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## INDENTURE OF TRUST

THIS INDENTURE OF TRUST dated as of August 1, 2024 (the “Indenture”) by and between BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, a not-for-profit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 95 Perry Street – Suite 403, Buffalo, New York (the “Issuer”) and UMB BANK, N.A., national banking association organized and existing under the laws of the United States of America having an office for the transaction of business located at 100 William Street – Suite 1850, New York, New York (the “Trustee”) for the holders of the Issuer’s Revenue Bonds (D’Youville University Project), Series 2024A (Taxable) in the aggregate principal amount of \$44,935,000 (the “Bonds”);

### WITNESETH:

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) (A) authorizes any county to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

WHEREAS, in January, 1982, a certificate of incorporation was filed with the New York Secretary of State’s Office (the “Certificate of Incorporation”) creating the Issuer as a public instrumentality of Erie County, New York (the “County”) pursuant to the Enabling Act; and

WHEREAS, the Issuer, as authorized and empowered by the Enabling Act and resolutions adopted by the Erie County Legislature (the “County Legislature”) on July 24, 2009, November 19, 2009, March 25, 2010, and June 20, 2011, respectively (collectively, the “Sponsor Resolution”), in January, 2024 accepted an application (the “Application”) from the University, which Application requested that the Issuer consider undertaking a project (the “Project”) for the benefit of the University, said Project to consist of the following: (A) the funding of certain initial startup costs of a new osteopathic medicine college (the “College of Osteopathic Medicine”) being developed by the University; (B) the funding of the Capitalized Interest Fund (as defined herein) for purposes of the payment of interest on the Bonds through May 1, 2025; (C) the financing of all or a portion of the costs of the foregoing by the issuance of the Bonds; and (D) paying a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds and any reserve funds as may be necessary to secure the Bonds; and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on February 28, 2024 (the “Bond Resolution”), the board of directors of the Issuer (A) determined that the Project constitutes a “Type II Action,” as such quoted term is defined under Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), and therefore that no further action with respect to the Project was required under SEQRA; (B) authorized the circulation of a preliminary limited offering memorandum (the “Preliminary Limited Offering Memorandum”) in connection with the marketing of the Bonds and (C) authorized the issuance of



the Bonds for the purpose of financing a portion of the costs of the Project, delegating to the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer authority to determine the final details of the Bonds (the “Bond Details”) once the marketing of the Bonds is completed and the University has agreed to the Bond Details; and

WHEREAS, the Issuer will now issue the Bonds under the Bond Resolution, a certificate of determination (the “Certificate of Determination”) executed by the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer and this Indenture; and

WHEREAS, prior to or simultaneously with the issuance of the Bonds, the Issuer and the University will execute and deliver a loan agreement dated as of August 1, 2024 (the “Loan Agreement”) by and between the Issuer, as lender, and the University, as borrower, pursuant to the terms of which Loan Agreement (A) the Issuer will agree (1) to issue the Bonds, and (2) to make a loan to the University of the proceeds of the Bonds (the “Loan”) for the purpose of assisting in financing the Project, and (B) in consideration of the Loan, the University will agree (1) to cause the Project to be undertaken and completed, (2) to use the proceeds of the Loan disbursed under this Indenture to pay (or reimburse the University for the payment of) the costs of the Project, and (3) to make payments in amounts sufficient to pay when due all amounts due with respect to the Bonds (the “Loan Payments”) to or upon the order of the Issuer in repayment of the Loan, which payments shall include amounts equal to the Loan Repayments (as defined herein) due on the Bonds; and

WHEREAS, pursuant to the terms of this Indenture, the net proceeds of the sale of the Bonds (the “Bond Proceeds”) will be deposited into various trust funds held by the Trustee under this Indenture and will be disbursed by the Trustee from time to time to pay the costs of the Project, but only upon satisfaction of the requirements for making such disbursements set forth in this Indenture and in the Loan Agreement; and

WHEREAS, as security for the Bonds, the Issuer will execute and deliver to the Trustee a pledge and assignment dated as of August 1, 2024 (the “Pledge and Assignment”) from the Issuer to the Trustee, and acknowledged by the University, which Pledge and Assignment will assign to the Trustee certain of the Issuer’s rights under the Loan Agreement; and

WHEREAS, pursuant to the Pledge and Assignment, Loan Payments made by the University under the Loan Agreement are to be paid directly to the Trustee; and

WHEREAS, the University’s obligations pursuant to the Loan Agreement will be secured by a pledge and security agreement dated as of August 1, 2024 (the “Pledge and Security Agreement”) from the University to the Trustee, pursuant to which the University grants to the Trustee a security interest in the Gross Revenues of the University (as defined therein); and

WHEREAS, pursuant to an amended and restated intercreditor agreement dated as of August 1, 2024 (the “Intercreditor Agreement”) by and between the Trustee and the Series 2020 Trustee (as defined herein), the Trustee and the Series 2020 Trustee will agree that their respective rights with respect to the Gross Revenues are intended to be *pari passu*, to be shared *pro rata* as described in the Intercreditor Agreement; and

WHEREAS, as additional security for the Bonds, the University will execute and deliver to the Issuer a mortgage dated as of August 1, 2024 (the “Mortgage”) pursuant to which the University will pledge to the Issuer all of its rights, title and interest in the Mortgaged Property (as defined therein), which

Mortgage shall be assigned by the Issuer to the Trustee pursuant to an assignment of mortgage dated as of August 1, 2024 (the “Mortgage Assignment”); and

WHEREAS, the operation of a college or university of osteopathic medicine in the United States requires accreditation from the American Osteopathic Association’s Commission on Osteopathic College Accreditation (“COCA”), and the requirements for accreditation of the College of Osteopathic Medicine include, among other things, the funding of sufficient escrows to provide for reserves of the University until the date upon which the first class of students of the College of Osteopathic Medicine graduates after COCA grants full accreditation (the “COCA Escrow Requirements”); and

WHEREAS, the University has deposited funds sufficient to satisfy the COCA Escrow Requirements into (i) a reserve account (the “Teach-Out Reserve”) held by Wilmington Trust, National Association (the “Teach-Out Reserve Depository”), established pursuant to the Multi-Party Account Agreement dated as of February 9, 2024 (the “Teach-Out Reserve Depository Agreement”) by and among COCA, the University and the Teach-Out Reserve Depository, and (ii) a reserve account (the “Operating Reserve”) held by Goldman Sachs & Co. LLC (the “Operating Reserve Depository”), established as required by the Operating Reserve Fund Account Agreement dated as of February 9, 2024 (the “Operating Reserve Depository Agreement”) by and between the University and COCA; and

WHEREAS, pursuant to the letter of instructions regarding teach-out reserve fund dated August 13, 2024 (the “Teach-Out Reserve Letter of Instructions”) from the Issuer and the University to the Trustee, and accepted by the Trustee, the University has irrevocably instructed the Trustee to deliver to the Teach-Out Reserve Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing the Teach-Out Reserve Depository to pay to the Trustee, upon termination of the Teach-Out Reserve, all moneys then on deposit in the Teach-Out Reserve, to be deposited by the Trustee into the Bond Fund established under this Indenture; and

WHEREAS, pursuant to the letter of instructions regarding operating reserve fund dated August 13, 2024 (the “Operating Reserve Letter of Instructions”) from the Issuer and the University to the Trustee, and accepted by the Trustee, the University has irrevocably instructed the Trustee to deliver to the Operating Reserve Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing the Operating Reserve Depository to pay to the Trustee, upon termination of the Operating Reserve, all moneys then on deposit in the Operating Reserve, to be deposited by the Trustee into the Bond Fund established under this Indenture; and

WHEREAS, in connection with the issuance of the Bonds, the University will execute and deliver an environmental compliance and indemnification agreement dated as of August 1, 2024 (the “Environmental Compliance Agreement”) from the University to the Issuer and the Trustee, pursuant to which, among other things, the University indemnifies the Issuer and the Trustee against certain environmental liabilities related to the Mortgaged Property; and

WHEREAS, the Bonds will be initially purchased by Loop Capital Markets, acting as underwriter for the Bonds (the “Underwriter”) pursuant to a bond purchase agreement dated August 1, 2024 (the “Bond Purchase Agreement”) by and among the Underwriter, the Issuer and the University. The Underwriter will utilize the Preliminary Limited Offering Memorandum and a final limited offering memorandum (the “Limited Offering Memorandum”) in connection with the initial offering of the Bonds. The Underwriter also intends to obtain a rating of the Bonds from one or more securities rating agencies; and

WHEREAS, the Trustee has the power to enter into this Indenture and to execute the trusts hereby created and in evidence thereof has joined in the execution hereof; and

WHEREAS, the execution and delivery of this Indenture and the issuance of the Bonds under the Enabling Act as herein provided have been in all respects approved by the Issuer and duly and validly authorized by the Bond Resolution; and

WHEREAS, the providing of the Project is for a proper purpose, to wit, relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest pursuant to the provisions of the Enabling Act; and

WHEREAS, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal of and interest thereon, the Issuer has authorized the execution and delivery of this Indenture; and

WHEREAS, all acts and proceedings required by law necessary to make the Bonds, when executed by the Issuer, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal limited obligations of the Issuer, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH:

That the Issuer, in consideration of the premises and of the mutual covenants contained and of the purchase and acceptance of the Bonds by the Registered Owners thereof and of the sum of One Dollar to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of and interest on all Bonds at any time Outstanding under this Indenture, according to their tenor and effect, to secure the performance and observance of all the covenants and conditions in the Bonds and herein contained, and to declare the terms and conditions upon and subject to which the Bonds are issued and secured, has executed and delivered this Indenture and has granted, bargained, sold, alienated, assigned, pledged, set over and confirmed, and by these presents does grant, bargain, sell, alien, assign, pledge, set over and confirm unto the Trustee, for the benefit of the Registered Owners from time to time of the Bonds, and to its successors and assigns forever, all and singular the following described property, franchises and income (except the Unassigned Rights):

- (a) The rights and interests of the Issuer under the Loan Agreement;
- (b) The Trust Revenues (as defined herein) and all rights and interests of the Issuer in the Trust Revenues and any proceeds thereof;
- (c) All Funds created in this Indenture and any proceeds thereof, except for moneys or obligations deposited with or paid to the Trustee for the payment of Bonds that are no longer deemed to be Outstanding hereunder, and all Revenues payable to the Trustee by or for the account of the Issuer pursuant to the Loan Agreement and this Indenture, subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture; and
- (d) Any and all other interests in real or personal property, and any proceeds thereof, of every name and nature from time to time hereafter by delivery or by writing of any kind specifically mortgaged, pledged or hypothecated, as and for additional security hereunder by the Issuer or by anyone on its behalf or with its written consent in favor of the Trustee, which is hereby authorized to receive any and all such

property at any and all times and to hold and apply the same, subject to the terms hereof (the property described in clauses (a) through (d) above, being herein referred to as the "Trust Estate");

TO HAVE AND TO HOLD the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended to be, to the Trustee and its successors in said trust and assigns forever;

SUBJECT ONLY TO THE RIGHTS OF THE ISSUER TO APPLY AMOUNTS UNDER THE PROVISIONS OF THIS INDENTURE, THE PLEDGE AND ASSIGNMENT OF THE TRUST ESTATE HEREBY MADE SHALL IMMEDIATELY ATTACH THERETO AND SHALL BE EFFECTIVE, BINDING AND ENFORCEABLE FROM AND AFTER THE TIME OF THE DELIVERY BY THE TRUSTEE OF THE FIRST BONDS AUTHENTICATED AND DELIVERED UNDER THIS INDENTURE; THE SECURITY SO PLEDGED AND ANY ASSIGNMENT THEN OR THEREAFTER RECEIVED BY THE TRUSTEE FROM THE ISSUER AS SECURITY FOR THE BONDS SHALL IMMEDIATELY BE SUBJECT TO THE LIEN OF SUCH PLEDGE AND ASSIGNMENT AND THE LIEN OF SUCH PLEDGE AND ASSIGNMENT SHALL BE VALID AND BINDING AGAINST THE ISSUER, PURCHASERS THEREOF, CREDITORS AND ALL OTHER PARTIES HAVING CLAIMS AGAINST THE ISSUER IRRESPECTIVE OF WHETHER SUCH PARTIES HAVE NOTICE THEREOF AND WITHOUT THE NEED FOR ANY PHYSICAL DELIVERY, RECORDATION, FILING, OR FURTHER ACT;

IN TRUST, NEVERTHELESS, upon the terms herein set forth for the equal and proportionate benefit, security and protection of all Registered Owners of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any other of the Bonds except with respect to moneys otherwise held to pay particular Bonds hereunder;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns shall well and truly pay, or cause to be paid, the principal of the Bonds and the interest due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as hereinafter required or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, or certain securities as herein permitted and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee and the Issuer all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, terminate, and be void; otherwise this Indenture to be and remain in full force and effect;

IT IS HEREBY EXPRESSLY ACKNOWLEDGED that the Issuer has entered into this Indenture and issued the Bonds to fulfill the public purposes of the Act, and the Trustee hereby accepts such trust and covenants to enforce the provisions of this Indenture and the Loan Agreement in accordance with their respective terms so as to effect the public purposes of the Act; and

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered, and all said property, rights, interests, revenues and funds hereby pledged, assigned and mortgaged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee for the benefit of the Registered Owners from time to time of the Bonds as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.1 Definitions.** Unless otherwise defined herein, all words and phrases defined in the preamble hereto or the preamble of the Loan Agreement shall have the same meaning in this Indenture. In this Indenture and any indenture supplemental hereto (except as otherwise expressly provided for or unless the context otherwise requires), the singular includes the plural, the masculine includes the feminine, and each of the following terms shall have the following meanings:

*“Accreditation”* means, on any date of determination, with reference to the COCA Policies and Procedures and their definitions then in effect, (i) “Pre-accreditation Status” for the period allowed pursuant to the COCA Policies and Procedures, and (ii) thereafter, any “Accreditation status” provided for under the COCA Policies and Procedures, excluding however any Accreditation status involving probation or commencement of proceedings for the withdrawal of Accreditation.

*“Act”* has the meaning set forth in the preambles hereof.

*“Act of Bankruptcy”* means any of the following events:

(a) the University shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the University or of all or substantially all of its property, (ii) commence a voluntary case under the United States Bankruptcy Code (as now or hereafter in effect), or (iii) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, winding-up or composition or adjustment of debts; or

(b) a proceeding or case shall be commenced without the application or consent of the University in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts, of the University, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of the University or of all or any substantial part of its property, or (iii) similar relief in respect of the University under any law relating to bankruptcy, insolvency, winding-up or composition or adjustment of debts and such case shall not have been dismissed within sixty (60) days of its filing.

*“Additional Payments”* means those amounts payable by the University pursuant to Section 4.02 of the Loan Agreement.

*“Administrative Fees and Expenses”* means all Trustee Fees and Expenses, and fees and expenses of the Issuer in undertaking and performing its obligations under the Indenture and acceptance, service, administrative or similar fees charged, or reimbursement for administrative or other expenses (including attorneys’ fees) incurred by the Issuer, including, without limitation, the Annual Fee.

*“Affiliate”* means any other Person who, directly or indirectly, controls or is controlled by or is under common control with such other Person.

*“Annual Debt Service”* means, when used in connection with any Indebtedness, as of any particular date of calculation the amount required to be paid by the University during the then current Fiscal Year to pay the principal, whether at maturity or upon mandatory redemptions and prepayments, of and interest on such Indebtedness; provided, however, that such amounts required to be paid on Short-Term Indebtedness and Balloon Indebtedness shall include interest only.

*“Approved Buyer”* means a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the “Securities Act”).

*“Assignments”* means, collectively, the Pledge and Assignment and the Mortgage Assignment.

*“Authorized Issuer Representative”* means with respect to the Issuer, the Chairperson, Vice Chairperson, Chief Executive Officer or Vice President of Operations of the Issuer, or any other person designated as an Authorized Issuer Representative by a certificate signed by a member of the Board and filed with the Trustee.

*“Authorized University Representative”* means the persons at any time designated to act on behalf of the University, such designation in each case to be evidenced by a certificate furnished to the Issuer and the Trustee containing the specimen signature of such person or persons and signed on behalf of the University by the sole member and manager of the University or its designee. Such certificate may designate an alternate or alternates.

*“Authorized Denominations”* means \$100,000 and any integral multiple of \$5,000 in excess of \$250,000.

*“Authorized Investments”* mean (1) Governmental Obligations; (2) obligations issued or guaranteed by any state or political subdivision thereof rated in one of the two highest Rating Categories by Moody’s and by S&P; (3) open market commercial or finance paper of any corporation having a net worth in excess of \$100,000,000 and that is rated either P1 or A1 or an equivalent by Moody’s and S&P; (4) bankers’ acceptances, certificates of deposit or time deposits issued by, or bankers’ acceptances of, the Trustee or any affiliate of the Trustee, or of banks or trust companies organized under the laws of the United States of America or any state thereof, any of which must have a reported capital and surplus of at least \$50,000,000 in dollars of the United States of America; (5) bank repurchase agreements, including the Trustee’s or any affiliate of the Trustee’s, fully secured by obligations of the type described in (1) above; (6) variable rate demand securities redeemable within seven days or able to be tendered for remarketing or purchase upon no more than seven days’ notice and secured by a credit facility issued by a financial institution, including the Trustee or an affiliate of the Trustee, which financial institution (or its corporate parent) maintains a long-term debt rating that is not lower than the third highest Rating Category by either Rating Agency, or by both Rating Agencies, if rated by both Rating Agencies; (7) shares of any so-called “money market mutual fund”, including any money market mutual fund that the Trustee or any of its affiliates operates or manages, which invests solely in any of the obligations described in items (1) through (6) above and (8) U.S. Dollar denominated deposit accounts that are fully and continuously insured by the Federal Deposit Insurance Corporation.

*“Balloon Indebtedness”* means Long-Term Indebtedness of which 25% or more in principal amount matures, or is required to be purchased, redeemed or retired by the University (either automatically or at the option of the holder of such Balloon Indebtedness), in any one year.

*“Beneficial Owners”* means, (i) when used with reference to the book entry only system, the person who is considered the beneficial owner of the Bonds pursuant to the arrangements for book entry determination of ownership applicable to the Securities Depository and, (ii) any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding such through nominees, depositories or other intermediaries) or (b) is treated as the owner of any Bonds for federal income tax purposes.

*“Bond Documents”* means the Indenture, the Bond Purchase Agreement, the University Loan Documents and each amendment or supplement thereof, and any other document or instrument to which

the Issuer or the University is a party or by which either of them is bound and that is executed and delivered in connection with the Bonds.

“*Bond Fund*” means the trust fund so designated which is established pursuant to Article III hereof.

“*Bond Owner*,” “*Bondowner*,” “*Owner*,” “*owner*,” “*Bondholder*,” “*holder*,” “*Registered Owner*,” “*registered owner*,” or “*owner of Bonds*” means the person listed on the Bond Register as the registered owner of any Bond.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement dated August 1, 2024, among the Issuer, the University and the Underwriter.

“*Bond Register*” has the meaning specified in Section 2.3 hereof.

“*Bond Resolution*” means the resolution of the members of the board of directors of the Issuer duly adopted on February 28, 2024 authorizing the Issuer to undertake the Project, to issue and sell the Bonds and to execute and deliver the Bond Documents to which the Issuer is a party.

“*Bonds*” means the Issuer’s Revenue Bonds (D’Youville University Project), Series 2024A (Taxable) in the original aggregate principal amount of \$44,935,000.

“*Business Day*” or “*business day*” means any day other than a Saturday, Sunday or other day on which commercial banks are required or authorized to be closed in New York, New York or St. Louis, Missouri, or any day on which the payment system of the Federal Reserve is not operational.

“*Calculation Agent*” means if there is a single beneficial owner that holds a majority in aggregate principal amount of Bonds outstanding (“Single Majority Holder”), the Single Majority Holder if willing to act as Calculation Agent, but if there is no such Single Majority Holder willing to act in such capacity, then Loop Capital Markets if willing to act as Calculation Agent, but if Loop Capital Markets is not willing to act in such capacity, then the Trustee or a qualified entity selected by the Trustee.

“*Candidacy Status*” means such term as defined in the COCA Policies and Procedures.

“*Capitalized Interest Fund*” means the trust fund so designated which is established pursuant to Article III hereof.

“*COCA*” means, collectively, the American Osteopathic Association and its Commission on Osteopathic College Accreditation, or any successor body acting in a similar capacity.

“*COCA Policies and Procedures*” means the standards, including any new or revised procedures or standards adopted by COCA as published in Accreditation of Colleges of Osteopathic Medicine: COM New & Developing Standards. As of the date of issuance of the Bonds, the current COCA Policies and Procedures are those identified as effective September 26, 2023.

“*College of Osteopathic Medicine*” shall have the meaning provided in the recitals hereto.

“*Costs of Issuance*” means all items of expense directly or indirectly payable by or reimbursable to the Issuer, the University, or the Trustee and related to the authorization, execution, issuance, sale and delivery of the Bonds, including (without limitation) costs of preparation and reproduction of documents, filing and recording fees, fees and charges of the University, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of financial or other consultants and professionals, fees and

charges for preparation, execution and safekeeping of the Bonds, and any other cost, charge or fee in connection with the issuance of the Bonds.

“*Costs of Issuance Fund*” means the fund of that name established pursuant to Article III of the Indenture.

“*Counsel*” means an Independent attorney at law or law firm (who may be attorneys for the Issuer or the University) acceptable to the Issuer and the Trustee.

“*Debt Service*” means, for any period of time with respect to the University, the sum of (i) the interest payable during such period on all Outstanding Bonds and (ii) the principal amount of all Outstanding Bonds due on the maturity date.

“*Debt Service Coverage Ratio*” means the ratio of Operating Revenues Available for Debt Service to Annual Debt Service.

“*Default*” means any event which with the giving of notice or the lapse of time or both would constitute an Event of Default.

“*Defaulted Interest*” has the meaning ascribed thereto in Section 2.7 hereof.

“*Default Rate*” means the rate of interest equal to 9% per annum, or the maximum permitted by law, whichever is less.

“*Depository Agreements*” means, collectively, the Teach-Out Reserve Depository Agreement and the Operating Reserve Depository Agreement.

“*Depository Reserve Accounts*” means the accounts held by the Teach-Out Reserve Depository and the Operating Reserve Depository, respectively, pursuant to the Depository Agreements.

“*DTC*” means The Depository Trust Company, New York, New York.

“*DTC Letter of Representations*” means the blanket letter of representations from the Issuer to DTC.

“*DTC Participant*” means (a) any person for which, from time to time, DTC, or, in the event that a successor Securities Depository to DTC is acting as such under Section 2.14 hereof, such successor Securities Depository, effectuates book-entry transfers and pledges of securities pursuant to the book-entry system referred to in Section 2.14 hereof or (b) any securities broker or dealer, bank, trust company or other person that clears through or maintains a custodial relationship with the person referred to in (a).

“*EMMA*” means the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system or any successor nationally-recognized municipal securities repository recognized by the United States Securities and Exchange Commission for the purposes referred to in Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

“*Environmental Regulations*” means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances or chemical waste, materials or substances.



“*Event of Default*” means any of the events specified in Section 10.1 hereof to be an Event of Default.

“*Extraordinary Expenses*” means all reasonable expenses properly incurred by the Trustee under the Indenture, other than Ordinary Expenses.

“*Extraordinary Services*” means all services rendered by the Trustee under the Indenture, other than Ordinary Services.

“*Extraordinary Trustee’s Fees and Expenses*” means the fees, expenses and disbursements payable to the Trustee and Paying Agent pursuant to Section 11.7 hereof during any Fiscal Year in excess of Ordinary Trustee’s Fees and Expenses, including but not limited to, reasonable counsel fees and expenses, reasonable fees of other third party professionals, and any costs of sending notices pursuant to the terms and conditions of the Bond Documents.

“*Fiscal Year*” means the fiscal year of the University, which currently commences June 1 of each year and ends on May 31, or such other twelve-month period as may be designated in a written statement of the University delivered to the Issuer and the Trustee.

“*Funds*” means, collectively, the Bond Fund, Capitalized Interest Fund, the Project Fund and the Costs of Issuance Fund.

“*GAAP*” means accounting principles general accepted in the United States, consistently applied, as in effect as of the time of application to the provisions hereof (unless otherwise noted).

“*Governmental Authority*” means the United States of America, the State, any political subdivision thereof, any other state and any agency, department, commission, board, bureau or instrumentality of any of them.

“*Governmental Obligations*” means (a) direct noncallable obligations of the United States of America, (b) obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States of America pursuant to authority granted by the Congress of the United States of America and (c) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b).

“*Gross Revenues*” means, to the maximum extent permitted by law, all receipts, revenues, income and other money received by or on behalf of the University derived from its operations, including all rights to receive the same, whether in the form of accounts receivable, contracts rights or other rights (including rights under policies of business interruption insurance but not under policies of casualty insurance), and proceeds of such rights, now owned or held or hereafter coming into existence; provided, however, that Gross Revenues shall not include gifts, grants, bequests, donations and contributions restricted at the time of making thereof by the donor or maker thereof as being for certain specific purposes inconsistent with the payments required by Sections 4.01, 4.02 and 5.01 of the Loan Agreement and the income derived therefrom to the extent required by such restriction.

“*Indebtedness*” means , collectively, (i) all indebtedness of the University for borrowed moneys; (ii) all liabilities for payment due from the University in connection with rights of use or possession under leases accounted for as capital leases or finance leases as evidenced by the University’s audited financial statements; (iii) all guaranties by the University in connection with any indebtedness of any Affiliate and/or other Person; and (iv) with respect to the Indebtedness incurred under the University Loan Documents: (A)

all Loan Repayments on the Bonds; (B) all other payments due from the Issuer or the University to the Trustee pursuant to the Loan Agreement or any other University Loan Document; (C) the performance and observance by the Issuer and the University of all of the covenants, agreements, representations and warranties made for the benefit of the Trustee pursuant to the Loan Agreement or any other University Loan Document; (D) the monetary obligations of the University to the Issuer and its members, officers, agents, servants and employees under the Loan Agreement and the other University Loan Documents; and (E) all interest accruing on any of the foregoing.

“*Indenture*” means the indenture of trust dated as of August 1, 2024 by and between the Issuer and the Trustee, as supplemented or amended in accordance with the terms thereof.

“*Indenture Act*” means the Trust Indenture Act of 1939 (Act of August 3, 1939, 53 Stat. 1149, 15 U.S.C., §§ 77aaa-77bbb), as amended.

“*Independent*” means, with respect to any professional employed for purposes of compliance with the terms of the Loan Agreement or the Indenture, an individual or firm not owned, employed or controlled by the University or any principal thereof, provided that an individual or firm shall not be deemed “employed” by the University if it is outside counsel to the University.

“*Intercreditor Agreement*” means the amended and restated intercreditor agreement dated as of August 1, 2024 by and between the Trustee and the Series 2020 Trustee, as consented to by the University.

“*Interest Payment Date*” means, with respect to any Bond, each May 1 and November 1, commencing November 1, 2024 and the Maturity Date or the date on which such Bond is accelerated pursuant to Section 10.2 hereof.

“*Issue Date*” means the date on which the Bonds are first authenticated and delivered at the direction of the Underwriter against payment therefor.

“*Issuer*” means Buffalo and Erie County Industrial Land Development Corporation, or its successors and assigns.

“*Issuer Issuance Fee*” means \$449,350.

“*Lien*” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, security agreement, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes hereof, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“*Limited Offering Memorandum*” means the Limited Offering Memorandum dated August 1, 2024, including any amendment or supplement thereto, relating to the limited offering of the Bonds.

“*Loan*” means the loan made by the Issuer to the University from the proceeds of the Bonds pursuant to the Loan Agreement.

“*Loan Agreement*” means the Loan Agreement dated as of August 1, 2024, between the Issuer and the University, as amended from time to time.

“*Loan Agreement Event of Default*” means any event specified in Section 6.01 of the Loan Agreement.

“*Loan Repayment*” means each payment required in consideration for the Loan, as defined in Section 4.01 of the Loan Agreement and as provided for in the Indenture, including the principal of and interest on the Bonds.

“*Long-Term Indebtedness*” means Indebtedness having an original maturity of greater than one (1) year or Indebtedness on which the University has an option to extend the maturity thereof for a period of greater than one (1) year beyond the date of the original incurrence thereof.

“*Majority Holders*” mean the Beneficial Owners of a majority in aggregate principal amount of the Bonds Outstanding.

“*Maturity Date*” means November 1, 2030.

“*Moody’s*” means Moody’s Investors Service, Inc. or any successor thereto.

“*Mortgage*” means the mortgage and security agreement dated as of August 1, 2024 from the University to the Issuer, which, among other things, (a) grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Mortgaged Property and (b) assigns to the Issuer the rents, issues and profits of the Mortgaged Property, as said mortgage and security agreement may be amended or supplemented from time to time.

“*Mortgage Assignment*” means the assignment of mortgage dated as of August 1, 2024 from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee, as said assignment of mortgage may be amended or supplemented from time to time.

“*Mortgaged Property*” means all Property which may from time to time be subject to the Lien of the Mortgage.

“*Operating Reserve*” means the reserve account held by Operating Reserve Depository established by the University for the purpose of paying certain operating, equipment or construction costs of the College of Osteopathic Medicine pursuant to the terms of the Operating Reserve Agreement.

“*Operating Reserve Depository*” means Goldman Sachs & Co. LLC, as custodian of the Operating Reserve, and its successors and assigns.

“*Operating Reserve Depository Agreement*” means the operating reserve fund account agreement dated as of February 29, 2024 by and between the University and COCA.

“*Operating Reserve Direction Letter*” means the letter from the University to the Operating Reserve Depository directing the Operating Reserve Depository to pay to the Trustee, for deposit into the Bond Fund, all moneys on deposit in the Operating Reserve, an executed original of which letter has been deposited in escrow with the Trustee pursuant to the Operating Reserve Letter of Instructions.

“*Operating Reserve Letter of Instructions*” means the letter of instructions regarding operating reserve fund dated August 13, 2024, from the Issuer and the University to the Trustee, and accepted by the

Trustee, pursuant to which the University has deposited the Operating Reserve Direction Letter in escrow with the Trustee and irrevocably instructed the Trustee to deliver the Operating Reserve Direction Letter to the Operating Reserve Depository upon termination of the Operating Reserve.

*“Operating Revenues Available for Debt Service”* means total unrestricted operating revenues, including funds made available for operations from endowment funds and from other temporarily restricted sources, minus total unrestricted expenses, excluding depreciation, amortization, and interest expenses as displayed in the University’s audited financial statements produced in accordance with GAAP then applicable to the University, and excluding (a) any gains or losses resulting from either the extinguishment of indebtedness, (b) the sale, exchange, or other disposition of capital assets not in the ordinary course of business, (c) any non-cash adjustment for changes in accounting estimates, changes in GAAP, or other non-cash adjustments made in accordance with GAAP, (d) extraordinary items, (e) any realized gains or losses on the sale of investments or interest exchange agreements, and (f) any unrealized gains/appreciation or losses/depreciation on the carrying value of investments or interest exchange agreements.

*“Ordinary Expenses”* means those reasonable expenses incurred in the ordinary course of business, by a trustee, a registrar, an authenticating agent and a paying agent under instruments similar to the Indenture, but excluding Extraordinary Expenses.

*“Ordinary Services”* means those services normally rendered by a trustee, a registrar, an authenticating agent and a paying agent under instruments similar to the Indenture, excluding Extraordinary Services.

*“Ordinary Trustee’s Fees and Expenses”* means those annual fees, expenses and disbursements for the Ordinary Services and the Ordinary Expenses of the Trustee and Paying Agent incurred in connection with their duties under the Indenture payable in advance on the Closing Date and payable on July 1 of each year thereafter until the Bonds are no longer Outstanding.

*“Outstanding”* or *“outstanding,”* in connection with Bonds means, as of the time in question, all Bonds authenticated and delivered under the Indenture, except:

- (a) Bonds theretofore cancelled or required to be cancelled under Section 2.11 hereof;
- (b) Bonds which are deemed to have been paid in accordance with Article XIV hereof
- (c) Bonds in substitution for which other Bonds have been authenticated and delivered pursuant to Article II hereof and Bonds paid pursuant to Section 2.10(a) hereof;
- (d) Bonds registered in the name of the Issuer; and
- (e) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the holders of a specified percentage of outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer or the University, except that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by a Responsible Officer of the Trustee by actual notice thereof to be so held.

*“Parity Obligations”* means Long-Term Indebtedness of the University incurred in accordance with Section 9 of the Pledge and Security Agreement, including but not limited to obligations of the University to one or more commercial banks or financial institutions obligated to contribute to making loans,

purchasing bonds or otherwise making funds available as security for the payment of the principal and interest when due on Long-Term Indebtedness of the University.

*“Permitted Encumbrances”* means:

- (i) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not in default;
- (ii) utility, access and other easements and rights-of-way restrictions and exceptions that an Authorized Representative of the University certifies to the Issuer and the Trustee will not interfere with or impair the University's use of the Mortgaged Property;
- (iii) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Mortgaged Property and as do not, either singly or in the aggregate, materially impair the property affected thereby for the purpose for which it is owned by the University;
- (iv) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien or right in respect thereof if payment is not yet due and payable, or are insured over, or which are not delinquent, or the amount or validity of which, are being contested and execution thereon is stayed or has been due for less than 90 days;
- (v) any mortgage, lien, security interest or other encumbrance which exists in favor of the Trustee;
- (vi) liens on Gross Revenues securing Parity Obligations;
- (vii) matters shown on the title insurance policy delivered to the Trustee upon issuance of the Bonds or the survey identified therein; and
- (viii) liens consented to in writing by the Majority Holders.

*“Permitted Indebtedness”* means, collectively,:

- (a) Any Indebtedness incurred under this Indenture and the University Loan Documents;
- (b) Indebtedness evidenced by the Series 2020 Bonds;
- (c) Indebtedness of the University's Affiliate, 301 Connecticut LLC, evidenced by certain promissory notes dated January 24, 2020 and January 27, 2020, in the original aggregate principal amount of \$18,650,000, which Indebtedness is guaranteed by the University;
- (d) Guaranties of any other Permitted Indebtedness;
- (e) Guaranties of any rent obligations of one or more University Affiliates established to manage or operate the College of Osteopathic Medicine under leases of facilities that will house the College of Osteopathic Medicine;
- (f) any Indebtedness arising from the honoring by a bank or other financial institution of checks, drafts or similar instruments drawn against insufficient funds in the ordinary course of business and extinguished within five Business Days of being drawn;

(g) all obligations, contingent or otherwise, of the University under bankers acceptances issued or created for the account of the University;

(h) (i) Indebtedness incurred by the University constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from governmental authorities, (ii) other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims, and (iii) Indebtedness incurred to refund, extend, renew, refinance or replace any other Indebtedness incurred pursuant to this clause (g); provided, however, that (1) upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence, and (2) the aggregate principal amount which, when aggregated with the then outstanding principal amount of all other Indebtedness incurred pursuant to this clause (g) and including all Indebtedness incurred to refund, extend, renew, refinance or replace any other Indebtedness incurred pursuant to this clause (g), does not exceed \$5,000,000; provided further that (i) such reimbursement obligations shall be fully cash collateralized and (ii) no such reimbursement obligations shall be secured by any proceeds of the Bonds nor the proceeds from the reimbursement of costs of the Project financed with the proceeds of the Bonds;

(i) Indebtedness (including finance lease obligations) incurred at the time of, or within 90 days after, the acquisition of any vehicles or other movable equipment for the purpose of financing all or any part of the acquisition or installation cost thereof provided such Indebtedness is secured only by purchase money security interests in such property;

(j) Indebtedness of the University consisting of accounts payable and trade payables that are not more than ninety (90) days past due; provided that no such payables shall result in a lien or encumbrance on any asset or property of the University; and

(k) one or more lines of credit in an aggregate maximum principal amount not to exceed \$10,000,000.

*"Person"* means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, an unincorporated organization, a governmental body or a political subdivision, a municipal corporation, a public corporation or any other group or organization of individuals.

*"Pledge and Assignment"* means the pledge and assignment dated as of August 1, 2024 from the Issuer to the Trustee, and acknowledged by the University, pursuant to which the Issuer has assigned to the Trustee its rights under the Loan Agreement (except the Unassigned Rights), as said pledge and assignment may be amended or supplemented from time to time.

*"Pledge and Security Agreement"* means the pledge and security agreement dated as of August 1, 2024 from the University to the Trustee, pursuant to which the University grants a security interest in the Gross Revenues to the Trustee, as said pledge and security agreement may be amended or supplemented from time to time.

*"Principal Office of the Trustee"* means the business address designated in writing to the Issuer and the University as its principal office for its duties hereunder, and which initially shall be as specified in Section 17.5 of the Indenture.

“*Project*” shall have the meaning provided in the recitals hereto.

“*Project Fund*” means the fund by that name created in Article III hereof.

“*Project Jurisdiction*” means Erie County, New York.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“*Rating Agency*” means Moody’s or S&P.

“*Rating Category*” means the generic rating categories of the Rating Agency, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

“*Record Date*” means, as the case may be, the applicable Regular Record Date or Special Record Date.

“*Redemption Date*” means the date upon which Bonds issued pursuant to the Indenture shall be redeemed.

“*Regular Record Date*” means the Trustee’s close of business on April 15 or October 15, as applicable, immediately preceding the Interest Payment Date.

“*Released Funds*” means the amounts on deposit in the Depository Reserve Accounts which are released from the Depository Reserve Accounts upon a Termination Event pursuant to and as defined in the Depository Agreements.

“*Responsible Officer*” means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of the Indenture.

“*Revenues*” means (a) Released Funds (provided, in no event shall amounts on deposit in the Depository Reserve Accounts constitute “Revenues” hereunder or be in any way subject to the lien of the Indenture until such funds constitute Released Funds); (b) amounts payable to the Trustee with respect to the principal of and interest on the Bonds (1) on deposit in the Bond Fund, the Capitalized Interest Fund, the Project Fund or the Costs of Issuance Fund from the proceeds of the Bonds or obligations of the Issuer issued to refund the Bonds or from any other source or (2) paid by the University as Loan Repayments under the Loan Agreement; (c) all receipts of the Trustee credited under the provisions of the Indenture against amounts described in clause (b); and (d) investment income with respect to any moneys held by the Trustee in the Bond Fund, the Capitalized Interest Fund, the Project Fund and the Costs of Issuance Fund.

“*S&P*” means Standard & Poor’s Global Ratings, a Standard & Poor’s Financial Services LLC business, or any successor thereto.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Securities Depository*” means any clearing agency registered under Section 18A of the Securities Exchange Act of 1934, as amended.

“*Series 2020 Bonds*” means, collectively, the Issuer’s Revenue Bonds (D’Youville College Project), Series 2020A in the original principal amount of \$34,370,000 and the Issuer’s Revenue Bonds (D’Youville College Project), Series 2020B (Taxable) in the original principal amount of \$13,835,000.

“*Series 2020 Trustee*” means U.S. Bank National Association, a national banking association duly organized and existing under the laws of the United States of America, and any successor trustee or co-trustee serving as such hereunder.

“*Short-Term Indebtedness*” means any Indebtedness that is not Long-Term Indebtedness.

“*Special Record Date*” means such date as may be fixed for the payment of Defaulted interest in accordance with Section 2.7 hereof.

“*State*” means the State of New York.

“*Supplemental Indenture*” means any indenture hereafter duly authorized and entered into between the Issuer and the Trustee in accordance with the provisions of the Indenture.

“*Teach-Out Requirements*” shall have the meaning given to such term in the Teach-Out Reserve Depository Agreement.

“*Teach-Out Depository*” means Wilmington Trust, National Association, and its successors and assigns.

“*Teach-Out Reserve*” means the reserve account, held by Teach-Out Reserve Depository, established by the University for the purpose of paying certain College of Osteopathic Medicine teach-out costs pursuant to the terms of the Teach-Out Reserve Depository Agreement.

“*Teach-Out Reserve Depository Agreement*” means the multi-party account agreement dated as of February 9, 2024 by and among the University, COCA and the Teach-Out Reserve Depository, as amended or supplemented from time to time.

“*Teach-Out Reserve Direction Letter*” means the letter from the University to the Teach-Out Reserve Depository directing the Teach-Out Reserve Depository to pay to the Trustee, for deposit into the Bond Fund, all moneys on deposit in the Teach-Out Reserve, an executed original of which letter has been deposited in escrow with the Trustee pursuant to the Teach-Out Reserve Letter of Instructions.

“*Teach-Out Reserve Letter of Instructions*” means the letter of instructions regarding teach-out reserve fund dated August 13, 2024, from the Issuer and the University to the Trustee, and accepted by the Trustee, pursuant to which the University has deposited the Teach-Out Reserve Direction Letter in escrow with the Trustee and irrevocably instructed the Trustee to deliver the Teach-Out Reserve Direction Letter to the Teach-Out Reserve Depository upon termination of the Teach-Out Reserve.

“*Trust Estate*” shall have the meaning provided in the granting clauses hereto.

“*Trustee*” means UMB Bank, N.A., a national banking association duly organized and existing under the laws of the United States of America, and any successor trustee or co-trustee serving as such hereunder.

“*Trustee Fees and Expenses*” means, collectively, Ordinary Trustee’s Fees and Expenses and Extraordinary Trustee’s Fees and Expenses.



“*Trust Revenues*” means (a) Released Funds (provided, in no event shall amounts on deposit in the Depository Reserve Accounts constitute “Trust Revenues” hereunder or be in any way subject to the lien of the Indenture until such funds constitute Released Funds); (b) amounts payable to the Trustee pursuant to the Assignments; (c) amounts payable to the Trustee pursuant to the Pledge and Security Agreement; (d) amounts payable to the Trustee with respect to the principal of and interest on the Bonds (1) on deposit in the Bond Fund, the Capitalized Interest Fund, the Project Fund or the Costs of Issuance Fund from the proceeds of the Bonds or obligations of the Issuer issued to refund the Bonds or from any other source or (2) paid by the University as Loan Repayments under the Loan Agreement; (e) all receipts of the Trustee credited under the provisions of the Indenture against amounts described in clause (b); and (f) investment income with respect to any moneys held by the Trustee in the Bond Fund, the Capitalized Interest Fund, the Project Fund and the Costs of Issuance Fund.

“*Unassigned Rights*” means the rights of the Issuer under Sections 4.02, 7.04, 8.10 and 8.11 of the Loan Agreement and to the extent not expressly provided in said sections (or in any other sections hereof or thereof), the Issuer’s rights hereunder or thereunder to (i) inspect books and records; (ii) receive notices, approvals, consents, requests, and other communications; (iii) receive payment or reimbursement for expenses, including, without limitation, “Additional Payments” as defined in the Loan Agreement owed to the Issuer; (iv) immunity from and limitation of liability; (v) indemnification by the University or any other Person; and (vi) to enforce, in its own name and on its own behalf, those provisions hereof and of the Loan Agreement and any other document, instrument or agreement entered into with respect to the Bonds that provides generally for the foregoing enumerated rights or any similar rights of the Issuer.

