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**BOND PURCHASE AGREEMENT**

**AND**

**BUILDING LOAN CONTRACT**

by and among

**BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION,**

**134 HIGH STREET, LLC**

and

**FIRST NIAGARA BANK, N.A.**

Dated December 22, 2010

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**THIS BOND PURCHASE AND BUILDING LOAN AGREEMENT  
PERTAINS TO THE IMPROVEMENT OF REAL PROPERTY AND IS  
INTENDED TO FUNCTION AS A "BUILDING LOAN CONTRACT" AS  
DEFINED IN SECTION 2(13) OF THE LIEN LAW OF THE STATE OF  
NEW YORK**

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## **BOND PURCHASE AGREEMENT AND BUILDING LOAN CONTRACT**

**THIS BOND PURCHASE AGREEMENT AND BUILDING LOAN CONTRACT**, dated as of December 22, 2010, by and among **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a not-for-profit corporation constituting a local development corporation, duly organized, existing and in good standing under the laws of the State of New York, having an office for the transaction of business at 275 Oak Street, Buffalo, New York 14203 (together with its successors and permitted assigns, the "*Issuer*"), **134 HIGH STREET, LLC** (together with its successors and permitted assigns, the "*Company*"), a limited liability company duly organized, existing and in good standing under the laws of the State of New York, and **FIRST NIAGARA BANK, N.A.**, a national banking association having an office at 726 Exchange Street, Suite 900, Buffalo, New York 14210 (together with its successors and permitted assigns, "*Purchaser*").

### **WITNESSETH:**

**WHEREAS**, pursuant to the purposes and powers contained within Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "*State*"), and Resolution Nos. 218 and 295 of 2009 and Resolution 5-3 of 2010 of the Erie County Legislature, as amended to date and hereafter from time to time (hereinafter collectively called the "*Act*"), and pursuant to its Certificate of Incorporation filed on January 13, 1982, as amended (the "*Certificate*"), the Issuer was established as a not-for-profit local development corporation of the State 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; and

**WHEREAS**, the Act further authorizes the Issuer to issue the "Bonds" (as defined below) 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 and interest on any such Bonds so issued and any agreements made in connection therewith, to pledge the revenues and receipts from said loans to secure the payment of such Bonds and interest thereon; and

**WHEREAS**, pursuant to a certain resolution, duly adopted by the Issuer on December 13, 2010 (as the same may be amended or supplemented from time to time, the "*Bond Resolution*"), the Issuer, among other things, authorized the issuance and sale of the Issuer's Tax Exempt Revenue Bonds (Buffalo Niagara Medical Campus, Inc. Project), Series 2010 in the aggregate principal amount of up to \$24,050,000 (the "*Bonds*") for the benefit of the Company, for the purpose of financing a project consisting of: (a)(i) the demolition, construction and/or renovation, expansion, upgrading and equipping of new improvements to be sited on a parcel of real property to be ground leased by Kaleida Health, a New York not-for-profit corporation, to the Company located at 134 High Street in the City of Buffalo, County of Erie (the "*Land*")

related to the construction of an approximately 600,000 square foot multi-modal transportation structure to house an approximately 1,800 vehicle-capacity parking ramp located on the Land (the "*Facility*"); (ii) the acquisition of and installation in the Facility of various machinery, equipment and furnishings (the "*Equipment*") (the Land, Facility and Equipment are hereinafter collectively referred to as the "*Project*"); (iii) the financing of all or a portion of the costs of the foregoing by the issuance of the Bonds; and (iv) funding a debt service reserve fund, if any, and paying capitalized interest, if any, and certain other costs incidental to the issuance of the Bonds; and

**WHEREAS**, the Bonds are being issued pursuant to, and subject to the terms, covenants and conditions of, this Bond Purchase Agreement; and

**WHEREAS**, the execution and delivery of this Bond Purchase Agreement and the issuance of the Bonds under the Act have been in all respects approved and duly and validly authorized by the Bond Resolution; and

**WHEREAS**, the proceeds of the Bonds will be loaned by the Issuer to the Company pursuant to a certain Loan Agreement, dated as of December 1, 2010, by and between the Issuer and the Company (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Loan Agreement*"); and

**WHEREAS**, among other things, as security for the Company's obligations under the Loan Agreement, the Company had granted to the Issuer a first priority leasehold mortgage lien on and security interest in the Project pursuant to a certain Building Loan Leasehold Mortgage and Security Agreement dated as of December 1, 2010, by the Company to the Issuer (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Mortgage*"); and

**WHEREAS**, as security for the repayment of the Bonds the Issuer has, among other things, assigned all of its right, title and interest (other than the Unassigned Rights) in and to (i) the Loan Agreement and certain other documents to the Purchaser pursuant to a certain Pledge and Assignment, dated as of December 1, 2010, between the Issuer and the Purchaser, with an acknowledgment by the Company (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Pledge and Assignment*"), and (ii) the Mortgage pursuant to a certain Assignment of Mortgage, dated as of December 1, 2010 (the "*Assignment of Mortgage*"); and

**WHEREAS**, among other things, as additional security for the Company's obligations under the Loan Agreement, the Company has granted to the Issuer a first priority assignment of leases and rents with respect to the Project pursuant to a certain Assignment of Leases and Rents, dated as of December 1, 2010, by the Company to the Issuer (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Assignment of Leases and Rents*") which the Issuer has assigned to the Purchaser pursuant to a certain Assignment of Assignment of Leases and Rents, dated as of December 1, 2010, by the Issuer to the Purchaser (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Assignment of Assignment of Leases and Rents*"); and

**WHEREAS**, to further secure the Bonds and the obligations of the Company with respect thereto, the Company has given a guaranty dated as of December 1, 2010 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Company Guaranty*") to the Purchaser; and

**WHEREAS**, to further secure the Bonds and the obligations of the Company with respect thereto, the Buffalo Niagara Medical Campus, Inc., (the "*Corporation*") has given an absolute, unconditional, unlimited and continuing guaranty of payment as well as a guaranty of the lien-free completion of the Project in accordance with the Plans and Specifications, each dated as of December 1, 2010 (as each may be amended, restated, supplemented or otherwise modified from time to time, and collectively referred to as the "*Corporate Guaranties*") to the Purchaser; and

**WHEREAS**, the undertaking of the Project and grant of the Financial Assistance is for a proper purpose, to wit: to relieve and reduce unemployment, promoting and providing for additional and maximum employment and alleviating the burdens of government; and

**WHEREAS**, the Purchaser, in consideration of, among other things, the express promises of the Company set forth in Section 2.04 hereof, has agreed to purchase the Bonds in the maximum aggregate principal amount not to exceed \$24,050,000 for the purpose of financing the acquisition, construction and equipping of the Project and the payment of costs and fees associated with the issuance of the Bonds; and

**WHEREAS**, the Bond shall be substantially in the form attached to this Agreement as Exhibit A; and

**WHEREAS**, the Purchaser and the Issuer have agreed that the Purchaser shall make all advances of the purchase price of the Bond hereunder to the Company or its order, as agent of the Issuer, on the terms set forth in Article IV hereof;

**NOW, THEREFORE**, the parties agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

#### **Section 1.01. Definitions of Terms.**

All capitalized terms used in this Agreement and not otherwise defined shall have the meanings given respectively thereto in the Loan Agreement. The following words and terms as used in this Bond Purchase Agreement shall have the following meanings:

"*1933 Act*" means the Securities Act of 1933, as amended, and the regulations thereunder.