“*Underwriter*” means Loop Capital Markets LLC.

“*University*” means D’Youville University, a New York not-for-profit education corporation, and its successors and assigns as permitted under the Loan Agreement.

“*University Loan Documents*” means the Loan Agreement, the Mortgage, the Pledge and Security Agreement, the Assignments, the Operating Reserve Letter of Instructions, the Teach-Out Reserve Letter of Instructions, the Intercreditor Agreement and the Depository Agreements, and each amendment thereof.

The words “*hereof*,” “*herein*,” “*hereto*,” “*hereby*” and “*hereunder*” (except in the form of Bond attached hereto as Exhibit A) refer to the entire Indenture. Unless otherwise noted, all Section and Article references are to sections and articles in this Indenture.

Section 1.2 Power to Issue Bonds and make Pledge and Assignment. The Issuer is duly authorized pursuant to law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other assets purported to be pledged and assigned under this Indenture in the manner and to the extent provided in this Indenture. The Issuer has duly authorized the execution and delivery of the Bonds and this Indenture under the terms and provisions of the Act and the Bond Resolution and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability against the Issuer of the Bonds and this Indenture. The Issuer has taken all necessary action and has complied with all provisions of the Act required to make the Bonds and this Indenture the valid, legal and binding limited obligations of the Issuer.

## ARTICLE II

### THE BONDS

Section 2.1 Amount, Terms and Issuance. The Bonds shall contain substantially the terms recited in the form of Bond set forth in Exhibit A attached hereto, with such changes and variations as may be necessary to conform to the provisions thereof. The Bonds shall be issued for the purpose of providing a portion of the funds necessary to pay the costs of the Project, as provided herein and in the Loan Agreement. The Bonds may have such additional legends thereon as shall be customary in the industry. All Bonds shall be issued in fully registered form. The Bonds shall be registered upon original issuance and upon subsequent transfer or exchange as provided in this Indenture.

Pursuant to recommendations promulgated by the Committee on Uniform Security Identification Procedures, “CUSIP” numbers may be printed on the Bonds. The Bonds may bear such endorsement or legend satisfactory to the Trustee as may be required to conform to usage or law with respect thereto.

At any time after the execution of this Indenture, the Issuer may execute and, upon satisfaction of the conditions set forth in this Section, the Trustee shall authenticate and, upon request of the Issuer, deliver the Bonds. Prior to the authentication and delivery of any Bonds by the Trustee, there shall have been filed with the Trustee each of the following:

- (a) executed counterparts of this Indenture, the Loan Agreement and the other Bond Documents;
- (b) a certified copy of the Bond Resolution;
- (c) executed counterparts of the Depository Agreements;
- (d) signed copies of the opinions of counsel to the Issuer, the University, and the Trustee, and of Bond Counsel, as required by the Bond Purchase Agreement;
- (e) such other documents as the Trustee or Bond Counsel may reasonably require; and
- (f) copies of any appropriate Uniform Commercial Code Financing Statements.

The Trustee shall be authorized to conclusively rely upon the fact of such delivery in authenticating and delivering the Bonds but shall not be required to make any independent investigation of the contents or underlying facts of any such agreements, policies, opinions or other documents.

Section 2.2 Designation, Denominations, Maturity and Form. The Bonds shall be designated “Buffalo and Erie County Industrial Land Development Corporation Revenue Bonds (D’Youville University Project), Series 2024A (Taxable)”.

Unless otherwise directed by the Issuer, the Bonds shall each be numbered from R-1 upward, unless otherwise determined by the Trustee. All Bonds shall be dated as of the Issue Date.

All Bonds shall be issued in Authorized Denominations, shall mature on the Maturity Date and shall bear interest at the rate per annum of 8.375%. On the Maturity Date, outstanding principal of the Bonds and interest accrued but unpaid thereon shall be due and payable.

Section 2.3 Bond Register. The Trustee will keep or cause to be kept, at the Principal Office of the Trustee, sufficient books for the registration and transfer of the Bonds (the “Bond Register”), which shall at all times be open to inspection during regular business hours by the Issuer; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such books, Bonds as hereinbefore provided. Records of beneficial ownership of the Bonds shall not be maintained by the Trustee. The Bonds shall be issued in book-entry only form in Authorized Denominations. The Bonds shall be registered in the name of the initial Holders thereof, each of which shall be Approved Buyers. Registered ownership of the Bonds, or any portion thereof, may not thereafter be transferred except to an Approved Buyer, as set forth in Section 2.4 hereof.

Section 2.4 Transfer and Exchange; Transfer Restrictions. Notwithstanding any other provision hereof, the Bonds may not be registered in the name of, or transferred to, any person except an Approved Buyer in Authorized Denominations. Only (a) Beneficial Owners or (b) the person(s) in whose name(s) the Bonds are registered hereunder shall be treated as Holders and shall have the rights of Holders hereunder. No purported transfer of any interest in any Bond or any portion thereof made in violation of this Section 2.4 shall be given effect by or be binding upon the Issuer or the Trustee, and, if the Bonds are registered in a book-entry only system, no purported transfer of any beneficial ownership interest in any Bond that is made in violation of this Section 2.4 shall be given effect by or be binding upon the Securities Depository. Any such purported transfer in violation of the requirements of this Section 2.4 shall be null and void ab initio and vest in the transferee no rights against the Issuer, the Trustee or, if applicable, the Securities Depository. By its ownership of a Bond and the registration thereof in the Bond Register, the Holder of such Bond will be deemed to have represented and agreed that it shall transfer such Bond only in accordance with the terms of this Indenture and such Bond and in compliance with applicable law. The Trustee has no duty or obligation to confirm that any beneficial owner of the Bonds meets the requirements set forth herein.

The Bonds will bear a legend to the following effect, unless the Issuer instructs the Trustee otherwise, in writing, in compliance with applicable law:

“THE BONDS EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS SO REGISTERED OR UNLESS IT IS SOLD TO AN “APPROVED BUYER” AS DEFINED IN THE INDENTURE AND PURSUANT TO THE TERMS THEREOF.”

Upon surrender for registration of transfer of any Bond at the Principal Office of the Trustee, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees, one or more new fully registered Bonds of Authorized Denominations for the aggregate principal amount which the Registered Owner is entitled to receive.

At the option of the Owner, Bonds may be exchanged for other Bonds of any other Authorized Denomination, of a like aggregate principal amount and accruing interest at the same interest rate, upon surrender of the Bonds to be exchanged at the Principal Office of the Trustee. Whenever any Bonds are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Bonds which the Bondholder making the exchange is entitled to receive.

All Bonds presented for registration of transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee, duly executed by the owner or by his attorney duly authorized in writing, and such documentation as the Trustee shall reasonably require.

No service charge shall be made to a Bondholder for any exchange or registration of transfer of Bonds, but the Issuer or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

New Bonds delivered upon any registration of transfer or exchange shall be valid obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

Section 2.5     Execution. The Bonds shall be executed in the name and on behalf of the Issuer by the manual or facsimile signature of an Authorized Issuer Representative. Any Bond may be signed (manually or by facsimile) on behalf of the Issuer by any person who, at the date of such act, shall hold the proper office, notwithstanding that at the date of authentication, issuance or delivery, such person may have ceased to hold such office.

Section 2.6     Authentication. No Bond shall be valid for any purpose until the Certificate of Authentication substantially in the form set forth in Exhibit A attached hereto has been manually executed in accordance herewith by the Trustee. Such executed Certificate of Authentication shall be conclusive proof that such Bond has been duly authenticated and delivered under this Indenture and that the owner thereof is entitled to the benefit of the trust hereby created.

Section 2.7     Payment of Principal and Interest; Interest Rights Preserved.

(a)     Subject to the provisions relating to book-entry only set forth in Section 2.14 hereof, the principal of any Bond shall be payable upon presentation and surrender of such Bond to the Principal Office of the Trustee. The principal of the Bonds shall be payable in immediately available funds. Such payments shall be made to the Registered Owner of the Bond so delivered, as shown in the Bond Register maintained by the Trustee.

(b)     Each Bond shall accrue interest and be payable as to interest as follows:

(1)     Each Bond shall accrue interest at the rate set forth in Section 2.2 hereof

(2)     Subject to the provisions of paragraph (c) below, the interest due on any Bond on each Interest Payment Date shall be paid to the Registered Owner of such Bond as shown on the Bond Register as of the Regular Record Date. The amount of interest so payable on each Interest Payment Date shall be computed on the basis of a 360-day year of twelve 30-day months.

(c)     Any interest on any Bond which is payable, but is not punctually paid or provided for, on any Interest Payment Date and within any applicable grace period (herein called "Defaulted Interest") shall forthwith cease to be payable to the owner of such Bond on the relevant Regular Record Date by virtue of having been such owner, and such Defaulted Interest shall be paid to the Person in whose name the Bond is registered at the close of business on a Special Record Date to be fixed by the Trustee, such date to be no more than 15 nor fewer than 10 days prior to the date of proposed payment. The Trustee shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each Bondholder at his address as it appears in the Bond Register, not fewer than 10 days prior to such Special Record Date.

(d)     Notwithstanding anything to the contrary herein, at no time shall the interest rate applicable to the Bonds (as a result of an Event of Default or otherwise) exceed the maximum interest rate permitted by law.

(e) Subject to the foregoing provisions of this Section, each Bond delivered under this Indenture upon registration of transfer of or exchange for or in lieu of any other Bond shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond.

Section 2.8 Persons Deemed Owners. The Issuer and the Trustee may deem and treat the Person in whose name any Bond is registered in the Bond Register on the Record Date as the absolute owner thereof (whether or not such Bond shall be overdue and notwithstanding any notation of ownership or other writing thereon made by anyone other than the Issuer or the Trustee) for the purpose of receiving payment of or on account of the principal of and (subject to Section 2.7) interest on, such Bond, and on any other date for all other purposes, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments so made to any such Registered Owner, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Bond.

Section 2.9 Additional Payments. The Trustee shall transfer any Additional Payments due to the Issuer promptly upon receipt thereof from the University to the Issuer at the address specified herein for notice for the Issuer or as otherwise directed by the Issuer; except that payments of the Annual Issuer Fee shall be remitted to the Issuer at the times specified in the Loan Agreement.

Section 2.10 Mutilated, Destroyed, Lost or Stolen Bonds.

(a) If any Bond shall become mutilated, lost, stolen or destroyed, the affected Bondholder shall be entitled to the issuance of a substitute Bond only as follows:

(1) in the case of a lost, stolen or destroyed Bond, the Bondholder shall (A) provide written notice of the loss, theft or destruction to the Trustee within a reasonable time after the Bondholder becomes aware of the loss, theft or destruction, (B) request the issuance of a substitute Bond and (C) provide evidence, satisfactory to the Trustee, of the ownership and the loss, theft or destruction of the affected Bond;

(2) in the case of a mutilated Bond, the Bondholder shall surrender the Bond to the Trustee for cancellation;

(3) in all cases, the Bondholder shall provide indemnity against any and all claims arising out of or otherwise related to the issuance of substitute Bonds pursuant to this Section 2.9 satisfactory to the Issuer, the Trustee and the University; and

(4) in all cases, upon payment by the affected Bondholder of the fees and expenses of the Trustee and the Issuer in connection with the issuance of any such substitute Bond.

Upon compliance with the foregoing, a substitute Bond of like tenor and denomination, executed by the Issuer, shall be authenticated by the Trustee and delivered to the Bondholder.

Notwithstanding the foregoing, the Trustee shall not be required to authenticate and deliver any substitute Bond for a Bond which has matured or is about to mature and, in any such case, the principal and interest then due or becoming due shall be paid by the Trustee in accordance with the terms of the mutilated, lost, stolen or destroyed Bond without substitution therefor.

(b) Every substituted Bond issued pursuant to this Section shall constitute an additional contractual obligation of the Issuer and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder.

(c) All Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or investment or other securities without their surrender.

Section 2.11 Cancellation of Surrendered Bonds. Bonds surrendered for payment, transfer or exchange and Bonds surrendered to the Trustee by the Issuer or by the University for cancellation shall be cancelled by the Trustee, and, upon request, such cancelled Bonds shall be delivered to the University.

Section 2.12 Waiver of Personal Liability; Limited Obligations. None of the Issuer, any Issuer member or any person executing the Bonds is liable personally on the Bonds or subject to any personal liability or accountability by reason of their issuance. The Bonds are limited obligations of the Issuer, payable solely from amounts received by or on behalf of the Issuer from certain revenues derived from the Project and pledged hereunder, or pledged to the payment of the Bonds pursuant to the Agreement. The State and the political subdivisions of the State are not and shall not be liable on the Bonds or any agreement entered into in connection therewith, including this Indenture and the Agreement, or for any other debt, obligation, or liability of the Issuer, whether in tort, contract, or otherwise. Pursuant to the Act, the State pledges to and agrees with the Bondholders that the State shall not limit or alter the rights vested in the Issuer by the Act to fulfill the terms of this Indenture and the Agreement or in any way impair the rights and remedies of such Bondholders until the Bonds, together with interest thereon, with the interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such Bondholders, are fully met and discharged.

Section 2.13 Validity of Bonds. The validity of the authorization and issuance of the Bonds is not dependent on and shall not be affected in any way by any proceedings taken by the Issuer or the Trustee with respect to or in connection with the Agreement. The recital contained in the Bonds that the same are issued pursuant to the Act and laws of the State shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

Section 2.14 Book-Entry System. The Bonds will initially not held as book-entry-only obligations. However, at the discretion of the Bondholders, the Bonds may be held by DTC, who will act as the Securities Depository for the Bonds, and the Bonds shall be registered in the name of Cede & Co. (as DTC's nominee). So long as Cede & Co. is the Registered Owner of the Bonds, as nominee of DTC, references herein to Registered Owners, Bondholders or holders of the Bonds shall mean Cede & Co. and shall not mean the beneficial owners of the Bonds.

(a) While DTC is the Securities Depository, the ownership interest of each of the beneficial owners of the Bonds will be recorded through the records of a DTC Participant. Transfers of beneficial ownership interests in the Bonds which are registered in the name of Cede & Co. will be accompanied by book entries made by DTC and, in turn, by the DTC Participants who act on behalf of the beneficial owners of the Bonds.

(b) With respect to Bonds registered in the name of the Securities Depository, the Issuer, the University and the Trustee shall have no responsibility or obligation to any Person on behalf of whom such Securities Depository holds an interest in the Bonds, except as provided in this Indenture. Without limiting the immediately preceding sentence, the Issuer, the University and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Securities Depository with respect to any ownership interest in the Bonds, (ii) the delivery to any Person, other than a Bondholder, as shown on the Bond Register, of any notice with respect to the Bonds or (iii) the payment to any Person, other than a

Registered Owner, as shown in the Bond Register of any amount with respect to principal of or interest on the Bonds.

(c) Notwithstanding any other provisions of this Indenture to the contrary, the Issuer and the Trustee shall be entitled to treat and consider the Person in whose name each Bond is registered in the Bond Register as the absolute owner of such Bond for the purpose of payment of principal and interest with respect to such Bond and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of and interest on the Bonds only to or upon the order of the respective owners, as shown in the Bond Register as provided in this Indenture, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of and interest on the Bonds to the extent of the sum or sums so paid.

(d) No Person other than a Registered Owner, as shown in the registration books, shall receive a Bond certificate evidencing the obligation of the Issuer to make payments of principal and interest pursuant to this Indenture.

(e) Any provision of this Indenture permitting or requiring the delivery of Bonds shall, while the book-entry system is in effect, be satisfied by the notation on the books of the Securities Depository, of the transfer of the beneficial owner's interest in such Bond.

(f) So long as the book-entry system is in effect, the Trustee shall comply with the terms of the DTC Letter of Representations.

(g) The Securities Depository may determine to discontinue providing its service with respect to the Bonds at any time by giving reasonable notice and all relevant information on the beneficial owners of the Bonds to the Issuer or the Trustee. If there is no successor Securities Depository appointed by the Issuer, the Trustee shall authenticate and deliver Bonds to the beneficial owners thereof. In the event that the University determines that the Securities Depository is incapable of discharging its responsibilities described herein or in any agreement among the Issuer, the Trustee and the Securities Depository and that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Issuer, at the direction of the University, shall (i) appoint a successor Securities Depository, qualified to act as such under Section 18(a) of the Securities and Exchange Act of 1934, as amended, notify the Securities Depository of the appointment of such successor Securities Depository and transfer one or more separate Bonds to such successor Securities Depository or (ii) notify the Securities Depository and owners, identified by the Securities Depository, of the availability through the Securities Depository of Bonds and transfer one or more separate Bonds to owners, identified by the Securities Depository, having Bonds credited to their accounts. In such event, the Bonds shall no longer be restricted to being registered in the Bond Register in the name of the Securities Depository, but may be registered in the name of the successor Securities Depository, or its nominee, or in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

Upon the written consent of 100% of the Beneficial Owners of the Bonds, the Trustee, in accordance with any agreement among the Issuer, the Trustee, and the Securities Depository, shall withdraw the Bonds from the Securities Depository, and authenticate and deliver Bonds fully registered to the assignees of the Securities Depository or its nominee. If the request for such withdrawal is not the result of any Issuer action or inaction, such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing, preparing and delivering such Bonds) of the Persons requesting such withdrawal, authentication and delivery.

Section 2.15 Payments to Securities Depository; Payments to Beneficial Owners. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on, such Bond and all notices with respect to such Bond shall be made and given, respectively, pursuant to DTC's rules and procedures, or in the case of a successor Securities Depository, pursuant to any agreement among the Issuer, the Trustee and the Securities Depository.

With respect to Bonds registered in the name of a Securities Depository (or its nominee) neither the Trustee, the Issuer nor the University shall have any obligation to any of its members or participants or to any Person on behalf of whom an interest is held in the Bonds.

Section 2.16 CUSIP Numbers. The Issuer has applied for a "CUSIP" number. The Issuer or the University will promptly notice the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.17 No Additional Bonds. No additional bonds, whether parity or subordinate, may be issued under or secured by this Indenture.



## ARTICLE III

### ESTABLISHMENT OF FUNDS AND ACCOUNTS

Section 3.1 Establishment of Funds for the Bonds. The following funds are hereby authorized to be established and maintained by the Trustee for the benefit of the Owners of all Bonds:

- (a) the Bond Fund;
- (b) the Capitalized Interest Fund;
- (c) the Project Fund; and
- (d) the Costs of Issuance Fund.

Section 3.2 Application of Proceeds of the Bonds. Upon receipt of proceeds of the Bonds in the amount of \$44,935,000 when the same shall have been sold by the Issuer, the Trustee shall forthwith deposit such money into the Project Fund;

Section 3.3 Application of University Deposit. (a) On or before the Issue Date, the University shall cause the sum of \$44,935,000 to be delivered to the Trustee, and the Trustee shall forthwith deposit such money in the following Funds:

- (i) the Trustee shall deposit the sum of \$2,697,036.15 into the Capitalized Interest Fund; and
- (ii) the Trustee shall deposit the sum of \$2,237,963.85 into the Costs of Issuance Fund; and
- (iii) the Trustee shall deposit the sum of \$40,000,000 into the Project Fund.

(b) Immediately after the deposits set forth in Section 3.3(a) of this Indenture have been made with the Trustee, the Trustee shall transfer \$5,000,000 from the Project Fund to KeyBank, representing the repayment of the Line of Credit as described in Section 5.08 of the Loan Agreement.

## ARTICLE IV

### PROJECT FUND

Section 4.1 Project Fund. The Trustee shall maintain the Project Fund for the purpose of funding costs of the Project.

(a) *Deposits into the Project Fund*. The Trustee shall, on the Issue Date, make the deposits specified in Sections 3.2 into the Project Fund.

(b) *Disbursements from the Project Fund*. On the Issue Date, the Trustee shall transfer \$35,000,000 from the Project Fund to the University to be used for the Project. Upon such transfer, the Trustee shall close the Project Fund.

## ARTICLE V

### COSTS OF ISSUANCE FUND; CAPITALIZED INTEREST FUND

Section 5.1 Costs of Issuance Fund. The Costs of Issuance Fund shall be maintained for the purpose of paying Costs of Issuance.

(a) *Deposits into the Costs of Issuance Fund.* The Trustee shall, on the Issue Date, make the deposit specified in Section 3.3(a) hereof into the Costs of Issuance Fund.

(b) *Disbursements from the Costs of Issuance Fund.* On or after the Issue Date, the Trustee shall make payments from the Costs of Issuance Fund upon receipt of a requisition from the University in substantially the form attached hereto as Exhibit B. On the Issue Date, disbursements may be made as provided in a closing certificate signed by an Authorized University Representative delivered to the Trustee. Upon the earlier of (i) the University's determination that all Costs of Issuance have been paid, as certified to the Trustee by an Authorized University Representative, or (ii) December 31, 2024, the Trustee shall transfer the balance on hand in the Costs of Issuance Fund to the Bond Fund, and the Costs of Issuance Fund shall then be closed. The Trustee shall be fully protected in disbursing the amounts set forth in any requisitions provided to it and on the closing certificate signed by an Authorized University Representative and shall have no duty or obligation to confirm that such requested disbursements constitute Costs of Issuance.

Section 5.2 Capitalized Interest Fund. The Capitalized Interest Fund shall be maintained for the purpose of paying a portion of the interest due on the Bonds.

(a) *Deposits into the Capitalized Interest Fund.* The Trustee shall, on the Issue Date, make the deposit specified in Section 3.3(a) hereof into the Capitalized Interest Fund.

(b) *Disbursements from the Capitalized Interest Fund.* On or after the Issue Date, the Trustee shall transfer amounts on deposit in the Capitalized Interest Fund to the Bond Fund in accordance with Section 6.1(a) in an amount sufficient to pay interest then due on the Bonds.

(c) *Investment of the Capitalized Interest Fund.* Interest earnings on investments in the Capitalized Interest Fund shall be transferred to the Bond Fund in accordance with 6.1(a)(1).

## ARTICLE VI

### BOND FUND

Section 6.1 Bond Fund. The Bond Fund shall be in the custody of the Trustee held for the benefit of the Bondholders. The University hereby authorizes and directs the Trustee to withdraw money from the Bond Fund sufficient to pay the principal of and interest on the Bonds as the same shall become due and payable.

(a) *Deposits into the Bond Fund*. The Trustee shall make the following deposits into the Bond Fund from the sources and in the order identified below:

- (1) Moneys on deposit in the Capitalized Interest Fund, including any investment earnings thereon;
- (2) As received, Revenues and earnings and proceeds of investments of moneys in the Bond Fund;
- (3) Moneys from the Costs of Issuance Fund required to be transferred to the Bond Fund pursuant to Section 5.1(b) hereof;
- (4) Released Funds paid to the Trustee by the Teach-Out Reserve Depository and the Operating Reserve Depository upon termination of the Teach-Out Reserve and Operating Reserve, respectively; and
- (5) Amounts received from the University pursuant to Section 5.01 of the Loan Agreement as the result of insufficient funds in the Bond Fund.

All other moneys or investments delivered to the Trustee with written direction from the University for deposit into the Bond Fund.

(b) *Disbursements from the Bond Fund*. The Trustee shall disburse money in the Bond Fund on the following dates, in the following amounts and in the following priority:

- (1) To the Owners, on each date on which a payment of interest on Bonds comes due, an amount equal to the interest on all of the Bonds then Outstanding coming due on such date;
- (2) To the Owners, on each date on which principal of the Bonds matures or is subject to redemption for as long as any of the Bonds are Outstanding and unpaid, an amount equal to the principal of the Bonds maturing or subject to redemption on such date;
- (3) To the Owners, on each date on which the Bonds are due by acceleration prior to maturity, the principal amount of Bonds due, plus accrued interest thereon; and
- (4) Upon payment in full of all Outstanding Bonds or the defeasance of all Outstanding Bonds pursuant to Article XIV of this Indenture, any remaining balance therein to the University.

## ARTICLE VII

### INVESTMENT OR DEPOSIT OF MONEYS

Section 7.1 Deposits. All moneys received by the Trustee under this Indenture shall be deposited by the Trustee, as provided herein. All deposits with the Trustee shall be secured as required by applicable law for such trust deposits.

Obligations purchased as an investment of moneys in any Fund shall be deemed at all times a part of such Fund. Any profit and income realized from such investments shall be credited to such Fund and any loss shall be charged to such Fund.

Section 7.2 Investment of Moneys in the Bond Fund and the Capitalized Interest Fund. At the written direction of an Authorized University Representative, the Trustee shall invest moneys held in the Bond Fund and the Capitalized Interest Fund in Authorized Investments, specified by the Authorized University Representative in such direction, maturing not later than the date or dates when the payments for which such moneys are held are to become due. Any such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the Bond Fund and the Capitalized Interest Fund, as the case may be. Upon the occurrence of, and during the continuation of, an Event of Default of which the Trustee has notice or is deemed to have notice under Section 11.4(e) hereof, the Trustee shall no longer take investment instructions from the University, but from a representative appointed by the Majority Holders.

The interest and income received upon such investments of the Bond Fund and the Capitalized Interest Fund and any interest paid by the Trustee or any other depository and any profit or loss resulting from the sale of any investment shall be added or charged to the extent received or paid and available for payment of amounts due on the Bonds, to the payment of the next-succeeding payment due on account of the Bonds and to the extent so applied, shall constitute payment in respect of the Loan Agreement (notice of which payment shall be given by the Trustee to the University), and any realized loss shall be made up by the University (the direction of the University to make investments as aforesaid to include an agreement so to do).

Section 7.3 No Liability for Investments. The Trustee may make any and all investments under this Article VII through its own investment department or that of its affiliates or subsidiaries. Moneys held in the Costs of Issuance Fund and the Project Fund shall be held uninvested.

(a) The Trustee shall have no responsibility with respect to the compliance by the University with respect to any covenant herein regarding investments made in accordance with this Article VII, other than to use its best reasonable efforts to comply with instructions from the University or direction of the Majority Holders, as applicable and permitted hereunder, regarding such investments. The Trustee may conclusively rely upon the written investment directions provided to it as to both the suitability and legality of the directed investments and such written direction shall be deemed to be a certification that such directed investments constitute Authorized Investments. Ratings of Authorized Investments shall be determined at the time of purchase of such Authorized Investments and without regard to ratings subcategories and the Trustee has no duty to confirm any such rating at the time of reinvestment of earnings thereon. Since the making of such investments will be subject to the University's direction, the Trustee specifically disclaims any obligation to the University for any loss, fee, or other charge arising from, or tax consequences of, investments, reinvestments, and liquidation of investments pursuant to the provisions of this Article VII. Absent receipt of written investment direction the Trustee shall hold amounts uninvested without liability for any interest.

(b) The Issuer acknowledges that to the extent regulations of the Comptroller of the Currency or any other regulatory entity grant the Issuer the right to receive brokerage confirmations of the security transactions as they occur, the Issuer specifically waives the right to receive such confirmations to the extent permitted by law. The Trustee will furnish the Issuer periodic cash transaction statements that shall include the detail for all investment transactions made by the Trustee under this Indenture.

(c) The Trustee may elect, but shall not be obligated, to credit the funds and accounts held by it with the moneys representing income or principal payments due on, or sales proceeds due in respect of, Authorized Investments in such funds and accounts, or to credit to Authorized Investments intended to be purchased with such moneys, in each case before actually receiving the requisite moneys from the payment source, or to otherwise advance funds for account transactions. The Issuer acknowledges that the legal obligation to pay the purchase price of Authorized Investments arises immediately at the time of the purchase. Notwithstanding anything else in this Indenture, (i) any such crediting of funds or assets shall be provisional in nature, and the Trustee shall be authorized to reverse any such transactions or advances of funds in the event that it does not receive good funds with respect thereto, and (ii) nothing in this Indenture shall constitute a waiver of any Trustee's rights as a securities intermediary under Uniform Commercial Code §9-206.

## ARTICLE VIII

### REDEMPTION OF BONDS

Section 8.1     Bonds Subject to Redemption and Purchase.     The Bonds shall be subject to redemption or purchase prior to maturity as set forth below:

(a)     *Optional Redemption.* Bonds shall not be subject to optional redemption prior to maturity.

(b)     *Special Mandatory Redemption of Bonds.* In the event (i) the Candidacy Status in accordance with COCA Policies and Procedures is terminated for any reason; (ii) the University abandons proceeding with the accreditation of the Osteopathic Medicine College by COCA; (iii) the University fails to obtain “Pre-Accreditation Status” in accordance with the COCA Policies and Procedures on or before January 31, 2025, (iv) if, after the University obtains such Pre-Accreditation Status, such status is terminated for any reason, or (v) if the University fails to obtain full accreditation status in accordance with the COCA Policies and Procedures on or before September 30, 2029, then in each case the University shall immediately notify the Trustee, in writing, and all of the Bonds then outstanding shall be subject to mandatory redemption on the earliest practicable Business Day thereafter for which timely notice of redemption may be given at a redemption price equal to 100% of the principal amount of such Bonds, together with unpaid interest accrued thereon to the date of redemption, from amounts deposited by the University with the Trustee.

(c)     *Purchase of Bonds.* The University further reserves the right to purchase any of the Bonds that are offered to the University at any price deemed appropriate by the Authorized University Representative. Any purchase of Bonds may be made with or without tender of Bonds and at either public or private sale. Bonds so purchased may, at the option of the University, be delivered to the Trustee for cancellation.

Section 8.2     Notice of Redemption.

(a)     *General.* The Trustee shall cause notice of any redemption of Bonds hereunder, to be mailed by first class mail, postage prepaid (except when DTC or a Securities Depository is the Registered Owner of all of the Bonds and except for any Person or entity owning or providing evidence of ownership satisfactory to the Trustee of a legal or beneficial ownership in at least \$1,000,000 of principal amount of Bonds who so requests, in which cases, by certified mail, return receipt requested), to the Registered Owners of all Bonds to be redeemed at the registered addresses appearing in the Bond Register kept for such purpose pursuant to Article II hereof. Each such notice shall (i) be mailed at least thirty (30) days prior to the redemption date for the Bonds, (ii) identify the Bonds to be redeemed if less than all Bonds are to be redeemed (specifying the CUSIP numbers, if any, assigned to the Bonds), (iii) specify the redemption date and the redemption price, (iv) state whether the notice is conditional or not as permitted by paragraph (b) hereof, and (v) state that on the redemption date the Bonds called for redemption will be payable at the office of the Trustee designated in such notice, that from the redemption date, provided funds have been deposited with the Trustee sufficient for redemption, interest will cease to accrue and that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or on the Bonds; provided, however, that if the Bonds are registered with DTC or a successor Securities Depository, redemption notices will be sent to Cede & Co. pursuant to the procedures set forth in the DTC Letter of Representations or the procedures of such successor Securities Depository. Any failure on the part of DTC or a successor Securities Depository, a direct participant or indirect participant to give such notice to the Owner or any defect therein shall not affect the sufficiency or validity of any proceedings for the redemption of the Bonds. No defect affecting any Bond, whether in the notice of redemption or mailing thereof (including any failure to mail such notice), shall affect the validity of the redemption proceedings for any other Bonds.

(b) *Conditional Notice.* If at the time of mailing of notice of a redemption there shall not have been deposited with the Trustee moneys sufficient to redeem all the Bonds called for redemption, such notice may state that it is conditional, that is, subject to the deposit of the redemption moneys with the Trustee on or prior to the redemption date, and such notice shall be of no effect unless such moneys are so deposited on or prior to the redemption date. If such redemption is not effectuated, the Trustee shall, at the expense of the University, within five days thereafter, give notice in the manner in which the notice of redemption was given that such moneys were not so received and shall rescind the redemption.



## ARTICLE IX

### COVENANTS OF THE ISSUER

Section 9.1 Payment of Principal of and Interest on Bonds. The Issuer covenants that it will promptly pay or cause to be paid, the principal of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bond according to the true intent and meaning thereof; provided, however, that the obligation of the Issuer hereunder to make or cause to be made any payment to the Trustee in respect of the principal of or interest on the Bonds shall be reduced by the amount of moneys, if any, on deposit in the Bond Fund and available to be applied by the Trustee toward the payment of the principal of or interest on the Bonds. The principal of and interest(except interest paid from the proceeds from the sale of the Bonds) are payable solely from the Trust Estate, including Revenues, which Revenues are specifically pledged and assigned for the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or this Indenture should be considered as assigning or pledging any funds or assets of the Issuer other than the Trust Estate in the manner and to the extent herein specified. Anything in this Indenture to the contrary notwithstanding, it is understood that whenever the Issuer makes any covenant involving financial commitments, it pledges no funds or assets other than the Trust Estate in the manner and to the extent herein specified, but nothing herein shall be construed as prohibiting the Issuer from using any other funds or assets.

Section 9.2 Compliance with Laws. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all resolutions pertaining thereto. The Issuer covenants that it is duly authorized under the Constitution and laws of the State, including particularly and without limitation the Act, to issue Bonds authorized hereby and to execute this Indenture and to make the pledge and covenants in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof.

Section 9.3 Further Assurances. Except to the extent otherwise provided in this Indenture, the Issuer shall not enter into any contract or take any action related to the Bonds by which the rights of the Trustee, the Bondholders or the University may be impaired and shall, from time to time, execute and deliver such further instruments and take such further action as may be required to carry out the purposes of this Indenture.

Section 9.4 Administrative Fees and Expenses. It is understood and agreed that pursuant to the provisions of Section 4.02 of the Loan Agreement, the University agrees to pay the Administrative Fees and Expenses. The Trustee may withdraw amounts owed to it for Trustee Fees and Expenses in accordance with Section 5.03 and Article XI hereof without further authorization of the Issuer or the University. Any amounts payable to the Issuer shall be paid by the University directly to the Issuer or the Trustee, respectively.

Section 9.5 Moneys to Be Held in Trust. All moneys required to be deposited with or paid to the Trustee for deposit into the Bond Fund, the Costs of Issuance Fund, the Capitalized Interest Fund or the Project Fund under any provision of this Indenture and all moneys in the Bond Fund, the Costs of Issuance Fund, the Capitalized Interest Fund or the Project Fund shall be held by the Trustee in trust, and for moneys deposited with or paid to the Trustee pursuant to Article XIV hereof, shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien hereof. The Issuer agrees that if it shall receive any moneys pursuant to applicable provisions of the Loan Agreement, it will forthwith upon receipt thereof pay the same over to the Trustee to be held, administered and disbursed by the Trustee in accordance with

the provisions of the Loan Agreement pursuant to which the Issuer may have received the same. Furthermore, if for any reason the Loan Agreement ceases to be in force and effect while any Bonds are outstanding, the Issuer agrees that if it shall receive any moneys derived from the Project, it will forthwith upon receipt thereof pay the same over to the Trustee to be held, administered and disbursed by the Trustee in accordance with provisions of the Loan Agreement that would be applicable if the Loan Agreement were then in force and effect.

Section 9.6     Rights of University under Loan Agreement. Nothing herein contained shall be deemed to impair the rights and privileges of the University set forth in the Loan Agreement. The Issuer and the Trustee agree that the University in its own name or in the name of the Issuer may enforce obligations of the Trustee, and all of the University's rights provided for in this Indenture.

Section 9.7     No Implied Duties. No implied duty or obligation of the Issuer shall be read into this Indenture, the Bonds, or the Loan Agreement.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default. Each of the following shall be an “Event of Default” hereunder:

- (a) Failure to make payment of the principal of any Bond when it becomes due and payable at maturity or earlier special mandatory redemption; or
- (b) Failure to make payment of any interest on any Bond when it becomes due and payable;  
or
- (c) The occurrence and continuance of any Loan Agreement Event of Default (including events of default under the Bond Documents as specified therein) after the expiration of any applicable cure periods; or
- (d) Default in the payment of any other amount required to be paid under this Indenture or in the performance or observance of any other of the covenants, agreements or conditions contained in this Indenture, or in the Bonds issued under this Indenture, and continuance thereof for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied shall have been given to the Issuer and the University by the Trustee, which may, but shall not be obligated to, give such notice and shall give such notice at the written request of the holders of not less than 25% in principal amount of the Bonds then Outstanding, unless the Trustee, or the Trustee and holders of a principal amount of Bonds not less than the principal amount of Bonds the holders of which requested such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; or
- (e) An event of default under any Bond Document after the expiration of any applicable cure periods.

Section 10.2 Acceleration and Annulment Thereof. If any Event of Default occurs and is continuing, the Trustee may, and upon written request of the Majority Holders shall, by notice in writing to the Issuer and the University, declare the principal of and accrued interest on all Bonds then Outstanding to be immediately due and payable; and upon such declaration the Bonds shall bear interest at the Default Rate, and the said principal, together with interest accrued thereon to the date of acceleration, shall become due and payable immediately at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding. Upon the occurrence of any acceleration hereunder, the Trustee shall immediately declare all payments under the Loan Agreement pursuant to Article IV thereof to be due and payable immediately.

After any acceleration hereunder, the Trustee, to the extent it has not already done so, shall notify in writing the Issuer and the University of the occurrence of such acceleration. Upon the occurrence of any acceleration hereunder, the Trustee shall notify by first class mail, postage prepaid, the owners of all Bonds Outstanding of the occurrence of such acceleration.

If, after the principal of the Bonds has become due and payable, all arrears of interest upon the Bonds are paid by the Issuer or the University, and the Issuer also performs all other things in respect to which it may have been in default hereunder and the Issuer or the University pays the charges of the Trustee and the Bondholders, including documented attorneys’ fees and expenses, then, and in every such case, the Majority Holders, by written notice to the Issuer and to the Trustee, may annul such acceleration and its consequences, and such annulment shall be binding upon the Trustee and upon all owners of Bonds issued hereunder. No such annulment shall extend to or affect any subsequent default or impair any right or remedy

consequent thereon. The Trustee shall forward a copy of any notice from Bondholders received by it pursuant to this paragraph to the University. Immediately upon such annulment, the Trustee shall cancel, by notice to the University, any demand for prepayment of all amounts due under the Loan Agreement made by the Trustee pursuant to this Section. The Trustee shall promptly give written notice of such annulment to the Issuer and the University, and, if notice of the acceleration of the Bonds shall have been given to the Bondholders, shall give notice thereof to the Bondholders.

Section 10.3 Other Remedies. If any Event of Default occurs and is continuing, the Trustee, before or after the principal of the Bonds becomes immediately due and payable, may enforce each and every right granted to it under the Loan Agreement and any supplements or amendments thereto, and in any other Bond Document. In exercising such rights and the rights given the Trustee under this Article, the Trustee may take such actions as, in the judgment of the Trustee, are in accordance with the provisions of Section 11.1.

Section 10.4 Legal Proceedings by Trustee. If any Event of Default has occurred and is continuing, the Trustee may, but shall not be obligated to, and upon the written request of the Majority Holders and receipt of indemnity to its satisfaction shall, subject to the provisions of Article XI hereof, in its own name:

(a) By mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, including the right to require the Issuer, subject to Section 15.13 hereof, to enforce any rights under the Loan Agreement and to require the Issuer to carry out any other provisions of this Indenture for the benefit of the Bondholders and to perform its duties under the Act; or

(b) Bring suit to enforce the Bonds; or

(c) By action or suit in equity require the Issuer, subject to Section 15.13 hereof, to account as if it were the trustee of an express trust for the Bondholders; or

(d) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders; or

(e) Take any other action pursuant to Section 6.02 of the Loan Agreement and any other action at law or in equity as may be necessary or desirable to enforce any provision of any Bond Document.

Section 10.5 Discontinuance of Proceedings by Trustee. If any proceeding commenced by the Trustee on account of any Event of Default is discontinued or is determined adversely to the Trustee, then the University, the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder as though no such proceedings had been commenced.

Section 10.6 Majority Holders May Direct Proceedings. The Majority Holders shall have the right, after furnishing indemnity satisfactory to the Trustee, to direct the method and place of conducting all remedial proceedings by the Trustee hereunder, provided that (a) such directions shall not be otherwise than in accordance with law or the provisions of this Indenture and (b) the Trustee shall have the right to decline to follow any such direction which in the reasonable opinion of the Trustee conflicts with law or with this Indenture or would be unjustly prejudicial to Bondholders not parties to such direction.

Section 10.7 Limitations on Actions by Bondholders. No Bondholder shall have any right to pursue any remedy hereunder unless:

(a) the Trustee shall have been given written notice of an Event of Default,

(b) the Majority Holders shall have requested the Trustee, in writing, to exercise the powers hereinabove granted or to pursue such remedy in its or their name or names,

(c) the Trustee shall have been offered indemnity satisfactory to it against costs, expenses and liabilities, including, without limitation, documented costs and expenses of its counsel, except that no offer of indemnification shall be required solely for a declaration of acceleration under Section 10.2, and

(d) the Trustee shall have failed to comply with such request within a reasonable time.

Notwithstanding the foregoing provisions of this Section or any other provision of this Indenture, the obligation of the Issuer shall be absolute and unconditional to pay hereunder, but solely from the Trust Estate, the principal of, and interest on, the Bonds to the respective owners thereof on the respective due dates thereof, and nothing herein shall affect or impair the right of action, which is absolute and unconditional, of such owners to enforce such payment.

Section 10.8 Trustee May Enforce Rights Without Possession of Bonds. All rights under this Indenture and the Bonds may be enforced by the Trustee without the possession of any Bonds or the production thereof at the trial or other proceedings relative thereto, and any proceeding instituted by the Trustee shall be brought in its name for the ratable benefit of the owners of the Bonds.

Section 10.9 Remedies Not Exclusive. No remedy herein conferred is intended to be exclusive of any other remedy or remedies, and each remedy is in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 10.10 Delays and Omissions Not to Impair Rights. No delays or omission in respect of exercising any right or power accruing upon any default shall impair such right or power or be a waiver of such default, and every remedy given by this Article may be exercised from time to time and as often as may be deemed expedient.

Section 10.11 Application of Moneys in Event of Default. Any moneys received by the Trustee under this Article shall be applied in the following order:

(a) To the payment of the Trustee Fees and Expenses, including but not limited to counsel fees and expenses, any disbursements of the Trustee with interest thereon at the prime rate of the Trustee, acting in its capacity as a bank, and its compensation in connection with any Event of Default or otherwise owed to the Trustee and the creation of a reasonable reserve for anticipated fees, costs and expenses; and

(b) To the payment of fees, costs, and expenses of the Issuer and any other payments due them in respect to the Unassigned Rights (including, without limitation, indemnification payments); provided that payment of amounts due to the Issuer under this Section shall not absolve the University from liability therefore except to the extent of the amounts received from the Trustee; and

(c) To the payment of interest then owing on the Bonds, and in case such moneys shall be insufficient to pay the same in full, then to the payment of such interest, without preference or priority of any installment of interest over any other installment of interest; and

(d) To the payment of principal then owing on the Bonds without regard to any acceleration in accordance with Section 10.2 hereof, and in case such moneys shall be insufficient to pay the same in full, then to the payment of such principal, without preference or priority of one over another; and

(e) To the payment of principal owed pursuant to an acceleration in accordance with Section 10.2 hereof, and in case such moneys shall be insufficient to pay the same in full, then to the payment of such principal, without preference or priority of one over another.

The surplus, if any, shall be paid to the University.

Section 10.12 Trustee and Bondholders Entitled to All Remedies under the Act. It is the purpose of this Article to provide such remedies to the Trustee and the Bondholders as may be lawfully granted under the provisions of the Act, but should any remedy herein granted be held unlawful, the Trustee and the Bondholders shall nevertheless be entitled to every other remedy granted hereunder and every remedy provided by the Act. It is further intended that, insofar as lawfully possible, the provisions of this Article shall apply to and be binding upon any trustee or receiver appointed under applicable law.

## ARTICLE XI

### THE TRUSTEE

Section 11.1 Duties, Immunities and Liabilities of Trustee. The Trustee hereby accepts the trusts imposed upon it by this Indenture, represents and covenants that it is fully empowered to accept said trusts, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default that may have occurred perform such duties and only such duties as are specifically imposed upon it as set forth in this Indenture. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs; provided that, except as to disbursement of funds for the purpose of making payments upon the Bonds when due or acceleration of the Bonds when required, before taking any action hereunder or under the Loan Agreement, if in the reasonable opinion of the Trustee any such action may tend to invoke expense or liability to the Trustee, it shall not be obligated to take such action unless it is first furnished with indemnity therefor satisfactory to it.

Notwithstanding anything herein to the contrary, the Trustee shall have no obligation to directly foreclose upon or directly take possession of or title to the real property which forms a part of the Project or otherwise take any action at the request or direction of the beneficial owners or Owners unless it shall have received indemnity satisfactory to it and such other conditions or requirements that are reasonable under the circumstances (i.e., satisfactory environmental surveys) shall have been satisfied.

(b) (i) At any time, the Majority Holders (or their attorneys duly authorized in writing) or (ii) so long as no Event of Default has occurred and no circumstance exists that with the giving of notice, the passage of time, or both, would constitute an Event of Default, the University, may remove the Trustee by an instrument or concurrent instruments in writing to the Trustee, the Issuer and the University.

(c) The Trustee may at any time resign by (i) providing written notice of such resignation to the Issuer and the University and (ii) providing notice of such resignation to the Bondholders by mail at the addresses shown on the Bond Register.

(d) Upon receiving such notice of resignation or removal or vacancy, the Majority Holders (or their attorneys duly authorized in writing) shall promptly appoint a successor Trustee by an instrument in writing. The Trustee shall not be relieved of its duties until such successor Trustee has accepted appointment.

(e) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective only upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee, at the expense of the University or any Bond Owner (on behalf of himself and all other Bond Owners) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the University and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the money, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but,

nevertheless at the request of the University or the request of the successor Trustee, such predecessor Trustee shall, at the expense of the University and upon prior payment or indemnification therefor, execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the rights, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the University shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such money, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, such successor Trustee shall mail a notice of the succession of such Trustee to the trusts hereunder to the Bond Owners at the addresses shown on the Bond Register.

(f) It is the intention that there shall at all times be one or more trustees under this Indenture qualified under the Indenture Act, at least one of whom shall at all times be a bank or corporation organized and doing business under the laws of the United States or of any state or of the District of Columbia or a corporation or other person permitted to act as trustee by the SEC (herein and in the Indenture Act referred to as the “institutional trustee”), which (A) is authorized under such laws to exercise corporate trust powers, and (B) is subject to supervision or examination by federal, state or District of Columbia authorities. Any successor Trustee appointed under the provisions of this Section shall be a trust company or bank having the powers of a trust company qualified under the Indenture Act to act as trustee, having a combined capital, surplus and undivided profits of at least \$50,000,000, subject to supervision or examination by federal, state, or District of Columbia authorities. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section. In no event shall the Issuer serve as trustee under this Indenture.

(g) Notwithstanding anything to the contrary herein, the Trustee shall not be responsible for any offering materials relating to the Bonds (except such statements provided by the Trustee for use in any such offering materials), or for the validity of the execution of this Indenture by the Issuer, or for the validity of the execution of the Loan Agreement or any other assignments to the Trustee hereunder or under any instrument or any supplemental instrument by the University, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the Project, or otherwise as to the maintenance of the security hereof; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenant, condition or agreement on the part of the University, as appropriate, except as set forth herein, but the Trustee may require of the University full information and advice as to the performance of the covenants, conditions and agreements aforesaid and of the condition of the physical property included in the Trust Estate. The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder.

(h) The Trustee’s rights to immunities and protection from liability hereunder and its rights to payment of fees and expenses shall survive its resignation or removal and the final payment or defeasance of the Bonds or the discharge of this Indenture.

(i) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation acts of God, earthquakes, fire, flood, hurricanes or other storms, wars, terrorism or similar military or quasi-military disturbances, sabotage, epidemic, pandemic,



quarantine restrictions, recognized public emergencies, riots, interruptions, loss or malfunction of utilities or communications services, accidents, labor disputes, or acts of civil disobedience, acts of civil or military authority or governmental action, it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under any such circumstances.

(j) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 11.2 Merger or Consolidation. Any entity or organization into which the Trustee may be merged or converted or with which it may be consolidated or any entity or organization resulting from any merger, conversion or consolidation to which it shall be a party or any entity or organization to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such entity or organization shall be eligible under subsection (f) of Section 11.1, shall be the successor to such Trustee without the executing or filing of any paper or any further act, anything herein to the contrary notwithstanding. Notice of such merger or consolidation shall be given to the University.

Section 11.3 Liability of Trustee.

(a) The recitals of facts herein and in the Bonds shall be taken as statements of the University, and the Trustee shall have no responsibility for the correctness of the same or for the validity or sufficiency of this Indenture, or any representations therein. The Trustee shall incur no responsibility in respect of any such documents, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable for following any instruction that it is directed to follow hereunder, and shall not be liable otherwise in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct, as determined in a final and non-appealable decision by a court of competent jurisdiction. The Trustee may become the Owner of Bonds as principal with the same rights it would have if it were not Trustee and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved, in a final and non-appealable decision by a court of competent jurisdiction, that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Majority Holders relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Indenture.

(d) The Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) The Trustee shall not be deemed to have knowledge of any default or Event of Default hereunder or a Loan Agreement Event of Default unless and until a Responsible Officer of the Trustee shall have actual knowledge thereof or and shall have received written notice thereof, at its Principal Office, and in the absence of the notice so delivered, the Trustee may conclusively assume there is no default except as

aforsaid. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of a default or event of default (however defined) thereunder. The Trustee shall not be responsible for the validity or effectiveness of any collateral given to or held by it.

(f) No provision of this Indenture shall require the Trustee to expend, advance or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers. Notwithstanding the above, the Trustee shall not seek indemnity before (1) making payments on the Bonds when due to the extent funds are available therefor in the funds and accounts held by the Trustee under this Indenture, or (2) causing an acceleration of Bonds when required by this Indenture.

(g) The Trustee shall have no responsibility for the initial recording or filing of this Indenture or any initial financing statements or any other document or instrument whatsoever. The Trustee shall, at the University's expense, file continuation statements of such originally filed financing statements provided that copies of the originally filed financing statements are timely delivered to the Trustee. In addition, unless the Trustee shall have been notified in writing that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (i) conclusively relying on such initial filing and description in filing any continuation statements pursuant to this Section and (ii) filing any continuation statements in the same filing offices as the initial filings were made. The University shall provide evidence to the Trustee that all necessary filings required by this paragraph have been made.

(h) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through affiliates, attorneys, accountants and other experts, agents, servicers, receivers, officers or employees and shall not be answerable for the conduct of such attorneys, accountants and other experts, agents, servicers or receivers provided they have been chosen with due care. All costs incurred by the Trustee and all documented compensation to all such attorneys, accountants and other experts, agents and receivers as may reasonably be employed in connection with the trusts hereof shall be paid by the University.

(i) The Trustee shall not be required to enter into any Supplemental Indenture or other supplement or amendment contemplated under Article XIII hereof that may or could involve it in liability or expense, or enlarge its duties hereunder or under any other instrument or agreement to which the Trustee is a party.

**Section 11.4 Right to Conclusively Rely on Documents.** The Trustee shall be protected in acting upon any notice, resolution, request, requisition, consent, order, certificate, direction, report, opinion, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. At the sole expense of the University, and with notice to the University, the Trustee may consult with counsel of its selection, who may be counsel of or to the University, and the advice of such counsel or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto is satisfactorily established, if disputed.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be

deemed to be conclusively proved and established by a certificate of an Authorized Issuer Representative or Authorized University Representative, and such certificate shall be full warrant and justification to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such certificate, but the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

Section 11.5 Preservation and Inspection of Documents. All documents maintained by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the University and its agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

Section 11.6 Trustee Compensation. The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and all advances, agent and counsel fees and expenses, and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services and, if it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary costs and expenses are occasioned by the gross negligence or willful misconduct of the Trustee, as determined in a final and non-appealable decision by a court of competent it shall not be entitled to compensation or reimbursement therefor. The Trustee shall have a first lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred. The Trustee's right to compensation and indemnification shall survive the satisfaction and discharge of this Indenture or its resignation or removal hereunder and payment in full of the Bonds.

## ARTICLE XII

### ACTS OF BONDHOLDERS; EVIDENCE OF OWNERSHIP

Section 12.1 Acts of Bondholders; Evidence of Ownership. Except as otherwise stated herein, any action to be taken by Bondholders may be evidenced by one or more concurrent written instruments of similar tenor signed or executed by such Bondholders (or their Beneficial Owners) in Person or by an agent appointed in writing. The fact and date of the execution by any Person of any such instrument may be proved by acknowledgment before a notary public or other officer empowered to take acknowledgments or by an affidavit of a witness to such execution. Where such execution is by an officer of a corporation or a member of a partnership, on behalf of such corporation or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient. The ownership of the Bonds shall be proved by the Bond Register. Any action by the Owner of any Bond shall bind all future Owners of the same Bond in respect of anything done or suffered by the Issuer or the Trustee in pursuance thereof.

## ARTICLE XIII

### AMENDMENTS AND SUPPLEMENTS

Section 13.1 Supplemental Indentures Not Requiring the Consent of the Owners. The Issuer and the Trustee may, with the consent of the University so long as no Event of Default shall have occurred and be continuing, without the consent of the Owners, but only with 21 days' notice to the Owners, enter into an indenture or indentures supplemental to this Indenture as for any one or more of the following purposes:

- (a) To cure any ambiguity or defect or omissions in this Indenture.
- (b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers, or authorities that may lawfully be granted to or conferred upon the Owners or the Trustee.
- (c) To subject to this Indenture additional security securing all Bonds.
- (d) To modify, amend, or supplement this Indenture, or any indenture supplemental hereto, in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States, and, if the Issuer and the Trustee so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions, and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute.
- (e) To add to the covenants and agreements of the Issuer contained in this Indenture other covenants and agreements thereafter to be observed for the protection of the Owners, or to surrender or limit any right, power, or authority herein reserved to or conferred upon the Issuer.
- (f) To further restrict investments to be made by the Trustee.

Section 13.2 Supplemental Indentures Requiring the Consent of the Owners and the University. Exclusive of supplemental indentures described in Section 13.1 hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Majority Owners shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee, with the consent of the University so long as no Event of Default shall have occurred and be continuing, of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable for the purposes of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing contained in this Section or Section 13.1 shall permit, or be construed as permitting, without the consent and approval of the Owners of 80% of the Bonds then Outstanding (a) an extension of the maturity of the principal of or the payment of interest on any Bond issued hereunder, or a reduction in the principal amount of any Bond or the rate of interest thereon; (b) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture; or (c) an alteration of the University's obligation to pay, when due, Loan Payments, and provided further, that nothing contained in this Section or Section 13.1 shall permit, or be construed as permitting, without the consent and approval of the Owners of 80% of the Bonds then Outstanding (y) a privilege or priority of any Bond or Bonds over any other Bond or Bonds or (z) the deprivation of the Owner of any Bond then Outstanding of the lien created by this Indenture, unless such amendment affects all Bonds at the same time. If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified

with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be given in the name of the Issuer in the manner herein provided. Such notice shall include a copy of the proposed supplemental indenture. If within 60 days, or such longer period as shall be prescribed by the Issuer following the giving of such notice, the Owners of the requisite percentage in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as therein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof; in any manner question the priority of the execution thereof; or enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

Section 13.3 Amendments to the Loan Agreement or Other Bond Documents Not Requiring the Consent of the Owners. The Issuer and the Trustee may, without the consent of the Owners, but with 21 days' notice to the Owners, consent to any amendment, change, or modification of the Loan Agreement or the other Bond Documents as may be required (i) for the purpose of curing any ambiguity, formal defect, or omission, (ii) so as to add additional rights or covenants in favor of the Trustee or Issuer.

Section 13.4 Amendments to the Loan Agreement or Other Bond Documents Requiring the Consent of the Owners. Except for amendments, changes or modifications permitted by Section 13.3 hereof, neither the Issuer nor the Trustee shall consent to any amendment, change, or modification of the Loan Agreement or the other Bond Documents, or waive any obligation or duty of the University under, as applicable, the Loan Agreement or the other Bond Documents without the prior written approval or consent of the Majority Owners; provided, however, that no such waiver, amendment, change, or modification shall, without the consent of the Owners of 80% of the Bonds then Outstanding, (a) permit termination or cancellation of the Loan Agreement or the other Bond Documents, (b) permit any reduction of the amounts payable under the Loan Agreement or the other Bond Documents, or change the dates when such payments are due or the provisions therein relating to prepayment, or (c) reduce the aggregate principal amount of Bonds required for consent to amendment of the Loan Agreement or the other Bond Documents. If at any time the Issuer or University shall request the consent of the Trustee to any such proposed amendment, change, or modification of the Loan Agreement or the other Bond Documents, the Trustee may, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change, or modification to be mailed in the same manner as herein provided with respect to supplemental indentures. Such notice shall be prepared by the Issuer or the University, shall briefly set forth the nature of such proposed amendment, change, or modification, and shall include a copy or copies of the proposed amendment. Notwithstanding the foregoing, the University may not request an amendment to any of the documents described in this Section during the occurrence and continuance of an Event of Default under this Indenture.

Section 13.5 Rights of the Trustee. The Trustee may, but shall not be obligated to, enter into any amendment, change, or modification to this Indenture or the Loan Agreement which affects the Trustee's own rights, duties, or immunities under this Indenture. Before the Trustee enters into any supplemental indenture or consents to any amendments to the Loan Agreement, there must have been delivered to the Trustee an Opinion(s) of Counsel substantially to the effect that such supplemental indenture and any other amendment is authorized or permitted by this Indenture and upon execution thereof such supplemental indenture or other amendment or supplement will be valid and binding upon each of the Issuer and the University, as applicable, and any required consents, in writing or other form acceptable to the Trustee, of the Majority Holders.

## ARTICLE XIV

### DEFEASANCE

Section 14.1 Defeasance. If the Issuer shall pay or cause to be paid to the holders and owners of the Bonds the principal of and interest to become due thereon and shall pay or cause to be paid all other sums payable hereunder by the Issuer, including all amounts owed to the Trustee for its fees and expenses, then these presents and the estate and rights hereby granted shall cease, terminate and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any property at the time subject to the lien of this Indenture which may then be in its possession except moneys or Governmental Obligations held by it for the payment of the principal of and interest on the Bonds.

(a) Provision for the payment of Bonds shall be deemed to have been made when the Trustee holds in the Bond Fund, in trust and irrevocably set aside exclusively for such payment, (i) money sufficient to make such payment of principal and interest on the Bonds; and/or (ii) noncallable, nonprepayable Governmental Obligations maturing as to principal and interest in such amounts and at such times as will provide sufficient money (without consideration of any reinvestment thereof) to make such payment of principal and interest on the Bonds.

No Bonds in respect of which a deposit under clause (a)(i) or (a)(ii) above has been made shall be deemed paid within the meaning of this Article unless the amounts deposited are sufficient to make all payments that might become due on the Bonds, with respect to which the Trustee may conclusively rely on a verification certificate or report of independent certified public accountants furnished to the Trustee by the University, a copy of which certificate or report shall also be furnished to Moody's, if the Bonds are then rated by Moody's, and S&P, if the Bonds are then rated by S&P, along with confirmation from Moody's, if the Bonds are then rated by Moody's, and S&P, if the Bonds are then rated by S&P, that defeasance as herein provided shall not adversely affect any such rating. Neither the obligations nor moneys deposited with the Trustee pursuant to this Section shall be withdrawn or used for any purpose other than, and shall be segregated and held in trust for, the payment of the principal and interest on the Bonds with respect to which such deposit has been made. In the event that such moneys or obligations are to be applied to the payment of principal of any Bonds more than 60 days following the deposit thereof with the Trustee, the Trustee shall mail a notice to the owners of the Bonds to be deemed paid, stating that such moneys or obligations have been deposited and identifying the Bonds for the payment of which such moneys or obligations are being held to all owners of Bonds for the payment of which such moneys or obligations are being held at their registered addresses and to S&P, if the Bonds are then rated by S&P, and Moody's, if the Bonds are then rated by Moody's.

(b) Anything in this Article XIV to the contrary notwithstanding, if money or Governmental Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of the principal of the Bonds and the interest thereon and the principal of such Bonds and the interest thereon shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the owner of each of the Bonds affected thereby.

The Issuer or the University may at any time surrender to the Trustee for cancellation by it any Bonds previously authenticated and delivered hereunder, which the Issuer or the University may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

## ARTICLE XV

### MISCELLANEOUS

Section 15.1 Limited Recourse. The Issuer shall not be obligated to pay the principal of or interest on the Bonds or any costs incidental thereto, except from the Trust Estate. The Issuer shall not be directly, indirectly, contingently, or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Loan Agreement, the Bonds or this Indenture, except only to the extent amounts are received for the payment thereof from the University under the Loan Agreement. Neither the faith and credit nor the taxing power of any State or any other political subdivision thereof or any political subdivision approving the issuance of the Bonds, nor the faith and credit of the Issuer, is pledged to the payment of the principal of or interest on the Bonds or any costs incidental thereto. The Issuer has no taxing power.

The Trustee hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the Trust Estate, and hereby agrees that if such amounts shall ever prove insufficient to pay all principal of and interest on the Bonds as the same shall become due (whether by maturity, acceleration or otherwise) or any costs incidental thereto, then the Trustee shall give notice to the University in accordance with Section 10.1 herein to pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, interest, or costs incidental thereto including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the University, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

Section 15.2 Deposit of Funds for Payment of Bonds. If the principal of any Bonds becoming due, either at maturity or otherwise, together with all interest accruing thereon to the due date, has been paid or provision therefor made in accordance with Section 14.1, all interest on such Bonds shall cease to accrue on the due date and all liability of the Issuer with respect to such Bonds shall likewise cease, except as hereinafter provided. Thereafter the owners of such Bonds shall be restricted exclusively to the funds so deposited for any claim of whatsoever nature with respect to such Bonds, and the Trustee shall hold such funds in trust for such owners.

Moneys which remain unclaimed two years after the due date shall, subject to any applicable State law, at the written request of the University, and if the University is not, at the time, to the knowledge of the Trustee, in default with respect to any covenant in the Loan Agreement or the Bonds, be paid to the University pursuant to its payment instructions, and the owners of the Bonds for which the deposit was made shall thereafter be limited to a claim against the University. Such moneys shall be held in trust uninvested or invested in Governmental Obligations maturing the next day.

Section 15.3 No Rights Conferred on Others. Nothing herein contained shall confer any right upon any Person other than the parties hereto, the University and the owners of the Bonds.

Section 15.4 Severability. If any term or provision of this Indenture or the Bonds or the application thereof for any reason or circumstance shall to any extent be held invalid or unenforceable, the remaining provisions or the application of such term or provision to Persons and situations other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision hereof and thereof shall be valid and enforced to the fullest extent permitted by law.

Section 15.5 Notices. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as



shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE ISSUER:

Buffalo and Erie County Industrial Land Development Corporation  
95 Perry Street – Suite 403  
Buffalo, New York 14203  
Attention: Chief Executive Officer

WITH A COPY TO:

Hodgson Russ LLP  
677 Broadway – Suite 401  
Albany, New York 12207  
Attention: Christopher C. Canada, Esq.

IF TO THE UNIVERSITY:

D’Youville University  
320 Porter Avenue  
Buffalo, New York 14201  
Attention: Chief Financial Officer

WITH A COPY TO:

Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, New York 13202  
Attention: Paul W. Reichel, Esq.

IF TO THE TRUSTEE:

UMB Bank, N.A., as Trustee  
100 William Street – Suite 1850  
New York, New York 10038  
Attention: Raymond Haniff, Vice President

WITH A COPY TO:

Ballard Spahr LLP  
1675 Broadway – 19<sup>th</sup> Floor  
New York, New York 10019  
Attention: David J. Fernandez, Esq.

All notices or other communications by the Trustee to any Bondholder hereunder shall be deemed to have been sufficiently given and received by such Bondholder upon the mailing thereof by first class mail.

The Issuer, the University and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

If the University fails to timely make or pay any payment hereunder or under the Loan Agreement or upon notification by the Internal Revenue Service that the interest on the Bonds is, or may be, subject to federal income taxation, the Trustee promptly shall inform the Issuer of such an occurrence by sending written notice to the address above or the latest address specified by the Issuer in writing.

Section 15.6 Successors and Assigns. All the covenants, promises and agreements in this Indenture contained by or on behalf of the Issuer, or by or on behalf of the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 15.7 Headings for Convenience Only. The descriptive headings in this Indenture are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 15.8 No Obligation to Enforce Assigned Rights. Notwithstanding anything to the contrary in this Indenture or the Loan Agreement, the Issuer shall have no obligation to and instead the Trustee, in accordance with this Indenture or the Loan Agreement, shall have the right, without any direction from or action by the Issuer, to take any and all steps, actions and proceedings, to enforce any or all rights of the Issuer under this Indenture or the Loan Agreement (other than the Unassigned Rights), including, without limitation, the rights to enforce the remedies upon the occurrence and continuation of an Event of Default and the obligations of the University under the Loan Agreement.

Section 15.9 Counterparts. This Indenture may be executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall together constitute but one and the same instrument.

Section 15.10 Choice of Law and Venue. This Indenture and the Bonds are contracts made under the laws of the State and shall be governed by and construed in accordance with the Constitution and laws applicable to contracts made and performed in the State. This Indenture and the Bonds shall be enforceable in the State, and any action arising out of this Indenture or the Bonds involving the Issuer shall be filed and maintained in Erie County, New York, unless the Issuer waives this requirement.

Section 15.11 Nonimpairment. Nothing in this Indenture shall be deemed or construed to limit, impair or affect in any way the Issuer's right to enforce the Unassigned Rights, regardless of whether there is then existing an Event of Default (including, without limitation, a payment default), or any action based thereon or occasioned by an Event of Default or alleged Event of Default, and regardless of any waiver or forbearance granted by the Trustee or any Bond Holders in respect thereof. Any default or Event of Default in respect of the Unassigned Rights may only be waived with the Issuer's written consent.

Section 15.12 Payments Due on non-Business Days. In any case where the date of payment of interest on or principal of any Bonds shall not be a Business Day, then payment of such interest or principal need not be made by the Trustee on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date or Maturity Date, as applicable, and no interest shall accrue for the period from and after such date.

Section 15.13 Issuer's Performance. None of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from the Trust Estate, or unless Issuer shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder to perform any administrative service with respect to the Bonds or the Project (including, without limitation, record keeping and legal services), it being understood that such services shall be performed or provided by the Trustee (to the extent provided in this Indenture) or the University. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Indenture, the Loan Agreement, and any and every Bond executed, authenticated and delivered under this Indenture; provided, however, that the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof unless and until it shall have (i) been directed to do so in writing by the University, the Trustee, or the Bondholders having the authority to so direct; (ii) received from the University assurance satisfactory to the Issuer that the Issuer's expenses incurred or to be incurred in connection with taking such action or executing such instrument have been or will be paid or reimbursed to the Issuer; and (iii) if applicable, received in a timely manner the instrument or document to be executed, in form and substance satisfactory to the Issuer.

In complying with any provision herein or in the Loan Agreement, including, but not limited to, any provision requiring the Issuer to "cause" another Person to take or omit any action, Issuer shall be entitled to rely conclusively (and without independent investigation or verification) (i) on the faithful performance by the Trustee or the University, as the case may be, of their respective obligations hereunder and under the Loan Agreement and (ii) upon any written certification or opinion furnished to the Issuer by the Trustee or the University, as the case may be. In acting, or in refraining from acting, under this Indenture, the Issuer may conclusively rely on the advice of its Counsel. The Issuer shall not be required to take any action hereunder or under the Loan Agreement that it reasonably believes to be unlawful or in contravention hereof or thereof.

Section 15.14 Consent of Trustee or Holders of the Bonds. Notwithstanding any provision of this Indenture to the contrary, except as applicable to the Unassigned Rights, in the case of any provision of this Indenture providing for the consent or approval of a Bondholder or the Trustee, the Issuer acknowledges and agrees that the granting, approval, rejection or withholding of any requested consent, waiver or authorization to take or refrain from taking any action contemplated or required hereunder may be withheld or granted in the Trustee's or the Bondholder's sole and absolute discretion.

Section 15.15 U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

*[Signature page follows]*

IN WITNESS WHEREOF, the Issuer has caused these presents to be signed in its name and behalf by one of its duly authorized officers and, to evidence its acceptance of the trust hereby created, the Trustee has caused these presents to be signed in its behalf by one of its duly authorized officers.

BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

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

UMB BANK, N.A., as Trustee

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

EXHIBIT A  
FORM OF BOND

R-1

\$44,935,000

THE BONDS EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS SO REGISTERED OR UNLESS IT IS SOLD TO AN “APPROVED BUYER” AS DEFINED IN THE INDENTURE AND PURSUANT TO THE TERMS THEREOF.

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION  
REVENUE BOND (D’YOUVILLE UNIVERSITY PROJECT),  
SERIES 2024A (TAXABLE)

<u>MATURITY DATE</u>	<u>DATED</u>	<u>INTEREST RATE</u>	<u>CUSIP</u>
November 1, 2030	August 13, 2024	8.375% per annum	11943KEG3

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: FORTY-FOUR MILLION NINE HUNDRED THIRTY-FIVE THOUSAND DOLLARS

Buffalo and Erie County Industrial Land Development Corporation, a New York public benefit corporation (the “Issuer”), for value received, hereby promises to pay (but only out of the Trust Estate, as hereinafter defined) to the Registered Owner identified above, or registered assigns, on the Maturity Date, the Principal Amount (as defined in the Indenture) in lawful money of the United States of America; and to pay interest on the Principal Amount hereof, in like lawful money from the date of initial authentication and delivery hereof until payment of such Principal Amount payable hereon shall be discharged as provided in the Indenture of Trust dated as of August 1, 2024 (the “Indenture”) between the Issuer and UMB Bank, N.A., as trustee (the “Trustee”), at the Interest Rate set forth above, payable on the Maturity Date (stated above) or on the date on which the Bonds are subject to acceleration, at the rate per annum set forth herein..

The principal of and interest on the Bonds of this issue are payable in any coin or currency of the United States of America that, on the respective dates of payment, is legal tender for public and private debts. For so long as the Bonds of this issue are in fully immobilized form, payments of principal and interest thereon shall be made as provided in accordance with the operational arrangements of DTC referred to in the Blanket Issuer Letter of Representations from the Issuer to The Depository Trust Company.

This Bond is one of a series of bonds entitled “Buffalo and Erie County Industrial Land Development Corporation Revenue Bonds (D’Youville University Project), Series 2024A (Taxable)” issued in the aggregate principal amount of \$44,935,000 pursuant to a resolution duly adopted by the board of directors of the Issuer on February 28, 2024 (the “Bond Resolution”), and pursuant to the Indenture. Proceeds of the Bonds of this issue will be loaned to D’Youville University, a New York not-for-profit education corporation (the “University”) pursuant to a loan agreement dated as of August 1, 2024 (the “Loan Agreement”) by and between the Issuer and the University for the purposes described in the Indenture.

Capitalized terms used in this Bond, not otherwise defined, have the meanings given such terms in the Indenture. Reference is hereby made to the Indenture (copies of which are on file at the Trustee's office located at 100 William Street – Suite 1850, New York, New York 10038) and all indentures supplemental thereto for a description of the rights thereunder of the Registered Owners of the Bonds of this issue, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all the provisions of which Indenture the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

THIS BOND IS A LIMITED OBLIGATION OF THE ISSUER. THIS BOND IS NOT A DEBT OF THE STATE OF NEW YORK (THE "STATE") OR OF THE POLITICAL SUBDIVISIONS OF THE STATE. THIS BOND SHALL NOT OBLIGATE THE STATE, THE ISSUER OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY ANY TAX OR MAKE ANY APPROPRIATION FOR PAYMENT THEREOF OR WITH RESPECT THERETO. THIS BOND IS ISSUED BY THE ISSUER UNDER THE ACT AND IS PAYABLE SOLELY FROM THE FUNDS PLEDGED FOR ITS PAYMENT IN ACCORDANCE WITH THE INDENTURE AND THE LOAN AGREEMENT. THE ISSUER HAS NO TAXING POWER. THIS BOND HAS BEEN AUTHORIZED AND ISSUED PURSUANT TO THE LAWS OF THE STATE, INCLUDING PARTICULARLY THE ACT. THIS BOND SO ISSUED SHALL NOT BE INVALID FOR ANY IRREGULARITY OR DEFECT IN THE PROCEEDINGS FOR ITS SALE OR ISSUANCE.

None of the Issuer, any director of the Issuer or any person executing the Bonds is liable personally on the Bonds or subject to any personal liability or accountability by reason of their issuance. The Bonds are limited obligations of the Issuer, payable solely from the Trust Estate. The State and the political subdivisions of the State are not and shall not be liable on the Bonds or any agreement entered into in connection therewith, including this Indenture and the Agreement, or for any other debt, obligation, or liability of the Issuer, whether in tort, contract, or otherwise. Pursuant to the Act, the State pledges to and agrees with the Bondholders that the State shall not limit or alter the rights vested in the Issuer by the Act to fulfill the terms of the Indenture and the Agreement or in any way impair the rights and remedies of such Bondholders until the Bonds, together with interest thereon, with the interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such Bondholders, are fully met and discharged.

The Issuer shall not be liable for payment of the principal of and interest on the Bonds or any other costs, expenses, losses, damages, claims or actions of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Indenture, the Bonds or any other documents, except only to the extent amounts are received for the payment thereof from the University under the Loan Agreement. The Issuer has no taxing power.

The Bonds of this issue are subject to redemption prior to maturity as set forth in Section 8.1 of the Indenture. If a Loan Agreement Event of Default or an Event of Default occurs, this Bond shall bear interest at the Default Rate and may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture or the Loan Agreement.

The Indenture and the rights and obligations of the Issuer and of the owners of the Bonds of this issue and of the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION has caused this Bond to be signed in its name and on its behalf by the manual or facsimile signature of its Authorized Signatory.

BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

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

## CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture, and is one of the Buffalo and Erie County Industrial Land Development Corporation Revenue Bonds (D’Youville University Project), Series 2024A (Taxable) dated August 13, 2024.

UMB BANK, N.A., as Trustee

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

Date of Authentication: August \_\_, 2024



[FORM OF ASSIGNMENT]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ to transfer the within Bond on the books kept for registration thereof with full owner of substitution in the premises.

Please insert social security or other identifying number of assignee:

\_\_\_\_\_

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

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

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature must be guaranteed by an eligible guarantor.

EXHIBIT B

COSTS OF ISSUANCE FUND REQUISITION CERTIFICATE

TO: UMB Bank, N.A.  
100 William Street – Suite 1850  
New York, New York 10038

FROM: D’Youville University

SUBJECT: Indenture of Trust dated as of August 1, 2024 (the “Indenture”) regarding the Buffalo and Erie County Industrial Land Development Corporation Revenue Bonds (D’Youville University Project), Series 2024A (Taxable) (the “Bonds”)

You are instructed to make the disbursement set forth in Schedule A attached hereto (in the total amount of \$ \_\_\_\_\_) and indicated on the attached invoices from the Costs of Issuance Fund under the Indenture.

The undersigned does hereby represent, warrant and certify under the Indenture that:

1. The expenditures for which money is requested hereby represent proper Costs of Issuance of the Bonds and have not been included in a previous Requisition Certificate.
2. The money requested hereby is not greater than that necessary to meet obligations due and payable. The money requested does not include retention or other money not yet due or earned under service contracts.
3. With respect to this disbursement, the University (i) certifies it has reviewed any wire instructions set forth herein to confirm such wire instructions are accurate, (ii) agrees to indemnify and hold harmless the Trustee from and against any and all claim, demand, loss, liability, or expense sustained, including but not limited to attorney fees, and expenses resulting directly or indirectly as a result of making the disbursement requested hereunder, and (iii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with its instructions herein.

Terms capitalized herein have the meanings specified in the Indenture.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

Authorized Officer

SCHEDULE A

Name and Address of Person to Whom Disbursement is to be <u>Made</u>	<u>Amount</u> *	<u>Description of Purpose</u>

\*See attached invoices

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## **APPENDIX D**

### **FORM OF THE LOAN AGREEMENT**

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BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

AND

D'YOUVILLE UNIVERSITY

---

LOAN AGREEMENT

---

DATED AS OF AUGUST 1, 2024

---

CERTAIN RIGHTS OF BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION (THE "ISSUER") UNDER  
THIS LOAN AGREEMENT, AND CERTAIN MONEYS DUE AND TO  
BECOME DUE TO THE ISSUER HEREUNDER, HAVE BEEN  
ASSIGNED TO UMB BANK, N.A., AS TRUSTEE (THE "TRUSTEE")  
PURSUANT TO A PLEDGE AND ASSIGNMENT DATED AS OF  
AUGUST 1, 2024 FROM THE ISSUER TO THE TRUSTEE.

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## LOAN AGREEMENT

THIS LOAN AGREEMENT dated as of August 1, 2024 (the “Loan Agreement”) by and between BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, a not-for-profit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 95 Perry Street – Suite 403, Buffalo, New York (the “Issuer”) and D’YOUVILLE UNIVERSITY (the “University”), a not-for-profit education corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 320 Porter Avenue, Buffalo, New York;

### WITNESSETH:

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) (A) authorizes any county to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

WHEREAS, in January, 1982, a certificate of incorporation was filed with the New York Secretary of State’s Office (the “Certificate of Incorporation”) creating the Issuer as a public instrumentality of Erie County, New York (the “County”) pursuant to the Enabling Act; and

WHEREAS, the Issuer, as authorized and empowered by the Enabling Act and resolutions adopted by the Erie County Legislature (the “County Legislature”) on July 24, 2009, November 19, 2009, March 25, 2010, and June 20, 2011, respectively (collectively, the “Sponsor Resolution”), in January, 2024 accepted an application (the “Application”) from the University, which Application requested that the Issuer consider undertaking a project (the “Project”) for the benefit of the University, said Project to consist of the following: (A) the funding of certain initial startup costs of a new osteopathic medicine college (the “College of Osteopathic Medicine”) being developed by the University; (B) the funding of the Capitalized Interest Fund (as defined herein) for purposes of the payment of interest on the Bonds (as defined herein) through May 1, 2025; (C) the financing of all or a portion of the costs of the foregoing by the issuance of the Bonds; and (D) paying a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds and any reserve funds as may be necessary to secure the Bonds; and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on February 28, 2024 (the “Bond Resolution”), the board of directors of the Issuer (A) determined that the Project constitutes a “Type II Action,” as such quoted term is defined under Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), and therefore that no further action with respect to the Project was required under SEQRA; (B) authorized the circulation of a preliminary limited offering memorandum (the “Preliminary Limited

Offering Memorandum”) in connection with the marketing of the Bonds and (C) authorized the issuance of the Bonds for the purpose of financing a portion of the costs of the Project, delegating to the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer authority to determine the final details of the Bonds (the “Bond Details”) once the marketing of the Bonds is completed and the University has agreed to the Bond Details; and

WHEREAS, the Issuer will now issue the Bonds under the Bond Resolution, a certificate of determination (the “Certificate of Determination”) executed by the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer and the Indenture; and

WHEREAS, prior to or simultaneously with the issuance of the Bonds, the Issuer and the University will execute and deliver this Loan Agreement, pursuant to which (A) the Issuer will agree (i) to issue the Bonds, and (ii) to make a loan to the University of the proceeds of the Bonds (the “Loan”) for the purpose of assisting in financing the Project, and (B) in consideration of the Loan, the University will agree (i) to cause the Project to be undertaken and completed, (ii) to use the proceeds of the Loan disbursed under the Indenture to pay (or reimburse the University for the payment of) the costs of the Project, and (iii) to make payments sufficient in amount to pay when due all amounts due with respect to the Bonds to or upon the order of the Issuer in repayment of the Loan, which payments shall include amounts equal to the Loan Repayments (as defined herein) due on the Bonds; and

WHEREAS, as security for the Bonds, the Issuer will execute and deliver to the Trustee a pledge and assignment dated as of August 1, 2024 (the “Pledge and Assignment”) from the Issuer to the Trustee, and acknowledged by the University, which Pledge and Assignment will assign to the Trustee certain of the Issuer’s rights under this Loan Agreement; and

WHEREAS, pursuant to the Pledge and Assignment, basic Loan Repayments made by the University under this Loan Agreement are to be paid directly to the Trustee; and

WHEREAS, the University’s obligations pursuant to this Loan Agreement will be secured by a pledge and security agreement dated as of August 1, 2024 (the “Pledge and Security Agreement”) from the University to the Trustee, pursuant to which the University grants to the Trustee a security interest in the Gross Revenues (as defined therein) of the University; and

WHEREAS, pursuant to an amended and restated intercreditor agreement dated as of August 1, 2024 (the “Intercreditor Agreement”) by and between the Trustee and the Series 2020 Trustee (as defined herein), the Trustee and the Series 2020 Trustee will agree that their respective rights with respect to the Gross Revenues are intended to be *pari passu*, to be shared *pro rata* as described in the Intercreditor Agreement; and

WHEREAS, as additional security for the Bonds, the University will execute and deliver to the Issuer a mortgage dated as of August 1, 2024 (the “Mortgage”), which Mortgage shall be assigned by the Issuer to the Trustee pursuant to an assignment of mortgage dated as of August 1, 2024 (the “Mortgage Assignment”); and

WHEREAS, the operation of a college or university of osteopathic medicine in the United States requires accreditation from the American Osteopathic Association’s Commission on Osteopathic College Accreditation (“COCA”), and the requirements for accreditation of the College of Osteopathic Medicine include, among other things, the funding of sufficient escrows to provide for reserves of the University until the date upon which the first class of students of the College of Osteopathic Medicine graduates after COCA grants full accreditation (the “COCA Escrow Requirements”); and

WHEREAS, the University has deposited funds sufficient to satisfy the COCA Escrow Requirements into (i) a reserve account (the “Teach-Out Reserve”) held by Wilmington Trust, National Association (the “Teach-Out Reserve Depository”), established pursuant to the Multi-Party Account Agreement dated as of February 9, 2024 (the “Teach-Out Reserve Depository Agreement”) by and among COCA, the University and the Teach-Out Reserve Depository, and (ii) a reserve account (the “Operating Reserve”) held by Goldman Sachs & Co. LLC (the “Operating Reserve Depository”), established as required by the Operating Reserve Fund Account Agreement dated as of February 9, 2024 (the “Operating Reserve Agreement”) by and between the University and COCA; and

WHEREAS, pursuant to the letter of instructions regarding teach-out reserve fund dated August 13, 2024 (the “Teach-Out Reserve Letter of Instructions”) from the Issuer and the University to the Trustee, and accepted by the Trustee, the University has irrevocably instructed the Trustee to deliver to the Teach-Out Reserve Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing the Teach-Out Reserve Depository to pay to the Trustee, upon termination of the Teach-Out Reserve, all moneys then on deposit in the Teach-Out Reserve, to be deposited by the Trustee into the Bond Fund established under the Indenture; and

WHEREAS, pursuant to the letter of instructions regarding operating reserve fund dated August 13, 2024 (the “Operating Reserve Letter of Instructions”) from the Issuer and the University to the Trustee, and accepted by the Trustee, the University has irrevocably instructed the Trustee to deliver to the Operating Reserve Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing the Operating Reserve Depository to pay to the Trustee, upon termination of the Operating Reserve, all moneys then on deposit in the Operating Reserve, to be deposited by the Trustee into the Bond Fund established under the Indenture; and

WHEREAS, in connection with the issuance of the Bonds, the University will execute and deliver an environmental compliance and indemnification agreement dated as of August 1, 2024 (the “Environmental Compliance Agreement”) from the University to the Issuer and the Trustee, pursuant to which, among other things, the University indemnifies the Issuer and the Trustee against certain environmental liabilities related to the Mortgage Property; and

WHEREAS, the Bonds will be initially purchased by Loop Capital Markets, acting as underwriter for the Bonds (the “Underwriter”) pursuant to a bond purchase agreement dated August 1, 2024 (the “Bond Purchase Agreement”) by and among the Underwriter, the Issuer and the University. The Underwriter will utilize the Preliminary Limited Offering Memorandum and a final limited offering memorandum (the “Limited Offering Memorandum”) in connection with the initial offering of the Bonds. The Underwriter also intends to obtain a rating of the Bonds from one or more securities rating agencies (each such rating agency that provides a rating of the Bonds, a “Rating Agency”); and

WHEREAS, the financing of the Project through the making of the loan pursuant to this Loan Agreement is for a proper purpose, to wit, relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest pursuant to the provisions of the Enabling Act; and

WHEREAS, all things necessary to constitute this Loan Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Loan Agreement have in all respects been duly authorized by the Issuer and the University;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. Unless the context or use indicates another or different meaning or intent, capitalized terms used in this Loan Agreement and the preambles hereto not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Appendix A and made a part hereof.

Section 1.02. Article and Section Headings. The headings or titles of the several Articles and Sections of this Loan Agreement, and the Table of Contents appended hereto, are solely for convenience of reference and shall not affect the meaning or construction of the provisions hereof.

Section 1.03. Interpretation. The singular form of any word used herein shall include the plural, and vice versa, if applicable. The use of a word of any gender shall include all genders, if applicable. This Loan Agreement and all of the terms and provisions hereof shall be construed so as to effectuate the purposes contemplated hereby and to sustain the validity hereof. All references to any person or entity defined in Section 1.01 shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity. Unless otherwise specified herein, all references to specific times shall be deemed to refer to Eastern Prevailing Time.