"*Accountant*" means a firm of independent certified public accountants of recognized standing, selected by the Company and acceptable to the Purchaser.

*"Act"* has the meaning set forth in the Recitals to this Agreement.

*"Affiliate"* means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

*"Architect"* means, EI Team, Inc., its successors and/or assigns.

*"Architect's Contract"* means, Standard Form of Agreement Between Design-Builder and Architect dated October 11, 2010 between the Architect and the General Contractor, together with all amendments, modifications and supplements thereto.

*"Assignment of Assignment of Leases and Rents"* means the Assignment of the Assignment of Leases and Rents dated as of December 1, 2010, from the Issuer to the Purchaser, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*"Assignment and Assumption"* means an assignment and assumption entered into by the Purchaser and an assignee in substantially the form of Exhibit E or any other form approved by the Issuer.

*"Assignment of Construction Documents"* means the Assignment of Construction Documents dated as of December 1, 2010, by the Company to the Purchaser with consents of the Architect and General Contractor attached thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*"Assignment of Leases and Rents"* means Assignment of Leases and Rents dated as of December 1, 2010, from the Company to the Issuer, as the same may be amended, modified, supplemented or otherwise modified from time to time.

*"Assignment of Mortgage"* means the Assignment of Mortgage dated December 22, 2010, from the Issuer to the Purchaser, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*"Authorized Representative"* means, in the case of the Issuer, the Chairman, the Vice Chairman, the Secretary, the Treasurer or any Assistant Secretary, any Assistant Treasurer or the President & Chief Executive Officer of the Issuer; in the case of the Company the Corporation and in the case of the Corporation its Executive Director, or any other officer; and in the case of all of the foregoing, such additional persons as, at the time, are designated to act on behalf of the Issuer, the Company or the Corporation, as the case may be, by written certificate furnished to the Purchaser, and to the Issuer or Company, as the case may be, containing the specimen signature of each such person and signed on behalf of an Authorized Representative of such Person.

*"Bond"* or *"Bonds"* has the meaning set forth in the Recitals to this Agreement.

*"Bond Counsel"* means the law firm of Hiscock & Barclay, LLP, or an attorney or firm of attorneys whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized.

**"Bond Documents"** means the Bonds, the Pledge and Assignment, the Loan Agreement, the Bond Purchase Agreement, the Mortgage, the Security Agreement, the Corporate Guaranties, the Company Guaranty, the Environmental Compliance and Indemnification Agreement, the Assignment of Lease and Rents, the Assignment of Assignment of Leases and Rents, the Assignment of Mortgage, the Assignment of Construction Documents, the Tax Compliance Agreement and any other document now or hereafter executed to evidence or secure the Bonds or the Company's obligations under the Loan Agreement.

**"Bondholders"** or **"Owners"** means the Purchaser.

**"Bond Proceeds"** means the sum of the face amount of the Bonds plus accrued interest, if any, less the sum of the original issue discount plus the underwriter's or similar discount, if any.

**"Bond Purchase Agreement"** or **"Agreement"** means this Bond Purchase Agreement and Building Loan Contract dated December 22, 2010, by and among the Issuer, the Company and the Purchaser, as the same may be amended, restated, supplemented or otherwise modified from time to time.

**"Bond Resolution"** has the meaning set forth in the Recitals to this Agreement.

**"Business Day"** means any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banks in New York, New York, or in the jurisdiction in which the Trust Office is located are authorized by law to close, or (iii) a day on which the New York Stock Exchange is closed.

**"Certificate"** has the meaning set forth in the Recitals to this Agreement.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the final, temporary and proposed regulations of the Department of Treasury promulgated thereunder.

**"Closing Date"** means the date of sale and delivery of the Bonds, being December 22, 2010.

**"Collateral"** shall mean any and all assets and rights and interests in or to property of the Company, the Issuer and other Persons, whether real or personal, tangible or intangible, in which a Lien is granted or purported to be granted pursuant to the Collateral Documents.

**"Collateral Documents"** means all agreements, instruments and documents now or hereafter executed and delivered in connection with this Agreement pursuant to which Liens are granted or purported to be granted to the Purchaser in Collateral securing all or part of the Obligations each in form and substance satisfactory to the Purchaser, including, without limitation, the Mortgage, the Assignment of Construction Documents, the Assignment of Leases and Rents, the Pledge and Assignment and the Security Agreement.

**"Commitment"** means, as to the Purchaser, its obligation to make Committed Disbursements to the Company pursuant to Section 4.01 in an aggregate principal amount at any one time outstanding not to exceed \$24,050,000 with respect to the Bonds.



*"Commitment Letter"* means the Purchaser's Commitment Letter and Summary of Terms and Conditions, dated December 8, 2010, as accepted and agreed to by the Company and the Corporation.

*"Committed Disbursement"* has the meaning specified in Section 4.01.

*"Committed Disbursement Notice"* means a notice of a Committed Disbursement substantially in the form of Exhibit D.

*"Company Documents"* means this Bond Purchase Agreement, the Loan Agreement, the Mortgage, the Security Agreement, the Assignment of Leases and Rents, the Environmental Compliance and Indemnification Agreement, the Tax Compliance Agreement, the Assignment of Construction Documents, the Company Guaranty and any other document entered into by the Company in connection with the issuance of the Bonds, each as may be amended, restated, supplemented or otherwise modified from time to time.

*"Company Guaranty"* means the Guaranty dated as of December 1, 2010, from the Company to the Purchaser, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*"Completion Date"* means June 30, 2012, or such earlier date on which Substantial Project Completion occurs.

*"Completion Guaranty"* means the Completion Guaranty dated as of December 1, 2010, by the Corporation for the benefit of the Purchaser, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*"Construction Agreement"* means the Design-Build Contract dated October 6, 2010 by and between the Company and the General Contractor relating to the construction of the Facility, together with all amendments, modifications and supplements thereto.