ARTICLE II  
REPRESENTATIONS

Section 2.01. Representations by the Issuer. The Issuer makes the following representations and warranties to the University:

(a) The Issuer is duly established under the provisions of the Enabling Act and has the power to (i) enter into this Loan Agreement and the Indenture, (ii) issue the Bonds in order to finance the Project and (iii) carry out its other obligations in connection therewith pursuant to this Loan Agreement. The facilities to be financed with the proceeds of the Bonds constitute facilities authorized to be financed under the Act and in furtherance of the purposes for which the Issuer was established.

(b) All requirements have been met and procedures have occurred in order to authorize the execution and delivery of this Loan Agreement. The Issuer has taken all necessary action and has complied with all provisions of the law required to make this Loan Agreement a valid and binding limited obligation of the Issuer, except to the extent limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity, or by public policy.

(c) The Bonds have been duly authorized, executed and delivered by the Issuer. Nothing in this Loan Agreement shall be construed as requiring the Issuer to provide any financing for the Project other than the proceeds of the Bonds or to provide sufficient moneys for all of the cost of financing the Project.

(d) To the best knowledge of the Issuer, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Issuer that (i) affects or seeks to prohibit, restrain or enjoin the issuance, execution or delivery of the Bonds, the origination of the loan or the lending of the proceeds of the Bonds to the University, or the execution and delivery of the Bond Documents, (ii) affects or questions the validity or enforceability of the Bonds or the Bond Documents or (iii) questions the tax-exempt status of interest on the Bonds.

Section 2.02. Representations by the University. The University makes the following representations as of the date hereof and as of the date of delivery of the Bonds to the Issuer and the initial purchasers, as the basis for the undertakings on its part herein contained:

(a) The University is a not-for-profit education corporation duly organized and in good standing under the laws of the State of New York and has full legal right, power and authority to enter into this Loan Agreement and the other University Loan Documents and to carry out and consummate all transactions contemplated hereby and by the other University Loan Documents and by proper corporate action has duly authorized the execution, delivery and performance of the University Loan Documents.

(b) (i) The University Loan Documents have been duly authorized, executed and delivered by the University, as applicable, and constitute the legal, valid and binding agreements of the University enforceable against the University in accordance with their terms, including, upon assignment by the Issuer of certain rights and interests under this Loan Agreement, by the Trustee for the benefit of the holders of the Bonds, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws or equitable principles relating to or limiting creditors' rights, and principles of equity, and (ii) the Unassigned Rights constitute the legal, valid and binding agreements of the University enforceable against the University by the Issuer in its own right.



(c) This Loan Agreement when assigned to the Trustee pursuant to the Indenture and the other University Loan Documents will constitute the legal, valid and binding agreements of the University enforceable against the University by the Trustee in accordance with their terms for the benefit of the Holders of the Bonds, and any rights of the Issuer and obligations of the University not so assigned to the Trustee constitute the legal, valid, and binding agreements of the University enforceable against the University by the Issuer in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

(d) The execution and delivery of the University Loan Documents, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the charter or by-laws of the University, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the University is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the University, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the University Loan Documents, or the financial condition, assets, properties or operations of the University.

(e) No consent or approval of any trustee or holder of any indebtedness of the University or any guarantor of indebtedness of or other provider of credit or liquidity to the University, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of the University Loan Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

(f) There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the University, after reasonable investigation, threatened, against or affecting the University or the assets, properties or operations of the University which, if determined adversely to the University or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by or the validity of the Bond Documents, or upon the financial condition, assets, properties or operations of the University.

(g) No written information, exhibit or report furnished to the Issuer by the University in connection with the negotiation of the University Loan Documents, and no official statement or other offering document in connection with the issuance of the Bonds, if any, as of its date or as of the date hereof, contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(h) All financial statements and information heretofore delivered to the Issuer by University, including without limitation, information relating to the financial condition of University, the Project, or members of University, and/or any guarantor, fairly and accurately present the financial position thereof and have been prepared (except where specifically noted therein) in accordance with generally accepted accounting principles consistently applied. Since the date of such statements, there has been no material

adverse change in the financial condition or results of operations of the University or the other subjects of such statements.

(i) The University is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) (1) under the University Loan Documents, or (2) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default could reasonably be expected to have consequences that would materially and adversely affect the consummation of the transactions contemplated by the University Loan Documents or the Indenture, or the financial condition, assets, properties or operations of the University.

(j) Except for Accreditation of the College of Osteopathic Medicine, the University has obtained or is authorized to act under all permits and governmental approvals currently required in connection with the execution and delivery of, and performance by the University of its obligations under, this Loan Agreement, the absence of which would have a material adverse effect upon the ability of the University to perform its obligations under this Loan Agreement or the other Bond Documents to which it is party.

(k) The University acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which the University is a party or of which it is a beneficiary, including the Indenture; that it understands the risks inherent in such transactions; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the University Loan Documents and the Indenture or otherwise relied on the Issuer for any advice.

(l) The University's representations and warranties (i) are made as of the date hereof and of the date of delivery of the Bonds to the initial purchasers; (ii) survive the issuance of the Bonds; and (iii) remain operative and in full force and effect regardless of the issuance of the Bonds, and regardless of any investigations by or on behalf of the Issuer or the results thereof.

(m) The University represents that (i) the University is an organization described in Section 501(c)(3) of the Code, or corresponding provisions of prior law; (ii) the University has received a letter or other notification from the Internal Revenue Service to that effect; (iii) such letter or other notification has not been modified, limited or revoked; (iv) the University is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification; (v) the facts and circumstances which form the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist; and (vi) the University is exempt from federal income taxes under Section 501(a) of the Code, except for the payment of unrelated business income tax. The University agrees that it shall not perform any act or enter into any agreement which shall adversely affect such federal income tax status and shall conduct its operations in a manner which will conform to the standards necessary to qualify the University as a charitable organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law.

## ARTICLE III

### ISSUANCE OF BONDS; LOAN OF PROCEEDS

Section 3.01. The Bonds. The Issuer has authorized the issuance of the Bonds pursuant to the Indenture in the aggregate principal amount of \$44,935,000. The Issuer hereby lends and advances to the University, and the University hereby borrows and accepts from the Issuer (solely from the proceeds of the sale of the Bonds), \$44,935,000, to be applied under the terms and conditions of this Loan Agreement and the Indenture. The University hereby approves the Indenture and the form of Bonds therein, the assignment thereunder to the Trustee of the rights, title and interests of the Issuer (with certain exceptions described therein) in and to this Loan Agreement, and the issuance thereunder by the Issuer of the Bonds.

## ARTICLE IV

### REPAYMENT OF LOAN

Section 4.01. Loan Repayments. In consideration of the issuance of the Bonds by the Issuer and the lending of the proceeds thereof to the University, the University agrees (a) on or before September 15, 2024 and October 15, 2024 to pay to the Trustee for deposit in the Bond Fund provided for in the Indenture, a sum equal to one-half (1/2) of the interest becoming due on November 15, 2024 (except to the extent funds sufficient to pay interest coming due on the next Interest Payment Date are on deposit in the Capitalized Interest Fund), (b) on or before the 15<sup>th</sup> day of each month commencing November 15, 2024, until such time as the principal of and interest on the Bonds shall have been paid in full, or provisions made for such full payment in accordance with the provisions of the Indenture, to pay to the Trustee for deposit in the Bond Fund provided for in the Indenture, a sum equal to one-sixth (1/6<sup>th</sup>) of the interest becoming due on the next Interest Payment Date (except to the extent funds sufficient to pay interest coming due on the next Interest Payment Date are on deposit in the Capitalized Interest Fund) and (c) whether at maturity or upon purchase of the Bonds, to pay or cause to be paid to the Trustee such amount as is necessary to pay the principal of and/or interest on the Bonds on such date.

In addition, the University shall pay to the Trustee any amount required (a) to pay the Administrative Fees and Expenses and (b) to be deposited in the Project Fund, the Bond Fund, the Costs of Issuance Fund, and the Capitalized Interest Fund on the Issue Date, all as provided in the Indenture. Any such amounts required to be paid as a condition to the execution and delivery of the Bonds shall be paid at closing. Each payment to the Trustee pursuant to this Section 4.01 (each, a “Loan Repayment” and, collectively, the “Loan Repayments”) shall be in immediately available funds in lawful money of the United States of America and paid to the Trustee at its Principal Office, and be held, invested, disbursed and applied as provided in the Indenture. To the extent that the payment of interest on the Bonds is paid from the Bond Fund, such payment shall be considered a Loan Repayment. Accordingly, the University shall make Loan Repayments, after taking into account amounts on deposit in the Bond Fund or the Capitalized Interest Fund available for such purpose, if any, from Released Funds, if any.

Section 4.02. Additional Payments. In addition to Loan Repayments, the University shall also pay to the Issuer or to the Trustee, as the case may be, “Additional Payments,” as follows:

(a) All taxes and assessments of any type or character charged to the Issuer or to the Trustee affecting the amount available to the Issuer or the Trustee from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments, but excluding franchise or other taxes based upon the capital, assets, income or revenues of the Trustee and taxes based upon or measured by the net income or revenues of the Trustee); provided, however, that the University shall have the right to protest any such taxes or assessments and to require the Issuer or the Trustee, as the case may be, at the University’s expense, to protest and contest any such taxes or assessments assessed or levied upon them and that the University shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless in the opinion of the Issuer reasonably exercised, such withholding, protest or contest would adversely affect the payment of the Bonds or the rights or interests of the Issuer or the Trustee under the Mortgage or the Pledge and Security Agreement (as the case may be);

(b) Trustee Fees and Expenses;

(c) The fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged hereunder or under the Indenture to prepare audits, financial statements, reports or opinions or

to provide such other services authorized or required, or otherwise contemplated, under this Loan Agreement, the Indenture or the Bonds, including, but not limited to, any audit or inquiry by the Internal Revenue Service or any other governmental body; and

(d) The Issuer Issuance Fee and the reasonable fees and expenses of the Issuer or any agent or attorney selected by the Issuer to act on its behalf in connection with the Bond Documents, the Bonds or the Indenture, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of any such Bonds or in connection with any litigation, investigation or other proceeding which may at any time be instituted involving this Loan Agreement, the Bond Documents, the Bonds or the Indenture or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the University, its properties, assets or operations or otherwise in connection with the administration of the Bond Documents.

Such Additional Payments shall be billed to the University by the Issuer or the Trustee from time to time, together with a statement certifying that the amount billed has been incurred or paid for one or more of the above items. Such bills and statements shall be delivered pursuant to the notice provisions set forth in Section 8.05 hereof. Amounts so billed shall be paid by the University within thirty (30) days after receipt of the bill by the University. Trustee Fees and Expenses shall be payable directly by the University in accordance with this section.

Any invoice furnished to the University by the Issuer or the Trustee pursuant to this Section 4.02 and Section 8.05 hereof shall be deemed to constitute a written notice under Section 6.01 sufficient to cause the 30-day period specified in said Section 6.01 to commence.

The Issuer Issuance Fee shall be paid to the Issuer by the University on the Closing Date. The University's obligation to pay the Issuer Issuance Fee shall in no way limit amounts payable by the University to the Issuer under the University Loan Documents, including for the enforcement thereof.

Section 4.03. Security for University Obligations. The University's obligations hereunder to pay the Loan Repayments and to perform and observe the other agreements on its part contained herein shall be secured by Mortgaged Property pursuant to the Mortgage, the funds and accounts held within the Indenture and the Gross Revenues pledged by the University pursuant to the Pledge and Security Agreement.

The University does hereby pledge to and grant to the Trustee, as assignee of the Issuer, a present security interest, within the meaning of the Uniform Commercial Code and to the extent permitted by law, in all of the University's right, title and interest in and to all Gross Revenues.

Section 4.04. Obligations of the University Unconditional; Net Contract. The obligations of the University to make the Loan Repayments required hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any Bonds remain Outstanding, regardless of any contingency, act of God, event or cause whatsoever, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the University's facilities, commercial frustration of purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rule or regulations of any governmental authority. The University shall pay the Loan Repayments and perform and observe the other agreements on its part contained herein regardless of any dispute, rights of set-off, recoupment, abatement or counterclaim that the University might otherwise have with or against the Issuer, the Trustee or any other party or parties. The University's obligation to pay

Additional Payments are subject to other terms and conditions contained in its agreements with the Issuer and the Trustee.

Section 4.05. Purchase of Bonds. The University shall have the right to surrender Bonds acquired by it in any manner whatsoever to the Trustee for cancellation, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and surrendered, and shall be allocated to Loan Repayments as specified in a certificate of the University. Notwithstanding any such surrender of Bonds, as long as any Bonds remain Outstanding or any Additional Payments remain unpaid, the University shall not be relieved of its obligations hereunder. If the University has committed a default of payment of any Additional Payments which is continuing, the Issuer, at any time that there is on deposit with the Trustee money or securities in the amount necessary to pay or redeem all Bonds Outstanding (as provided in Article XIV of the Indenture), shall forthwith take all steps that may be necessary to discharge the entire indebtedness on all Bonds Outstanding.

## ARTICLE V

### COVENANTS OF THE UNIVERSITY

#### Section 5.01. Covenants Relating to Teach-Out Reserve and Operating Reserve.

(a) Pursuant to the Teach-Out Reserve Letter of Instructions, the University has irrevocably instructed the Trustee to deliver the Teach-Out Reserve Direction Letter to the Teach-Out Reserve Depository upon termination of the Teach-Out Reserve, directing the Teach-Out Reserve Depository to pay to the Trustee all monies then on deposit in the Teach-Out Reserve. To ensure that all monies in the Teach-Out Reserve are timely paid to the Trustee upon termination of the Teach-Out Reserve, the University hereby covenants as follows:

(i) Within three (3) business days after COCA provides written notice that the Teach-Out Reserve Termination Date (as defined in the Teach-Out Reserve Agreement) has occurred, the University shall deliver to the Trustee a copy of such notice;

(ii) The University shall promptly deliver to the Trustee (A) written notice of any changes in (1) the University's authorized signatories with the Teach-Out Reserve Depository, (2) the identity or notice address of the Teach-Out Reserve Depository, or (3) the account number assigned by the Teach-Out Reserve Depository to the Teach-Out Reserve account, and (B) a replacement Teach-Out Reserve Direction Letter that includes the applicable changes, to be held by the Trustee in escrow pursuant to the terms of the Teach-Out Reserve Letter of Instructions; and

(iii) If any monies from the Teach-Out Reserve are paid to the University, upon termination of the Teach-Out Reserve, the University shall, within three (3) business days, remit all such monies to the Trustee for deposit into the Bond Fund.

The University shall take all other actions necessary to cause all monies on deposit in the Teach-Out Reserve to be promptly paid to the Trustee upon termination of the Teach-Out Reserve.

(b) Pursuant to the Operating Reserve Letter of Instructions, the University has irrevocably instructed the Trustee to deliver the Operating Reserve Direction Letter to the Operating Reserve Depository upon termination of the Operating Reserve, directing the Operating Reserve Depository to pay to the Trustee all monies then on deposit in the Operating Reserve. To ensure that all monies in the Operating Reserve are timely paid to the Trustee upon termination of the Operating Reserve, the University hereby covenants as follows:

(i) Within three (3) business days after COCA provides written notice that the Operating Reserve Termination Date (as defined in the Operating Reserve Agreement) has occurred, the University shall deliver to the Trustee a copy of such notice;

(ii) The University shall promptly deliver to the Trustee (A) written notice of any changes in (1) the University's authorized signatories on file with the Operating Reserve Depository, (2) the identity or notice address of the Operating Reserve Depository, or (3) the account number assigned by the Operating Reserve Depository to the Operating Reserve account, and (B) a replacement Operating Reserve Direction Letter that includes the applicable changes, to be held by the Trustee in escrow pursuant to the terms of the Operating Reserve Letter of Instructions; and

(iii) If any monies from the Operating Reserve are paid to the University, upon termination of the Operating Reserve, the University shall, within three (3) business days, remit all such monies to the Trustee for deposit into the Bond Fund.

The University shall take all other actions necessary to cause all monies on deposit in the Operating Reserve to be promptly paid to the Trustee upon termination of the Operating Reserve.

Section 5.02. Additional Indebtedness. The University shall not incur or guaranty any Indebtedness other than Permitted Indebtedness.

Section 5.03. Liens. The University covenants not to create, assume, or allow any pledge, security interest or lien on the Mortgaged Property or the Gross Revenues, except for Permitted Encumbrances.

Section 5.04 Issuer's Rights Assigned to Trustee. The University is advised and recognizes that as security for the payment of the Bonds, the Issuer will assign to the Trustee the Issuer's rights under this Loan Agreement, including the right to receive payments hereunder (except the Unassigned Rights), and hereby directs the University to make said payments directly to the Trustee. The University herewith assents to such assignment and will make such payments directly to the Trustee without defense or set-off by reason of any dispute between the University and the Issuer or the Trustee. All rights against the University arising under this Loan Agreement, the Indenture, or any other Bond Document and assigned to the Trustee may be enforced by the Trustee, or the owners of the Bonds, to the extent provided in the applicable Bond Document, and the Trustee, or the owners of the Bonds, shall be entitled to bring any suit, action, or proceeding against the University, to the extent provided in the Indenture or any other Bond Document, for the enforcement of this Loan Agreement and any other Bond Document, and it shall not be necessary in any such suit, action, or proceeding to make the Issuer a party thereto.

Section 5.05 Taxes. The University will pay or cause to be paid, as the same become due, all taxes and governmental charges of any kind whatsoever or payments in lieu of taxes that may at any time be lawfully assessed or levied against the University or its properties.

Section 5.06 Covenant to Comply with Indenture. The University hereby acknowledges its receipt and approval of the Indenture and agrees to be bound by its terms and accepts all obligations and duties imposed thereby.

Section 5.07 Insurance Requirements. So long as any Bond is Outstanding and/or during the term of this Loan Agreement, the University shall maintain insurance with respect to the Mortgaged Property against such risks and for such amounts and with such deductibles as are customary to the industry, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance protecting the interests of the University as insured against loss or damage to the Mortgaged Property by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount not less than the greater of the total principal amount of the Bonds Outstanding or the actual replacement value of the Mortgaged Property.

(b) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the University is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the University who are located at or assigned to the Mortgaged Property.



(c) Insurance protecting the University, the Issuer and the Trustee against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the University by any applicable workers' compensation law, and a separate umbrella liability policy protecting the University, the Issuer and the Trustee, with a limit of not less than \$5,000,000. With respect to the policies providing for such coverage, the Trustee shall be listed as an additional insured on a primary and non-contributory basis.

(d) If the Mortgaged Property is located within an area identified by the Secretary of Housing and Urban Development as having special flood hazards, insurance against loss by floods in an amount at least equal to the total principal amount of the Bonds Outstanding or to the maximum limit of coverage made available, whichever is less. If no portion of the Mortgaged Property is located in such a federally designated "special flood hazard area," such fact shall be substantiated by a certificate in form satisfactory to the Trustee from a licensed surveyor, appraiser or professional engineer or other qualified person.

(e) THE ISSUER DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR IN LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE UNIVERSITY'S BUSINESS OR INTERESTS.

#### Section 5.08 Termination of KeyBank Line of Credit.

(a) On the issuance date of the Bonds (the "Closing Date"), the University shall repay its \$5,000,000 maximum principal amount line of credit (the "Line of Credit") with KeyBank National Association ("KeyBank") and shall terminate the Line of Credit. On the Closing Date, the University shall direct the Trustee to disburse to KeyBank \$5,000,000 from the Project Fund or such other amount necessary to repay, in full, the outstanding balance of the Line of Credit.

(b) The University shall cause KeyBank to execute and deliver all documents and instruments necessary to terminate the Line of Credit and related agreements between the University and KeyBank, including but not limited to terminations of all pledge agreements, security agreements, negative pledge agreements and UCC financing statements securing the University's obligations to KeyBank under the Line of Credit or otherwise.

#### Section 5.09 Continuing Disclosure.

(a) The University shall provide to the Trustee the following financial information and operating data of the University by not later than one hundred twenty (120) days after the close of each fiscal year, commencing with the fiscal year ending May 31, 2024: (i) audited financial statements, (ii) operating information in the form included in Appendix A of the Limited Offering Memorandum under the table heading "Certain Operating Information" with comparative information for the preceding fiscal year and (iii) financial information in the form included in Appendix A of the Limited Offering Memorandum under the table heading "Financial Statements" with comparative information for the preceding fiscal year, unless such information is available in the audited financial statements.

(b) The University shall also provide to the Trustee unaudited financial information of the University on a quarterly basis, such unaudited financial information to consist of a consolidated balance sheet and a consolidated statement of operations of the University and all persons required to be combined or consolidated with the University in accordance with accounting principles generally accepted in the

United States of America by not later than sixty (60) days after the close of each of the first three (3) fiscal quarters of each fiscal year, commencing with the fiscal quarter ending August 31, 2024.

## ARTICLE VI

### LOAN AGREEMENT DEFAULTS AND REMEDIES

Section 6.01 Loan Agreement Events of Default. The occurrence and continuation of any one of the following shall constitute a “Loan Agreement Event of Default” under this Loan Agreement:

(a) failure by the University to pay or cause to be paid, when due, Loan Repayments, provided that, with respect to the payment of principal or interest owing on the Bonds on any monthly payment date, only in the event amounts sufficient and available to pay the principal of and interest on the Bonds on such monthly payment date are not otherwise on deposit with the Trustee; or

(b) failure by the University to pay or cause to be paid to the Trustee, on the due date therefor, amounts required to be paid to the Trustee pursuant to Sections 4.01 or 5.01 hereof;

(c) failure by the University to comply with Sections 5.02 or 5.03 hereof;

(d) failure by the University to observe and perform any other covenant, condition or agreement on its part required to be observed or performed in this Loan Agreement or to make any other payment required hereby, other than as referred to in (a) above, for a period of thirty (30) days after receipt by the University of written notice specifying such failure and requesting that it be remedied, given to the University by the Trustee or by the Issuer, unless the Trustee or the Issuer, with the consent of the Trustee, shall agree in writing to an extension of such time prior to its expiration; or

(e) the occurrence of an Act of Bankruptcy with respect to the University and, if occurring by reason of clause (b) of the definition thereof, such petition resulting therefrom shall not be stayed or denied, or a proceeding resulting therefrom shall not be discharged, within sixty (60) days after the filing of such petition or the commencement of such proceeding, as the case may be; or

(f) the occurrence and continuance of an Event of Default under the Indenture after the expiration of any applicable cure periods; or

(g) the occurrence and continuance of any “event of default” under the Mortgage or the Pledge and Security Agreement after the expiration of any applicable cure periods; or

(h) failure to maintain the minimum balances in the Depository Reserve Accounts required pursuant to the Depository Agreements, and such failure continues for a period of thirty (30) days; or

(i) termination of a Depository Agreement without replacement thereof with a comparable agreement acceptable to the Majority Holders.

Section 6.02 Remedies on Default. Whenever any Loan Agreement Event of Default shall have happened and is existing, the Trustee, on behalf of the Issuer, may, and at the written direction of the Majority Holders shall, take any one or more of the following remedial steps:

(a) By notice in writing to the University, declare the unpaid Loan Repayments to be due and payable immediately; provided, however, that a Loan Agreement Event of Default shall be deemed waived and a declaration accelerating payment of unpaid Loan Repayments payable under this Loan Agreement shall be deemed rescinded (1) by written notice to the University by the Trustee at the written direction of the Majority Holders rescinding the declaration of acceleration of the unpaid Loan Repayments or (2)

without further action on the part of the Trustee or the Issuer upon any rescission by the Trustee of the corresponding declaration of acceleration of the Bonds under Section 10.2 of the Indenture.

(b) Whatever action at law or in equity may appear necessary or desirable to collect the payment and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the University under this Loan Agreement or any other Bond Document.

(c) Foreclose on the Mortgaged Property pursuant to the terms of the Mortgage; and

(d) Upon the commencement of judicial proceedings, the Trustee shall be entitled as a matter of right to the appointment of a receiver or receivers of the University.

In case the Issuer, with the consent of the Trustee, or the Trustee shall have proceeded to enforce its rights under this Loan Agreement or any other Bond Document and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Issuer and/or the Trustee, then and in every such case the Issuer, the University and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Issuer, the University and the Trustee shall continue as though no such proceeding had been taken.

In case the University shall fail forthwith to pay any such amounts upon such demand, the Trustee shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the University and collect in the manner provided by law out of the property of the University, the moneys adjudged or decreed to be payable. Any sums collected by the Trustee shall be applied as provided in the Indenture. The Issuer or the Trustee may pursue all remedies now or hereafter existing at law or in equity to enforce the performance and observance of any other obligation or agreement of the University under this Loan Agreement.

If a Loan Agreement Event of Default shall occur and be continuing, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Loan Agreement, irrespective of whether the principal of the Bonds or any amount hereunder shall then be due and payable as therein or herein expressed or by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.02, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or desirable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the University, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its fees, charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it up to the date of such distribution.

The remedies for any "Event of Default" under the Indenture shall be as specified in Article X of the Indenture or for any event of default under any other Bond Document, and the remedies for an event of default under any other Bond Document shall be as specified therein, and in each case, are in addition to any remedies hereunder.

In acting or omitting to act pursuant to the provisions of this Loan Agreement, the Trustee shall be entitled to all of the rights, benefits, privileges, protections, indemnities and immunities accorded to the Trustee under the terms of the Indenture, including but not limited to those set out in Article XI thereof.

Any amounts collected pursuant to action taken under this Section (other than sums collected for the Issuer on account of the Issuer's Unassigned Rights, which sums shall be paid directly to the Issuer), after reimbursement of any costs incurred by the Issuer or the Trustee, including, but not limited to fees and expenses of counsel, in connection therewith shall be applied in accordance with the provisions of the Indenture.

Section 6.03. Agreement to Pay Attorneys' Fees and Expenses. In the event the University should default under any of the provisions of this Loan Agreement and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of the payments due under this Loan Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the University herein contained, the University agrees that it will on demand therefor, and upon presentation of an invoice, pay to the Issuer or the Trustee the reasonable fees and expenses of such attorneys and such other expenses so incurred by the Issuer or the Trustee, including such reasonable fees and expenses of in-house counsel and legal staff of the Trustee.

Section 6.04. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement 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 or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required herein or by applicable law. Such rights and remedies as are given the Issuer hereunder shall also extend to the Trustee, the Beneficial Owners and the Registered Owners of the Bonds, subject to the Indenture.

Section 6.05. Treatment of Funds in Bankruptcy. The University acknowledges and agrees that in the event University is the subject of an Act of Bankruptcy: (i) amounts on deposit in any of the Funds are not, nor shall they be deemed to be, property of University's bankruptcy estate as defined by Section 541 of the Bankruptcy Code; (ii) that in no event shall University assert, claim or contend that amounts on deposit in any of the Funds are property of University's bankruptcy estate; and (iii) that amounts on deposit in any of the Funds are held in trust solely for the benefit of the Registered Owners and the Beneficial Owners, shall be applied only in accordance with the provisions of the Indenture and the University has no legal, equitable nor reversionary interest in, or right to, such amounts.

Section 6.06. Confession of Judgment. Upon the occurrence of an Event of Default, the University hereby submits (and waives all rights to object) to nonexclusive personal jurisdiction in the State and authorizes any attorney designated by the Majority Holders or any clerk of any court of record in the State or elsewhere to appear for the University in any court of record and confess judgment against the University without prior hearing in favor of the Beneficial Owners for, and in the amount of, the outstanding principal balance of the Bonds, all accrued and unpaid interest thereon, all other amounts payable by the University to the Issuer and/or the Beneficial Owners under the terms hereof and the Bond, and costs of suit and actual attorneys' fees incurred by the Issuer and/or the Beneficial Owners in connection with such confession of judgment. The Trustee and each Beneficial Owner agrees that in enforcing any judgment by confession, none of the Issuer, the Trustee and the Beneficial Owners shall demand, solely with respect to attorneys' fees incurred by the Issuer, the Beneficial Owners or the Trustee in connection with such indebtedness for which such judgment is rendered, any amounts in excess of the actual amount of attorneys' fees charged or billed to the Issuer, the Beneficial Owners and the Trustee.

The University hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay or execution, inquisition and other rights to which the University may otherwise

be entitled under the laws of the United States of America or of any state or possession of the United States of America now in force and which may hereafter be enacted. The University hereby consents to the immediate execution of such judgment. The authority and power to appear for and enter judgment against the University shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdictions as often as the Issuer and the Beneficial Owners shall deem necessary and desirable, for all of which the Bonds shall be sufficient warrant.

## ARTICLE VII

### SPECIAL COVENANTS

Section 7.01 Assignment. This Loan Agreement may be assigned by the University with the prior written consent of the Majority Holders.

Section 7.02. Mergers or Consolidations. The University agrees that during the term of this Loan Agreement it will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets or will not consolidate with or merge into any other entity or permit one or more entities to consolidate with or merge into it; provided that the University may, without violating the covenants contained in this Section, consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets and thereafter dissolve if the surviving, resulting or transferee entity, as the case may be, (i) assumes and agrees in writing to pay and perform all of the obligations of the University hereunder, (ii) qualifies to do business in the State, (iii) has a net worth immediately after such transaction at least equal to that of the University immediately prior thereto, and (iv) has obtained the prior written consent of the Majority Holders.

Section 7.03. Indemnification and Release.

(a) To the fullest extent permitted by law, the University agrees to indemnify, hold harmless and defend the Issuer, the Trustee, and each of their respective past, present and future officers, directors, officials, employees, attorneys and agents (collectively, the "Indemnified Parties"), against any and all losses, damages, claims, actions, judgments, liabilities, costs, tax, charge and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees and expenses, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under or any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

(i) the Bonds, the Indenture, or the University Loan Documents or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including the issuance, sale or resale of the Bonds;

(ii) any lien or charge upon payments by the University to the Issuer and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project;

(iii) the defeasance and/or redemption, in whole or in part, of the Bonds;

(iv) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering statement or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bonds, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Bonds of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(v) the Trustee's acceptance or administration of the trust of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party; except

(A) in the case of the foregoing indemnification of the Trustee or any of its respective officers, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the negligence or willful misconduct of such Indemnified Party, in each case, as determined in a final and non-appealable decision by a court of competent jurisdiction; or (B) in the case of the foregoing indemnification of the Issuer or any of its officers, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the University, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the University shall pay the documented fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the University if in the judgment of such Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(B) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to Section 6.04 hereof, this Section 7.03 and Section 8.14 hereof shall survive the final payment or defeasance of the Bonds and in the case of the Trustee any resignation or removal. The provisions of this Section shall survive the termination of this Loan Agreement.

Section 7.04. Recordation. The University agrees that it will record and file all initial financing statements and such other instruments as may be required to be recorded or filed in connection with the issuance of the Bonds, in such manner and in such place that may be required by law in order fully to preserve and protect any security interests of the Owners of the Bonds and the rights of the Trustee hereunder and under the Indenture and any other Bond Documents. The University shall promptly provide copies of such instruments to the Trustee and the Issuer. The University agrees that it will cooperate with the Trustee on any information needed for the Trustee's timely recordation and filing of all continuation statements and such other instruments required from time to time in accordance with the terms of the Indenture.

Section 7.05. Acknowledgement of University. The University acknowledges that to the extent regulations of the Comptroller of the Currency or any other regulatory entity grant the University the right to receive brokerage confirmations of the security transactions as they occur, the University specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the University periodic cash transaction statements that include the detail for all investment transactions made by the Trustee under this Loan Agreement.

The University acknowledges that the Trustee may elect, but shall not be obligated, to credit the funds and accounts held by it with moneys representing income or principal payments due on, or sales proceeds due in respect of, Authorized Investments in such funds and accounts, or to credit to Authorized Investments intended to be purchased with such moneys, in each case before actually receiving the requisite moneys from the payment source, or to otherwise advance funds for account transactions. The University further acknowledges that the legal obligation to pay the purchase price of any Authorized Investments arises immediately at the time of the purchase. Notwithstanding anything else in the Indenture, (i) any such crediting of funds or assets shall be provisional in nature, and the Trustee shall be authorized to reverse any such transactions or advances of funds in the event that it does not receive good funds with respect thereto, and (ii) nothing in this Loan Agreement shall constitute a waiver of any of the Trustee's rights as a securities intermediary under Uniform Commercial Code Section 9-206.



Section 7.06. Further Assurances. The University shall execute, acknowledge and deliver such further resolutions, assurances and other instruments as may be necessary or desirable for better assuring and confirming the rights of the Trustee and the Bondholders.

Section 7.07. Debt Service Coverage Ratio.

(a) The University shall maintain a Debt Service Coverage Ratio equal to at least 1:10 to 1:00, which shall be calculated as of May 31<sup>st</sup> of each Fiscal Year, commencing on May 31, 2025.

(b) By no later than 120 days after the close of each Fiscal Year, the University will provide to the Trustee a Certificate of an Authorized Representative of the University stating whether the Debt Service Coverage Ratio was satisfied for such Fiscal Year and setting forth the calculations upon which the statement is based.

(c) The University's failure to maintain a Debt Service Coverage Ratio of at least 1:10 to 1:00 for two (2) consecutive Fiscal Years shall constitute an Event of Default under this Loan Agreement.

Section 7.08. Termination.

(a) Upon (i) payment in full of the Loan evidenced by the Bonds, (ii) termination of the Pledge and Assignment, (iii) payment in full of all other Indebtedness evidenced by this Loan Agreement and (iv) performance by the University of all other obligations of the University to the Issuer pursuant to the provisions of this Loan Agreement (collectively, the "Termination Preconditions"), this Loan Agreement shall terminate, except as provided in Section 8.15 hereof. Upon satisfaction of the Termination Preconditions, the Issuer agrees to execute and deliver to the University the Termination of Loan Agreement, in substantially the form attached hereto as Exhibit A and by this reference made a part hereof.

(b) The University agrees to (i) prepare evidence satisfactory to the Issuer of the satisfaction of the Termination Preconditions and (ii) prepare the Termination of Loan Agreement and to forward same to the Issuer at least thirty (30) days prior to the date that the University proposes that the issuer execute and deliver the Termination of Loan Agreement.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 8.01. General Provisions. (a) The terms of this Loan Agreement may be enforced as to one or more breaches either separately or cumulatively.

(b) No remedy conferred upon or reserved to the Issuer, the University or the Trustee in this Loan Agreement or any other Bond Document 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 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, omission, or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In the event any provision contained in this Loan Agreement should be breached by the Issuer or the University and thereafter duly waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach of this Loan Agreement. No waiver by either party of any breach by the other party of any of the provisions of this Loan Agreement shall be construed as a waiver of any subsequent breach, whether of the same or of a different provision of this Loan Agreement. In view of the assignment of the Issuer's rights in and under this Loan Agreement to the Trustee under the Indenture, the Issuer shall have no power to waive any default hereunder by the University (except with respect to the Unassigned Rights) without the consent of the Trustee. Any waiver of any "Event of Default" under the Indenture and a rescission and annulment of its consequences shall constitute a waiver of the corresponding Event of Default hereunder and a rescission and annulment of the consequences thereof.

(c) Headings of the Sections of this Loan Agreement have been inserted for convenience of reference only and in no way shall they affect the interpretation of any of the provisions of this Loan Agreement.

(d) This Loan Agreement is made for the exclusive benefit of the Issuer, the Trustee, the owners of the Bonds and the University, and their respective successors and assigns herein permitted, and not for any other third party or parties; and nothing in this Loan Agreement, expressed or implied, is intended to confer upon any party or parties other than the Issuer, the Trustee and the University, and their respective successors and assigns herein permitted, any rights or remedies under or by reason of this Loan Agreement. In particular, but not by way of limitation, the Trustee shall be a third-party beneficiary for purposes of enforcing its rights and the University's obligations under Section 7.03 of this Loan Agreement as fully as if the Trustee had been a party in privity of contract with the University hereunder.

Section 8.02. Amendment of Agreement. The Authorized University Representative and the Authorized Issuer Representative, with the consent of the Trustee, may from time to time enter into supplements and amendments to this Loan Agreement.

Section 8.03. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE UNIVERSITY AND THE ISSUER (a) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND THE UNIVERSITY THAT IS TRIABLE OF RIGHT BY A JURY AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. EACH PARTY SEPARATELY GIVES THIS WAIVER OF RIGHT TO TRIAL BY JURY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Section 8.04. Term of Agreement. The term of this Loan Agreement shall be from the date hereof until all payments and indemnities required to be made by the University pursuant hereto shall have been made and the Bonds are no longer Outstanding under the Indenture.

Section 8.05. Notices. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE ISSUER:

Buffalo and Erie County Industrial Land Development Corporation  
95 Perry Street – Suite 403  
Buffalo, New York 14203  
Attention: Chief Executive Officer

WITH A COPY TO:

Hodgson Russ LLP  
677 Broadway – Suite 401  
Albany, New York 12207  
Attention: Christopher C. Canada, Esq.

IF TO THE UNIVERSITY:

D’Youville University  
320 Porter Avenue  
Buffalo, New York 14201  
Attention: Chief Financial Officer

WITH A COPY TO:

Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, New York 13202  
Attention: Paul W. Reichel, Esq.

IF TO THE TRUSTEE:

UMB Bank, N.A., as Trustee  
100 William Street – Suite 1850  
New York, New York 10038  
Attention: Raymond Haniff, Vice President

WITH A COPY TO:

Ballard Spahr LLP  
1675 Broadway – 19<sup>th</sup> Floor  
New York, New York 10019  
Attention: David J. Fernandez, Esq.

Section 8.06. Severability. If any clause, provision or Section of this Loan Agreement should be held illegal or invalid by any court, the invalidity of such clause, provision or Section shall not affect any of the remaining clauses, provisions or Sections hereof and this Loan Agreement shall be construed and enforced as if such illegal or invalid clause, provision or Section had not been contained herein. In case any agreement or obligation contained in this Loan Agreement should be held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the University or the Issuer, as the case may be, to the full extent permitted by law.

Section 8.07. Execution of Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.08. Governing Law; Venue. This Loan Agreement and the Bonds are contracts made under the laws of the State and shall be governed by and construed in accordance with the Constitution and laws applicable to contracts made and performed in the State. This Loan Agreement and the Bonds shall be enforceable in the State, and any action arising out of this Loan Agreement or the Bonds shall be filed and maintained in Erie County, New York, unless the Issuer waives this requirement.

Section 8.09. No Personal Liability. The Issuer shall not be obligated to pay the principal (or Redemption Price) of or interest on the Bonds, except from Trust Revenues and other moneys and assets received by the Trustee pursuant to this Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Issuer or any member is pledged to the payment of the principal (or Redemption Price) or interest on the Bonds. Neither the Issuer nor its officers, directors, agents or employees or their successors and assigns shall be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under, by reason of or in connection with this Loan Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the University under this Loan Agreement.

The University hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by payments made by the University to the Trustee pursuant to this Loan Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or Redemption Price) and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the University shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or Redemption Price) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the University, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor but solely, in the case of the Issuer, from the Trust Revenues, other than with respect to any deficiency caused by the willful misconduct of the Issuer.

Section 8.10. No Obligation to Enforce Assigned Rights. Notwithstanding anything to the contrary in this Loan Agreement or the Indenture, the Issuer shall have no obligation to and instead the Trustee, in accordance with this Loan Agreement or the Indenture, shall have the right, without any direction

from or action by the Issuer, to take any and all steps, actions and proceedings, to enforce any or all rights of the Issuer under this Loan Agreement or the Indenture (other than the Unassigned Rights), including, without limitation, the rights to enforce the remedies upon the occurrence and continuation of an Event of Default and the obligations of the University under this Loan Agreement.

Section 8.11. Waiver of Personal Liability. No director, member, officer, agent or employee of the Issuer or any director, officer, agent or employee of the University shall be individually or personally liable for the payment of any principal (or Redemption Price) or interest on the Bonds or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Loan Agreement, but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Loan Agreement.

Section 8.12. Final Agreement of the Parties. This Loan Agreement, together with all agreements executed by the parties concurrently herewith or in conjunction with the initial issuance of the Bonds, shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Issuer and the University relating to the Bonds, the lending of money and the Project.

Section 8.13. Issuer's Performance. None of the provisions of this Loan Agreement shall require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from the Trust Estate, or unless Issuer shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder to perform any administrative service with respect to the Bonds or the Project (including, without limitation, record keeping and legal services), it being understood that such services shall be performed or provided by the Trustee, to the extent provided in the Indenture, or the University. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Loan Agreement, the Indenture, and any and every Bond executed, authenticated and delivered under the Indenture; provided, however, that the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof unless and until it shall have (i) been directed to do so in writing by the University, the Trustee, or the having the authority to so direct; (ii) received from the Person requesting such action or execution assurance satisfactory to the Issuer that the Issuer's expenses incurred or to be incurred in connection with taking such action or executing such instrument have been or will be paid or reimbursed to the Issuer; and (iii) if applicable, received in a timely manner the instrument or document to be executed, in form and substance satisfactory to the Issuer. In complying with any provision herein or in the Indenture, including, but not limited to, any provision requiring the Issuer to "cause" another Person to take or omit any action, Issuer shall be entitled to rely conclusively (and without independent investigation or verification) (i) on the faithful performance by the Trustee or the University, as the case may be, of their respective obligations hereunder and under the Indenture and (ii) upon any written certification or opinion furnished to the Issuer by the Trustee or the University, as the case may be. In acting, or in refraining from acting, under this Loan Agreement, the Issuer may conclusively rely on the advice of its counsel. The Issuer shall not be required to take any action hereunder or under the Indenture that it reasonably believes to be unlawful or in contravention hereof or thereof.

Section 8.14. Closing Expenses. In addition to and without in any way limiting the University's obligations to pay and indemnify the Issuer against fees, costs and charges arising out of or in connection with this Loan Agreement and the other University Loan Documents, the University shall pay, upon the closing of the issuance of the Bonds and as a condition thereto: (i) to the Issuer, the Issuer's issuance fee of \$449,350; and (ii) attorney's fees incurred by the Issuer in connection with the issuance of the Bonds.

Section 8.15. Survival of Provisions. The provisions of this Loan Agreement and the Indenture and any other document in connection with the issuance of the Bonds to which the Issuer or the Trustee is

a party concerning (i) the interpretation of this Loan Agreement; (ii) governing law, jurisdiction and venue; (iii) the Issuer's or the Trustee's right to conclusively rely on written representations of others contained herein or in any other document or instrument issued or entered into in respect of the Bonds, regardless of whether the Issuer or the Trustee is a party thereto; (iv) the indemnification rights and exculpation from liability of the Issuer and the Trustee and the Trustee Indemnified Parties; and (v) any other provision of this Loan Agreement not described or enumerated above that expressly provides for its survival, shall survive and remain in full force and effect notwithstanding the payment in full, or defeasance of the Bonds, the discharge of the Indenture, and the termination or expiration of this Loan Agreement.

Section 8.16. No Impairment of Rights. Nothing in this Loan Agreement shall be deemed or construed to limit, impair or affect in any way the Issuer's right to enforce the Unassigned Rights, regardless of whether there is then existing an Event of Default (including, without limitation, a payment default), or any action based thereon or occasioned by an Event of Default or alleged Event of Default, and regardless of any waiver or forbearance granted by the Trustee or any Bond Owners in respect thereof Any default or Event of Default in respect of the Unassigned Rights may only be waived with the Issuer's written consent.

Section 8.17. Consent of the Registered Owners of the Bonds. Notwithstanding any provision of this Loan Agreement to the contrary, in the case of any provision of this Loan Agreement providing for the consent or approval of the Owner of any Bond, the University acknowledges and agrees that the granting, approval, rejection or withholding of any requested consent, waiver or authorization to take or refrain from taking any action contemplated or required hereunder may be withheld or granted in the Owner's sole and absolute discretion.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be signed in multiple counterparts, each of which shall be considered an original for all purposes, as of the day and year first set out above.

BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

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

D'YOUVILLE UNIVERSITY

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

## APPENDIX A

### SCHEDULE OF DEFINITIONS

*“Accreditation”* means, on any date of determination, with reference to the COCA Policies and Procedures and their definitions then in effect, (i) “Pre-accreditation Status” for the period allowed pursuant to the COCA Policies and Procedures, and (ii) thereafter, any “Accreditation status” provided for under the COCA Policies and Procedures, excluding however any Accreditation status involving probation or commencement of proceedings for the withdrawal of Accreditation.

*“Act”* has the meaning set forth in the preambles hereof.

*“Act of Bankruptcy”* means any of the following events:

(a) the University shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the University or of all or substantially all of its property, (ii) commence a voluntary case under the United States Bankruptcy Code (as now or hereafter in effect), or (iii) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, winding-up or composition or adjustment of debts; or

(b) a proceeding or case shall be commenced without the application or consent of the University in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts, of the University, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of the University or of all or any substantial part of its property, or (iii) similar relief in respect of the University under any law relating to bankruptcy, insolvency, winding-up or composition or adjustment of debts and such case shall not have been dismissed within sixty (60) days of its filing.

*“Additional Payments”* means those amounts payable by the University pursuant to Section 4.02 of the Loan Agreement.

*“Administrative Fees and Expenses”* means all Trustee Fees and Expenses, and fees and expenses of the Issuer in undertaking and performing its obligations under the Indenture and acceptance, service, administrative or similar fees charged, or reimbursement for administrative or other expenses (including attorneys’ fees) incurred by the Issuer, including, without limitation, the Annual Fee.

*“Affiliate”* means any other Person who, directly or indirectly, controls or is controlled by or is under common control with such other Person.

*“Annual Debt Service”* means, when used in connection with any Indebtedness, as of any particular date of calculation the amount required to be paid by the University during the then current Fiscal Year to pay the principal, whether at maturity or upon mandatory redemptions and prepayments, of and interest on such Indebtedness; provided, however, that such amounts required to be paid on Short-Term Indebtedness and Balloon Indebtedness shall include interest only.

*“Approved Buyer”* means a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the “Securities Act”).

*“Assignments”* means, collectively, the Pledge and Assignment and the Mortgage Assignment.



*“Authorized Issuer Representative”* means with respect to the Issuer, the Chairperson, Vice Chairperson, Chief Executive Officer or Vice President of Operations of the Issuer, or any other person designated as an Authorized Issuer Representative by a certificate signed by a member of the Board and filed with the Trustee.

*“Authorized University Representative”* means the persons at any time designated to act on behalf of the University, such designation in each case to be evidenced by a certificate furnished to the Issuer and the Trustee containing the specimen signature of such person or persons and signed on behalf of the University by the sole member and manager of the University or its designee. Such certificate may designate an alternate or alternates.

*“Authorized Denominations”* means \$100,000 and any integral multiple of \$5,000 in excess of \$250,000.

*“Authorized Investments”* mean (1) Governmental Obligations; (2) obligations issued or guaranteed by any state or political subdivision thereof rated in one of the two highest Rating Categories by Moody’s and by S&P; (3) open market commercial or finance paper of any corporation having a net worth in excess of \$100,000,000 and that is rated either P1 or A1 or an equivalent by Moody’s and S&P; (4) bankers’ acceptances, certificates of deposit or time deposits issued by, or bankers’ acceptances of, the Trustee or any affiliate of the Trustee, or of banks or trust companies organized under the laws of the United States of America or any state thereof, any of which must have a reported capital and surplus of at least \$50,000,000 in dollars of the United States of America; (5) bank repurchase agreements, including the Trustee’s or any affiliate of the Trustee’s, fully secured by obligations of the type described in (1) above; (6) variable rate demand securities redeemable within seven days or able to be tendered for remarketing or purchase upon no more than seven days’ notice and secured by a credit facility issued by a financial institution, including the Trustee or an affiliate of the Trustee, which financial institution (or its corporate parent) maintains a long-term debt rating that is not lower than the third highest Rating Category by either Rating Agency, or by both Rating Agencies, if rated by both Rating Agencies; (7) shares of any so-called “money market mutual fund”, including any money market mutual fund that the Trustee or any of its affiliates operates or manages, which invests solely in any of the obligations described in items (1) through (6) above and (8) U.S. Dollar denominated deposit accounts that are fully and continuously insured by the Federal Deposit Insurance Corporation.

*“Balloon Indebtedness”* means Long-Term Indebtedness of which 25% or more in principal amount matures, or is required to be purchased, redeemed or retired by the University (either automatically or at the option of the holder of such Balloon Indebtedness), in any one year.

*“Beneficial Owners”* means, (i) when used with reference to the book entry only system, the person who is considered the beneficial owner of the Bonds pursuant to the arrangements for book entry determination of ownership applicable to the Securities Depository and, (ii) any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding such through nominees, depositories or other intermediaries) or (b) is treated as the owner of any Bonds for federal income tax purposes.

*“Bond Documents”* means the Indenture, the Bond Purchase Agreement, the University Loan Documents and each amendment or supplement thereof, and any other document or instrument to which the Issuer or the University is a party or by which either of them is bound and that is executed and delivered in connection with the Bonds.

*“Bond Fund”* means the trust fund so designated which is established pursuant to Article III hereof.

“*Bond Owner*,” “*Bondowner*,” “*Owner*,” “*owner*,” “*Bondholder*,” “*holder*,” “*Registered Owner*,” “*registered owner*,” or “*owner of Bonds*” means the person listed on the Bond Register as the registered owner of any Bond.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement dated August 1, 2024, among the Issuer, the University and the Underwriter.

“*Bond Register*” has the meaning specified in Section 2.3 hereof.

“*Bond Resolution*” means the resolution of the members of the board of directors of the Issuer duly adopted on February 28, 2024 authorizing the Issuer to undertake the Project, to issue and sell the Bonds and to execute and deliver the Bond Documents to which the Issuer is a party.

“*Bonds*” means the Issuer’s Revenue Bonds (D’Youville University Project), Series 2024A (Taxable) in the original aggregate principal amount of \$44,935,000.

“*Business Day*” or “*business day*” means any day other than a Saturday, Sunday or other day on which commercial banks are required or authorized to be closed in New York, New York or St. Louis, Missouri, or any day on which the payment system of the Federal Reserve is not operational.

“*Calculation Agent*” means if there is a single beneficial owner that holds a majority in aggregate principal amount of Bonds outstanding (“Single Majority Holder”), the Single Majority Holder if willing to act as Calculation Agent, but if there is no such Single Majority Holder willing to act in such capacity, then Loop Capital Markets if willing to act as Calculation Agent, but if Loop Capital Markets is not willing to act in such capacity, then the Trustee or a qualified entity selected by the Trustee.

“*Candidacy Status*” means such term as defined in the COCA Policies and Procedures.

“*Capitalized Interest Fund*” means the trust fund so designated which is established pursuant to Article III hereof.

“*COCA*” means, collectively, the American Osteopathic Association and its Commission on Osteopathic College Accreditation, or any successor body acting in a similar capacity.

“*COCA Policies and Procedures*” means the standards, including any new or revised procedures or standards adopted by COCA as published in Accreditation of Colleges of Osteopathic Medicine: COM New & Developing Standards. As of the date of issuance of the Bonds, the current COCA Policies and Procedures are those identified as effective September 26, 2023.

“*College of Osteopathic Medicine*” shall have the meaning provided in the recitals hereto.

“*Costs of Issuance*” means all items of expense directly or indirectly payable by or reimbursable to the Issuer, the University, or the Trustee and related to the authorization, execution, issuance, sale and delivery of the Bonds, including (without limitation) costs of preparation and reproduction of documents, filing and recording fees, fees and charges of the University, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of financial or other consultants and professionals, fees and charges for preparation, execution and safekeeping of the Bonds, and any other cost, charge or fee in connection with the issuance of the Bonds.

“*Costs of Issuance Fund*” means the fund of that name established pursuant to Article III of the Indenture.

“*Counsel*” means an Independent attorney at law or law firm (who may be attorneys for the Issuer or the University) acceptable to the Issuer and the Trustee.

“*Debt Service*” means, for any period of time with respect to the University, the sum of (i) the interest payable during such period on all Outstanding Bonds and (ii) the principal amount of all Outstanding Bonds due on the maturity date.

“*Debt Service Coverage Ratio*” means the ratio of Operating Revenues Available for Debt Service to Annual Debt Service.

“*Default*” means any event which with the giving of notice or the lapse of time or both would constitute an Event of Default.

“*Defaulted Interest*” has the meaning ascribed thereto in Section 2.7 hereof.

“*Default Rate*” means the rate of interest equal to 9% per annum, or the maximum permitted by law, whichever is less.

“*Depository Agreements*” means, collectively, the Teach-Out Reserve Depository Agreement and the Operating Reserve Depository Agreement.

“*Depository Reserve Accounts*” means the accounts held by the Teach-Out Reserve Depository and the Operating Reserve Depository, respectively, pursuant to the Depository Agreements.

“*DTC*” means The Depository Trust Company, New York, New York.

“*DTC Letter of Representations*” means the blanket letter of representations from the Issuer to DTC.

“*DTC Participant*” means (a) any person for which, from time to time, DTC, or, in the event that a successor Securities Depository to DTC is acting as such under Section 2.14 hereof, such successor Securities Depository, effectuates book-entry transfers and pledges of securities pursuant to the book-entry system referred to in Section 2.14 hereof or (b) any securities broker or dealer, bank, trust company or other person that clears through or maintains a custodial relationship with the person referred to in (a).

“*EMMA*” means the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system or any successor nationally-recognized municipal securities repository recognized by the United States Securities and Exchange Commission for the purposes referred to in Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

“*Environmental Regulations*” means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances or chemical waste, materials or substances.

“*Event of Default*” means any of the events specified in Section 10.1 hereof to be an Event of Default.

“*Extraordinary Expenses*” means all reasonable expenses properly incurred by the Trustee under the Indenture, other than Ordinary Expenses.

“*Extraordinary Services*” means all services rendered by the Trustee under the Indenture, other than Ordinary Services.

“*Extraordinary Trustee’s Fees and Expenses*” means the fees, expenses and disbursements payable to the Trustee and Paying Agent pursuant to Section 11.7 hereof during any Fiscal Year in excess of Ordinary Trustee’s Fees and Expenses, including but not limited to, reasonable counsel fees and expenses, reasonable fees of other third party professionals, and any costs of sending notices pursuant to the terms and conditions of the Bond Documents.

“*Fiscal Year*” means the fiscal year of the University, which currently commences June 1 of each year and ends on May 31, or such other twelve-month period as may be designated in a written statement of the University delivered to the Issuer and the Trustee.

“*Funds*” means, collectively, the Bond Fund, Capitalized Interest Fund, the Project Fund and the Costs of Issuance Fund.

“*GAAP*” means accounting principles general accepted in the United States, consistently applied, as in effect as of the time of application to the provisions hereof (unless otherwise noted).

“*Governmental Authority*” means the United States of America, the State, any political subdivision thereof, any other state and any agency, department, commission, board, bureau or instrumentality of any of them.

“*Governmental Obligations*” means (a) direct noncallable obligations of the United States of America, (b) obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States of America pursuant to authority granted by the Congress of the United States of America and (c) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b).

“*Gross Revenues*” means, to the maximum extent permitted by law, all receipts, revenues, income and other money received by or on behalf of the University derived from its operations, including all rights to receive the same, whether in the form of accounts receivable, contracts rights or other rights (including rights under policies of business interruption insurance but not under policies of casualty insurance), and proceeds of such rights, now owned or held or hereafter coming into existence; provided, however, that Gross Revenues shall not include gifts, grants, bequests, donations and contributions restricted at the time of making thereof by the donor or maker thereof as being for certain specific purposes inconsistent with the payments required by Sections 4.01, 4.02 and 5.01 of the Loan Agreement and the income derived therefrom to the extent required by such restriction.

“*Indebtedness*” means , collectively, (i) all indebtedness of the University for borrowed moneys; (ii) all liabilities for payment due from the University in connection with rights of use or possession under leases accounted for as capital leases or finance leases as evidenced by the University’s audited financial statements; (iii) all guaranties by the University in connection with any indebtedness of any Affiliate and/or other Person; and (iv) with respect to the Indebtedness incurred under the University Loan Documents: (A) all Loan Repayments on the Bonds; (B) all other payments due from the Issuer or the University to the Trustee pursuant to the Loan Agreement or any other University Loan Document; (C) the performance and observance by the Issuer and the University of all of the covenants, agreements, representations and warranties made for the benefit of the Trustee pursuant to the Loan Agreement or any other University Loan Document; (D) the monetary obligations of the University to the Issuer and its members, officers, agents,

servants and employees under the Loan Agreement and the other University Loan Documents; and (E) all interest accruing on any of the foregoing.

*“Indenture”* means the indenture of trust dated as of August 1, 2024 by and between the Issuer and the Trustee, as supplemented or amended in accordance with the terms thereof.

*“Indenture Act”* means the Trust Indenture Act of 1939 (Act of August 3, 1939, 53 Stat. 1149, 15 U.S.C., §§ 77aaa-77bbbb), as amended.

*“Independent”* means, with respect to any professional employed for purposes of compliance with the terms of the Loan Agreement or the Indenture, an individual or firm not owned, employed or controlled by the University or any principal thereof, provided that an individual or firm shall not be deemed “employed” by the University if it is outside counsel to the University.

*“Intercreditor Agreement”* means the amended and restated intercreditor agreement dated as of August 1, 2024 by and between the Trustee and the Series 2020 Trustee, as consented to by the University.

*“Interest Payment Date”* means, with respect to any Bond, each May 1 and November 1, commencing November 1, 2024 and the Maturity Date or the date on which such Bond is accelerated pursuant to Section 10.2 hereof.

*“Issue Date”* means the date on which the Bonds are first authenticated and delivered at the direction of the Underwriter against payment therefor.

*“Issuer”* means Buffalo and Erie County Industrial Land Development Corporation, or its successors and assigns.

*“Issuer”* means \$449,350.

*“Lien”* means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, security agreement, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes hereof, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

*“Limited Offering Memorandum”* means the Limited Offering Memorandum dated August 1, 2024, including any amendment or supplement thereto, relating to the limited offering of the Bonds.

*“Loan”* means the loan made by the Issuer to the University from the proceeds of the Bonds pursuant to the Loan Agreement.

*“Loan Agreement”* means the Loan Agreement dated as of August 1, 2024, between the Issuer and the University, as amended from time to time.

*“Loan Agreement Event of Default”* means any event specified in Section 6.01 of the Loan Agreement.

“*Loan Repayment*” means each payment required in consideration for the Loan, as defined in Section 4.01 of the Loan Agreement and as provided for in the Indenture, including the principal of and interest on the Bonds.

“*Long-Term Indebtedness*” means Indebtedness having an original maturity of greater than one (1) year or Indebtedness on which the University has an option to extend the maturity thereof for a period of greater than one (1) year beyond the date of the original incurrence thereof.

“*Majority Holders*” mean the Beneficial Owners of a majority in aggregate principal amount of the Bonds Outstanding.

“*Maturity Date*” means November 1, 2030.

“*Moody’s*” means Moody’s Investors Service, Inc. or any successor thereto.

“*Mortgage*” means the mortgage and security agreement dated as of August 1, 2024 from the University to the Issuer, which, among other things, (a) grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Mortgaged Property and (b) assigns to the Issuer the rents, issues and profits of the Mortgaged Property, as said mortgage and security agreement may be amended or supplemented from time to time.

“*Mortgage Assignment*” means the assignment of mortgage dated as of August 1, 2024 from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee, as said assignment of mortgage may be amended or supplemented from time to time.

“*Mortgaged Property*” means all Property which may from time to time be subject to the Lien of the Mortgage.

“*Operating Reserve*” means the reserve account held by Operating Reserve Depository established by the University for the purpose of paying certain operating, equipment or construction costs of the College of Osteopathic Medicine pursuant to the terms of the Operating Reserve Agreement.

“*Operating Reserve Depository*” means Goldman Sachs & Co. LLC, as custodian of the Operating Reserve, and its successors and assigns.

“*Operating Reserve Depository Agreement*” means the operating reserve fund account agreement dated as of February 29, 2024 by and between the University and COCA.

“*Operating Reserve Direction Letter*” means the letter from the University to the Operating Reserve Depository directing the Operating Reserve Depository to pay to the Trustee, for deposit into the Bond Fund, all moneys on deposit in the Operating Reserve, an executed original of which letter has been deposited in escrow with the Trustee pursuant to the Operating Reserve Letter of Instructions.

“*Operating Reserve Letter of Instructions*” means the letter of instructions regarding operating reserve fund dated August 13, 2024, from the Issuer and the University to the Trustee, and accepted by the Trustee, pursuant to which the University has deposited the Operating Reserve Direction Letter in escrow with the Trustee and irrevocably instructed the Trustee to deliver the Operating Reserve Direction Letter to the Operating Reserve Depository upon termination of the Operating Reserve.

“*Operating Revenues Available for Debt Service*” means total unrestricted operating revenues, including funds made available for operations from endowment funds and from other temporarily restricted

sources, minus total unrestricted expenses, excluding depreciation, amortization, and interest expenses as displayed in the University's audited financial statements produced in accordance with GAAP then applicable to the University, and excluding (a) any gains or losses resulting from either the extinguishment of indebtedness, (b) the sale, exchange, or other disposition of capital assets not in the ordinary course of business, (c) any non-cash adjustment for changes in accounting estimates, changes in GAAP, or other non-cash adjustments made in accordance with GAAP, (d) extraordinary items, (e) any realized gains or losses on the sale of investments or interest exchange agreements, and (f) any unrealized gains/appreciation or losses/depreciation on the carrying value of investments or interest exchange agreements.

*“Ordinary Expenses”* means those reasonable expenses incurred in the ordinary course of business, by a trustee, a registrar, an authenticating agent and a paying agent under instruments similar to the Indenture, but excluding Extraordinary Expenses.

*“Ordinary Services”* means those services normally rendered by a trustee, a registrar, an authenticating agent and a paying agent under instruments similar to the Indenture, excluding Extraordinary Services.

*“Ordinary Trustee's Fees and Expenses”* means those annual fees, expenses and disbursements for the Ordinary Services and the Ordinary Expenses of the Trustee and Paying Agent incurred in connection with their duties under the Indenture payable in advance on the Closing Date and payable on July 1 of each year thereafter until the Bonds are no longer Outstanding.

*“Outstanding”* or *“outstanding,”* in connection with Bonds means, as of the time in question, all Bonds authenticated and delivered under the Indenture, except:

- (a) Bonds theretofore cancelled or required to be cancelled under Section 2.11 hereof;
- (b) Bonds which are deemed to have been paid in accordance with Article XIV hereof
- (c) Bonds in substitution for which other Bonds have been authenticated and delivered pursuant to Article II hereof and Bonds paid pursuant to Section 2.10(a) hereof;
- (d) Bonds registered in the name of the Issuer; and
- (e) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the holders of a specified percentage of outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer or the University, except that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by a Responsible Officer of the Trustee by actual notice thereof to be so held.

*“Parity Obligations”* means Long-Term Indebtedness of the University incurred in accordance with Section 9 of the Pledge and Security Agreement, including but not limited to obligations of the University to one or more commercial banks or financial institutions obligated to contribute to making loans, purchasing bonds or otherwise making funds available as security for the payment of the principal and interest when due on Long-Term Indebtedness of the University.

*“Permitted Encumbrances”* means:

- (i) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not in default;

(ii) utility, access and other easements and rights-of-way restrictions and exceptions that an Authorized Representative of the University certifies to the Issuer and the Trustee will not interfere with or impair the University's use of the Mortgaged Property;

(iii) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Mortgaged Property and as do not, either singly or in the aggregate, materially impair the property affected thereby for the purpose for which it is owned by the University;

(iv) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien or right in respect thereof if payment is not yet due and payable, or are insured over, or which are not delinquent, or the amount or validity of which, are being contested and execution thereon is stayed or has been due for less than 90 days;

(v) any mortgage, lien, security interest or other encumbrance which exists in favor of the Trustee;

(vi) liens on Gross Revenues securing Parity Obligations;

(vii) matters shown on the title insurance policy delivered to the Trustee upon issuance of the Bonds or the survey identified therein; and

(viii) liens consented to in writing by the Majority Holders.

*“Permitted Indebtedness”* means, collectively,:

(a) Any Indebtedness incurred under this Indenture and the University Loan Documents;

(b) Indebtedness evidenced by the Series 2020 Bonds;

(c) Indebtedness of the University's Affiliate, 301 Connecticut LLC, evidenced by certain promissory notes dated January 24, 2020 and January 27, 2020, in the original aggregate principal amount of \$18,650,000, which Indebtedness is guaranteed by the University;

Guaranties of any other Permitted Indebtedness;

Guaranties of any rent obligations of one or more University Affiliates established to manage or operate the College of Osteopathic Medicine under leases of facilities that will house the College of Osteopathic Medicine;

any Indebtedness arising from the honoring by a bank or other financial institution of checks, drafts or similar instruments drawn against insufficient funds in the ordinary course of business and extinguished within five Business Days of being drawn;

all obligations, contingent or otherwise, of the University under bankers acceptances issued or created for the account of the University;

(i) Indebtedness incurred by the University constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and



letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from governmental authorities, (ii) other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims, and (iii) Indebtedness incurred to refund, extend, renew, refinance or replace any other Indebtedness incurred pursuant to this clause (g); provided, however, that (1) upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence, and (2) the aggregate principal amount which, when aggregated with the then outstanding principal amount of all other Indebtedness incurred pursuant to this clause (g) and including all Indebtedness incurred to refund, extend, renew, refinance or replace any other Indebtedness incurred pursuant to this clause (g), does not exceed \$5,000,000; provided further that (i) such reimbursement obligations shall be fully cash collateralized and (ii) no such reimbursement obligations shall be secured by any proceeds of the Bonds nor the proceeds from the reimbursement of costs of the Project financed with the proceeds of the Bonds;

Indebtedness (including finance lease obligations) incurred at the time of, or within 90 days after, the acquisition of any vehicles or other movable equipment for the purpose of financing all or any part of the acquisition or installation cost thereof provided such Indebtedness is secured only by purchase money security interests in such property;

Indebtedness of the University consisting of accounts payable and trade payables that are not more than ninety (90) days past due; provided that no such payables shall result in a lien or encumbrance on any asset or property of the University; and

one or more lines of credit in an aggregate maximum principal amount not to exceed \$10,000,000.

*"Person"* means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, an unincorporated organization, a governmental body or a political subdivision, a municipal corporation, a public corporation or any other group or organization of individuals.

*"Pledge and Assignment"* means the pledge and assignment dated as of August 1, 2024 from the Issuer to the Trustee, and acknowledged by the University, pursuant to which the Issuer has assigned to the Trustee its rights under the Loan Agreement (except the Unassigned Rights), as said pledge and assignment may be amended or supplemented from time to time.

*"Pledge and Security Agreement"* means the pledge and security agreement dated as of August 1, 2024 from the University to the Trustee, pursuant to which the University grants a security interest in the Gross Revenues to the Trustee, as said pledge and security agreement may be amended or supplemented from time to time.

*"Principal Office of the Trustee"* means the business address designated in writing to the Issuer and the University as its principal office for its duties hereunder, and which initially shall be as specified in Section 17.5 of the Indenture.

*"Project"* shall have the meaning provided in the recitals hereto.

*"Project Fund"* means the fund by that name created in Article III hereof.

*"Project Jurisdiction"* means Erie County, New York.

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

“*Rating Agency*” means Moody’s or S&P.

“*Rating Category*” means the generic rating categories of the Rating Agency, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

“*Record Date*” means, as the case may be, the applicable Regular Record Date or Special Record Date.

“*Redemption Date*” means the date upon which Bonds issued pursuant to the Indenture shall be redeemed.

“*Regular Record Date*” means the Trustee’s close of business on April 15 or October 15, as applicable, immediately preceding the Interest Payment Date.

“*Released Funds*” means the amounts on deposit in the Depository Reserve Accounts which are released from the Depository Reserve Accounts upon a Termination Event pursuant to and as defined in the Depository Agreements.

“*Responsible Officer*” means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of the Indenture.

“*Revenues*” means (a) Released Funds (provided, in no event shall amounts on deposit in the Depository Reserve Accounts constitute “Revenues” hereunder or be in any way subject to the lien of the Indenture until such funds constitute Released Funds); (b) amounts payable to the Trustee with respect to the principal of and interest on the Bonds (1) on deposit in the Bond Fund, the Capitalized Interest Fund, the Project Fund or the Costs of Issuance Fund from the proceeds of the Bonds or obligations of the Issuer issued to refund the Bonds or from any other source or (2) paid by the University as Loan Repayments under the Loan Agreement; (c) all receipts of the Trustee credited under the provisions of the Indenture against amounts described in clause (b); and (d) investment income with respect to any moneys held by the Trustee in the Bond Fund, the Capitalized Interest Fund, the Project Fund and the Costs of Issuance Fund.

“*S&P*” means Standard & Poor’s Global Ratings, a Standard & Poor’s Financial Services LLC business, or any successor thereto.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Securities Depository*” means any clearing agency registered under Section 18A of the Securities Exchange Act of 1934, as amended.

“*Series 2020 Bonds*” means, collectively, the Issuer’s Revenue Bonds (D’Youville College Project), Series 2020A in the original principal amount of \$34,370,000 and the Issuer’s Revenue Bonds (D’Youville College Project), Series 2020B (Taxable) in the original principal amount of \$13,835,000.

“*Series 2020 Trustee*” means U.S. Bank National Association, a national banking association duly organized and existing under the laws of the United States of America, and any successor trustee or co-trustee serving as such hereunder.

*“Short-Term Indebtedness”* means any Indebtedness that is not Long-Term Indebtedness.

*“Special Record Date”* means such date as may be fixed for the payment of Defaulted interest in accordance with Section 2.7 hereof.

*“State”* means the State of New York.

*“Supplemental Indenture”* means any indenture hereafter duly authorized and entered into between the Issuer and the Trustee in accordance with the provisions of the Indenture.

*“Teach-Out Requirements”* shall have the meaning given to such term in the Teach-Out Reserve Depository Agreement.

*“Teach-Out Depository”* means Wilmington Trust, National Association, and its successors and assigns.

*“Teach-Out Reserve”* means the reserve account, held by Teach-Out Reserve Depository, established by the University for the purpose of paying certain College of Osteopathic Medicine teach-out costs pursuant to the terms of the Teach-Out Reserve Depository Agreement.

*“Teach-Out Reserve Depository Agreement”* means the multi-party account agreement dated as of February 9, 2024 by and among the University, COCA and the Teach-Out Reserve Depository, as amended or supplemented from time to time.

*“Teach-Out Reserve Direction Letter”* means the letter from the University to the Teach-Out Reserve Depository directing the Teach-Out Reserve Depository to pay to the Trustee, for deposit into the Bond Fund, all moneys on deposit in the Teach-Out Reserve, an executed original of which letter has been deposited in escrow with the Trustee pursuant to the Teach-Out Reserve Letter of Instructions.

*“Teach-Out Reserve Letter of Instructions”* means the letter of instructions regarding teach-out reserve fund dated August 13, 2024, from the Issuer and the University to the Trustee, and accepted by the Trustee, pursuant to which the University has deposited the Teach-Out Reserve Direction Letter in escrow with the Trustee and irrevocably instructed the Trustee to deliver the Teach-Out Reserve Direction Letter to the Teach-Out Reserve Depository upon termination of the Teach-Out Reserve.

*“Trust Estate”* shall have the meaning provided in the granting clauses hereto.

*“Trustee”* means UMB Bank, N.A., a national banking association duly organized and existing under the laws of the United States of America, and any successor trustee or co-trustee serving as such hereunder.

*“Trustee Fees and Expenses”* means, collectively, Ordinary Trustee’s Fees and Expenses and Extraordinary Trustee’s Fees and Expenses.

*“Trust Revenues”* means (a) Released Funds (provided, in no event shall amounts on deposit in the Depository Reserve Accounts constitute “Trust Revenues” hereunder or be in any way subject to the lien of the Indenture until such funds constitute Released Funds); (b) amounts payable to the Trustee pursuant to the Assignments; (c) amounts payable to the Trustee pursuant to the Pledge and Security Agreement; (d) amounts payable to the Trustee with respect to the principal of and interest on the Bonds (1) on deposit in the Bond Fund, the Capitalized Interest Fund, the Project Fund or the Costs of Issuance Fund from the proceeds of the Bonds or obligations of the Issuer issued to refund the Bonds or from any other source or

(2) paid by the University as Loan Repayments under the Loan Agreement; (e) all receipts of the Trustee credited under the provisions of the Indenture against amounts described in clause (b); and (f) investment income with respect to any moneys held by the Trustee in the Bond Fund, the Capitalized Interest Fund, the Project Fund and the Costs of Issuance Fund.

*“Unassigned Rights”* means the rights of the Issuer under Sections 4.02, 7.04, 8.10 and 8.11 of the Loan Agreement and to the extent not expressly provided in said sections (or in any other sections hereof or thereof), the Issuer’s rights hereunder or thereunder to (i) inspect books and records; (ii) receive notices, approvals, consents, requests, and other communications; (iii) receive payment or reimbursement for expenses, including, without limitation, “Additional Payments” as defined in the Loan Agreement owed to the Issuer; (iv) immunity from and limitation of liability; (v) indemnification by the University or any other Person; and (vi) to enforce, in its own name and on its own behalf, those provisions hereof and of the Loan Agreement and any other document, instrument or agreement entered into with respect to the Bonds that provides generally for the foregoing enumerated rights or any similar rights of the Issuer.

*“Underwriter”* means Loop Capital Markets LLC.

*“University”* means D’Youville University, a New York not-for-profit education corporation, and its successors and assigns as permitted under the Loan Agreement.

*“University Loan Documents”* means the Loan Agreement, the Mortgage, the Pledge and Security Agreement, the Assignments, the Operating Reserve Letter of Instructions, the Teach-Out Reserve Letter of Instructions, the Intercreditor Agreement and the Depository Agreements, and each amendment thereof.

## EXHIBIT A

### FORM OF TERMINATION OF LOAN AGREEMENT

WHEREAS, D'YOUVILLE UNIVERSITY, a not-for-profit education corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 320 Porter Avenue, Buffalo, New York (the "University"), and BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, a not-for-profit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 95 Perry Street – Suite 403, Buffalo, New York (the "Issuer"), entered into an Loan Agreement dated as of August 1, 2024 (the "Loan Agreement"); and

WHEREAS, pursuant to the Loan Agreement, (A) the Issuer agreed (1) to issue its Revenue Bonds (D'Youville University Project), Series 2024A (Taxable) in the aggregate principal amount of \$44,935,000 (the "Bonds"), and (2) to make a loan to the University of the proceeds of the Bonds (the "Loan") for the purpose of assisting in financing the Project, and (B) in consideration of the Loan, the University agreed (1) to cause the Project to be undertaken and completed, (2) to use the proceeds of the Loan disbursed under the Indenture to pay (or reimburse the University for the payment of) the costs of the Project, and (3) to make payments sufficient in amount to pay when due all amounts due with respect to the Bonds (the "Loan Payments") to or upon the order of the Issuer in repayment of the Loan, which Loan Payments shall include amounts equal to the Debt Service Payments due on the Bonds; and

WHEREAS, the Bonds were issued pursuant to the terms of a trust indenture dated as of August 1, 2024 (the "Indenture") between the Issuer and UMB Bank, N.A., as trustee (the "Trustee") for the holders of the Bonds; and

WHEREAS, as security for the Bonds, the Issuer executed and delivered to the Trustee a pledge and assignment dated as of August 1, 2024 (the "Pledge and Assignment") from the Issuer to the Trustee, and acknowledged by the University, which Pledge and Assignment assigned to the Trustee certain of the Issuer's rights under the Loan Agreement; and

WHEREAS, pursuant to the Loan Agreement, the University and the Issuer agreed that the Loan Agreement would terminate upon (1) payment in full of the Loan evidenced by the Bonds, (2) termination of the Pledge and Assignment, (3) payment in full of all other Indebtedness (as defined therein) evidenced by the Loan Agreement and (4) performance by the University of all other obligations of the University to the Issuer pursuant to the provisions of the Loan Agreement; and

WHEREAS, the Bonds and the other Indebtedness have been paid in full, and the University and the Issuer now desire to evidence the termination of the Loan Agreement;

NOW, THEREFORE, it is hereby agreed that the Loan Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 8.15 of the Loan Agreement, certain obligations of the University shall survive the termination of the Loan Agreement, and the execution of this termination of Loan Agreement by the Issuer is not intended, and shall not be construed, as a waiver or alteration by the Issuer or the University of the provisions of Section 8.15 of the Loan Agreement.

IN WITNESS WHEREOF, the University and the Issuer have signed this Termination of Loan Agreement and caused same to be dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

D'YOUVILLE UNIVERSITY

BY: \_\_\_\_\_  
Authorized Officer

BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

BY: \_\_\_\_\_  
Authorized Officer

## **APPENDIX E**

### **FORM OF THE MORTGAGE**

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D'YOUVILLE UNIVERSITY  
TO  
BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

---

MORTGAGE

---

DATED AS OF AUGUST 1, 2024

---

THIS MORTGAGE (A) AFFECTS TANGIBLE AND INTANGIBLE  
PERSONAL PROPERTY AS WELL AS REAL PROPERTY,  
(B) CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS,  
AND (C) IS INTENDED TO CONSTITUTE A SECURITY  
AGREEMENT UNDER THE UNIFORM COMMERCIAL CODE OF  
THE STATE OF NEW YORK.

---

Record and Return:  
Hodgson Russ LLP  
677 Broadway – Suite 401  
Albany, New York 12207  
Attn: Samantha Rose, Paralegal

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the Mortgage and is for convenience of reference only.)

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## MORTGAGE

THIS MORTGAGE dated as of August 1, 2024 (the “Mortgage”) from D’YOUVILLE UNIVERSITY (the “University”), a not-for-profit education corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 95 Perry Street – Suite 403, Buffalo, New York to BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (the “Issuer”), a not-for-profit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 320 Porter Avenue, Buffalo, New York, as issuer of the Issuer’s Revenue Bonds (D’Youville University Project), Series 2024A (Taxable) in the aggregate principal amount of \$44,935,000 (the “Bonds”) issued by the Issuer pursuant to a trust indenture dated as of August 1, 2024 (the “Indenture”) by and between the Issuer and UMB Bank, N.A., as trustee (the “Trustee”);

### WITNESSETH:

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) (A) authorizes any city to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

WHEREAS, in January, 1982, a certificate of incorporation was filed with the New York Secretary of State’s Office (the “Certificate of Incorporation”) creating the Issuer as a public instrumentality of Erie County, New York (the “County”) pursuant to the Enabling Act; and

WHEREAS, the Issuer, as authorized and empowered by the Enabling Act and resolutions adopted by the Erie County Legislature (the “County Legislature”) on July 24, 2009, November 19, 2009, March 25, 2010, and June 20, 2011, respectively (collectively, the “Sponsor Resolution”), in January, 2024 accepted an application (the “Application”) from the University, which Application requested that the Issuer consider undertaking a project (the “Project”) for the benefit of the University, said Project to consist of the following: (A) the funding of certain initial startup costs of a new osteopathic medicine college (the “College of Osteopathic Medicine”) being developed by the University; (B) the funding of the Capitalized Interest Fund (as defined herein) for purposes of the payment of interest on the Bonds through May 1, 2025; (C) the financing of all or a portion of the costs of the foregoing by the issuance of the Bonds; and (D) paying a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds and any reserve funds as may be necessary to secure the Bonds; and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on February 28, 2024 (the “Bond Resolution”), the board of directors of the Issuer (A) determined that the Project constitutes a “Type II Action,” as such quoted term is defined under Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6NYCRR Part 617, as amended (the “Regulations” and

collectively with the SEQR Act, “SEQRA”), and therefore that no further action with respect to the Project was required under SEQRA; (B) authorized the circulation of a preliminary limited offering memorandum (the “Preliminary Limited Offering Memorandum”) in connection with the marketing of the Bonds and (C) authorized the issuance of the Bonds for the purpose of financing a portion of the costs of the Project, delegating to the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer authority to determine the final details of the Bonds (the “Bond Details”) once the marketing of the Bonds is completed and the University has agreed to the Bond Details; and

WHEREAS, the Issuer will now issue the Bonds under the Bond Resolution, a certificate of determination (the “Certificate of Determination”) executed by the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer and the Indenture; and

WHEREAS, prior to or simultaneously with the issuance of the Bonds, the Issuer and the University will execute and deliver a loan agreement dated as of August 1, 2024 (the “Loan Agreement”) by and between the Issuer, as lender, and the University, as borrower, pursuant to the terms of which Loan Agreement (A) the Issuer will agree (i) to issue the Bonds, and (ii) to make a loan to the University of the proceeds of the Bonds (the “Loan”) for the purpose of assisting in financing the Project, and (B) in consideration of the Loan, the University will agree (i) to cause the Project to be undertaken and completed, (ii) to use the proceeds of the Loan disbursed under the Indenture to pay (or reimburse the University for the payment of) the costs of the Project, and (iii) to make payments sufficient in amount to pay when due all amounts due with respect to the Bonds to or upon the order of the Issuer in repayment of the Loan, which payments shall include amounts equal to the Loan Repayments (as defined in the Loan Agreement) due on the Bonds; and

WHEREAS, pursuant to the terms of the Indenture, the net proceeds of the sale of the Bonds (the “Bond Proceeds”) will be deposited into various trust funds held by the Trustee under the Indenture and will be disbursed by the Trustee from time to time to pay the costs of the Project, but only upon satisfaction of the requirements for making such disbursements set forth in the Indenture and in the Loan Agreement; and

WHEREAS, as security for the Bonds, the Issuer will execute and deliver to the Trustee a pledge and assignment dated as of August 1, 2024 (the “Pledge and Assignment”) from the Issuer to the Trustee, and acknowledged by the University, which Pledge and Assignment will assign to the Trustee certain of the Issuer’s rights under the Loan Agreement; and

WHEREAS, pursuant to the Pledge and Assignment, basic Loan Repayments made by the University under the Loan Agreement are to be paid directly to the Trustee; and

WHEREAS, the University’s obligations pursuant to the Loan Agreement will be secured by a pledge and security agreement dated as of August 1, 2024 (the “Pledge and Security Agreement”) from the University to the Trustee, pursuant to which the University grants to the Trustee a security interest in the Gross Revenues of the University (as defined therein); and

WHEREAS, pursuant to an amended and restated intercreditor agreement dated as of August 1, 2024 (the “Intercreditor Agreement”) by and between the Trustee and the Series 2020 Trustee (as defined herein), the Trustee and the Series 2020 Trustee will agree that their respective rights with respect to the Gross Revenues are intended to be *pari passu*, to be shared *pro rata* as described in the Intercreditor Agreement; and

WHEREAS, as additional security for the Bonds, the University will execute and deliver to the Issuer this Mortgage, which shall be assigned by the Issuer to the Trustee pursuant to an assignment of mortgage dated as of August 1, 2024 (the “Mortgage Assignment”); and

WHEREAS, the operation of a college or university of osteopathic medicine in the United States requires accreditation from the American Osteopathic Association’s Commission on Osteopathic College Accreditation (“COCA”), and the requirements for accreditation of the College of Osteopathic Medicine include, among other things, the funding of sufficient escrows to provide for reserves of the University until the date upon which the first class of students of the College of Osteopathic Medicine graduates after COCA grants full accreditation (the “COCA Escrow Requirements”); and

WHEREAS, the University has deposited funds sufficient to satisfy the COCA Escrow Requirements into (i) a reserve account (the “Teach-Out Reserve”) held by Wilmington Trust, National Association (the “Teach-Out Reserve Depository”), established pursuant to the Multi-Party Account Agreement dated as of February 9, 2024 (the “Teach-Out Reserve Depository Agreement”) by and among COCA, the University and the Teach-Out Reserve Depository, and (ii) a reserve account (the “Operating Reserve”) held by Goldman Sachs & Co. LLC (the “Operating Reserve Depository”), established as required by the Operating Reserve Fund Account Agreement dated as of February 9, 2024 (the “Operating Reserve Depository Agreement”) by and between the University and COCA; and

WHEREAS, pursuant to the letter of instructions regarding teach-out reserve fund dated August 13, 2024 (the “Teach-Out Reserve Letter of Instructions”) from the Issuer and the University to the Trustee, and accepted by the Trustee, the University has irrevocably instructed the Trustee to deliver to the Teach-Out Reserve Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing the Teach-Out Reserve Depository to pay to the Trustee, upon termination of the Teach-Out Reserve, all moneys then on deposit in the Teach-Out Reserve, to be deposited by the Trustee into the Bond Fund established under the Indenture; and

WHEREAS, pursuant to the letter of instructions regarding operating reserve fund dated August 13, 2024 (the “Operating Reserve Letter of Instructions”) from the Issuer and the University to the Trustee, and accepted by the Trustee, the University has irrevocably instructed the Trustee to deliver to the Operating Reserve Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing the Operating Reserve Depository to pay to the Trustee, upon termination of the Operating Reserve, all moneys then on deposit in the Operating Reserve, to be deposited by the Trustee into the Bond Fund established under the Indenture; and

WHEREAS, in connection with the issuance of the Bonds, the University will execute and deliver an environmental compliance and indemnification agreement dated as of August 1, 2024 (the “Environmental Compliance Agreement”) from the University to the Issuer and the Trustee, pursuant to which, among other things, the University indemnifies the Issuer and the Trustee against certain environmental liabilities related to the Mortgaged Property; and

WHEREAS, the Bonds will be initially purchased by Loop Capital Markets, acting as underwriter for the Bonds (the “Underwriter”) pursuant to a bond purchase agreement dated August 1, 2024 (the “Bond Purchase Agreement”) by and among the Underwriter, the Issuer and the University. The Underwriter will utilize the Preliminary Limited Offering Memorandum and a final limited offering memorandum (the “Limited Offering Memorandum”) in connection with the initial offering of the Bonds. The Underwriter also intends to obtain a rating of the Bonds from one or more securities rating agencies; and

WHEREAS, all things necessary to constitute this Mortgage a valid first priority Lien on and pledge of the Mortgaged Property (as hereinafter defined) herein described in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Mortgage, as security for the University's obligations under the Bond Documents (as defined in the Indenture), have in all respects been duly authorized;



NOW THEREFORE, THIS MORTGAGE FURTHER WITNESSETH:

KNOW ALL MEN BY THESE PRESENTS, that the University, in order to secure payment of the principal of and interest on the Bonds, originally in the aggregate principal amount of \$44,935,000 according to their tenor and effect, and all amounts required to be paid to the Trustee under the Loan Agreement, originally in the maximum principal amount of \$44,935,000, according to the tenor and effect of the Loan Agreement, the payment of all other sums required to be paid hereunder and under the Indenture and the other Bond Documents and the performance and observance by the University of all of the covenants, agreements, representations and warranties herein and in the Indenture and the other Bond Documents, does hereby covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.01. DEFINITIONS. All of the capitalized terms used in this Mortgage and the preambles hereto not otherwise defined shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Appendix A and made a part hereof.