*"Construction Period"* or *"Construction Term"* means the period commencing on the Closing Date and expiring on the Completion Date.

*"Control"* (and its derivatives) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, partnership interests or other equity interest, by contract or otherwise, including the power to elect a majority of the directors of a corporation or trustees of a trust, as the case may be. A Person shall be deemed to Control another Person if the Controlling Person owns five percent (5%) or more of any class of voting securities, partnership interests or other Equity Interests of the Controlled Person or possess, indirectly or directly, the power to direct or cause the direction of the management or policies of the Controlled Person, whether through the ownership of voting securities, by contract or otherwise.

*"Corporate Guaranties"* means collectively the Completion Guaranty and the Payment Guaranty.

***"Corporation"*** means Buffalo Niagara Medical Campus, Inc., a not-for-profit corporation duly organized, existing and in good standing under the laws of the State of New York.

***"Corporation Documents"*** means the Corporate Guaranties, the Tax Compliance Agreement and any other document entered into by the Corporation in connection with the issuance of the Bonds, each as may be amended, restated, supplemented or otherwise modified from time to time.

***"Cost of the Project"*** means all those costs and items of expense incurred in connection with the Project as approved by the Purchaser.

***"Debt"*** shall have the meaning set forth in Section 4.02 of this Agreement.

***"Debtor Relief Laws"*** means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

***"Debt Service Coverage Ratio"*** means the ratio of the Project's annual Net Operating Income (as confirmed by the Company's operating statement) to the annual payments of principal and interest under the Bonds and any other Indebtedness secured by the Project.

***"Default"*** means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time or both, would be an Event of Default.

***"Deficiency"*** shall have the meaning set forth in Section 4.02 of this Agreement.

***"Disbursement Date"*** means the date on which a Committed Disbursement is made by the Purchaser pursuant to Section 4.01 of this Agreement.

***"Draw Down Period"*** means the period commencing on the Closing Date and ending on the Completion Date, during which the Bond Proceeds may be drawn for the construction and equipping of the Project.

***"Environmental Compliance and Indemnification Agreement"*** means the Environmental Compliance and Indemnification Agreement, dated as of December 1, 2010, from the Company and the Corporation to the Issuer and the Purchaser, as the same may be amended, restated, supplemented or otherwise modified from time to time.

***"Environmental Laws"*** means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

***"Equipment"*** has the meaning set forth in the Recitals to this Agreement.

***"Equity Interests"*** means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

***"Equity Portion"*** means 29% of the amount of each Committed Disbursement Notice representing that portion of each Committed Disbursement to be paid from the Company's equity.

***"ERISA"*** means the Employee Retirement Income Security Act of 1974, as the same may, from time to time, be amended or supplemented, and all regulations thereunder.

***"ERISA Affiliate"*** means any trade or business (whether or not incorporated) under common control with the Company within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

***"ERISA Event"*** means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Company or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Company or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company or any ERISA Affiliate.

***"Event of Default"*** means any of those events defined as Events of Default by Section 6.01 of this Bond Purchase Agreement.

***"Facility"*** has the meaning set forth in the Recitals to this Agreement.

***"Financing Commitment"*** means that certain Commitment Letter, dated December 8, 2010, of the Purchaser to the Company, as the same may be amended.

***"Fiscal Year"*** means the twelve (12) month period beginning on January 1 in any year or such other fiscal year as the Company may adopt from time to time.

*"Force Majeure"* means any delay in the construction of the Project Facility, caused by natural disaster, fire, war, embargoes, civil disturbances, earthquake, floods, explosion, extraordinary adverse weather conditions, inability to procure or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, strikes or lockouts for which an Institution has notified the Bank in writing.

*"Funding Agreement"* means the Agreement dated December 22, 2010 among Kaleida Health, Roswell Park Cancer Institute Corporation, FNUB, Inc. and the Company relating to certain possible equity contributions to the Project.

*"GAAP"* means generally accepted accounting principles, consistently applied

*"General Contractor"* means LPCiminelli Construction Corp., its successors and/or assigns.

*"Governmental Authority"* means the United States, the State, and any other state or any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of these, having jurisdiction over the construction, equipping, ownership, leasing, operation and/or maintenance of the Project.

*"Governmental Requirements"* means any present and future laws, rules, orders, ordinances, regulations, statutes, requirements and executive orders applicable to the Project of the United States, the State and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them, now existing or hereafter created, and having or asserting jurisdiction over the Project or any part thereof.

*"Ground Lease"* means Ground Lease dated December 22, 2010 between the Company and Kaleida Health, as same may be amended, restated, supplemented or otherwise modified from time to time.

*"Guarantor"* means the Corporation and any other Person guaranteeing the payment or performance of the Company's Obligations hereunder or under the other Bond Documents.

*"Hazardous Materials"* or *"Hazardous Substance"* means any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum-based products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, *et seq.*), Articles 15 or 27 of the New York Environmental Conservation Law, or any other applicable Environmental Law and the regulations promulgated thereunder.

*"Hedging Contracts"* means interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, or any other agreements or arrangements entered into between the Company and the Purchaser and designed to protect the Company against fluctuations in interest rates or currency exchange rates.

***"Indebtedness"*** means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit (other than letters of credit collateralized by cash or cash equivalents, but only to the extent of the amount of such cash or cash equivalents), or for the deferred purchase price of property for which such Person or its assets is liable; (b) all outstanding amounts under a loan agreement, letter of credit (other than letters of credit collateralized by cash or cash equivalents, but only to the extent of the amount of such cash or cash equivalents), or other credit facility; (c) all amounts required to be paid by such Person as a guaranteed payment to partners, members (or other equity holders) or a preferred or special dividend, including any mandatory redemption of shares or interests; (d) all obligations under leases that constitute capital leases for which such Person is liable; (e) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss; and (f) all Indebtedness referred to in clauses (a), (b), (c), (d) or (e) above guaranteed directly or indirectly in any manner by such Person. The parties agree that any Indebtedness of a Loan Party to any other Loan Party shall not constitute Indebtedness hereunder.

***"Indemnified Liabilities"*** has the meaning specified in Section 7.11 of this Agreement.

***"Indemnified Persons"*** has the meaning specified in Section 7.11 of this Agreement.

***"Initial LIBOR Rate"*** has the meaning set forth in the form of Bond attached as Exhibit A hereto.

***"Interest Payment Date"*** has the meaning set forth in the form of Bond attached as Exhibit A hereto.

***"Issuer Documents"*** means the Bonds, this Bond Purchase Agreement, the Loan Agreement, the Pledge and Assignment, the Assignment of Mortgage, the Assignment of Leases and Rents, the Tax Compliance Agreement and any other documents executed by the Issuer in connection with the issuance of the Bonds.