SECTION 1.02. INTERPRETATION. In this Mortgage, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder”, and any similar terms as used in this Mortgage, refer to this Mortgage, and the term “heretofore” shall mean before the date of this Mortgage, and the term “hereafter” shall mean after the date of this Mortgage;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa; and

(D) any certificates, letters or opinions required to be given pursuant to this Mortgage shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Mortgage.

## ARTICLE II

### LAND MORTGAGE; GRANTING CLAUSES; SECURITY AGREEMENT; GENERAL COVENANTS

SECTION 2.01. GRANTING CLAUSES. The University, in consideration of the execution and delivery by the Trustee of the Indenture, the purchase and acceptance of the Bonds by the holders and owners thereof, and for other good and valuable consideration, receipt of which is hereby acknowledged, and in order to secure (i) the payment of the principal of and interest on the Bonds, issued in the original aggregate principal amount of \$44,935,000 according to their tenor and effect, (ii) all amounts required to be paid to the Issuer and the Trustee under the Loan Agreement originally in the aggregate principal amount of \$44,935,000 according to its tenor and effect, (iii) the payment of all other sums required to be paid hereunder and under the Indenture and the other Bond Documents, and (iv) the performance and observance by the University of all of the covenants, agreements, representations and warranties herein and in the Indenture and the other Bond Documents (all of the above in (i) through (iv) being collectively referred to herein as the "Mortgage Indebtedness"), hereby warrants, assigns, mortgages, hypothecates, pledges, grants a Lien on and security interest in, sets over and confirms unto the Issuer, and the Issuer's successors and assigns forever, all of the estate, right, title and interest of the University in, to and under any and all of the following described property (the "Mortgaged Property"), whether now owned or held or hereafter acquired:

(A) The real property as more particularly described in Exhibit A attached hereto (the "Mortgaged Land"), together with the appurtenances thereto and the title in and to any portion of the Mortgaged Land lying in the streets and roads in front of and adjoining said Mortgaged Land;

(B) All buildings, structures, improvements, fixtures and appurtenances now standing, or at any time hereafter constructed or placed, upon the Mortgaged Land or any part thereof, including all right, title and interest of the Issuer and the University in and to all building materials and fixtures of every kind and nature whatsoever on the Mortgaged Land or in any building now or hereafter standing on the Mortgaged Land or any part thereof;

(C) All easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Mortgaged Property or now or hereafter transferred to the Mortgaged Property) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Mortgaged Property to the center line thereof;

(D) Any and all reserves, escrows, impounds, moneys, securities and other investment property from time to time held by the Issuer under the terms of this Mortgage or by the Trustee under the terms of the Indenture, and any and all other Property of every name and nature, from time to time hereinafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder by the University or by anyone on its behalf or with its written consent in favor of the Issuer or the Trustee;

(E) All leases, subleases, licenses, contract rights, general intangibles, accounts and other agreements affecting the use, operation or occupancy of all or any portion of the Mortgaged Property or the other real property described above now or hereafter entered into, and the right to receive and apply

the rents, issues, fees and profits of the Mortgaged Property or the other real property described above to the payment of the Mortgage Indebtedness;

(F) All rents, revenues, income, proceeds, issues, profits, security and other types of deposits, and other benefits paid or payable and to become due or payable by parties to leases other than the University for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying any portion or portions of the Mortgaged Land and/or improvements and all rights and interests of the University in any and all moneys due or to become due to the University under or arising out of the Mortgaged Property; provided, that the assignment made by this clause shall not impair or diminish any obligation of the University under the Loan Agreement;

(G) All rights and interests of the University in any insurance policies affecting the Mortgaged Property, and all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property or the other real property described above, including, without limitation, the right to receive and apply the proceeds of any insurance or judgments, or settlements made in lieu thereof, for damage to any of the foregoing;

(H) All right, title and interest of the University in and to (i) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to the use or operation of the Mortgaged Property or any part thereof, and (ii) all drawings, plans, specifications and similar or related items relating to the Mortgaged Property;

(I) All other proceeds of the conversion, whether voluntary or involuntary, of the Mortgaged Property or any other Property or rights encumbered or conveyed hereby into cash or liquidated claims, including, without limitation, all hazard insurance, Condemnation and other awards;

(J) All extensions, additions, substitutions and accessions with respect to any of the foregoing, and all proceeds and products (both cash and non-cash) of all of the foregoing; and

(K) The right, in the name and on behalf of the University, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of the Issuer or the Trustee in the Mortgaged Property;

TO HAVE AND TO HOLD the foregoing Mortgaged Property unto the Issuer and its respective successors and assigns forever;

SUBJECT, HOWEVER, to the Permitted Encumbrances;

PROVIDED, HOWEVER, that, if (A) there shall be no Event of Default under the Indenture, (B) the University shall perform and observe all the covenants to be performed and observed hereunder and under the Loan Agreement and the other Bond Documents to which the University is a party, and (C) the University has paid or caused to be paid to the Issuer and the Trustee all sums of money due or to become due to the Issuer and the Trustee in accordance with the terms and provisions hereof and of the other Bond Documents to which it is a party, including, without limitation all amounts owed under all indemnification provisions, then upon such final payments and such performance and observance, this Mortgage and the rights hereby granted shall cease, terminate and be void; otherwise, this Mortgage to be and remain in full force and effect.

SECTION 2.02. SECURITY AGREEMENT. (A) The Mortgaged Property includes both real and personal Property and all other rights and interest, whether tangible or intangible in nature, of the University in the Mortgaged Property. This Mortgage shall also constitute a security agreement under the

Uniform Commercial Code of the State so that the Issuer shall have and may enforce a security interest in any or all of the Mortgaged Property, in addition to (but not in limitation of) the Lien upon that portion of the Mortgaged Property constituting part of the realty imposed by the foregoing provisions hereof, such security interest to attach at the earliest moment permitted by law and also to include and attach to all additions and accessions thereto, all substitutions and replacements therefor, all proceeds thereof, including insurance and Condemnation proceeds, and all contract rights, rental or lease payments and general intangibles of the University obtained in connection with or relating to the Mortgaged Property as well as any and all items of Property in the foregoing classifications which are hereafter acquired. The University shall, at the request of the Issuer, deliver to the Issuer any and all further instruments which the Issuer shall require in order to further secure and perfect the Lien of this Mortgage. Pursuant to the Uniform Commercial Code of the State, the University hereby authorizes (i) the Issuer, and (ii) upon assignment of this Mortgage by the Issuer to the Trustee pursuant to the Assignment of Mortgage, the Trustee to execute and file continuation statements without the necessity of the University's signature as debtor (copies of which shall be sent to the University promptly after the filing thereof) if either the Issuer or the Trustee shall determine that such are necessary or advisable in order to perfect or continue the perfection of the Issuer's or the Trustee's respective security interests in any of the Mortgaged Property covered by this Mortgage, and shall pay to the Issuer or the Trustee, as the case may be, on demand, any reasonable expenses incurred by the Issuer or the Trustee, as the case may be, in connection with the preparation, execution and filing of such statements and any continuation statements that may be filed by the Issuer or the Trustee, as the case may be.

(B) The University shall not change its name or principal place of business without giving the Issuer and the Trustee at least thirty (30) days prior written notice thereof, which notice shall be accompanied by new financing statements executed by the University in the same form as the financing statements delivered to the Issuer and/or the Trustee on the date hereof except for the change of name and/or address. Without limiting the foregoing, the University hereby irrevocably appoints (i) the Issuer, and (ii) upon assignment of this Mortgage by the Issuer to the Trustee pursuant to the Assignment of Mortgage, the Trustee, and each of their respective officers, as attorneys-in-fact for the University to execute, deliver and file such instruments for and on behalf of the University. The chief executive office and principal place of business or operations of the University is located at 320 Porter Avenue, Buffalo, New York 14201, and the University will not move its chief executive office or its principal place of business or operations except to such new location as the University may establish in accordance with this Section 2.02. The originals of all documents evidencing any portion of the Mortgaged Property and the only original books of account and records of the University relating thereto are, and will continue to be, kept at such chief executive office or at such new location as the University may establish in accordance with this Section 2.02.

SECTION 2.03. INFORMATION UNDER THE UNIFORM COMMERCIAL CODE. The following information is stated in order to facilitate filings under the Uniform Commercial Code of the State:

(A) The Secured Party is Buffalo and Erie County Industrial Land Development Corporation, having an office for the transaction of business located at 95 Perry Street – Suite 403, Buffalo, New York 14203.

(B) The Debtor is D'Youville University having an office for the transaction of business located at 320 Porter Avenue, Buffalo, New York 14201.

SECTION 2.04. PERFORMANCE OF COVENANTS. The University hereby covenant that the University will faithfully observe and perform, or cause to be observed and performed, at all times any and all covenants, undertakings, stipulations and provisions on its parts to be observed or performed contained in this Mortgage and the other Bond Documents to be executed by the University.

SECTION 2.05. PRIORITY OF LIEN OF MORTGAGE; DISCHARGE OF LIENS AND ENCUMBRANCES. (A) The University hereby represents and warrants that, except for Permitted Encumbrances, the University is lawfully seized of the estate conveyed hereby and the University has the right to grant and convey its interest in the Mortgaged Property, and the University will warrant and defend title to its interest in the Mortgaged Property against all claims and demands, excepting the Permitted Encumbrances.

(B) The University shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Mortgaged Property or any part thereof, without the prior written consent of the Trustee given at the direction of the Holders of not less than fifty-one percent (51%) in aggregate principal amount of the Bonds then outstanding.

(C) Notwithstanding the provisions of subsection (B) of this Section 2.05, the University may in good faith contest any such Lien, after prior notice to the Issuer in the case of any material item, and at its own expense, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, provided that (i) no Event of Default shall have occurred and shall be continuing under any of the Bond Documents, (ii) the University is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to this Mortgage, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the University or the Mortgaged Property is subject and shall not constitute a default thereunder, (iv) neither the Mortgaged Property nor any part thereof nor any interest therein, nor the Lien of the Issuer thereon, nor any funds of the University or the Issuer applicable to the acquisition or installation of the Mortgaged Property, will in the reasonable opinion of the Issuer be in danger of being sold, forfeited, terminated, canceled, lost or adversely affected at any time during the pendency of or after such proceeding, and (v) the University shall have set aside in an interest-bearing account with a bank, and otherwise in a manner reasonably satisfactory to the Issuer, adequate cash reserves for the discharge of the contested Lien, together with all interest and penalties related thereto, or in the alternative the University shall have furnished such security as may be required in the proceeding, or as may otherwise be reasonably requested or required by the Issuer to insure the discharge of the contested Lien, together with all interest and penalties related thereto.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES

SECTION 3.01. REPRESENTATIONS AND WARRANTIES OF THE ISSUER. The Issuer hereby represents and warrants that it has the power to issue the Bonds, to execute and deliver the Bond Documents to which the Issuer is a party and to accept this mortgage from the University; and that all action on the part of the Issuer for the issuance of the Bonds and the execution and delivery of the Bond Documents to which the Issuer is a party has been duly and effectively taken.

SECTION 3.02. REPRESENTATIONS AND WARRANTIES OF THE UNIVERSITY. The University represents and warrants as follows:

(A) (i) The University has good, marketable and insurable title to the Mortgaged Land, subject only to Permitted Encumbrances, (ii) the University owns or will own all fixtures and articles of personal Property now or hereafter constituting part of the Mortgaged Property, including any substitutions or replacements thereof, and accessions thereto, free and clear of all Liens and claims, and (iii) this Mortgage is and will remain a valid and enforceable Lien on the Mortgaged Property.

(B) The University is a not-for-profit education corporation duly organized and validly existing under the laws of the State, is duly authorized to do business in the State, and has the power to enter into and perform this Mortgage and the other Bond Documents executed by the University and to mortgage and pledge its interest in the Mortgaged Property in the manner and to the extent herein set forth; and this Mortgage and the other Bond Documents executed by the University constitute valid and enforceable obligations according to their respective terms.

(C) Neither the execution and delivery of this Mortgage or the other Bond Documents executed by the University, the consummation of the transactions contemplated hereby or thereby nor the fulfillment of or compliance with the provisions hereof or thereof will violate any provision of the University's charter or by-laws, or conflict with or result in a breach of or default under any of the terms, conditions or provisions of any order, judgment, law, restriction, agreement or instrument to which the University is a party to or by which the University or any of its Property is or may be bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the University under the terms of any such instrument or agreement.

(D) The Mortgaged Property and the operation thereof currently complies and will continue to comply with all Applicable Laws.

(E) The Mortgaged Land is not located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as same may have been amended to date.

(F) The University has all necessary certificates, licenses, authorizations, registrations, permits and approvals necessary for the operation of the Mortgaged Property, including, but not limited to, all required environmental, zoning and planning permits and approvals, all of which are in full force and effect and not, to the knowledge of the University, subject to any revocation, amendment, release, suspension, forfeiture or the like; the present and contemplated use and occupancy of the Mortgaged Land does not conflict with or violate any such certificate, license, authorization, registration, permit of approval.

(G) (i) The University is now, and after giving effect to this Mortgage will be, in a solvent condition, (ii) the execution and delivery of this Mortgage by the University does not constitute a “fraudulent conveyance” within the meaning of Title 11 of the United States Code as now constituted or under any other applicable statute, and (iii) no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of the University’s knowledge, against the University.

SECTION 3.03. PERFORMANCE OF COVENANTS. The University hereby covenants that the University will faithfully observe and perform at all times any and all covenants, undertakings, stipulations, warranties and provisions on its part to be observed or performed contained in the Bond Documents.

SECTION 3.04. PAYMENT OF PRINCIPAL AND INTEREST ON THE BONDS. As provided in the Loan Agreement, the University hereby covenants that the University will promptly pay, or cause to be paid, the Debt Service on the Bonds at the place, on the dates and in the manner provided therein.

SECTION 3.05. PRIORITY OF LIEN OF MORTGAGE. The University covenants that the University shall not create or suffer to be created any Lien, except Permitted Encumbrances, upon the Mortgaged Property or any part thereof.



## ARTICLE IV

### MAINTENANCE, MODIFICATION, TAXES AND INSURANCE

SECTION 4.01. MAINTENANCE OF AND MODIFICATIONS TO THE MORTGAGED PROPERTY BY THE UNIVERSITY. Subject to the applicable provisions of the Loan Agreement, the University shall (A) keep the Mortgaged Property in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (B) make all necessary repairs and replacements to the Mortgaged Property or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), (C) not remove or demolish any material portion of the Mortgaged Property without the prior written consent of the Issuer, which consent shall not be unreasonably withheld, conditioned or delayed, (D) not permit the Mortgaged Property to become deserted or abandoned, and (E) operate the Mortgaged Property in a sound and economic manner.

SECTION 4.02. INSURANCE REQUIRED. At all times throughout the term of this Mortgage the University shall maintain insurance in accordance with Section 5.07 of the Loan Agreement.

SECTION 4.03. UTILITY CHARGES. The University shall pay or cause to be paid, as the same respectively become due, all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Mortgaged Property.

## ARTICLE V

### SPECIAL COVENANTS

SECTION 5.01. RIGHT OF ACCESS TO THE MORTGAGED PROPERTY. The Issuer and the University agree that the Issuer or the duly authorized agents of the Issuer shall have the right (but not the duty) at all reasonable times upon reasonable notice (except in the event of an Event of Default or in the event of an emergency) to enter upon and to examine and inspect the Mortgaged Property. Such right of access shall include, without limitation, the right to enter upon the Mortgaged Property to conduct such tests, analyses, environmental audits, inspections and soil borings as the Issuer may deem necessary or advisable in its sole discretion as set forth in the Loan Agreement.

SECTION 5.02. INSPECTION OF MORTGAGED PROPERTY BOOKS. The University hereby covenants that all books and documents in its possession relating to the Mortgaged Property and the revenues derived from the Mortgaged Property shall at all reasonable times upon reasonable notice (except in the event of an Event of Default) be open to inspection by such accountants or other agents as the Issuer may from time to time designate.

SECTION 5.03. AGREEMENT TO PROVIDE INFORMATION. The University agrees, whenever requested by the Issuer, to provide and certify or cause to be provided and certified such information concerning the University, its finances and other topics as may be reasonably required pursuant to the Loan Agreement or as the Issuer from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Issuer to make any reports required by Applicable Law.

SECTION 5.04. BOOKS OF RECORD AND ACCOUNT. The University agrees to maintain, in accordance with the Loan Agreement, proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the University.

SECTION 5.05. COMPLIANCE WITH APPLICABLE LAWS. (A) The University agrees that it will, at all times prior to the termination of this Mortgage, promptly and fully comply with all (i) Applicable Laws, (ii) covenants, conditions and restrictions of record relating to the ownership, use, construction, operation or leasing of the Mortgaged Property, (iii) covenants, conditions and restrictions set forth in any document or instrument creating a lien or charge upon all or any portion of the Mortgaged Property, and (iv) policies of insurance at any time in force with respect to the Mortgaged Property and required hereunder or under the Loan Agreement.

(B) The University may in good faith actively contest the validity or the applicability of any such requirements, after prior notice to the Issuer in the case of any material item, and at its own expense, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, provided that (i) no Event of Default shall have occurred and shall be continuing under any of the Bond Documents, (ii) the University is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to this Mortgage, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the University or the Mortgaged Property is subject and shall not constitute a default thereunder, (iv) neither the Mortgaged Property nor any part thereof nor any interest therein, nor the Lien of the Issuer, nor any funds of the Issuer applicable to the acquisition, construction or installation of the Mortgaged Property, will be in danger of being sold, forfeited, terminated, canceled, lost or adversely affected at any time during the pendency of or after such proceeding, and (v) the University shall have set aside in an interest-bearing account with a bank, and

otherwise in a manner reasonably satisfactory to the Issuer, adequate cash reserves for the performance of the contested requirement, together with all interest and penalties related thereto, or in the alternative the University shall have furnished such security as may be required in the proceeding, or as may otherwise be reasonably requested or required by the Issuer to insure the performance of the contested requirement, together with all interest and penalties related thereto. This Section 5.05(B) shall not be deemed to apply to the payment of taxes or assessments (which is covered by Section 4.03), or to the contest of Liens (which is covered by Section 2.05 hereof).

**SECTION 5.06. RECORDATION OF MORTGAGE AND MORTGAGE ASSIGNMENT AND FILING OF SECURITY INSTRUMENTS.** (A) By acceptance of the benefits of this Mortgage, the Issuer hereby covenants that it will, at the sole cost and expense of the University, cause this Mortgage and the Assignment of Mortgage and all supplements hereto and thereto, together with all other security instruments and financing statements, to be recorded and filed, as the case may be, in such manner and in such places as may be requested by the Trustee in order to perfect the Liens created by the Bond Documents. The University covenants that it will, upon request of the Issuer or the Trustee, cause to be filed all documents requested by the Issuer or the Trustee, as the case may be, including, without limitation, continuation statements under the Uniform Commercial Code of the State, in such manner and in such places as may be required by law in order to protect and maintain in force the Liens of the Bond Documents.

(B) Without limiting the foregoing, the University hereby irrevocably appoints the Issuer as attorney-in-fact for the University to execute, deliver and file such instruments for and on behalf of the University without the necessity of the signature of the University or anyone claiming under or through the University, including, but not limited to, the University.

**SECTION 5.07. ENFORCEMENT OF DUTIES AND OBLIGATIONS OF THE UNIVERSITY.** The University hereby covenants that the University will take all legally available action to fully comply with the covenants of the University contained in the Loan Agreement in the manner and at the times provided in the Loan Agreement.

**SECTION 5.08. ENVIRONMENTAL PROVISIONS.** (A) The University hereby represents and warrants to the Issuer that, other than as permitted by Applicable Laws, (i) no Hazardous Material is currently located at, on, in, under or about the Mortgaged Property, (ii) no releasing, emitting, discharging, leaching, dumping, disposing or transporting of any Hazardous Material from the Mortgaged Property onto any other property or from any other property onto or into the Mortgaged Property has occurred or is occurring in violation of any Applicable Law, (iii) no notice of violation, non-compliance, liability or potential liability, lien, complaint, suit, order or other notice with respect to the Mortgaged Property is presently outstanding under any Applicable Law or from any Governmental Authority, nor does the University have knowledge or reason to believe that any such notice will be received or is being threatened, and (iv) the Mortgaged Property and the operation thereof are in material compliance with all Applicable Laws and all covenants, conditions, and restrictions of record relating to the ownership, use, operation, construction or leasing of the Mortgaged Property.

(B) The University shall comply with all of the terms, conditions and provisions of the Environmental Compliance Agreement. All of the representations, certifications, statements of reasonable expectation and covenants made by the University in the Environmental Compliance Agreement are hereby declared to be for the benefit of, among others, the Issuer and, by this reference, are incorporated herein by this reference as though set forth in full herein.

**SECTION 5.09. ENFORCEMENT OF RIGHTS UNDER ASSIGNED CONTRACT RIGHTS.** The University agrees to perform all obligations, conditions and agreements to be performed by the University

with respect to all permits, licenses and approvals for the Mortgaged Property and to enforce the performance of all obligations, conditions and agreements to be performed by each third party with respect to contracts, subcontracts, and other agreements for the acquisition, construction, use or occupancy of the Mortgaged Property.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01. EVENTS OF DEFAULT DEFINED. (A) The following shall be “Events of Default” under this Mortgage and the terms “Event of Default” or “default” shall mean, whenever they are used in this Mortgage, any one or more of the following events:

(i) default by the University in the due and punctual payment of any sum due under Section 4.01 of the Loan Agreement;

(ii) default by the University in the due and punctual payment of any sum due under the Loan Agreement relating to the principal of and interest on the Bonds;

(iii) failure by the University to observe and perform any covenant, condition or agreement on its part required to be observed or performed in this Mortgage or to make any other payment required hereby, other than as referred to in (2) above, for a period of sixty (60) days after receipt by the University of written notice specifying such failure and requesting that it be remedied, given to the University by the Trustee or by the Issuer, unless the Trustee or the Issuer, with the consent of the Trustee, shall agree in writing to an extension of such time prior to its expiration;

(iv) the occurrence of an “Event of Default” under any of the Bond Documents;

(v) any representation or warranty made by the University herein or in any other Bond Document shall have been materially false at the time that it was made;

(vi) the University shall generally not pay its debts as such debts become due or admits in writing its general inability to pay its debts as they become due;

(vii) the University shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof;

(viii) the Mortgaged Property, or any part thereof, is in any manner, whether voluntarily or involuntarily, encumbered, assigned, leased, subleased, sold, transferred or conveyed, except as is expressly provided in the Loan Agreement, or the University threatens to encumber, assign, lease, sublease, sell, transfer or convey, the Mortgaged Property, or any part thereof, to any person without the prior written consent of the Issuer, except as is expressly provided in the Loan Agreement;

(ix) (a) the filing by the University (as debtor) of a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy statute; (b) the failure by the University within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the University’s ability to carry out its obligations hereunder; (c) the commencement of a case under the Bankruptcy Code against the University as the debtor or commencement

under any other federal or state bankruptcy statute of a case, action or proceeding against the University and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days; (d) the entry of an order for relief by a court of competent jurisdiction under the Bankruptcy Code or any other federal or state bankruptcy statute with respect to the debts of the University ; or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the University unless such order, judgment or decree is vacated, dismissed or dissolved within sixty (60) days of such appointment; and

(x) the imposition of a Lien on the Mortgaged Property other than a Permitted Encumbrance.

SECTION 6.02. ACCELERATION; ANNULMENT OF ACCELERATION. (A) Upon the occurrence and continuance of an Event of Default hereunder, the Issuer may, by notice in writing delivered to the University, declare the whole of the Mortgage Indebtedness immediately due and payable, whereupon the same shall become and be immediately due and payable, anything in this Mortgage or any other Bond Document to the contrary notwithstanding. In such event, there shall be due and payable the total amount of the Mortgage Indebtedness plus all accrued but unpaid interest thereon and all interest which will accrue thereon to the date of payment. If the Bonds shall become so immediately due and payable, the Issuer may immediately declare by written notice to the University all unpaid loan payments payable by the University under Section 4.01 of the Loan Agreement or otherwise to be immediately due and payable.

(B) At any time after the principal of the Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Mortgage, the Issuer may, at its option, annul such declaration and its consequences. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.03. ENFORCEMENT OF REMEDIES. (A) Upon the occurrence and continuance of any Event of Default, the Issuer may proceed forthwith to protect and enforce its rights under this Mortgage and the other Bond Documents by such suits, actions or proceedings as the Issuer shall deem appropriate, including, without limitation, an action to foreclose the Lien of this Mortgage, in which case the Mortgaged Property or any interest therein may be sold for cash or credit in one or more interests and in any order or manner, in one parcel and as an entirety or in more than one parcel, and in any order or manner as the Issuer may elect.

(B) The Issuer may sue for, enforce payment of and receive any amounts due or becoming due from the University for principal, interest or otherwise under any of the provisions of this Mortgage or the other Bond Documents, without prejudice to any other right or remedy of the Issuer.

(C) Regardless of the happening of an Event of Default, the Issuer may institute and maintain such suits and proceedings as the Issuer reasonably believes shall be necessary or expedient to prevent any impairment of the security under this Mortgage by any acts which may be unlawful or in violation of this Mortgage, or to preserve or protect the interests of the Issuer.

(D) The Issuer shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Issuer or the University, which the Issuer reasonably believes shall be necessary to protect its interest in the Mortgaged Property.

(E) Upon the occurrence of any Event of Default hereunder, the University, upon demand of the Issuer, shall forthwith surrender the possession of, and it shall be lawful for the Issuer, by such officer or agent as it may appoint, to take possession of, all or any part of the Mortgaged Property, together with the books, papers and accounts of the University pertaining thereto, and to hold, operate and manage the same, and from time to time to make all needed repairs and improvements as the Issuer shall deem wise; and the Issuer may sell the Mortgaged Property or any part thereof, or lease the Mortgaged Property or any part thereof in the name and for the account of the Issuer or the University, collect, receive and sequester the rents, revenues, earnings, income, products and profits therefrom, and pay out of the same all proper costs and expenses of taking, holding, leasing, selling and managing the Mortgaged Property, including reasonable compensation to the Issuer and its agents and counsel, and any charges hereunder, and any taxes and other charges prior to the Lien of this Mortgage which the Issuer reasonably believes should be paid, and all expenses of such repairs and improvements, and apply the remainder of the moneys so received in accordance with the provisions of Section 6.05 hereof.

Whenever all that is due under the Bonds and the other Bond Documents, including any amounts which may have been accelerated pursuant to Section 6.02 herein, shall have been paid and all defaults made good, the Issuer shall surrender possession to the University; the same right of entry, however, to exist upon any subsequent Event of Default.

(F) Notwithstanding anything herein contained to the contrary, the Issuer and the University and anyone claiming through or under the Issuer or the University (i) will not (a) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, (b) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision hereof, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (c) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the Property so sold or any part thereof, (ii) hereby expressly waive all benefit or advantage of any such law or laws, and (iii) covenant not to hinder, delay or impede the execution of any power herein granted or delegated to the Issuer, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The University, for itself and all who may claim under it, waives, to the extent that the University lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.

(G) Upon and during the continuance of any Event of Default, the Issuer shall be entitled to exercise any and all rights of a secured party with respect to the Mortgaged Property under the Uniform Commercial Code. The Issuer may take possession of any of the Mortgaged Property and sell any portion of such property pursuant to the provisions of the New York Uniform Commercial Code and generally exercise any of such other rights and remedies with respect to such property as may be provided by said Code. Any requirement of such Uniform Commercial Code as to reasonable notice shall be met by delivering written notice to the University ten (10) days prior to any such sale. In the event of any foreclosure under this Mortgage, the Mortgaged Property may be sold in whole or in part as part of the realty or separately. The Issuer shall also be entitled to take possession of, assemble and collect all or any portion of the Mortgaged Property and require the University to assemble the Mortgage Property and make it available at any place the University may designate so as to allow the Issuer to take possession of or dispose of all or any portion of the Mortgaged Property.

(H) Upon and during the continuance of any Event of Default, the Issuer shall be entitled to ask for, demand, collect, receive, compound and give acquaintance therefor or any part thereof, to extend the time of payment of, compromise or settle for cash, credit or otherwise, and upon any terms and

conditions, any thereof, to endorse the name of the University on any checks, drafts or other orders or instruments for the payment of moneys payable to the University which shall be issued in respect thereof, to exercise and enforce any rights and remedies in respect thereof, to file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by the Issuer necessary or advisable for the purpose of collecting or enforcing payment and performance thereof, to make test verifications thereof or any portion thereof, to notify any or all account debtors thereunder to make payment thereof directly to the Issuer for the account of the Issuer and to require the University to forthwith give similarly notice to the account debtors and to require the University forthwith to account for and transmit to the Issuer in the same form as received all proceeds (other than physical property) or collection thereof received by the University and, until so transmitted, to hold the same in trust for the Issuer and not commingle such proceeds with any other funds of the University.

(I) Upon the occurrence of an Event of Default, the Issuer may cause one or more environmental remedial actions to be taken, provided that the exercise of any of such remedies shall not be deemed to have relieved the University from any responsibility therefor or given the Issuer “control” over the Mortgaged Property or cause the Issuer to be considered to be a mortgagee in possession, “owner” or “operator” of the Mortgaged Property for purposes of any Environmental Regulation.

(J) Without limiting the generality of the foregoing, upon the occurrence of any Event of Default, the Issuer may take such other actions or proceedings as the Issuer reasonably believes shall be necessary or advisable to protect its interest in the Mortgaged Property and ensure payment and performance of the Mortgaged Indebtedness including, without limitation, appointment of a receiver (and the University hereby waives any right to object to such appointment and any requirement relating to the condition, value or adequacy of the Mortgaged Property) and exercise of any of the Issuer’s remedies provided in the Loan Agreement or the other Bond Documents, or in any document evidencing, securing or relating to any of the Mortgage Indebtedness available to a secured party under the Uniform Commercial Code in the State or under other applicable law.

SECTION 6.04. APPOINTMENT OF RECEIVERS. Upon the occurrence of an Event of Default hereunder and the filing of a suit or commencement of other judicial proceedings to enforce rights of the Issuer under this Mortgage, the Issuer shall be entitled, as a matter of right, without notice and without regard to the adequacy of any security for the debt secured hereby, to the appointment of a receiver or receivers of the Mortgaged Property and of the revenues and receipts thereof, pending the conclusion of such proceedings and any appeal therefrom, with such powers as the court making such appointment shall confer. The receiver shall be entitled to occupational rent from an owner/occupant and may upon non-payment of said rent evict the owner/occupant.

SECTION 6.05. APPLICATION OF MONEYS. The Net Proceeds received by the Issuer pursuant to any right given or action taken under the provisions of this Article VI shall, during the continuance of an Event of Default hereunder, be applied in the following order of priority (A) first, to the payment of the fees, costs and expenses of the Issuer, including reasonable attorney’s fees; (B) second, in accordance with the provisions contained in the Indenture respecting the application of moneys received under the enforcement provisions of the Indenture; (C) third, to the payment of any sum or charge (other than principal or interest) evidenced or secured by this Mortgage and all interest payable thereon; (D) fourth, to the payment of interest on principal amounts then due and payable under the Loan Agreement or any other Bond Document; and (E) fifth, the balance thereof to be applied in reduction of any other amounts then due and payable under the Loan Agreement or any other Bond Document.

SECTION 6.06. REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Mortgage or under any other Bond



Document or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver thereof or an acquiescence therein, and every right or remedy given by this Mortgage to the Issuer may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to either of them in this Article VI, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Mortgage.

SECTION 6.07. TERMINATION OF PROCEEDINGS. In case any proceeding taken by the Issuer on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Issuer, then the Issuer and the University shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Issuer shall continue as if no such proceeding had been taken.

SECTION 6.08. WAIVER AND NON-WAIVER OF EVENT OF DEFAULT. (A) The Issuer may, in its discretion, agree in writing to waive any Event of Default hereunder and its consequences and annul any acceleration in accordance with Section 6.02 hereof. No such waiver shall extend to or affect any other existing or any subsequent Event of Default.

(B) The failure of the Issuer to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. The University shall not be relieved of the University's obligations hereunder by reason of (i) failure of the Issuer to comply with any request of the University to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or (iii) any agreement or stipulation by the Issuer extending the time of payment or otherwise modifying or supplementing the terms of this Mortgage or any of the other Bond Documents. The Issuer may resort for the payment of the Mortgage Indebtedness to any other security held by the Issuer pursuant to the Bond Documents in such order and manner as the Issuer, in its discretion, may elect. The Issuer may take action to recover the Mortgage Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of the Issuer thereafter to foreclose this Mortgage. The rights of the Issuer under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of the Issuer shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. No waiver of any right of the Issuer shall be effective unless it is in a writing signed by an officer of the Issuer.

SECTION 6.09. REPAYMENT AND SECURING OF EXPENSES PAID BY THE ISSUER. In the event the Issuer shall pay any premiums on any policies of insurance required to be maintained or procured by Section 4.02 hereof, or in the event the Issuer shall expend any funds for the payment of any unpaid taxes or assessments upon the Mortgaged Property, or expend any funds in payment of any unpaid installments under any applicable agreement for payments in lieu of taxes with any Taxing Entity, or pay or perform any other obligation of either the Issuer or the University under any of the Bond Documents, then in any such event such payment shall be deemed to be secured by this Mortgage and shall be payable to the Issuer in the manner provided and with interest as provided herein, or if not so provided herein, shall be payable on demand with interest at the Default Rate.

SECTION 6.10. OTHER ACTIONS BY THE ISSUER. Regardless of the happening of an Event of Default, the Issuer may institute and maintain such suits and proceedings as it shall deem necessary or expedient to prevent any impairment of the security under this Mortgage by any acts which may be unlawful or in violation of this Mortgage or to preserve or protect the interests of the Issuer.

SECTION 6.11. REPAYMENT AND SECURING OF COLLECTION COSTS INCURRED BY THE ISSUER. (A) In the event this Mortgage or the Bonds or any of the other Bond Documents or all of the

foregoing are placed in the hands of an attorney (i) for collection of any sum payable hereunder or thereunder, (ii) for the foreclosure of this Mortgage, or (iii) for the enforcement of any of the terms, conditions and obligations of this Mortgage, the University agrees to pay all reasonable costs of collection (including reasonable counsel fees and expenses) incurred by the Issuer, together with interest thereon at the Default Rate. All such costs as incurred shall be deemed to be secured by this Mortgage and collectible out of the proceeds of this Mortgage in any manner permitted by law or by this Mortgage.

(B) In addition to and not in limitation of the foregoing, in any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall also apply. The reasonable expenses of pursuing, searching for, retaking, receiving, holding, storing, safe-guarding, any environmental testing and cleanup, insuring, accounting for, advertising, preparing for sale or lease, selling, leasing and the like, plus attorney's fees, fees for certified public accountants, fees for auctioneers, fees for brokers and/or appraisers, fees for security guards, fees for environmental auditors and engineers, fees for hazard insurance premiums, or any other costs or disbursements whatsoever incurred by or contracted for by the Issuer in connection with the disposition of the Mortgaged Property after an Event of Default (including any of the foregoing incurred or contracted for by the Issuer in connection with any bankruptcy or insolvency proceedings involving the University) shall all be chargeable to the University and shall be secured by this Mortgage, and the University will also be responsible for any deficiency.

## ARTICLE IV

### MISCELLANEOUS

SECTION 7.01. LIMITATION OF RIGHTS. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Mortgage or the other Bond Documents is intended or shall be construed to give to any Person, other than the parties hereto or thereto, and their successors and assigns, any right, remedy or claim under or with respect to this Mortgage or any covenants, conditions and provisions herein contained. This Mortgage and all of the covenants, conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties hereto and their successors and assigns as herein provided.

SECTION 7.02. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (i) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (ii) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE ISSUER:

Buffalo and Erie County Industrial Land Development Corporation  
95 Perry Street – Suite 403  
Buffalo, New York 14203  
Attention: Chief Executive Officer

WITH A COPY TO:

Hodgson Russ LLP  
677 Broadway – Suite 401  
Albany, New York 12207  
Attention: Christopher C. Canada, Esq.

IF TO THE UNIVERSITY:

D'Youville University  
320 Porter Avenue  
Buffalo, New York 14201  
Attention: Chief Financial Officer

WITH A COPY TO:

Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, New York 13202  
Attention: Paul W. Reichel, Esq.

IF TO THE TRUSTEE:

UMB Bank, N.A., as Trustee  
100 William Street – Suite 1850  
New York, New York 10038  
Attention: Raymond Haniff, Vice President

WITH A COPY TO:

Ballard Spahr LLP  
1675 Broadway – 19<sup>th</sup> Floor  
New York, New York 10019  
Attention: David J. Fernandez, Esq.

(C) A duplicate copy of each notice, certificate and other communication given hereunder by the Issuer or the University to the other shall also be given to the Trustee.

(D) The Issuer, the University and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

(E) Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person or Persons entitled to receive such notice.

SECTION 7.03. COUNTERPARTS; AMENDMENTS. (A) This Mortgage may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Any counterpart delivered by facsimile, pdf or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Mortgage.

(B) This Mortgage may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 7.04. APPLICABLE LAW. This Mortgage shall be governed exclusively by the applicable laws of the State.

SECTION 7.05. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The table of contents and the headings of the several articles and sections of this Mortgage have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Mortgage.

SECTION 7.06. SEVERABILITY. (A) If any provision of this Mortgage shall, for any reason, be held or shall, in fact, be inoperative or unenforceable in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance or render any other provision herein contained inoperative or unenforceable.

(B) The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections in this Mortgage shall not affect the remaining portions of this Mortgage or any part thereof.

SECTION 7.07. COVENANTS RUN WITH THE MORTGAGED LAND. All of the grants, covenants, terms, provisions and conditions herein shall run with the Mortgaged Land and shall apply to, bind and inure to the benefit of the parties hereto and their successors and assigns.

SECTION 7.08. USURY. Notwithstanding anything to the contrary contained herein, in no event shall the total of all charges payable hereunder or under any of the Bond Documents which are or could be held to be in the nature of interest exceed the maximum rate permitted to be charged under applicable law. Should the Issuer receive any payment which is or would be in excess of that permitted to be charged under any applicable law, such payment shall have been, and shall be deemed to have been, made in error and shall automatically be applied to reduce the Mortgage Indebtedness.

SECTION 7.09. TAX LAWS. If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on this Mortgage, the University will pay, or cause to be paid, such tax, with interest and penalties thereon, if any.

SECTION 7.10. REVENUE STAMPS. If at any time any Governmental Authority shall require revenue or other stamps to be affixed to this Mortgage, the University will pay, or cause to be paid, the same, with interest and penalties thereon, if any.

SECTION 7.11. FURTHER ASSURANCE. The University will execute and procure for the Issuer and cause to be done any further conveyances, instruments or acts of further assurance as the Issuer shall reasonably require to perfect the security of the Issuer in the Mortgaged Property intended now or hereafter to be covered by this Mortgage or otherwise for carrying out the intention of facilitating the performance of the terms of this Mortgage.

SECTION 7.12. SATISFACTION OF MORTGAGE. Upon the payment in full of all of the amounts due under the Bonds, if (A) there is no Event of Default under the Indenture, (B) the Issuer and the University have performed and observed all the covenants to be performed and observed hereunder and have performed all obligations under the Indenture, the Loan Agreement and the other Bond Documents to which they are parties and (C) the University has paid or caused to be paid to the Issuer all sums of money due or to become due to it in accordance with the terms and provisions hereof and of the other Bond Documents to which it is a party, including, without limitation all amounts owed under the Loan Agreement and all indemnification provisions, and (D) the University has paid or caused to be paid to all sums of money due or to become due to it in accordance with the terms and provisions hereof and of the other Bond Documents to which it is a party, including, without limitation all amounts owed under all indemnification provisions, then the Issuer, by acceptance of this Mortgage, agrees to execute and deliver (after the expiration of the preference period under federal bankruptcy law and any similar period under any similar statute affecting creditors' rights), any and all instruments necessary and/or appropriate to discharge the Lien of this Mortgage of record and to terminate the UCC-1 Financing Statements filed in connection with this Mortgage and the other Bond Documents, in each case at the sole expense of the University.

SECTION 7.13. LIEN LAW. The University will receive the advances to be made hereunder subject to the trust provisions of Section 13 of the Lien Law of the State of New York, and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of constructing the improvements to the Land and will apply the same first to such payment before using any part of the same for any other purpose, but nothing herein shall be construed to impose upon the Issuer any obligation to see to the proper allocation of such advances by the University.

SECTION 7.14. RECOVERY OF SUMS REQUIRED TO BE PAID. The Issuer shall have the right from time to time to take action to recover any sum or sums which constitute a part of the indebtedness secured

by this Mortgage as the same become due, without regard to whether or not the balance of such indebtedness shall be due, and without prejudice to the right of the Issuer thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the University existing at the time such earlier action was commenced.