***"Land"*** has the meaning set forth in the Recitals to this Agreement.

***"Laws"*** means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

***"LIBOR"*** has the meaning set forth in the form of Bond attached as Exhibit A hereto.

***"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, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes

reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, mechanics', materialmen's, warehousemen's and carriers' liens and other similar encumbrances affecting real property. For the purposes hereof, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional lease agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

*"Loan Agreement"* has the meaning set forth in the Recitals to this Agreement.

*"Loan Payments"* means any and all payments required to be made by or on behalf of the Company pursuant to Section 7 of the Loan Agreement.

*"Loan Party"* means the Issuer or the Company under this Agreement or any other Bond Document.

*"Major Subcontract"* means a subcontract for the performance of work or the provision of goods and/or services with respect to the Project in an amount equal to or greater than \$500,000.

*"Major Subcontractor"* means a subcontractor performing work or providing goods and/or services pursuant to a Major Subcontract.

*"Material Adverse Effect"* means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, assets, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Corporation, the Company and/or its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party or the Corporation to perform its obligations under any Bond Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party or the Corporation of any Bond Document to which it is a party.

*"Mortgage"* means, the Building Loan Leasehold Mortgage and Security Agreement, dated as of December 1, 2010, granted by the Company to the Issuer in connection with the issuance of the Bonds, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*"Mortgaged Property"* has the meaning set forth in the Mortgage.

*"Net Operating Income"* means the aggregate actual income generated by the Project for such period less the sum of (a) a vacancy factor equal to 2.5% of the income from Parking Agreements, (b) ordinary operating expenses, (c) a management fee of 1.5% of the effective gross income and (d) a replacement reserve equal to 2% of the income from the Parking Agreements.

*"Net Proceeds"* means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs, including, but not limited to, attorneys' fees, and taxes incurred in obtaining such gross proceeds.

**"Obligations"** means all unpaid principal of, and accrued and unpaid interest due on, the Bonds, and all other advances to, and debts, liabilities, obligations, interest, fees, charges, expenses, covenants, stipulations, promises, agreements, obligations and duties of, any Person arising under any Bond Document or otherwise with respect to any Committed Disbursements or Hedging Contract, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Person party to any Bond Documents or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

**"OFAC"** has the meaning set forth in Section 2.03(n) of this Agreement.

**"Outstanding"** means all Bonds which have been executed and delivered by the Issuer under this Agreement except the following:

- (i) Bonds canceled or delivered to the Issuer for cancellation;
- (ii) Bonds paid in full pursuant to the terms thereof; and
- (iii) Bonds in lieu of which other Bonds have been executed in exchange thereof or to replace mutilated, lost, stolen or destroyed Bonds.

**"Owner"** or **"Bondholder"** means a Purchaser.

**"Parking Agreements"** means collectively: (i) the Tenancy-in-Common Agreement dated as of December 22, 2010 between the Company and FNUB, Inc.; (ii) the Parking Permit Agreement dated as of December 22, 2010 between the Company and Kaleida Health; (iii) the Parking Permit Agreement dated as of December 22, 2010 between the Company and Roswell Park Cancer Institute Corporation; (iv) the Parking Garage Operations Agreement dated as of December 22, 2010 among the Company, FNUB, Inc., Kaleida Health and Roswell Park Cancer Institute Corporation; and (v) the Parking Permit Agreement dated as of December 22, 2010 between the Company and BNMC Parking, LLC.

**"Participant"** has the meaning specified in Section 7.12(c) of this Agreement.

**"Payment Guaranty"** means the Guaranty of Payment dated as of December 1, 2010, from the Corporation to the Purchaser, as the same may be amended, restated, supplemented or otherwise modified from time to time.

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

**"Pension Plan"** means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Company or any ERISA Affiliate or to which the Company or any ERISA Affiliate contributes or has an obligation to contribute or, in the case of

a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

*"Permitted Encumbrances"* means when used in connection with the Project any of the following:

- (i) The lien of taxes and assessments which are not delinquent;
- (ii) The lien of taxes and assessments which are delinquent but the validity of which is being contested in good faith in accordance with the Loan Agreement;
- (iii) Minor defects and irregularities in the title to such property which do not in the aggregate materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held;
- (iv) Easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held;
- (v) The Ground Lease, the Mortgage, the Assignment of Leases and Rents and the other Security Documents;
- (vi) Security interests, liens and other encumbrances to secure the purchase price of any equipment or furnishings, and any other liens, pledges, charges and encumbrances; and
- (vii) Any instrument recorded pursuant to Section 21 of the Loan Agreement; and
- (viii) The Parking Agreements;
- (ix) Subject to Section 4.01(j) of this Agreement, exception nos. 9, 10, 11, 12, 14 and 14 on Schedule B to the Title Policy; and
- (x) Such other encumbrances, defects, and irregularities to which the prior written consent of the Issuer and the Purchaser has been obtained.

*"Person"* means an individual, partnership, corporation, limited liability company, trust or unincorporated organization, and a government or agency or political subdivision or branch thereof.

*"Plan"* means any plan defined in Section 4021(a) of ERISA in respect of which the Company, a Guarantor or any Subsidiary of the Company or a Guarantor is an "employer" or a "substantial employer" as defined in Sections 3(5) and 4001(a)(2) of ERISA, respectively.



***"Plans and Specifications"*** means the plans and specifications for the Facility, prepared for the Company and satisfactory to the Purchaser, as revised from time to time in accordance with Section 2.04(a) of this Agreement.

***"Pledge and Assignment"*** has the meaning set forth in the Recitals to this Agreement.

***"Pledged Collateral"*** shall mean the Collateral in which the Company and/or the Issuer have given the Purchaser a security interest pursuant to the Collateral Documents.

***"Pledged Revenues"*** means (i) all amounts payable by, or on behalf of, the Company pursuant to the Loan Agreement, including all Loan Payments (except payment of any Rebate Amount or representing any Unassigned Rights); (ii) all amounts realized by the Purchaser pursuant to the exercise of its rights and remedies under the Security Agreement, Company Guaranty or the other Collateral Documents; and (iii) any moneys received pursuant to Section 25 of the Loan Agreement from the insurance required by Sections 24 of the Loan Agreement or from title insurance or condemnation awards or proceeds with respect to the Project.

***"Pro Forma Debt Service"*** means the pro forma annual payments of principal and interest under the Bonds for the first twelve months of the Permanent Term.

***"Pro Forma Debt Service Coverage Ratio"*** means the ratio of the Project's Pro Forma Net Operating Income to the Pro Forma Debt Service for the Project.

***"Pro Forma Net Operating Income"*** means the aggregate pro forma income to be generated by the Project under the Parking Agreements for the first year of the Permanent Term less the sum (a) a vacancy factor equal to 2.5% of the income under the Parking Agreements, (b) projected operating expenses, (c) a management fee of 1.5% of the effective gross income and (d) a replacement reserve equal to 2% of the payments under the Parking Agreements.

***"Project"*** has the meaning set forth in the Recitals to this Agreement.

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

***"Purchaser"*** means First Niagara Bank N.A., a national banking association and its successors and assigns.

***"Purchaser's Consultant"*** shall have the meaning set forth in Section 4.01(e) of this Agreement.

***"Purchaser's Office"*** means the office or offices of the Purchaser described as such in the first paragraph of this Agreement or such other office or offices as the Purchaser may from time to time notify the Company, the Issuer and any other Purchaser.

***"Rebate Amount"*** has the meaning set forth in the Tax Compliance Agreement.

*"Record Date"* means the 15<sup>th</sup> day of each calendar month preceding an Interest Payment Date.

*"Register"* has the meaning specified in Section 7.12(b)(iv) of this Agreement.

*"Related Parties"* means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

*"Reportable Event"* means any reportable event as that term is defined in ERISA.

*"Returned Payment"* shall have the meaning set forth in Section 7.16 of this Agreement.

*"SEC"* means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

*"Security Agreement"* means that certain Security Agreement, dated as of December 1, 2010, by and between the Purchaser and the Company, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*"Security Documents"* means the Corporate Guaranties, the Company Guaranty, the Security Agreement, the Mortgage, the Assignments of Lease and Rents and the Assignment of Construction Documents.

*"SEQRA"* means the State Environmental Quality Review Act, as amended, and the regulations thereunder.

*"State"* means the State of New York.

*"Subsidiary"* of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Company.

*"Substantial Project Completion"* means (a) the Project has been completed in accordance with the Plans and Specifications (as evidenced by a certificate of substantial completion by the Architect) and is lien free and (b) an unconditional certificate of occupancy (containing only such conditions as are satisfactory to the Purchaser in its sole discretion) or a permanent certificate of occupancy and any other approvals required for the use and operation of the Project have been issued by the City of Buffalo, New York.

*"Tax Compliance Agreement"* means the Tax Compliance Agreement dated December 22, 2010, among the Issuer, the Company and the Corporation, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*"Tenants"* means, collectively, Kaleida Health, Roswell Park Cancer Institute Corporation, BNMC Parking, LLC and FNUB, Inc.

*"Ten Year Interest Rate"* has the meaning set forth in the form of Bond attached as Exhibit A hereto.

*"Title Policy"* means leasehold mortgagee title policy issued by Chicago Title Insurance Company to the Issuer and the Purchaser, as of the Closing Date.

*"Total Outstandings"* means the aggregate amount on any date of all Committed Disbursements including any Committed Disbursement occurring on such date.

*"UCC"* means the Uniform Commercial Code as adopted and in effect from time to time in the State, except when the provisions of the UCC as adopted in another jurisdiction are applicable due to the location of any collateral in such other jurisdiction.

*"USA Patriot Act"* has the meaning set forth in Section 2.03(o) of this Agreement.

*"Unassigned Rights"* has the meaning set forth in the Loan Agreement.

**Section 1.02. Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Bond Purchase Agreement:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the redemption or calling for redemption of Bond shall not be deemed to refer to or connote the payment of Bonds at their stated maturity.

(c) All references herein to particular articles or sections are references to articles or sections of this Bond Purchase Agreement.

(d) The Table of Contents and headings of the several Sections herein are solely for convenience of reference and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.

(e) The use of the neuter gender shall include the masculine and feminine genders as well.

(f) All undefined terms contained in this Agreement shall, unless the context indicates otherwise, have the meanings provided for by the UCC to the extent the same are used or defined therein. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, including the Exhibits and Schedules hereto, as the same may from time to time be amended, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement.

(g) The words, "including," "include" and "includes" shall be deemed to be followed by the words "without limitation."

(h) Without limitation and for the avoidance of doubt, in regard to use of the words "during the continuance of," "that is continuing" and the like in connection with "Event of Default" shall be deemed to be noncurable absent a waiver by the Purchaser.

(i) References to the Purchaser with respect to consent, waiver, approval or other action to be taken by the Purchaser shall, in the event there is more than one Purchaser, mean Purchasers of not less than fifty-one percent (51%) of the principal amount of Outstanding Bonds.

## **ARTICLE II**

### **REPRESENTATIONS BY AND COVENANTS OF THE ISSUER, THE COMPANY AND THE PURCHASER**

**Section 2.01. Representations by the Issuer.** The Issuer represents and warrants that:

(a) The Issuer is a not-for-profit corporation under the laws of the State, duly organized and existing as such under the laws of the State;

(b) The Issuer has full power and authority to undertake the acquisition, construction, installation and equipping of the Project, to issue and sell the Bonds to finance the Cost of the Project and to pay the costs of issuance of the Bonds as provided in this Bond Purchase Agreement, to enter into, and to loan the proceeds of the Bonds to the Company pursuant to, the Loan Agreement, and to enter into the Pledge and Assignment, the Assignment of Mortgage and any other documents or agreements for the purposes of securing the Bonds, and the Issuer has taken all actions and obtained all approvals required by the Act;

(c) The Issuer has duly adopted the Bond Resolution and has duly authorized the execution and delivery of each of the Issuer Documents, and the issuance and sale of the Bonds, and has taken all actions necessary or appropriate to carry out the same;

(d) There is no litigation or proceeding pending or, to the Issuer's knowledge, threatened against the Issuer, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds or the Issuer Documents;

(e) The consummation of the transactions contemplated by the Bond Resolution and this Bond Purchase Agreement and the performance of the Issuer Documents will not result in any breach of, or constitute a default under, the Act or any mortgage, deed or trust, lease, purchase loan or credit agreement, order or judgment, by-law or other instrument or document to which the Issuer is a party or by which it may be bound or affected; and

(f) The Issuer has not made and does not intend to make in connection with the Project or the sale of the Bonds to the Purchaser or otherwise any inquiry concerning the financial position or business condition of the Company. The Issuer makes no warranty or representation as to the financial position or business condition of the Company and does not represent or warrant as to any of the statements, materials, representations or certifications (financial or otherwise) made or furnished, or to be made and furnished by the Company in connection with the Project or the sale of the Bonds to the Purchaser or the making of

disbursements hereunder or otherwise or as to the correctness, completeness or accuracy of such statements, materials, representations or certificates.