**SECTION 7.15. ABSOLUTE AND UNCONDITIONAL OBLIGATION.** The University acknowledges that the University's obligation to pay the indebtedness secured hereby in accordance with the provisions of this Mortgage and the other Bond Documents is and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Mortgage or the other Bond Documents or the obligation of the University thereunder to pay the indebtedness secured hereby or the obligations of any other person relating to the Bonds or this Mortgage or the obligations of the University under this Mortgage or the other Bond Documents or otherwise with respect to the indebtedness secured hereby, and the University absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligation of the University to pay such indebtedness in accordance with the provisions of this Mortgage and the other Bond Documents or the obligations of any other person relating to this Mortgage or the other Bond Documents or the obligations of the University under this Mortgage or the other Bond Documents or otherwise with respect to the indebtedness secured hereby in any action or proceeding brought by the Issuer to collect such indebtedness, or any portion thereof, or to enforce, foreclose and realize upon the lien and security interest created by this Mortgage or any other Bond Document, in whole or in part.

**SECTION 7.16. CHANGES IN LAWS REGARDING TAXATION.** In the event of the passage after the date of this Mortgage of any law of the State changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage or the indebtedness secured hereby, the University shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within thirty (30) days after demand by the Issuer, whichever is less, provided, however, that if, in the opinion of the attorneys for the Issuer, the University is not permitted by law to pay such taxes, the Issuer shall have the right, at its option, to declare the indebtedness secured hereby due and payable on a date specified in a prior notice to the University of not less than thirty (30) days.

**SECTION 7.17. NO CREDITS ON ACCOUNT OF THE DEBT.** The University will not claim or demand or be entitled to any credit or credits on account of the indebtedness secured hereby for any part of the taxes assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the indebtedness secured hereby. If at any time this Mortgage shall secure less than all of the principal amount of the indebtedness secured hereby, it is expressly agreed that any repayment of the principal amount of such indebtedness shall not reduce the amount of the lien of this Mortgage until the lien amount shall equal the outstanding principal amount of such indebtedness.

**SECTION 7.18. OFFSETS, COUNTERCLAIMS AND DEFENSES.** Any assignee of this Mortgage shall take the same free and clear of all offsets, counterclaims or defenses of any nature whatsoever which the University may have against any assignor of this Mortgage, and no such offset, counterclaim or defense shall be interposed or asserted by the University in any action or proceeding brought by any such assignee upon this Mortgage and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the University.

SECTION 7.19. NON-RESIDENTIAL PROPERTY. This Mortgage does not cover real property principally improved by one or more structures containing in the aggregate six (6) or less residential dwelling units having their own separate cooling facilities.

SECTION 7.20. WAIVER OF TRIAL BY JURY. The University hereby irrevocably and unconditionally waives, and the Issuer by its acceptance of this Mortgage irrevocably and unconditionally waives, any and all rights to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to this Mortgage or any other Bond Document.

SECTION 7.21. WAIVER OF STATUTORY RIGHTS. The University shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws to the full extent that the University may do so under applicable law. The University for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien of this Mortgage and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. The University hereby waives for itself and all who may claim through or under it, and to the full extent the University may do so under applicable law, any and all rights of redemption from sale under any order of decree of foreclosure of this Mortgage or granted under any statute now existing or hereafter enacted.

SECTION 7.22. INDEMNITY. (A) Anything in this Mortgage or the other Bond Documents to the contrary notwithstanding, the University shall indemnify and hold the Issuer harmless and defend the Issuer and its officers, directors, shareholders, agents and employees (collectively, the "Indemnified Parties") at the University's sole cost and expense against any loss or liability, cost or expense (including, without limitation and reasonable attorneys' fees and disbursements of the Indemnified Parties' respective counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with (i) any ongoing matters arising out of the transaction contemplated hereby, the indebtedness secured hereby, this Mortgage or any other document or instrument now or hereafter executed and/or delivered in connection with the indebtedness secured hereby and/or the Mortgaged Property, including, but not limited to, all costs of reappraisal of the Mortgaged Property or any part thereof, whether required by law, regulation, or any governmental or quasi-governmental authority, (ii) any amendment to, or restructuring of, the Bonds and this Mortgage or any of the other Bond Documents requested by the University, and (iii) any and all lawful action that may be taken by any of the Indemnified Parties in connection with the enforcement of the provisions of this Mortgage or any of the other Bond Documents requested by the University, whether or not suit is filed in connection with the same, or in connection with the University, any guarantor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding. All reasonable sums expended by any of the Indemnified Parties shall be payable on demand and, until reimbursed by the University pursuant hereto, shall be deemed additional principal of the indebtedness secured hereby and shall bear interest at the Default Rate. The obligations of the University under this section shall, notwithstanding any exculpatory or other provisions of any nature whatsoever set forth in the Bond Documents, constitute the personal recourse undertakings, obligations and liabilities of the University, but not its officers, directors, employees, agents or representatives.

(B) The obligations and liabilities of the University under this Section 7.22 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Bonds have been paid in full and irrespective of any foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to the provisions of this Mortgage or acceptance by the Issuer, its nominee or affiliate of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

SECTION 7.23. ENFORCEABILITY. This Mortgage was negotiated in the State, and made by the University and accepted by the Issuer in the State, and the proceeds of the Bonds and other indebtedness secured hereby were disbursed from the State, which State the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance, this Mortgage and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State applicable to contracts made and performed in the State and any applicable laws of the United State of America. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be unenforceable or prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Mortgage.

SECTION 7.24. PAYMENT OF COSTS AND EXPENSES OF THE ISSUER. The University shall promptly pay upon demand, with interest thereon at the Default Rate, all expenses and costs incurred by the Issuer, including reasonable attorney's fees and expenses in connection with (A) any action, proceeding, litigation or claim relating to the Mortgaged Property instituted or asserted by or against the Issuer or in which the Issuer becomes engaged, wherein it becomes necessary in the opinion of the Issuer to defend or uphold the Lien of this Mortgage, or the validity or effectiveness of any assignment or any claim, award, payment, property damage insurance policy or any other right or property conveyed, encumbered or assigned by the University to the Issuer hereunder, or the priority of any of the same, and (B) the exercise or enforcement of any other rights or remedies of the Issuer hereunder and all such expenses and costs, and interest thereon, may be added to and become part of the principal indebtedness of the University hereunder, bear interest at the Default Rate, and be secured in all respects hereby as if part of the principal indebtedness of the University hereunder.



IN WITNESS WHEREOF, the University has caused this Mortgage to be executed in its name by a duly authorized officer of the University and has caused this Mortgage to be dated as of the day and year first above written.

D'YOUVILLE UNIVERSITY

BY: \_\_\_\_\_  
Authorized Officer

STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF ERIE                    )

On the \_\_\_\_ day of August, in the year 2024, before me, the undersigned, personally appeared NICHOLAS FIUME, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

## APPENDIX A

### SCHEDULE OF DEFINITIONS

**“Accreditation”** means, on any date of determination, with reference to the COCA Policies and Procedures and their definitions then in effect, (i) “Pre-accreditation Status” for the period allowed pursuant to the COCA Policies and Procedures, and (ii) thereafter, any “Accreditation status” provided for under the COCA Policies and Procedures, excluding however any Accreditation status involving probation or commencement of proceedings for the withdrawal of Accreditation.

**“Act”** has the meaning set forth in the preambles hereof.

**“Act of Bankruptcy”** means any of the following events:

(a) the University shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the University or of all or substantially all of its property, (ii) commence a voluntary case under the United States Bankruptcy Code (as now or hereafter in effect), or (iii) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, winding-up or composition or adjustment of debts; or

(b) a proceeding or case shall be commenced without the application or consent of the University in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts, of the University, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of the University or of all or any substantial part of its property, or (iii) similar relief in respect of the University under any law relating to bankruptcy, insolvency, winding-up or composition or adjustment of debts and such case shall not have been dismissed within sixty (60) days of its filing.

**“Additional Payments”** means those amounts payable by the University pursuant to Section 4.02 of the Loan Agreement.

**“Administrative Fees and Expenses”** means all Trustee Fees and Expenses, and fees and expenses of the Issuer in undertaking and performing its obligations under the Indenture and acceptance, service, administrative or similar fees charged, or reimbursement for administrative or other expenses (including attorneys’ fees) incurred by the Issuer, including, without limitation, the Annual Fee.

**“Affiliate”** means any other Person who, directly or indirectly, controls or is controlled by or is under common control with such other Person.

**“Annual Debt Service”** means, when used in connection with any Indebtedness, as of any particular date of calculation the amount required to be paid by the University during the then current Fiscal Year to pay the principal, whether at maturity or upon mandatory redemptions and prepayments, of and interest on such Indebtedness; provided, however, that such amounts required to be paid on Short-Term Indebtedness and Balloon Indebtedness shall include interest only.

**“Approved Buyer”** means a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the “Securities Act”).

**“Assignments”** means, collectively, the Pledge and Assignment and the Mortgage Assignment.

**“Authorized Issuer Representative”** means with respect to the Issuer, the Chairperson, Vice Chairperson, Chief Executive Officer or Vice President of Operations of the Issuer, or any other person designated as an Authorized Issuer Representative by a certificate signed by a member of the Board and filed with the Trustee.

**“Authorized University Representative”** means the persons at any time designated to act on behalf of the University, such designation in each case to be evidenced by a certificate furnished to the Issuer and the Trustee containing the specimen signature of such person or persons and signed on behalf of the University by the sole member and manager of the University or its designee. Such certificate may designate an alternate or alternates.

**“Authorized Denominations”** means \$100,000 and any integral multiple of \$5,000 in excess of \$250,000.

**“Authorized Investments”** mean (1) Governmental Obligations; (2) obligations issued or guaranteed by any state or political subdivision thereof rated in one of the two highest Rating Categories by Moody’s and by S&P; (3) open market commercial or finance paper of any corporation having a net worth in excess of \$100,000,000 and that is rated either P1 or A1 or an equivalent by Moody’s and S&P; (4) bankers’ acceptances, certificates of deposit or time deposits issued by, or bankers’ acceptances of, the Trustee or any affiliate of the Trustee, or of banks or trust companies organized under the laws of the United States of America or any state thereof, any of which must have a reported capital and surplus of at least \$50,000,000 in dollars of the United States of America; (5) bank repurchase agreements, including the Trustee’s or any affiliate of the Trustee’s, fully secured by obligations of the type described in (1) above; (6) variable rate demand securities redeemable within seven days or able to be tendered for remarketing or purchase upon no more than seven days’ notice and secured by a credit facility issued by a financial institution, including the Trustee or an affiliate of the Trustee, which financial institution (or its corporate parent) maintains a long-term debt rating that is not lower than the third highest Rating Category by either Rating Agency, or by both Rating Agencies, if rated by both Rating Agencies; (7) shares of any so-called “money market mutual fund”, including any money market mutual fund that the Trustee or any of its affiliates operates or manages, which invests solely in any of the obligations described in items (1) through (6) above and (8) U.S. Dollar denominated deposit accounts that are fully and continuously insured by the Federal Deposit Insurance Corporation.

**“Balloon Indebtedness”** means Long-Term Indebtedness of which 25% or more in principal amount matures, or is required to be purchased, redeemed or retired by the University (either automatically or at the option of the holder of such Balloon Indebtedness), in any one year.

**“Beneficial Owners”** means, (i) when used with reference to the book entry only system, the person who is considered the beneficial owner of the Bonds pursuant to the arrangements for book entry determination of ownership applicable to the Securities Depository and, (ii) any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding such through nominees, depositories or other intermediaries) or (b) is treated as the owner of any Bonds for federal income tax purposes.

**“Bond Documents”** means the Indenture, the Bond Purchase Agreement, the University Loan Documents and each amendment or supplement thereof, and any other document or instrument to which the Issuer or the University is a party or by which either of them is bound and that is executed and delivered in connection with the Bonds.

**“Bond Fund”** means the trust fund so designated which is established pursuant to Article III hereof.

**“Bond Owner,” “Bondowner,” “Owner,” “owner,” “Bondholder,” “holder,” “Registered Owner,” “registered owner,” or “owner of Bonds”** means the person listed on the Bond Register as the registered owner of any Bond.

**“Bond Purchase Agreement”** means the Bond Purchase Agreement dated August 1, 2024, among the Issuer, the University and the Underwriter.

**“Bond Register”** has the meaning specified in Section 2.3 hereof.

**“Bond Resolution”** means the resolution of the members of the board of directors of the Issuer duly adopted on February 28, 2024 authorizing the Issuer to undertake the Project, to issue and sell the Bonds and to execute and deliver the Bond Documents to which the Issuer is a party.

**“Bonds”** means the Issuer’s Revenue Bonds (D’Youville University Project), Series 2024A (Taxable) in the original aggregate principal amount of \$44,935,000.

**“Business Day” or “business day”** means any day other than a Saturday, Sunday or other day on which commercial banks are required or authorized to be closed in New York, New York or St. Louis, Missouri, or any day on which the payment system of the Federal Reserve is not operational.

**“Calculation Agent”** means if there is a single beneficial owner that holds a majority in aggregate principal amount of Bonds outstanding (“Single Majority Holder”), the Single Majority Holder if willing to act as Calculation Agent, but if there is no such Single Majority Holder willing to act in such capacity, then Loop Capital Markets if willing to act as Calculation Agent, but if Loop Capital Markets is not willing to act in such capacity, then the Trustee or a qualified entity selected by the Trustee.

**“Candidacy Status”** means such term as defined in the COCA Policies and Procedures.

**“Capitalized Interest Fund”** means the trust fund so designated which is established pursuant to Article III hereof.

**“COCA”** means, collectively, the American Osteopathic Association and its Commission on Osteopathic College Accreditation, or any successor body acting in a similar capacity.

**“COCA Policies and Procedures”** means the standards, including any new or revised procedures or standards adopted by COCA as published in Accreditation of Colleges of Osteopathic Medicine: COM New & Developing Standards. As of the date of issuance of the Bonds, the current COCA Policies and Procedures are those identified as effective September 26, 2023.

**“College of Osteopathic Medicine”** shall have the meaning provided in the recitals hereto.

**“Costs of Issuance”** means all items of expense directly or indirectly payable by or reimbursable to the Issuer, the University, or the Trustee and related to the authorization, execution, issuance, sale and delivery of the Bonds, including (without limitation) costs of preparation and reproduction of documents, filing and recording fees, fees and charges of the University, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of financial or other consultants and professionals, fees and charges for preparation, execution and safekeeping of the Bonds, and any other cost, charge or fee in connection with the issuance of the Bonds.

**“Costs of Issuance Fund”** means the fund of that name established pursuant to Article III of the Indenture.

“*Counsel*” means an Independent attorney at law or law firm (who may be attorneys for the Issuer or the University) acceptable to the Issuer and the Trustee.

“*Debt Service*” means, for any period of time with respect to the University, the sum of (i) the interest payable during such period on all Outstanding Bonds and (ii) the principal amount of all Outstanding Bonds due on the maturity date.

“*Debt Service Coverage Ratio*” means the ratio of Operating Revenues Available for Debt Service to Annual Debt Service.

“*Default*” means any event which with the giving of notice or the lapse of time or both would constitute an Event of Default.

“*Defaulted Interest*” has the meaning ascribed thereto in Section 2.7 hereof.

“*Default Rate*” means the rate of interest equal to 9% per annum, or the maximum permitted by law, whichever is less.

“*Depository Agreements*” means, collectively, the Teach-Out Reserve Depository Agreement and the Operating Reserve Depository Agreement.

“*Depository Reserve Accounts*” means the accounts held by the Teach-Out Reserve Depository and the Operating Reserve Depository, respectively, pursuant to the Depository Agreements.

“*DTC*” means The Depository Trust Company, New York, New York.

“*DTC Letter of Representations*” means the blanket letter of representations from the Issuer to DTC.

“*DTC Participant*” means (a) any person for which, from time to time, DTC, or, in the event that a successor Securities Depository to DTC is acting as such under Section 2.14 hereof, such successor Securities Depository, effectuates book-entry transfers and pledges of securities pursuant to the book-entry system referred to in Section 2.14 hereof or (b) any securities broker or dealer, bank, trust company or other person that clears through or maintains a custodial relationship with the person referred to in (a).

“*EMMA*” means the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system or any successor nationally-recognized municipal securities repository recognized by the United States Securities and Exchange Commission for the purposes referred to in Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

“*Environmental Regulations*” means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances or chemical waste, materials or substances.

“*Event of Default*” means any of the events specified in Section 10.1 hereof to be an Event of Default.

“*Extraordinary Expenses*” means all reasonable expenses properly incurred by the Trustee under the Indenture, other than Ordinary Expenses.

*“Extraordinary Services”* means all services rendered by the Trustee under the Indenture, other than Ordinary Services.

*“Extraordinary Trustee’s Fees and Expenses”* means the fees, expenses and disbursements payable to the Trustee and Paying Agent pursuant to Section 11.7 hereof during any Fiscal Year in excess of Ordinary Trustee’s Fees and Expenses, including but not limited to, reasonable counsel fees and expenses, reasonable fees of other third party professionals, and any costs of sending notices pursuant to the terms and conditions of the Bond Documents.

*“Fiscal Year”* means the fiscal year of the University, which currently commences June 1 of each year and ends on May 31, or such other twelve-month period as may be designated in a written statement of the University delivered to the Issuer and the Trustee.

*“Funds”* means, collectively, the Bond Fund, Capitalized Interest Fund, the Project Fund and the Costs of Issuance Fund.

*“GAAP”* means accounting principles general accepted in the United States, consistently applied, as in effect as of the time of application to the provisions hereof (unless otherwise noted).

*“Governmental Authority”* means the United States of America, the State, any political subdivision thereof, any other state and any agency, department, commission, board, bureau or instrumentality of any of them.

*“Governmental Obligations”* means (a) direct noncallable obligations of the United States of America, (b) obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States of America pursuant to authority granted by the Congress of the United States of America and (c) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b).

*“Gross Revenues”* means, to the maximum extent permitted by law, all receipts, revenues, income and other money received by or on behalf of the University derived from its operations, including all rights to receive the same, whether in the form of accounts receivable, contracts rights or other rights (including rights under policies of business interruption insurance but not under policies of casualty insurance), and proceeds of such rights, now owned or held or hereafter coming into existence; provided, however, that Gross Revenues shall not include gifts, grants, bequests, donations and contributions restricted at the time of making thereof by the donor or maker thereof as being for certain specific purposes inconsistent with the payments required by Sections 4.01, 4.02 and 5.01 of the Loan Agreement and the income derived therefrom to the extent required by such restriction.

*“Indebtedness”* means , collectively, (i) all indebtedness of the University for borrowed moneys; (ii) all liabilities for payment due from the University in connection with rights of use or possession under leases accounted for as capital leases or finance leases as evidenced by the University’s audited financial statements; (iii) all guaranties by the University in connection with any indebtedness of any Affiliate and/or other Person; and (iv) with respect to the Indebtedness incurred under the University Loan Documents: (A) all Loan Repayments on the Bonds; (B) all other payments due from the Issuer or the University to the Trustee pursuant to the Loan Agreement or any other University Loan Document; (C) the performance and observance by the Issuer and the University of all of the covenants, agreements, representations and warranties made for the benefit of the Trustee pursuant to the Loan Agreement or any other University Loan Document; (D) the monetary obligations of the University to the Issuer and its

members, officers, agents, servants and employees under the Loan Agreement and the other University Loan Documents; and (E) all interest accruing on any of the foregoing.

“*Indenture*” means the indenture of trust dated as of August 1, 2024 by and between the Issuer and the Trustee, as supplemented or amended in accordance with the terms thereof.

“*Indenture Act*” means the Trust Indenture Act of 1939 (Act of August 3, 1939, 53 Stat. 1149, 15 U.S.C., §§ 77aaa-77bbbb), as amended.

“*Independent*” means, with respect to any professional employed for purposes of compliance with the terms of the Loan Agreement or the Indenture, an individual or firm not owned, employed or controlled by the University or any principal thereof, provided that an individual or firm shall not be deemed “employed” by the University if it is outside counsel to the University.

“*Intercreditor Agreement*” means the amended and restated intercreditor agreement dated as of August 1, 2024 by and between the Trustee and the Series 2020 Trustee, as consented to by the University.

“*Interest Payment Date*” means, with respect to any Bond, each May 1 and November 1, commencing November 1, 2024 and the Maturity Date or the date on which such Bond is accelerated pursuant to Section 10.2 hereof.

“*Issue Date*” means the date on which the Bonds are first authenticated and delivered at the direction of the Underwriter against payment therefor.

“*Issuer*” means Buffalo and Erie County Industrial Land Development Corporation, or its successors and assigns.

“*Issuer*” means \$449,350.

“*Lien*” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, security agreement, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “*Lien*” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes hereof, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“*Limited Offering Memorandum*” means the Limited Offering Memorandum dated August 1, 2024, including any amendment or supplement thereto, relating to the limited offering of the Bonds.

“*Loan*” means the loan made by the Issuer to the University from the proceeds of the Bonds pursuant to the Loan Agreement.

“*Loan Agreement*” means the Loan Agreement dated as of August 1, 2024, between the Issuer and the University, as amended from time to time.



*“Loan Agreement Event of Default”* means any event specified in Section 6.01 of the Loan Agreement.

*“Loan Repayment”* means each payment required in consideration for the Loan, as defined in Section 4.01 of the Loan Agreement and as provided for in the Indenture, including the principal of and interest on the Bonds.

*“Long-Term Indebtedness”* means Indebtedness having an original maturity of greater than one (1) year or Indebtedness on which the University has an option to extend the maturity thereof for a period of greater than one (1) year beyond the date of the original incurrence thereof.

*“Majority Holders”* mean the Beneficial Owners of a majority in aggregate principal amount of the Bonds Outstanding.

*“Maturity Date”* means November 1, 2030.

*“Moody’s”* means Moody’s Investors Service, Inc. or any successor thereto.

*“Mortgage”* means the mortgage and security agreement dated as of August 1, 2024 from the University to the Issuer, which, among other things, (a) grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Mortgaged Property and (b) assigns to the Issuer the rents, issues and profits of the Mortgaged Property, as said mortgage and security agreement may be amended or supplemented from time to time.

*“Mortgage Assignment”* means the assignment of mortgage dated as of August 1, 2024 from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee, as said assignment of mortgage may be amended or supplemented from time to time.

*“Mortgaged Property”* means all Property which may from time to time be subject to the Lien of the Mortgage.

*“Operating Reserve”* means the reserve account held by Operating Reserve Depository established by the University for the purpose of paying certain operating, equipment or construction costs of the College of Osteopathic Medicine pursuant to the terms of the Operating Reserve Agreement.

*“Operating Reserve Depository”* means Goldman Sachs & Co. LLC, as custodian of the Operating Reserve, and its successors and assigns.

*“Operating Reserve Depository Agreement”* means the operating reserve fund account agreement dated as of February 29, 2024 by and between the University and COCA.

*“Operating Reserve Direction Letter”* means the letter from the University to the Operating Reserve Depository directing the Operating Reserve Depository to pay to the Trustee, for deposit into the Bond Fund, all moneys on deposit in the Operating Reserve, an executed original of which letter has been deposited in escrow with the Trustee pursuant to the Operating Reserve Letter of Instructions.

*“Operating Reserve Letter of Instructions”* means the letter of instructions regarding operating reserve fund dated August 13, 2024, from the Issuer and the University to the Trustee, and accepted by the Trustee, pursuant to which the University has deposited the Operating Reserve Direction Letter in escrow with the Trustee and irrevocably instructed the Trustee to deliver the Operating Reserve Direction Letter to the Operating Reserve Depository upon termination of the Operating Reserve.

*“Operating Revenues Available for Debt Service”* means total unrestricted operating revenues, including funds made available for operations from endowment funds and from other temporarily restricted sources, minus total unrestricted expenses, excluding depreciation, amortization, and interest expenses as displayed in the University’s audited financial statements produced in accordance with GAAP then applicable to the University, and excluding (a) any gains or losses resulting from either the extinguishment of indebtedness, (b) the sale, exchange, or other disposition of capital assets not in the ordinary course of business, (c) any non-cash adjustment for changes in accounting estimates, changes in GAAP, or other non-cash adjustments made in accordance with GAAP, (d) extraordinary items, (e) any realized gains or losses on the sale of investments or interest exchange agreements, and (f) any unrealized gains/appreciation or losses/depreciation on the carrying value of investments or interest exchange agreements.

*“Ordinary Expenses”* means those reasonable expenses incurred in the ordinary course of business, by a trustee, a registrar, an authenticating agent and a paying agent under instruments similar to the Indenture, but excluding Extraordinary Expenses.

*“Ordinary Services”* means those services normally rendered by a trustee, a registrar, an authenticating agent and a paying agent under instruments similar to the Indenture, excluding Extraordinary Services.

*“Ordinary Trustee’s Fees and Expenses”* means those annual fees, expenses and disbursements for the Ordinary Services and the Ordinary Expenses of the Trustee and Paying Agent incurred in connection with their duties under the Indenture payable in advance on the Closing Date and payable on July 1 of each year thereafter until the Bonds are no longer Outstanding.

*“Outstanding”* or *“outstanding,”* in connection with Bonds means, as of the time in question, all Bonds authenticated and delivered under the Indenture, except:

- (a) Bonds theretofore cancelled or required to be cancelled under Section 2.11 hereof;
- (b) Bonds which are deemed to have been paid in accordance with Article XIV hereof
- (c) Bonds in substitution for which other Bonds have been authenticated and delivered pursuant to Article II hereof and Bonds paid pursuant to Section 2.10(a) hereof;
- (d) Bonds registered in the name of the Issuer; and
- (e) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the holders of a specified percentage of outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer or the University, except that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by a Responsible Officer of the Trustee by actual notice thereof to be so held.

*“Parity Obligations”* means Long-Term Indebtedness of the University incurred in accordance with Section 9 of the Pledge and Security Agreement, including but not limited to obligations of the University to one or more commercial banks or financial institutions obligated to contribute to making loans, purchasing bonds or otherwise making funds available as security for the payment of the principal and interest when due on Long-Term Indebtedness of the University.

*“Permitted Encumbrances”* means:

(i) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not in default;

(ii) utility, access and other easements and rights-of-way restrictions and exceptions that an Authorized Representative of the University certifies to the Issuer and the Trustee will not interfere with or impair the University's use of the Mortgaged Property;

(iii) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Mortgaged Property and as do not, either singly or in the aggregate, materially impair the property affected thereby for the purpose for which it is owned by the University;

(iv) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien or right in respect thereof if payment is not yet due and payable, or are insured over, or which are not delinquent, or the amount or validity of which, are being contested and execution thereon is stayed or has been due for less than 90 days;

(v) any mortgage, lien, security interest or other encumbrance which exists in favor of the Trustee;

(vi) liens on Gross Revenues securing Parity Obligations;

(vii) matters shown on the title insurance policy delivered to the Trustee upon issuance of the Bonds or the survey identified therein; and

(viii) liens consented to in writing by the Majority Holders.

*“Permitted Indebtedness”* means, collectively,:

(a) Any Indebtedness incurred under this Indenture and the University Loan Documents;

(b) Indebtedness evidenced by the Series 2020 Bonds;

(c) Indebtedness of the University's Affiliate, 301 Connecticut LLC, evidenced by certain promissory notes dated January 24, 2020 and January 27, 2020, in the original aggregate principal amount of \$18,650,000, which Indebtedness is guaranteed by the University;

Guaranties of any other Permitted Indebtedness;

Guaranties of any rent obligations of one or more University Affiliates established to manage or operate the College of Osteopathic Medicine under leases of facilities that will house the College of Osteopathic Medicine;

any Indebtedness arising from the honoring by a bank or other financial institution of checks, drafts or similar instruments drawn against insufficient funds in the ordinary course of business and extinguished within five Business Days of being drawn;

all obligations, contingent or otherwise, of the University under bankers acceptances issued or created for the account of the University;

(i) Indebtedness incurred by the University constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from governmental authorities, (ii) other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims, and (iii) Indebtedness incurred to refund, extend, renew, refinance or replace any other Indebtedness incurred pursuant to this clause (g); provided, however, that (1) upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or incurrence, and (2) the aggregate principal amount which, when aggregated with the then outstanding principal amount of all other Indebtedness incurred pursuant to this clause (g) and including all Indebtedness incurred to refund, extend, renew, refinance or replace any other Indebtedness incurred pursuant to this clause (g), does not exceed \$5,000,000; provided further that (i) such reimbursement obligations shall be fully cash collateralized and (ii) no such reimbursement obligations shall be secured by any proceeds of the Bonds nor the proceeds from the reimbursement of costs of the Project financed with the proceeds of the Bonds;

Indebtedness (including finance lease obligations) incurred at the time of, or within 90 days after, the acquisition of any vehicles or other movable equipment for the purpose of financing all or any part of the acquisition or installation cost thereof provided such Indebtedness is secured only by purchase money security interests in such property;

Indebtedness of the University consisting of accounts payable and trade payables that are not more than ninety (90) days past due; provided that no such payables shall result in a lien or encumbrance on any asset or property of the University; and

one or more lines of credit in an aggregate maximum principal amount not to exceed \$10,000,000.

*"Person"* means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, an unincorporated organization, a governmental body or a political subdivision, a municipal corporation, a public corporation or any other group or organization of individuals.

*"Pledge and Assignment"* means the pledge and assignment dated as of August 1, 2024 from the Issuer to the Trustee, and acknowledged by the University, pursuant to which the Issuer has assigned to the Trustee its rights under the Loan Agreement (except the Unassigned Rights), as said pledge and assignment may be amended or supplemented from time to time.

*"Pledge and Security Agreement"* means the pledge and security agreement dated as of August 1, 2024 from the University to the Trustee, pursuant to which the University grants a security interest in the Gross Revenues to the Trustee, as said pledge and security agreement may be amended or supplemented from time to time.

*"Principal Office of the Trustee"* means the business address designated in writing to the Issuer and the University as its principal office for its duties hereunder, and which initially shall be as specified in Section 17.5 of the Indenture.

*"Project"* shall have the meaning provided in the recitals hereto.

*"Project Fund"* means the fund by that name created in Article III hereof.

*“Project Jurisdiction”* means Erie County, New York.

*“Property”* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

*“Rating Agency”* means Moody’s or S&P.

*“Rating Category”* means the generic rating categories of the Rating Agency, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

*“Record Date”* means, as the case may be, the applicable Regular Record Date or Special Record Date.

*“Redemption Date”* means the date upon which Bonds issued pursuant to the Indenture shall be redeemed.

*“Regular Record Date”* means the Trustee’s close of business on April 15 or October 15, as applicable, immediately preceding the Interest Payment Date.

*“Released Funds”* means the amounts on deposit in the Depository Reserve Accounts which are released from the Depository Reserve Accounts upon a Termination Event pursuant to and as defined in the Depository Agreements.

*“Responsible Officer”* means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of the Indenture.

*“Revenues”* means (a) Released Funds (provided, in no event shall amounts on deposit in the Depository Reserve Accounts constitute “Revenues” hereunder or be in any way subject to the lien of the Indenture until such funds constitute Released Funds); (b) amounts payable to the Trustee with respect to the principal of and interest on the Bonds (1) on deposit in the Bond Fund, the Capitalized Interest Fund, the Project Fund or the Costs of Issuance Fund from the proceeds of the Bonds or obligations of the Issuer issued to refund the Bonds or from any other source or (2) paid by the University as Loan Repayments under the Loan Agreement; (c) all receipts of the Trustee credited under the provisions of the Indenture against amounts described in clause (b); and (d) investment income with respect to any moneys held by the Trustee in the Bond Fund, the Capitalized Interest Fund, the Project Fund and the Costs of Issuance Fund.

*“S&P”* means Standard & Poor’s Global Ratings, a Standard & Poor’s Financial Services LLC business, or any successor thereto.

*“Securities Act”* means the Securities Act of 1933, as amended.

*“Securities Depository”* means any clearing agency registered under Section 18A of the Securities Exchange Act of 1934, as amended.

“*Series 2020 Bonds*” means, collectively, the Issuer’s Revenue Bonds (D’Youville College Project), Series 2020A in the original principal amount of \$34,370,000 and the Issuer’s Revenue Bonds (D’Youville College Project), Series 2020B (Taxable) in the original principal amount of \$13,835,000.

“*Series 2020 Trustee*” means U.S. Bank National Association, a national banking association duly organized and existing under the laws of the United States of America, and any successor trustee or co-trustee serving as such hereunder.

“*Short-Term Indebtedness*” means any Indebtedness that is not Long-Term Indebtedness.

“*Special Record Date*” means such date as may be fixed for the payment of Defaulted interest in accordance with Section 2.7 hereof.

“*State*” means the State of New York.

“*Supplemental Indenture*” means any indenture hereafter duly authorized and entered into between the Issuer and the Trustee in accordance with the provisions of the Indenture.

“*Teach-Out Requirements*” shall have the meaning given to such term in the Teach-Out Reserve Depository Agreement.

“*Teach-Out Depository*” means Wilmington Trust, National Association, and its successors and assigns.

“*Teach-Out Reserve*” means the reserve account, held by Teach-Out Reserve Depository, established by the University for the purpose of paying certain College of Osteopathic Medicine teach-out costs pursuant to the terms of the Teach-Out Reserve Depository Agreement.

“*Teach-Out Reserve Depository Agreement*” means the multi-party account agreement dated as of February 9, 2024 by and among the University, COCA and the Teach-Out Reserve Depository, as amended or supplemented from time to time.

“*Teach-Out Reserve Direction Letter*” means the letter from the University to the Teach-Out Reserve Depository directing the Teach-Out Reserve Depository to pay to the Trustee, for deposit into the Bond Fund, all moneys on deposit in the Teach-Out Reserve, an executed original of which letter has been deposited in escrow with the Trustee pursuant to the Teach-Out Reserve Letter of Instructions.

“*Teach-Out Reserve Letter of Instructions*” means the letter of instructions regarding teach-out reserve fund dated August 13, 2024, from the Issuer and the University to the Trustee, and accepted by the Trustee, pursuant to which the University has deposited the Teach-Out Reserve Direction Letter in escrow with the Trustee and irrevocably instructed the Trustee to deliver the Teach-Out Reserve Direction Letter to the Teach-Out Reserve Depository upon termination of the Teach-Out Reserve.

“*Trust Estate*” shall have the meaning provided in the granting clauses hereto.

“*Trustee*” means UMB Bank, N.A., a national banking association duly organized and existing under the laws of the United States of America, and any successor trustee or co-trustee serving as such hereunder.

“*Trustee Fees and Expenses*” means, collectively, Ordinary Trustee’s Fees and Expenses and Extraordinary Trustee’s Fees and Expenses.

*“Trust Revenues”* means (a) Released Funds (provided, in no event shall amounts on deposit in the Depository Reserve Accounts constitute “Trust Revenues” hereunder or be in any way subject to the lien of the Indenture until such funds constitute Released Funds); (b) amounts payable to the Trustee pursuant to the Assignments; (c) amounts payable to the Trustee pursuant to the Pledge and Security Agreement; (d) amounts payable to the Trustee with respect to the principal of and interest on the Bonds (1) on deposit in the Bond Fund, the Capitalized Interest Fund, the Project Fund or the Costs of Issuance Fund from the proceeds of the Bonds or obligations of the Issuer issued to refund the Bonds or from any other source or (2) paid by the University as Loan Repayments under the Loan Agreement; (e) all receipts of the Trustee credited under the provisions of the Indenture against amounts described in clause (b); and (f) investment income with respect to any moneys held by the Trustee in the Bond Fund, the Capitalized Interest Fund, the Project Fund and the Costs of Issuance Fund.

*“Unassigned Rights”* means the rights of the Issuer under Sections 4.02, 7.04, 8.10 and 8.11 of the Loan Agreement and to the extent not expressly provided in said sections (or in any other sections hereof or thereof), the Issuer’s rights hereunder or thereunder to (i) inspect books and records; (ii) receive notices, approvals, consents, requests, and other communications; (iii) receive payment or reimbursement for expenses, including, without limitation, “Additional Payments” as defined in the Loan Agreement owed to the Issuer; (iv) immunity from and limitation of liability; (v) indemnification by the University or any other Person; and (vi) to enforce, in its own name and on its own behalf, those provisions hereof and of the Loan Agreement and any other document, instrument or agreement entered into with respect to the Bonds that provides generally for the foregoing enumerated rights or any similar rights of the Issuer.

*“Underwriter”* means Loop Capital Markets LLC.

*“University”* means D’Youville University, a New York not-for-profit education corporation, and its successors and assigns as permitted under the Loan Agreement.

*“University Loan Documents”* means the Loan Agreement, the Mortgage, the Pledge and Security Agreement, the Assignments, the Operating Reserve Letter of Instructions, the Teach-Out Reserve Letter of Instructions, the Intercreditor Agreement and the Depository Agreements, and each amendment thereof.

## EXHIBIT A

### DESCRIPTION OF THE MORTGAGED LAND

#### **PARCEL A (555 Prospect Ave.)**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Block No. 126 in said City, bounded and described as follows:

BEGINNING at the point of intersection of the northwesterly line of Porter Avenue (as now laid out as a 100 foot wide street) with the northeasterly line of Prospect Avenue (99 feet wide); thence northeasterly along the northwesterly line of Porter Avenue a distance of 333.26 feet to its intersection with the southwesterly line of Fargo Avenue (66 feet wide); thence northwesterly along the southwesterly line of Fargo Avenue a distance of 219.36 feet to a corner of lands conveyed to the City of Buffalo by Deed recorded in the Erie County Clerk's Office in Liber 11182 of Deeds at page 6446; thence northwesterly along said City of Buffalo lands a distance of 77.21 feet to a corner of said lands; thence northwesterly continuing along said City of Buffalo lands a distance of 47.86 feet to another corner of said lands; thence northerly continuing along said City of Buffalo lands a distance of 67.21 feet to a point on said southwesterly line of Fargo Avenue; thence northwesterly along the southwesterly line of Fargo Avenue a distance of 208.38 feet its intersection with the southeasterly line of Connecticut Street (66 feet wide); thence southwesterly along the southeasterly line of Connecticut Street a distance of 172.75 feet to a point distant 161.02 feet measured northeasterly from the northeasterly line of Prospect Avenue as measured along the southeasterly line of Connecticut Street; thence southeasterly along a line drawn parallel with the northeasterly line of Prospect Avenue a distance of 80 feet to a point; thence southwesterly along a line drawn parallel with the southeasterly line of Connecticut Street a distance of 161.02 feet to a point on the northeasterly line of Prospect Avenue distant 80 feet southeasterly from the southeasterly line of Connecticut Street as measured along the northeasterly line of Prospect Avenue; thence southeasterly along the northeasterly line of Prospect Avenue a distance of 515.31 feet to the point or place of beginning.

#### **PARCEL B (222 Connecticut St.)**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Block No. 144 in said City, bounded and described as follows:

BEGINNING at the intersection of the northwesterly line of Connecticut Street (as now laid out as a 66 foot wide street) with the northeasterly line of Prospect Avenue (99 feet wide); thence northeasterly along the northwesterly line of Connecticut Street a distance of 232.38 feet to a point on the northwesterly line of Connecticut Street distant 102.38 feet measured, 100.00 feet deeded southwesterly from the southwesterly line of Fargo Avenue (66 feet wide); thence northwesterly at an interior angle of 89° 54' 58" measured, 89° 42' deeded and along a line drawn parallel with the southwesterly line of Fargo Avenue a distance of 116.50 feet to a point; thence northeasterly along a line drawn parallel with the northwesterly line of Connecticut Street a distance of 102.38 feet measured, 100.00 feet deeded to a point on the southwesterly line of Fargo Avenue, said point being 116.50 feet northwesterly from the northwesterly line of Connecticut Street; thence northwesterly at an interior angle of 89° 54' 58" measured, 89° 42' deeded and along the southwesterly line of Fargo Avenue a distance of 60.00 feet to a point; thence southwesterly at an interior angle of 90° 5' 2" measured, 90° 18' deeded and along a line drawn parallel with the northwesterly line of Connecticut Street a distance of 142.50 feet to a point;



thence northwesterly at an exterior angle of  $90^{\circ} 5' 2''$  measured,  $90^{\circ} 18'$  deeded and along a line drawn parallel with the southwesterly line of Fargo Avenue a distance of 40.00 feet to a point; thence northeasterly at an exterior angle of  $89^{\circ} 54' 58''$  measured,  $89^{\circ} 42'$  deeded and along a line drawn parallel with the northwesterly line of Connecticut Street a distance of 142.50 feet to a point on the southwesterly line of Fargo Avenue, said point being 216.50 feet northwesterly from the northwesterly line of Connecticut Street; thence northwesterly along the southwesterly line of Fargo Avenue a distance of 60.00 feet to a point; thence southwesterly along a line drawn parallel with the northwesterly line of Connecticut Street a distance of 131.76 feet to a point on a line drawn parallel with the northeasterly line of Prospect Avenue and distant 203.19 feet measured, 200.00 feet deeded northeasterly therefrom as measured along a line forming an angle in the southeast quadrant of  $89^{\circ} 51' 59''$  measured,  $90^{\circ}$  deeded with the northeasterly line of Prospect Avenue; thence northwesterly at an interior angle of  $269^{\circ} 49' 40''$  and along said line drawn parallel with the northeasterly line of Prospect Avenue a distance of 76.00 feet measured, 76.60 feet deeded to a point on a line forming an angle in the southeast quadrant of  $89^{\circ} 51' 59''$  measured,  $90^{\circ}$  deeded with the northeasterly line of Prospect Avenue drawn northeasterly from the northeasterly line of Prospect Avenue from a point on the northeasterly line of Prospect Avenue distant 352.50 feet northwesterly from the northwesterly line of Connecticut Street as measured along the northeasterly line of Prospect Avenue; thence southwesterly at an interior angle of  $90^{\circ} 10' 20''$  measured,  $90^{\circ}$  deeded and along said last described line drawn northeasterly from the northeasterly line of Prospect Avenue a distance of 203.19 feet measured, 200.00 feet deeded to a point on the northeasterly line of Prospect Avenue; thence southeasterly along the northeasterly line of Prospect Avenue a distance of 352.50 feet to the point or place of beginning.

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## **APPENDIX F**

### **FORM OF THE PLEDGE AND SECURITY AGREEMENT**

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D'YOUVILLE UNIVERSITY

TO

UMB BANK, N.A.,  
AS TRUSTEE

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PLEDGE AND SECURITY AGREEMENT

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DATED AS OF AUGUST 1, 2024

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RELATING TO REVENUE BONDS (D'YOUVILLE UNIVERSITY  
PROJECT), SERIES 2024A (TAXABLE) IN THE AGGREGATE  
PRINCIPAL AMOUNT OF \$44,935,000 ISSUED BY BUFFALO AND  
ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT  
CORPORATION.

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and is for convenience of reference only.)