**Section 2.02. Covenants of the Issuer.** Subject to Section 7.10 hereof, the Issuer hereby agrees with the Purchaser and the Company that, so long as the Bonds remain unpaid:

(a) The Issuer will not create, assume or suffer to exist any assignment, mortgage, pledge, security interest or other lien, encumbrance or charge on any revenues derived or to be derived from the Project, unless otherwise authorized hereunder or under the Loan Agreement;

(b) The Issuer will not take any action impairing any authority, right or benefit given or conferred by the Bond Resolution, this Bond Purchase Agreement or any of the other Bond Documents;

(c) The Issuer will pay or cause to be paid the principal of, premium, if any, and the interest on the Bonds as the same become due, but solely to the extent provided in Section 7.10 hereof;

(d) The Issuer will execute, acknowledge, when appropriate, and deliver from time to time at the request of the Purchaser such instruments and documents as in the opinion of the Purchaser are necessary or desirable to carry out the intent and purpose of the Bond Documents; and

(e) The Issuer will make no use of any of the Bond Proceeds or of any other moneys which, if such use had been reasonably expected on the date of issue thereof, would have caused the Bonds to be an "arbitrage bond" within the meaning of Section 103 of the Code.

**Section 2.03. Representations by the Company.** The Company makes the following representations, all of which will survive the purchase of the Bond:

(a) The Company is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New York, and has the full power and authority to enter into each of the Company Documents and to carry out its obligations thereunder and by proper limited liability company action has been duly authorized to execute, deliver and perform its obligations under this Bond Purchase Agreement;

(b) Neither the Company nor anyone acting on its behalf has, directly or indirectly, offered the Bonds for sale to, or solicited any offer to buy the same from, anyone other than the Purchaser except for offers made to any Accredited Investors, as such term is defined in Rule 501(a) as promulgated under the 1933 Act, as amended;

(c) Each of the Company Documents, when executed and delivered by the respective parties thereto, will constitute valid and binding obligations of the Company enforceable in accordance with their terms, except as such enforcement may be limited by applicable state or federal laws affecting the enforcement of creditors' rights generally. The execution and delivery by the Company of the Company Documents and the performance by the Company of its obligations thereunder will not conflict with, or result in any breach of, or

constitute a default under any indenture, mortgage, deed of trust, purchase loan or credit agreement or any other agreement or instrument to which the Company is a party or by which it or any of its property may be bound or affected for which a valid consent has not been secured; nor is any approval nor any action by any Governmental Authority required in connection with the execution and performance thereof by the Company;

(d) There has been no material adverse change in the business, properties or financial condition of the Company from that shown on the financial statements, if any, submitted to the Purchaser;

(e) There is no litigation or proceeding pending or, to the Company's knowledge, threatened against the Company challenging the validity of any of the Company Documents or seeking to enjoin the performance of the obligations of the Company, the acquisition, construction or equipping of the Project or the operation of the Project;

(f) The Company is at present not in default under any indenture, mortgage, deed of trust, purchase loan or credit agreement to which the Company is a party and there exists no condition, event or act which constitutes, or after notice or lapse of time or both would constitute, an Event of Default;

(g) The Company will apply the proceeds from the sale of the Bonds which are loaned by the Issuer to the Company pursuant to the Loan Agreement for the sole purpose of providing funds for paying the Cost of the Project in accordance with Article IV of this Bond Purchase Agreement and paying the costs of issuance of the Bonds;

(h) All authorizations, certificates and permits necessary for the site preparation and the acquisition, construction and equipping of the Facility in accordance with applicable building codes and Environmental Laws have been obtained and are in full force and effect, and all site preparation and construction work done to date has been done in accordance with said authorizations, certificates, permits, codes and laws and that the proposed or actual use of the Project will comply with all applicable laws, statutes, codes, ordinances, rules and regulations, including Environmental Laws, and that there is no action or proceeding pending before any court, quasi-governmental body or administrative agency relating to the validity of this Bond Purchase Agreement or the transactions contemplated hereby;

(i) The Company has or will have good, marketable and insurable leasehold title to the Land, pursuant to the Ground Lease, free and clear of all liens, pledges, mortgages, security interests, charges, claims and other encumbrances, except the Permitted Encumbrances. The Company has good title to the Pledged Collateral, free and clear of all liens, pledges, mortgages, security interests, charges, claims and other encumbrances, except the Permitted Encumbrances. The Security Agreement and other Bond Documents create or will create a valid and prior lien or security interest in favor of the Purchaser, on behalf and for the benefit of the Purchaser, in the Pledged Collateral, subject to no other liens or encumbrances arising by, through or under the Company or any other person, except for the Permitted Encumbrances;

(j) The Company has good, marketable and insurable fee title to, or a valid leasehold interest in, its real properties in accordance with the laws of the jurisdiction where

located, and good and marketable title to substantially all its other property and assets, subject, however, in the case of real property, to title defects and restrictions which do not materially interfere with the operations conducted thereon by the Company. Each lease to which the Company is a party is in full force and effect, no material default on the part of any party thereto exists, and, as to each of such leases to which the Company is party as lessee, the Company enjoys peaceful and undisturbed possession of the property affected thereby;

(k) No Reportable Event or Prohibited Transaction (as defined in Section 4975 of the Code) has occurred and is continuing with respect to any Plan and the Company has not incurred any "accumulated funding deficiency" as such term is defined in Section 302 of ERISA;

(l) The Company has filed all tax returns which are to be filed and has paid, or has made adequate provision for the payment of, all taxes which have or may become due pursuant to said returns or to assessments received by them. The Company knows of no deficiency assessment or proposed deficiency assessment of taxes against the Company, except as may be otherwise disclosed in writing to the Purchaser prior to the date hereof;

(m) The Company does not have outstanding on the date hereof any Indebtedness for borrowed money, except (i) for such Indebtedness reflected on the financial statements which may previously have been delivered to the Purchaser, and (ii) indebtedness in connection with the Bonds;

(n) The Company is not (i) in violation of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 *et seq.*), as amended; (ii) on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation; (iii) in violation of the USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001 ("*USA Patriot Act*"); (iv) a Person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; or (v) to the best of its knowledge, engaging in any dealings or transactions, or is otherwise associated, with any of the foregoing blocked Persons; and

(o) The Company hereby restates and incorporates herein by reference its representations and warranties set forth in the Loan Agreement, the Mortgage, the Tax Compliance Agreement and the Company Guaranty as if the same were fully set forth herein.

#### **Section 2.04. Covenants of the Company.**

(a) The Company covenants and agrees with the Issuer and the Purchaser that the Company will acquire, install and equip the Project in accordance with the Plans and Specifications on or before the Completion Date; any amendments or revisions to the Plans and Specifications shall be subject to the prior written approval of the Purchaser, which approval may not unreasonably be withheld or delayed, but may be subject to such conditions as the Purchaser may deem appropriate.