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## PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT dated as of August 1, 2024 (the “Security Agreement”) is made by and between D’YOUVILLE UNIVERSITY (the “University”), a not-for-profit education corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 320 Porter Avenue, Buffalo, New York and UMB BANK, N.A., a national banking association organized and existing under the laws of the United States of America having an office for the transaction of business located at 100 William Street, New York, New York, as trustee (the “Trustee”) for the holders of the Buffalo and Erie County Industrial Land Development Corporation Revenue Bonds (D’Youville University Project), Series 2024A (Taxable) in the aggregate principal amount of \$44,935,000 (the “Bonds”) issued by Buffalo and Erie County Industrial Land Development Corporation (the “Issuer”) pursuant to a certain indenture of trust dated as of August 1, 2024 (the “Indenture”) by and between the Issuer and the Trustee.

### WITNESSETH:

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) (A) authorizes any county to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

WHEREAS, in January, 1982, a certificate of incorporation was filed with the New York Secretary of State’s Office (the “Certificate of Incorporation”) creating the Issuer as a public instrumentality of Erie County, New York (the “County”) pursuant to the Enabling Act; and

WHEREAS, the Issuer, as authorized and empowered by the Enabling Act and resolutions adopted by the Erie County Legislature (the “County Legislature”) on July 24, 2009, November 19, 2009, March 25, 2010, and June 20, 2011, respectively (collectively, the “Sponsor Resolution”), in January, 2024 accepted an application (the “Application”) from the University, which Application requested that the Issuer consider undertaking a project (the “Project”) for the benefit of the University, said Project to consist of the following: (A) the funding of certain initial startup costs of a new osteopathic medicine college (the “College of Osteopathic Medicine”) being developed by the University; (B) the funding of the Capitalized Interest Fund (as defined herein) for purposes of the payment of interest on the Bonds through May 1, 2025; (C) the financing of all or a portion of the costs of the foregoing by the issuance of the Bonds; and (D) paying a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds and any reserve funds as may be necessary to secure the Bonds; and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on February 28, 2024 (the “Bond Resolution”), the board of directors of the Issuer (A) determined that the Project constitutes a “Type II Action,” as such quoted term is defined under Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental

Conservation of the State of New York, being 6NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQRA Act, “SEQRA”), and therefore that no further action with respect to the Project was required under SEQRA; (B) authorized the issuance of the Bonds for the purpose of financing a portion of the costs of the Project, (C) authorized the circulation of a preliminary limited offering memorandum (the “Preliminary Limited Offering Memorandum”) in connection with the marketing of the Bonds, (D) delegated to the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer authority to determine the final details of the Bonds (the “Bond Details”) once the marketing of the Bonds is completed and the University has agreed to the Bond Details and (E) authorized execution and delivery by the Issuer of various documents relating to the issuance of the Bonds, including but not limited to a final limited offering memorandum (the “Limited Offering Memorandum”) relating to the Bonds; and

WHEREAS, the Issuer will now issue the Bonds under the Bond Resolution, a certificate of determination (the “Certificate of Determination”) executed by the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President or Assistant Treasurer of the Issuer and the Indenture; and

WHEREAS, prior to or simultaneously with the issuance of the Bonds, the Issuer and the University will execute and deliver a loan agreement dated as of August 1, 2024 (the “Loan Agreement”) by and between the Issuer, as lender, and the University, as borrower, pursuant to the terms of which Loan Agreement (A) the Issuer will agree (i) to issue the Bonds, and (ii) to make a loan to the University of the proceeds of the Bonds (the “Loan”) for the purpose of assisting in financing the Project, and (B) in consideration of the Loan, the University will agree (i) to cause the Project to be undertaken and completed, (ii) to use the proceeds of the Loan disbursed under the Indenture to pay the costs of the Project, and (iii) to make payments in amounts sufficient to pay when due all amounts due with respect to the Bonds to or upon the order of the Issuer in repayment of the Loan, which such payments shall include amounts equal to the Loan Repayments (as defined in the Indenture) due on the Bonds; and

WHEREAS, pursuant to the terms of the Indenture, the net proceeds of the sale of the Bonds (the “Bond Proceeds”) will be deposited into various trust funds held by the Trustee under the Indenture and will be disbursed by the Trustee from time to time to pay the costs of the Project, but only upon satisfaction of the requirements for making such disbursements set forth in the Indenture and in the Loan Agreement; and

WHEREAS, as security for the Bonds, the Issuer will execute and deliver to the Trustee a pledge and assignment dated as of August 1, 2024 (the “Pledge and Assignment”) from the Issuer to the Trustee, and acknowledged by the University, which Pledge and Assignment will assign to the Trustee certain of the Issuer’s rights under the Loan Agreement; and

WHEREAS, pursuant to the Pledge and Assignment, Loan Repayments made by the University under the Loan Agreement are to be paid directly to the Trustee; and

WHEREAS, the University’s obligations pursuant to the Loan Agreement will be secured by this Security Agreement, pursuant to which the University grants to the Trustee a security interest in the Gross Revenues (as defined herein) of the University; and

WHEREAS, pursuant to the Intercreditor Agreement (as defined herein), the Trustee and the Series 2020 Trustee (as defined herein) will agree that their respective rights with respect to the Gross Revenues are intended to be *pari passu*, to be shared *pro rata* as described in the Intercreditor Agreement; and



WHEREAS, as additional security for the Bonds, the University will execute and deliver to the Issuer a mortgage dated as of August 1, 2024 (the “Mortgage”) from the University to the Issuer, which Mortgage shall be assigned by the Issuer to the Trustee pursuant to an assignment of mortgage dated as of August 1, 2024 (the “Mortgage Assignment”); and

WHEREAS, the operation of a college or university of osteopathic medicine in the United States requires accreditation from the American Osteopathic Association’s Commission on Osteopathic College Accreditation (“COCA”), and the requirements for accreditation of the College of Osteopathic Medicine include, among other things, the funding of sufficient escrows to provide for reserves of the University until the date upon which the first class of students of the College of Osteopathic Medicine graduates after COCA grants full accreditation (the “COCA Escrow Requirements”); and

WHEREAS, the University has deposited funds sufficient to satisfy the COCA Escrow Requirements into (i) a reserve account (the “Teach-Out Reserve”) held by Wilmington Trust, National Association (the “Teach-Out Reserve Depository”), established pursuant to the Multi-Party Account Agreement dated as of February 9, 2024 (the “Teach-Out Reserve Depository Agreement”) by and among COCA, the University and the Teach-Out Reserve Depository, and (ii) a reserve account (the “Operating Reserve”) held by Goldman Sachs & Co. LLC (the “Operating Reserve Depository”), established as required by the Operating Reserve Fund Account Agreement dated as of February 9, 2024 (the “Operating Reserve Agreement”) by and between the University and COCA; and

WHEREAS, pursuant to the letter of instructions regarding teach-out reserve fund dated August 13, 2024 (the “Teach-Out Reserve Letter of Instructions”) from the Issuer and the University to the Trustee, and accepted by the Trustee, the University has irrevocably instructed the Trustee to deliver to the Teach-Out Reserve Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing the Teach-Out Reserve Depository to pay to the Trustee, upon termination of the Teach-Out Reserve, all moneys then on deposit in the Teach-Out Reserve, to be deposited by the Trustee into the Bond Fund established under the Indenture; and

WHEREAS, pursuant to the letter of instructions regarding operating reserve fund dated August 13, 2024 (the “Operating Reserve Letter of Instructions”) from the Issuer and the University to the Trustee, and accepted by the Trustee, the University has irrevocably instructed the Trustee to deliver to the Operating Reserve Depository a direction letter, duly executed by the University and deposited in escrow with the Trustee, directing the Operating Reserve Depository to pay to the Trustee, upon termination of the Operating Reserve, all moneys then on deposit in the Operating Reserve, to be deposited by the Trustee into the Bond Fund established under the Indenture; and

WHEREAS, in connection with the issuance of the Bonds, the University will execute and deliver an environmental compliance and indemnification agreement dated as of August 1, 2024 (the “Environmental Compliance Agreement”) from the University to the Issuer and the Trustee, pursuant to which, among other things, the University indemnifies the Issuer and the Trustee against certain environmental liabilities related to the Mortgaged Property; and

WHEREAS, the Bonds will be initially purchased by Loop Capital Markets, acting as underwriter for the Bonds (the “Underwriter”) pursuant to a bond purchase agreement dated August 1, 2024 (the “Bond Purchase Agreement”) by and among the Underwriter, the Issuer and the University. The Underwriter will utilize the Preliminary Limited Offering Memorandum and a final limited offering memorandum (the “Limited Offering Memorandum”) in connection with the initial offering of the Bonds. The Underwriter also intends to obtain a rating of the Bonds from one or more securities rating agencies; and

WHEREAS, in order to provide additional security for the University's obligations pursuant to the Loan Agreement, the Issuer, the University and the Trustee deem it necessary that the University execute and deliver this Security Agreement, pursuant to which the University shall grant to the Trustee, for the benefit of the holders of the Bonds, a security interest in the Gross Revenues (defined herein);

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth in this Security Agreement, the University and the Trustee agree as follows:

SECTION 1. DEFINITIONS. (A) The following words and terms used in this document shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

"Bonds" means the Issuer's Revenue Bonds (D'Youville University Project), Series 2024A (Taxable) in the aggregate principal amount of \$44,935,000.

"Commercial Code" shall mean the Uniform Commercial Code, as the same may from time to time be in effect in the State.

"Fiscal Year" means a twelve-month period beginning on June 1 and ending on May 31 of each year, or such other twelve-month period as the University may elect as its fiscal year.

"Gross Revenues" means, to the maximum extent permitted by law, all receipts, revenues, income and other money received by or on behalf of the University derived from its operations, including all rights to receive the same, whether in the form of accounts receivable, contracts rights or other rights (including rights under policies of business interruption insurance but not under policies of casualty insurance), and proceeds of such rights, now owned or held or hereafter coming into existence; provided, however, that Gross Revenues shall not include gifts, grants, bequests, donations and contributions restricted at the time of making thereof by the donor or maker thereof as being for certain specific purposes inconsistent with the payments required by Sections 4.01, 4.02 and 5.01 of the Loan Agreement and the income derived therefrom to the extent required by such restriction.

"Indenture" means the trust indenture dated as of the date hereof by and between the Issuer and the Trustee, as said trust indenture may be amended or supplemented from time to time.

"Intercreditor Agreement" means the amended and restated intercreditor agreement dated as of August 1, 2024 (the "Intercreditor Agreement") by and between the Trustee and the Series 2020A Trustee, as consented to by the University.

"Majority Holders" means the beneficial owners of a majority in the aggregate principal amount of the Bonds Outstanding.

"Parity Obligations" means Long-Term Indebtedness of the University incurred in accordance with Section 9 hereof, including but not limited to obligations of the University to one or more commercial banks or financial institutions obligated to contribute to making loans, purchasing bonds or otherwise making funds available as security for the payment of the principal and interest when due on Long-Term Indebtedness of the University.

"Secured Indebtedness" means (1) the payment of \$44,935,000, being the aggregate principal amount of the Bonds and interest thereon, according to their tenor and effect; (2) the payment of all other sums required to be paid by the University hereunder and under the Loan Agreement and the other Bond Documents; and (3) the performance and observance by the University of all of the covenants,

agreements, representations and warranties herein and in the Loan Agreement and the other Bond Documents made by the University.

“Security Agreement” means this Pledge and Security Agreement dated as of August 1, 2024 from the University to the Trustee, as amended or supplemented from time to time.

“Series 2020 Bonds” shall have the meaning set forth in Section 9(B) of this Security Agreement.

“Series 2020 Security Agreement” shall have the meaning set forth in Section 9(B) of this Security Agreement.

“Series 2020 Trustee” shall have the meaning set forth in Section 9(B) of this Security Agreement.

“State” means the State of New York.

(B) All of the other capitalized terms used in this Security Agreement and not otherwise defined shall have the meanings assigned thereto in the Indenture or, if not defined therein, in the Loan Agreement.

SECTION 2. INTERPRETATION. In this Security Agreement, unless the context otherwise requires:

(A) The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms as used in this Security Agreement refer to this Security Agreement, and the term “heretofore” shall mean before the date of this Security Agreement, and the term “hereafter” shall mean after the date of this Security Agreement;

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) Words importing the singular number shall mean and include the plural number, and vice versa; and

(D) Any certificates, notices, letters or opinions required to be given pursuant to this Security Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Security Agreement.

SECTION 3. PLEDGE AND ASSIGNMENT OF, AND GRANT OF SECURITY INTEREST, THE GROSS REVENUES. (A) In consideration of the issuance of the Bonds, the making of the Loan and in order to secure the Secured Indebtedness, the University hereby pledges, assigns, transfers, hypothecates and delivers to the Trustee, and hereby grants to the Trustee a security interest in, all of University’s right, title and interest in and to the Gross Revenues, whether now owned or at anytime hereafter acquired.

(B) This assignment by University is a present, irrevocable, absolute and unconditional assignment of the Gross Revenues, reserving unto the University, however, a license to collect, retain, enjoy and use such Gross Revenues prior to the occurrence of an Event of Default (as hereinafter defined) beyond the expiration of any applicable notice and cure period. This license shall be revocable by Trustee at any time following the occurrence of an Event of Default beyond the expiration of any applicable notice and cure periods.

SECTION 4. UNIVERSITY REMAINS LIABLE. Anything herein to the contrary notwithstanding, (A) the University shall remain liable under any contracts and agreements and shall be required to perform all of its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed despite the fact that it had entered into same based upon its right to receive the Gross Revenues; (B) the exercise by Trustee of any of the rights hereunder shall not release the University from any of its duties or obligations under any such contracts and agreements included in the Gross Revenues; and (C) the Trustee shall not have any obligation or liability under the contracts and agreements by reason of this Security Agreement, nor shall the Trustee be obligated to perform any of the obligations or duties of the University thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 5. REPRESENTATIONS AND WARRANTIES. The University represents and warrants as follows:

(A) The University is a not-for-profit education corporation organized and existing under the laws of the State of New York and has the power to enter into and perform its obligations under this Security Agreement and to pledge, assign and grant a security interest in the Gross Revenues.

(B) This Security Agreement and the other Bond Documents executed by the University constitute or, upon their execution and delivery in accordance with the terms hereof and thereof, will constitute valid and binding obligations of the University enforceable in accordance with their respective terms.

(C) Except for the pari passu lien securing the Series 2020 Bonds, the security interest created by this Security Agreement and the Permitted Encumbrances, the Gross Revenues are free and clear of any lien, security interest, charge or encumbrance. No effective financing statement or other instrument similar in effect covering all or any part of the Gross Revenues is on file in any recording office, except such as may have been filed in favor of the Series 2020 Trustee or in favor of the Trustee relating to this Security Agreement.

(D) This Security Agreement creates a valid and perfected security interest in the Gross Revenues.

(E) No event has occurred and no condition exists which, upon the execution of this Security Agreement, would constitute an Event of Default under Section 12 hereof. The University is not in violation of (i) any material provision of its charter or by-laws, or (ii) in any material respect, any other instrument to which the University is a party or by which the University may be bound.

(F) Without the prior written consent of the Majority Holders, the University agrees that it shall not hereafter create or permit the creation of any pledge, assignment, encumbrance, restriction, security interest in or other commitment of or with respect to the Gross Revenues which is prior or equal to the pledge made by Section 3 hereof except with respect to Parity Obligations as provided in Section 9 hereof. The University is (or in the case of Gross Revenues acquired after the date hereof, will be) the sole legal and beneficial owner of each item of the Gross Revenues, having good and marketable title thereto, free and clear of any and all Liens, except for the pari passu lien securing the Series 2020 Bonds.

(G) The chief executive office and/or principal place of business of the University is located at its address set forth in Section 20 hereof.

(H) This Security Agreement is effective to create, in favor of the Trustee, legal, valid and enforceable liens on and security interests in the Gross Revenues and all necessary and appropriate filings

having been duly effected in all appropriate public offices so that the liens and security interests created by this Security Agreement will constitute perfected liens on and security interests in the Gross Revenues.

(I) The Gross Revenues do not constitute all or substantially all of the assets of the University. No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either (a) for the grant by the University of the security interest granted hereby; (b) for the execution, delivery or performance of this Security Agreement by the University; or (c) for the perfection of or the exercise by the Trustee of its rights and remedies hereunder.

(J) As of the date hereof, the University has no actual knowledge of any actions, suits or proceedings against the University or any real or personal property owned by University which would or could have a materially adverse affect on the University or the University's right to collect the Gross Revenues.

SECTION 6. FINANCING STATEMENTS; FURTHER ASSURANCES. (A) The University shall file, and hereby authorizes the Trustee to file to the extent the University fails to file, one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Gross Revenues without the signature of University where permitted by law. A photocopy or other reproduction of this Security Agreement or any financing statement covering the Gross Revenues or any part thereof shall be sufficient as a financing statement where permitted by law. In addition, the University covenants that it will take such other action and execute such documents, including control agreements or amendments thereto which shall, in the opinion of counsel to the Trustee, be necessary to comply with applicable law.

(B) At any time and from time to time, at the sole expense of the University, the University will promptly execute and deliver any and all such further instruments and documents and will take such further action as may be necessary or desirable to obtain, maintain and perfect the liens and security interests granted to the Trustee herein, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction with respect to the liens and security interests granted hereby, and the Trustee is authorized to complete one or more financing statements or continuation statements with respect to the liens and security interests granted hereby and to file the same in any appropriate office or place to the extent permitted by applicable law. If any amount payable under or in connection with any of the Gross Revenues shall be or become evidenced by any instrument or chattel paper, such instrument or chattel paper shall be delivered to the Trustee, duly endorsed in a manner reasonably satisfactory to the Trustee, to be held as Gross Revenues pursuant to this Security Agreement.

(C) The University shall provide to the Trustee a statement identifying the name and number of any fund or account established by the University with any banking, trust or other financial institution into which the Gross Revenues (or any portion thereof) are deposited.

(D) A copy of any notice sent by the Trustee to a bank or other financial institution of the occurrence of an Event of Default hereunder shall also promptly be sent to the University.

SECTION 7. INSURANCE. The University shall, at its own expense, maintain insurance with respect to the University and its property in such amounts, against such risks, in such form and with such insurers, as described in Section 5.07 of the Loan Agreement.

SECTION 8. AS TO COLLECTION AND USE OF GROSS REVENUES. Subject to the provisions of Section 3 hereof and the provisions of the Intercreditor Agreement, so long as no Event of Default has occurred (beyond the expiration of any applicable notice and grace period) and is continuing the

University may collect, retain, enjoy and use the Gross Revenues; provided, however, that the Trustee shall have the right at any time upon the occurrence and continuation of an Event of Default (beyond the expiration of any applicable notice and cure periods) and upon written notice to the University of its intention to do so, to notify the account debtors or obligors with respect to Gross Revenues of the assignment of such Gross Revenues to the Trustee and to direct such account debtors or obligors to make payment of all amounts due or to become due to the University thereunder directly to Trustee and, upon such notification and at the expense of the University, to enforce collection of any such Gross Revenues, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the University might have done. After receipt by the University of the notice from the Trustee referred to in the preceding sentence, (a) all amounts and proceeds received by University, in respect of the Gross Revenues shall be received in trust for the benefit of the Trustee, shall be segregated from other funds of the University and shall be forthwith paid over to the Trustee in the same form as so received (with any necessary endorsement) to be applied as provided by Section 15 hereof, and (b) the University shall not adjust, settle or compromise the amount or payment of any receivable, or release wholly or partly any account debtor or obligor thereof, or allow any credit or discount thereon without the consent of the Issuer.

SECTION 9. PARITY OBLIGATIONS. (A) Notwithstanding anything in this Security Agreement to the contrary, the University may issue, incur or assume Long-Term Indebtedness secured by a Lien on the Gross Revenues which, in the event of any default and acceleration or claim on the Gross Revenues, is *pari passu* with the Lien on the Gross Revenues granted by this Security Agreement. Subsequent to the Closing Date, the University shall cause any additional holder of Parity Obligations to sign a joinder for purposes of becoming a party to the Intercreditor Agreement.

(B) Pursuant to the Intercreditor Agreement, the pledge of, and the security interest in, the Gross Revenues made by and granted by the University pursuant to this Security Agreement is intended to be *pari passu* with the pledge of, and the security interest in, the Gross Revenues made by and granted by the University pursuant to the pledge and security agreement dated as of September 1, 2020 (the “Series 2020 Security Agreement”) by and between the University and U.S. Bank National Association, as trustee (the “Series 2020 Trustee”) for the holders of the Issuer’s Revenue Bonds (D’Youville College Project), Series 2020A in the original principal amount of \$34,370,000 (the “Series 2020A Bonds”) and its Revenue Bonds (D’Youville College Project), Series 2020B (Taxable) in the original principal amount of \$13,835,000 (the “Series 2020B Bonds” and together with the Series 2020A Bonds, the “Series 2020 Bonds”).

SECTION 10. TRUSTEE MAY PERFORM. (A) If the University fails to perform or comply with any agreement contained herein, the Trustee may itself perform or comply with, or cause performance of or compliance with, such agreement, and the reasonable expenses of Trustee incurred in connection therewith shall be payable by the University under Section 18(B) hereof.

(B) The Trustee shall be under no obligation to perform or comply with, or cause performance of or compliance with, any agreement which the University fails to perform or comply with, unless the Trustee shall have been requested in writing to do so by the Majority Holders and shall have been provided with adequate funds to comply with or perform, or cause compliance with or performance of, such agreement.

SECTION 11. THE DUTIES OF THE TRUSTEE. The powers conferred on the Trustee hereunder are solely to protect its interest in the Gross Revenues. Except for the accounting for moneys actually received by it hereunder, the Trustee shall have no duty as to any Gross Revenues or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Gross Revenues except as otherwise provided in Section 10(B) hereof.

SECTION 12. EVENTS OF DEFAULT. The following shall each be an “Event of Default” under this Security Agreement and the terms “Event of Default” or “default” shall mean, whenever they are used in or with respect to this Security Agreement, any one or more of the following events (beyond all applicable notice, cure and/or grace periods):

- (A) a default in the due and punctual payment of principal of and interest on the Bonds;
- (B) if the University shall default in the due observance or performance of or compliance with any of the provisions, warranties, covenants, promises, agreements, terms or conditions to be observed, performed, or complied with by the University, as contained in this Security Agreement other than those referred to in the other paragraphs of this Section 12, and such default shall continue for a period of thirty (30) days after notice thereof to the University by the Trustee; provided that in the case of a default under this paragraph (B) which cannot with due diligence be cured within such period of thirty (30) days, the time within which the University may cure the same shall be extended for such period as may be reasonably necessary in the Trustee’s reasonable discretion to cure the same with due diligence (but in no event more than ninety (90) days from said notice), so long as the University commences within such thirty (30) days and proceeds diligently to cure the same;
- (C) the occurrence of a default or an Event of Default under any of the Indenture, the Loan Agreement or any other Bond Document beyond any applicable grace and cure periods;
- (D) if any warranty, representation, certification, financial statement or other information made or furnished to induce the Issuer to issue the Bonds, or made or furnished, at any time, in or pursuant to the terms of this Security Agreement or otherwise by the University, shall prove to have been false or misleading in any material respect when made;
- (E) the University shall (1) be generally not paying its debts as they become due, (2) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, (3) make a general assignment for the benefit of its general creditors, (4) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (5) be adjudicated insolvent or be liquidated or (6) take corporate action for the purpose of any of the foregoing;
- (F) the University shall conceal, remove or permit to be concealed or removed any part of the Gross Revenues with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of the Gross Revenues which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or
- (G) the imposition of a lien on the Gross Revenues, other than the Parity Obligations described in Section 9 hereof, the security interest created hereby, Permitted Encumbrances or liens being contested as provided herein.

SECTION 13. ACCELERATION; ANNULMENT OF ACCELERATION. (A) Upon the occurrence and continuance of an Event of Default hereunder, the Trustee may, by notice in writing delivered to the University, declare the whole of the Secured Indebtedness immediately due and payable, whereupon the same shall become and be immediately due and payable, anything in this Security Agreement or any other Bond Document to the contrary notwithstanding. In such event, there shall be due and payable the total amount of the Secured Indebtedness plus all accrued but unpaid interest thereon and all interest which will accrue thereon to the date of payment, together with any premium payable thereon.

(B) At any time after the principal of the Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Security Agreement, the Trustee may annul such declaration and its consequences. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 14. ENFORCEMENT OF REMEDIES. Subject to the Intercreditor Agreement:

(A) If an Event of Default shall occur and be continuing, the Trustee, on behalf of the Bondholders, may exercise, in addition to all other rights and remedies granted to it in this Security Agreement, and in any other instrument or agreement securing, evidencing or relating to the Bonds, all rights and remedies of a secured party under the Commercial Code. Without limiting the generality of the foregoing, the Trustee without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon the University or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith, collect, receive, appropriate and realize upon the Gross Revenues, or any part thereof. The Trustee shall apply the net proceeds of any such collection, recovery, receipt, appropriation or realization, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care or safekeeping of any of the Gross Revenues or in any way relating to the Gross Revenues or the rights of the Trustee hereunder, respectively, including, without limitation, reasonable attorneys' fees and disbursements, as provided in Section 15 hereof, and only after such application and after the payment by the Trustee of any other amount required by any provision of law, including, without limitation, Section 9-615 the Commercial Code, need the Trustee account for the surplus, if any, to the University. To the maximum extent permitted by applicable law, the University waives all claims, damages and demands it may acquire against the Trustee arising out of the exercise of any rights hereunder. The University shall remain liable for any deficiency if the proceeds of any sale of assets as described under this Section are insufficient to pay amounts owed with respect to the Bonds and the reasonable fees and disbursements of any attorneys employed by the Trustee to collect such deficiency.

(B) If an Event of Default shall have occurred and be continuing, the Trustee shall have the right (i) to notify or to require the University to notify Persons obligated on any instruments, accounts, or contracts which are part of the Gross Revenues to make payment thereof directly to the Trustee, or as the Trustee shall direct, (ii) to collect and enforce any such accounts and contracts, and (iii) to compromise, settle or otherwise agree to waive, amend or modify the obligation of any account debtors or obligors under such accounts and contracts

(C) If an Event of Default exists and continues, the Trustee may proceed to enforce the provisions hereof and to exercise any other rights, powers and remedies available to it. The Trustee, in its sole discretion, shall have the right to proceed first and directly against the University under this Security Agreement without proceeding against or exhausting any other remedies which it may have and without resorting to any other security held by the Trustee.

(D) Each and every Event of Default hereunder shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by the Trustee as each cause of action arises.

(E) The Trustee may pursue its rights and remedies under this Security Agreement notwithstanding (i) any guaranty of or other security for the Bonds, and (ii) any action taken or omitted to be taken by the Trustee or any other Person to enforce any of the rights or remedies under such guaranty or with respect to any other security.



(F) The University shall pay to the Trustee all fees and reasonable costs and expenses (including reasonable legal fees and expenses) incurred by the Trustee in the protection of its rights or in the pursuance of its remedies in respect of this Security Agreement.

(G) The foregoing rights and powers of the Trustee shall be in addition to, and not a limitation upon, any rights and powers of the Trustee given by law, by any other provisions of this Security Agreement, by the other Bond Documents or otherwise.

SECTION 15. APPLICATION OF MONEYS. The net proceeds received by the Trustee pursuant to any right given or action taken under the provisions of Section 14 shall, during the continuance of an Event of Default hereunder, be applied in accordance with Section 10.11 of the Indenture.

SECTION 16. TERMINATION OF PROCEEDINGS. In case any proceeding taken by the Trustee on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then the Trustee and the University shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceeding had been taken.

SECTION 17. WAIVER AND NON-WAIVER OF EVENT OF DEFAULT. (A) The Trustee may, in its discretion, agree to waive any Event of Default hereunder and its consequences and annul any acceleration in accordance with Section 13 hereof. No such waiver shall extend to or affect any other existing or any subsequent Event of Default.

(B) The failure of the Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Agreement. The University shall not be relieved of its obligations hereunder by reason of (i) failure of the Trustee to comply with any request of the University to take any action to enforce any of the provisions hereof; or (ii) any agreement or stipulation by the Trustee extending the time of payment or otherwise modifying or supplementing the terms of this Security Agreement or any of the other Bond Documents. The Trustee may resort for the payment of the Secured Indebtedness to any other security held by the Trustee pursuant the Bond Documents in such order and manner as the Trustee, in its discretion, may elect. No act of the Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. No waiver of any right of the Trustee shall be effective unless it is in a writing signed by an officer of the Trustee.

SECTION 18. INDEMNITY AND EXPENSES. (A) The University agrees to indemnify the Trustee from and against any and all claims, fines, penalties, losses, costs, expenses (including, without limitation, reasonable attorney's fees) and liabilities arising out of or relating to, in connection with or resulting from this Security Agreement (including, without limitation, enforcement of this Security Agreement), except claims, fines, penalties, losses, costs, expenses or liabilities resulting from the Trustee's gross negligence or willful misconduct.

(B) The University will upon demand pay to the Trustee the amount of any and all reasonable expenses, including the reasonable fees and disbursements of its counsel and of any experts, together with interest thereon at the Default Rate which the Trustee may incur in connection with (i) the custody, preservation, use or operation of, or the collection from, or other realization upon, any of the Gross Revenues, (ii) the exercise or enforcement of any of the rights of the Trustee under this Security Agreements, or (iii) the failure by the University to perform or observe any of the provisions of this Security Agreement to be performed or observed by the University.

(C) The sums referred to in Subsections (A) and (B) above shall constitute additional obligations secured by this Security Agreement.

SECTION 19. AMENDMENTS. No amendment or waiver of any provision of this Security Agreement or consent to any departure by the University from the terms hereof shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 20. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (i) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (ii) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notice, request, direction, designation, consent, acknowledgment, certification, appointment, waiver or other communication hereunder shall be delivered are as follows:

IF TO THE ISSUER:

Buffalo and Erie County Industrial Land Development Corporation  
95 Perry Street – Suite 403  
Buffalo, New York 14203  
Attention: Chief Executive Officer

WITH A COPY TO:

Harris Beach PLLC  
726 Exchange Street  
Buffalo, New York 14210  
Attention: Robert G. Murray, Esq.

AND A COPY TO:

Hodgson Russ LLP  
677 Broadway – Suite 401  
Albany, New York 12207  
Attention: Christopher C. Canada, Esq.

IF TO THE UNIVERSITY:

D'Youville University  
320 Porter Avenue  
Buffalo, New York 14201  
Attention: Chief Financial Officer

WITH A COPY TO:

Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, New York 13202  
Attention: Paul W. Reichel, Esq.

IF TO THE TRUSTEE:

UMB Bank, N.A., as Trustee  
100 William Street – Suite 1850  
New York, New York 10038  
Attention: Corporate Trust Department

WITH A COPY TO:

Ballard Spahr LLP  
1675 Broadway – 19th Floor  
New York, New York 10019  
Attention: David J. Fernandez, Esq.

(C) The Trustee and the University may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates and other communications shall be sent.

(D) Whenever in this Security Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person or Persons entitled to receive such notice.

(E) A duplicate copy of each notice, certificate or other communication given hereunder by the Trustee or the University shall be given to the Issuer.

SECTION 21. CONTINUING SECURITY INTEREST. This Security Agreement shall create a continuing security interest in the Gross Revenues and shall (A) remain in full force and effect until the conditions set forth in Section 22 have been met, (B) be binding upon the University, its successors and assigns, and (C) inure, together with the rights and remedies of Trustee hereunder, to the benefit of the Trustee, its successors, transferees and assigns.

SECTION 22. DISCHARGE. When the Secured Indebtedness has been paid in full, including, without limitation, all amounts owed under the Bonds, and the Bonds are no longer Outstanding, then, and only then, this Security Agreement and the pledge and security interests created hereby shall be null and void and shall be released in due form, at the University's expense; otherwise, this Security Agreement shall remain in full force and effect. No release of this Security Agreement, or of the Lien, security interest or assignment created and evidenced hereby, shall be valid unless executed by the Trustee. The Trustee, upon the University's request and at the University's expense, shall deliver to the University all

documents evidencing such release. On the date of such discharge, the University shall be released from any and all conditions, terms, covenants or restrictions created or placed upon it by this Security Agreement and the University shall not have any further obligation or liability hereunder.

SECTION 23. GOVERNING LAW. This Security Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of law provisions.

SECTION 24. LIMITATION OF RIGHTS. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Security Agreement or the other Bond Documents is intended or shall be construed to give to any Person, other than the parties hereto or thereto and the Owners of the Bonds, and their successors and assigns, any right, remedy or claim under or with respect to this Security Agreement or any covenants, conditions and provisions herein contained. This Security Agreement and all of the covenants, conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties hereto, the Owners of the Bonds and their successors and assigns as provided herein and in the Indenture.

SECTION 25. NO SET-OFF BY THE UNIVERSITY. No set-off, counterclaim, reduction or diminution of an obligation, or any defense of any kind or nature (other than full performance by the University of the obligations hereunder) which the University has or may have against the Trustee or any other Person, shall be available hereunder to the University with respect to a claim under this Security Agreement. The University acknowledges that no oral or other agreements, understandings, representations or warranties exist with respect to this Security Agreement or with respect to the obligations of the University under this Security Agreement, except as specifically set forth in this Security Agreement.

SECTION 26. WAIVER OF JURY TRIAL. The Trustee and the University each hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Security Agreement.

SECTION 27. HEADINGS AND DEFINITIONS. The headings used herein are solely for the convenience of the parties and shall not be deemed to limit or affect the terms contained herein.

SECTION 28. COUNTERPARTS. This Security Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 29. SEVERABILITY. (A) If any provision of this Security Agreement shall, for any reason, be held or shall, in fact, be inoperative or unenforceable in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance or render any other provision herein contained inoperative or unenforceable.

(b) The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections in this Security Agreement shall not affect the remaining portions of this Security Agreement or any part thereof.

SECTION 30. INFORMATION UNDER THE UNIFORM COMMERCIAL CODE. (A) This Security Agreement shall be considered a "Security Agreement" within the Uniform Commercial Code, as amended.

(B) By executing this Security Agreement, the University has granted and hereby grants Trustee a security interest in the Gross Revenues to the fullest extent permitted by the Uniform Commercial Code.

(C) The following information is stated in order to facilitate filings under the Uniform Commercial Code of the State: (1) The Secured Party is UMB Bank, N.A., as trustee, having its principal corporate trust office at 100 William Street – Suite 1850, New York, New York 10019. The Debtor is D'Youville University, a not-for-profit education corporation organized under the laws of the State of New York, having its office and principal place of business at 320 Porter Avenue, Buffalo, New York 14201.

SECTION 31. OBLIGATIONS ARISE ON THE ISSUANCE OF THE BONDS. The obligations of the University hereunder shall arise absolutely and unconditionally when the Bonds are issued by the Issuer on the Closing Date.

SECTION 32. SURVIVAL. All warranties, representations and covenants made by the University herein shall be deemed to have been relied upon by the Trustee and shall survive the delivery to the Trustee of this Security Agreement, regardless of any investigation made by the Trustee.

SECTION 33. ENTIRE UNDERSTANDING; COUNTERPARTS. This Security Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 34. LIMITATIONS ON THE DUTIES OF THE TRUSTEE. The Trustee enters into and accepts this Security Agreement upon the terms and conditions set forth in the Indenture with the same force and effect as if those terms and conditions were repeated at length herein and made applicable to the Trustee in respect of this Security Agreement and in respect of any action taken, suffered or omitted to be taken by the Trustee hereunder.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the University and the Trustee have caused this Security Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

D'YOUVILLE UNIVERSITY

BY: \_\_\_\_\_  
Authorized Officer

UMB BANK, N.A., as Trustee

BY: \_\_\_\_\_  
Authorized Officer

## **APPENDIX G**

### **FORM OF INVESTOR LETTER**

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August 1, 2024

Buffalo and Erie County Industrial Land  
Development Corporation  
95 Perry Street – Suite 403  
Buffalo, New York 14203

UMB Bank, N.A.  
100 William Street – Suite 1850  
New York, New York 10038

Loop Capital Markets LLC  
425 South Financial Place – Suite 2700  
Chicago, Illinois 60605

Re: Buffalo and Erie County Industrial Land Development Corporation  
Revenue Bonds (D’Youville University Project), Series 2024A (Taxable)

Ladies and Gentlemen,

The undersigned, [being the initial purchaser] [OR] [[not on its own behalf but in its capacity as investment advisor to those certain funds/accounts identified opposite its signature hereto] managed by [Name of Investment Advisor]] (the “**Purchaser**”), of the above-referenced bonds in the aggregate principal amount of \$44,935,000 (the “**Bonds**”), hereby makes the following representations upon which you may rely:

1. The undersigned acknowledges that the Bonds will be issued by Buffalo and Erie County Industrial Land Development Corporation (the “**Issuer**”) under an Indenture of Trust dated as of August 1, 2024 (the “**Indenture**”) between the Issuer and UMB Bank, N.A., as trustee (the “**Trustee**”), for the benefit of D’Youville University (the “**Borrower**”) for the purpose of assisting in the financing of a portion of the cost of a project located in Buffalo, New York (the “**Project**”) consisting of (A) the funding of certain initial startup costs of a new osteopathic medicine college (the “College of Osteopathic Medicine”) being developed by the Borrower; (B) the funding of the Capitalized Interest Fund (as defined in the Indenture) for purposes of the payment of interest on the Bonds; (C) the financing of all or a portion of the costs of the foregoing by the issuance of the Bonds; and (D) paying a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds and any reserve funds as may be necessary to secure the Bonds, all as more particularly described in that certain Preliminary Limited Offering Memorandum, dated July 8, as supplemented and amended by the Supplement to Preliminary Limited Offering Memorandum dated August 1, 2024 (the “**Preliminary Limited Offering Memorandum**”). The undersigned further acknowledges that (i) the Indenture will create a security interest in the trust estate established thereunder for the benefit of the beneficial owners of the Bonds; (ii) the proceeds of the Bonds will be loaned by the Issuer to the Borrower pursuant to a Loan Agreement dated as of August 1, 2024 (the “**Loan Agreement**”), between the Issuer and the Borrower; and (iii) the

obligations of the Borrower under the Loan Agreement will be secured by, among other things, (A) a Mortgage dated as of August 1, 2024 granting to the Issuer a first-priority lien on certain real property of the Borrower, which will be assigned to the Trustee pursuant to an assignment of mortgage dated as of August 1, 2024, (B) a Pledge and Security Agreement dated as of August 1, 2024 pursuant to which the Borrower grants to the Trustee a security interest in its Gross Revenues (as defined in the Indenture), (C) a Pledge and Assignment dated as of August 1, 2024 from the Issuer to the Trustee assigning the Loan Agreement (except for the Issuer's unassigned rights) to the Trustee and (D) a Teach-Out Reserve Letter of Instructions and an Operating Reserve Letter of Instructions, each from the Issuer to the Trustee, and each dated as of the date of issuance of the Bonds, directing the respective depository banks to pay to the Trustee upon termination of the respective reserves all moneys on deposit in the respective reserves.

2. The Purchaser has the requisite authority to purchase the Bonds and to execute this letter in connection with its purchase of the Bonds.

3. The Purchaser is a "Qualified Institutional Buyer" within the meaning of Rule 144A under the Securities Act of 1933. The Purchaser has sufficient knowledge and experience in financial and business matters, including purchase and ownership of tax-exempt municipal obligations similar to the Bonds, and is capable of evaluating the risks and merits of its purchase of the Bonds and can bear the economic risk of purchasing the Bonds.

4. The Bonds are being acquired by the Purchaser for investment and not with a current view to, or for resale in connection with, any distribution of the Bonds, and, subject to the further provisions of this paragraph 4, the Purchaser (or an affiliate) intends to hold the Bonds for its own account (subject to its rights to sell, pledge, transfer, convey, hypothecate, mortgage, or dispose of such Bonds at a future date or dates in accordance with the terms and conditions of the Indenture and applicable law) and does not intend at this time to dispose of all or any part of the Bonds. Although the Purchaser does not intend at this time to dispose of all or any part of the Bonds (other than to an affiliate), the Purchaser retains the right to sell and transfer the Bonds to Qualified Institutional Buyers in accordance with terms and conditions of the Indenture and applicable law. The Purchaser understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible.

5. The Purchaser understands that the Bonds will not be registered under the Securities Act of 1933 and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, and (c) will not carry a rating from any rating service.

6. The Purchaser acknowledges that (a) the Bonds, together with interest thereon, will be special, limited obligations payable solely from amounts paid to the Issuer by the Borrower pursuant to the terms of the Bonds, the Indenture and the Loan Agreement and any other amounts held in any fund or account established pursuant to the Indenture and (b) notwithstanding anything to the contrary contained in the Bonds or the Indenture, the Issuer shall not be required to use any other moneys or assets of the Issuer to pay any portion of the Project, or make any other payment or advance any other monies or be liable for any other costs or expenses in connection with the Project, or the Bonds, except from amount paid to the Issuer by the Borrower pursuant to the Loan

Agreement and the Indenture (other than Issuer fees and expenses). The Purchaser understands that the Bonds will not be deemed to constitute a debt or liability of the State of New York (the “**State**”) or of any political subdivision, agency or instrumentality thereof, except the Issuer, but solely to the extent of the Trust Revenues (as defined in the Indenture), and neither the faith and credit of the State nor of any such political subdivision, agency or instrumentality (except the Issuer), is pledged to the payment of the principal of or interest on the Bonds.

7. The Purchaser acknowledges and agrees that it has not relied upon the Issuer or any of its members, employees or officers for any information in connection with the Purchaser’s purchase of the Bonds, except with respect to the information in the Preliminary Limited Offering Memorandum concerning the Issuer under the captions “THE ISSUER” and “ABSENCE OF MATERIAL LITIGATION – The Issuer.”

8. The Purchaser has made its own independent investigations and evaluation of the financial position and business condition of the Borrower and the Project.

9. In connection with the initial purchase of the Bonds, the Purchaser acknowledges that, under Rule 144A(d)(4) of the Securities Act, upon its request, certain financial information with respect to the Borrower is required to be provided to the Purchaser (e.g., the Borrower’s most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for such part of the two preceding fiscal years as the Borrower has been in operation) (the “**Financial Information**”) and, as of the date hereof, certain of such Financial Information which is available has been included by the Borrower in the Preliminary Limited Offering Memorandum and final Limited Offering Memorandum.

10. The undersigned is a duly appointed, qualified, and acting representative of the Purchaser, is authorized to make the representations and acknowledgements contained herein on behalf of the Purchaser and is authorized to execute and deliver this letter.

Nothing in the foregoing representations shall be deemed to either (i) relieve, release or hold harmless any party from its obligations, responsibilities or undertakings under applicable law, and/or (ii) constitute an indemnification of, or an obligation to contribute toward, losses, damages or liabilities incurred by any party in connection with the performance of, or failure to perform, such obligations, responsibilities or undertakings under applicable law.

Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Indenture.

*[Signature page follows]*

[NAME OF PURCHASER][, not on its own behalf  
but in its capacity as investment advisor to the  
[INSERT NAME OF FUND(S)]]

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

[Name]

[Title]

[Address]

[Phone Number]



# D'YOUVILLE



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