(b) The Company covenants that (i) advances received under the terms of this Bond Purchase Agreement and the Loan Agreement and the right to receive such advances for the purpose of paying the Cost of the Project will be held as a trust fund to be applied first for the purpose of paying the cost of acquiring, constructing and equipping the Project, and (ii) such advances will be applied first to the payment of the cost of acquiring, installing and equipping the Project on the Land described in Exhibit A attached to the Mortgage, it being intended by this covenant to subject all payments received hereunder to the trust fund provisions of Section 13 of the Lien Law.

(c) The Company will furnish to the Purchaser for its review and approval before the Closing Date, and shall maintain at all times while the Bonds remain Outstanding, insurance on the Project from duly licensed and responsible insurers acceptable to the Purchaser in its sole discretion in accordance with the Loan Agreement.

(d) The Purchaser, and its agents, representatives and contractors, shall, at all times during the acquisition, construction and equipping of the Project, have the right of entry and free access to the Project, upon reasonable notice to the Company (except in such circumstances which the Purchaser determines to be an emergency), to inspect all work done, labor performed and materials furnished in and about the Project, and to inspect all books and records of the Company kept in connection therewith; provided the exercise of such rights shall, except in such circumstances which the Purchaser determines to be an emergency, be during business hours at times reasonably convenient to the Company and the Purchaser and shall not interfere in a material way with the acquisition, construction and equipping or related work on the Project.

(e) The Company shall maintain its deposit accounts and its operating accounts for the Project with the Purchaser at all times while the Bonds remain Outstanding.

(f) Commencing on the Completion Date, the Company shall establish and maintain a replacement reserve account (the "*Replacement Reserve*") in an amount equal to 2% of the aggregate annual payments to be made under the Parking Agreements. Such amount to be deposited in equal monthly installments on each Interest Payment Date. In the sole discretion of the Purchaser, and in no event more frequently than annually, funds in the Replacement Reserve will be released to the Company to reimburse the Company for capital improvements and repairs to the Project upon receipt by the Purchaser of the Company's request accompanied by paid invoices or other evidence satisfactory to the Purchaser.

(g) The Company will execute, acknowledge, when appropriate, and deliver from time to time at the request of the Purchaser such instruments and documents as in the opinion of the Purchaser are necessary or desirable to carry out the intent and purpose of this Agreement.

(h) So long as any Bonds shall remain Outstanding, the Company shall, and shall cause each Subsidiary, to:

(i) Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (1) all tax liabilities, assessments and



governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Company or such Subsidiary; (2) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (3) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness;

(ii) (1) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization, except as otherwise consented to by the Purchaser in its sole discretion; (2) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (3) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect;

(iii) (1) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (2) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (3) use the standard of care typical in the industry in the operation and maintenance of its facilities;

(iv) Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (1) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (2) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect;

(v) (1) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP shall be made of all financial transactions and matters involving the assets and business of the Company or such Subsidiary, as the case may be; and (2) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Company or such Subsidiary, as the case may be. The Company shall maintain at all times books and records pertaining to the Collateral in such detail, form and scope as the Purchaser shall reasonably require;

(vi) Permit representatives and independent contractors of the Purchaser to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Company and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable

advance notice to the Company, *provided, however*, that when an Event of Default exists the Purchaser (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Company at any time and without advance notice;

(vii) Promptly notify the Purchaser of (1) the occurrence of any Default, (2) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (x) breach or non-performance of, or any default under, a contractual obligation of the Company or any Subsidiary; (y) any dispute, litigation, investigation, proceeding or suspension between the Company or any Subsidiary and any Governmental Authority; or (z) the commencement of, or any material development in, any litigation or proceeding affecting the Company or any Subsidiary, including pursuant to any applicable Environmental Laws; (3) the occurrence of any ERISA Event, and (4) any material change in accounting policies or financial reporting practices by the Company or any Subsidiary; and

(viii) Not perform any act or enter into any agreement that may cause any revocation or adverse modification of the tax-exempt status of the Corporation pursuant to Section 501(c)(3) of the Code, or carry on or permit to be carried on in or at the Property of the Company, or permit the use of the Company's Property for any trade or business, the conduct of which is not substantially related to the exercise or performance by the Company of the purposes or functions constituting the basis for the Corporation's exempt status under Section 501(c)(3) of the Code if such carrying on or use may result in the loss of such exempt status.

(i) So long as any Purchaser shall have any Commitment hereunder, or any of the Bonds shall remain Outstanding, the Company shall not, nor shall it permit any Subsidiary to, directly or indirectly:

(i) Create, assume, incur or in any manner become or remain liable in respect to, any Indebtedness, except pursuant to the Loan Agreement and otherwise with respect to the Bonds;

(ii) Directly or indirectly guarantee the Indebtedness or obligation of any other Person, except pursuant to the Company Guaranty;

(iii) Create, assume, incur or suffer to exist or allow to be created, assumed or incurred or suffered to exist any Lien upon any of its properties, now owned or hereafter acquired, nor acquire nor agree to acquire any kind of property subject to a Lien excepting, however, Permitted Encumbrances;

(iv) Sell, convey, assign, lease, abandon or otherwise transfer or dispose of, voluntarily or involuntarily, any of its properties or assets, whether tangible or intangible, real or personal without the prior written consent of the Purchaser;

(v) Engage in any business operation other than the business it is engaged in on the date hereof;

(vi) At any time permit any Plan of the Company to (a) engage in any "prohibited transaction" as such term is defined in Section 4975 of the Code, (b) incur

any "accumulated funding deficiency" as such term is defined in Section 302 of ERISA, whether or not waived, or (c) be terminated in a manner which could result in the imposition of alien on the property of the Company pursuant to Section 4068 of ERISA;

(vii) Merge with or consolidate into any other Person or permit any Person to consolidate with or merge into the Company, or acquire all or a substantial part of the assets, capital stock or membership interests of any other Person or permit any Person to acquire all or a substantial part of the assets or capital stock of the Company;

(viii) Make loans or advances to any Person, except in its capacity as trustee or manager of any pension, profit sharing or retirement plan for its employees;

(ix) Purchase, acquire or own any stock, bonds, notes, or securities of, or any partnership interest (whether general or limited) in, or any other interest in, or make any capital contribution to, any other Person, or become a joint venture partner in any joint venture, or agree, become or remain liable to do any of the foregoing;

(x) Enter into or carry out any material transaction (including, without limitation, purchasing property or services or selling property or services) with an Affiliate unless such transaction (i) is not otherwise prohibited by this Agreement or any of the other Bond Documents, (ii) is entered into in the ordinary course of the Company's business and upon fair and reasonable arm's-length terms and conditions which are fully disclosed to the Purchaser beforehand, and (iii) is in accordance with all applicable Laws; and

(xi) Without twenty (20) days prior written notice to the Purchaser, amend the Company's Articles of Organization, Operating Agreement or other organizational document of the Company and if, in the judgment of the Purchaser, such amendment would be adverse to the Purchaser, obtaining the Purchaser's prior written consent.

(j) Commencing on the Completion Date, the Company shall maintain a Debt Service Coverage Ratio of not less than 1.1 to 1.0 measured annually as of the last day of each Fiscal Year using the Company's audited annual financial statements for such Fiscal Year; and

(k) The Company hereby restates and incorporates herein by reference its covenants set forth in the Loan Agreement and the Company Guaranty as if the same were fully set forth herein.

**Section 2.05. Representations by and Covenants of the Purchaser.** The Purchaser represents to, and covenants and agrees with, the Issuer that:

(a) The Purchaser has had an opportunity to make such investigations and has had access to such information with respect to the Company and its affairs and condition, financial and otherwise, which the Purchaser has deemed necessary in connection with and as a basis for the purchase of the Bonds, and any and all information relating to the Company and its affairs which the Purchaser has requested has been provided to the Purchaser.

(b) The Purchaser has approved the Bonds, the Bond Resolution and each of the Bond Documents, and such documents contain the terms agreed to by the Purchaser.

(c) The Purchaser is purchasing the Bonds (i) for its own account, for the purpose of investment and not with a present view to the distribution or resale thereof, and (ii) not for the account of others. The Purchaser has not offered, offered to sell, offered for sale or sold the Bonds by means of any form of general solicitation or general advertising and will not sell the Bonds without registration under the applicable federal and state securities laws or an exemption therefrom. The Purchaser presently has no arrangement, written or oral, with any Person for the distribution, transfer or resale of the Bonds. The Purchaser agrees to notify the Issuer and the Company at least thirty (30) days in advance in writing of any proposed transfer or resale of the Bonds or any portion thereof and to furnish to them prior to any such transfer or resale (i) an opinion of Bond Counsel that such transfer or resale does not and will not require registration of the Bonds under any applicable federal and state securities laws, and (ii) a certificate of the purchaser of the Bonds to the effect that such purchaser has been provided with all requested disclosure information by the Company. In the event such transfer is at the request of the Company, the Company shall pay all expenses incurred by the Purchaser, including, but not limited to, reasonable legal fees, in connection with such transfer or resale and the cost of obtaining the opinion of Bond Counsel referred to above. If the proposed transfer of the Bonds is other than at the request of the Company, the Purchaser will bear such costs and expenses.

(d) The Purchaser understands that (i) the Bonds being purchased shall be a special obligation of the Issuer payable solely from certain of the revenues and receipts of the Issuer pursuant to this Bond Purchase Agreement and the other security given for the payment of the Bonds, (ii) the Issuer has no power of taxation, and (iii) the Issuer makes no representations or warranties, express or implied, with respect to the merchantability, condition or workmanship of any part of the Project or the suitability of the Project for the Company's purposes or needs or the extent to which the proceeds derived from the sale of the Bonds will be sufficient to pay the Cost of the Project.

(e) The Purchaser has not requested or received from the Issuer any information which it, as a reasonable investor, deems important in reaching its investment decision to purchase the Bonds. It has received from the Company and not the Issuer whatever information requested with respect to the Company and the Project which it deems as a reasonable investor important in reaching its investment decision to purchase the Bonds. The Purchaser acknowledges that neither the Issuer nor its counsel nor Bond Counsel have made any investigation or inquiry with respect to the affairs or condition, financial or otherwise, of the Company and that the Issuer, its counsel and Bond Counsel do not make any representations to the Purchaser with respect to the adequacy, sufficiency or accuracy of any financial statements and information or other information provided to the Purchaser or with respect to the ability of the Company to pay the Bonds or fulfill its obligations with respect to the transactions contemplated in connection therewith. The Purchaser is not relying on any statements or representations by the Issuer with respect to (i) the financial condition of the Company, (ii) the creditworthiness of the Company, (iii) the competency or integrity of the management of the Company, or (iv) the suitability of the Project for the Company's business. The Purchaser has made an independent evaluation of the facts listed above without reliance upon any evaluation or investigation by the Issuer, its counsel or Bond Counsel as to any of them, except to the extent

such facts are specifically opined upon by the Issuer's counsel or Bond Counsel in their respective opinion letters to be delivered to the Purchaser on the Closing Date.

(f) The Purchaser has not relied upon the determination of the Issuer to issue the Bonds to finance the Project for any purpose in connection with its evaluation of the Company's financial condition, creditworthiness and competency, or of the integrity of the Company's management, or of the suitability of the Project for the Company's business.

(g) The Purchaser acknowledges that neither the Issuer nor the Company has prepared an offering document with respect to the Bonds.

(h) The Purchaser understands that the Bonds have not been registered under the 1933 Act or any state securities laws.

(i) The Purchaser is an "accredited investor" as defined in Rule 501 of Regulation D under the 1933 Act and is duly and validly organized under the laws of its jurisdiction of incorporation or organization. The Purchaser can bear the economic risk of the purchase of the Bonds and has such knowledge and experience in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Bonds on the basis of the information and review described in paragraph (e).

(j) The Purchaser considers itself a substantial, sophisticated institutional investor having such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of investment in the Bonds.

(k) The Purchaser has read the Bond Documents in their entirety and understands the risks associated with an investment in the Bonds.

(l) The Purchaser acknowledges that no credit rating or credit enhancement has been sought or obtained with respect to the Bonds, and it acknowledges that the Bonds are a speculative investment and that there is a high degree of risk in such investment.

### **ARTICLE III**

#### **CLOSING AND PURCHASE AND SALE OF BOND**

**Section 3.01. Issuance of the Bonds.** There are hereby authorized to be issued from time to time Bonds of the Issuer to be designated generally as "Tax-Exempt Revenue Bonds (Buffalo Niagara Medical Campus, Inc. Project)." The Bonds shall be special obligations of the Issuer payable solely from Pledged Revenues. The Bonds may be issued in one or more series, and the designation thereof, in addition to the name "Tax-Exempt Revenue Bonds (Buffalo Niagara Medical Campus, Inc. Project)," shall include such further appropriate particular designations added to or incorporated in such title for the Bonds of any particular series as the Issuer may determine. Each Bond shall bear upon its face the designation so determined for the series to which it belongs. All Bonds shall be dated the date of delivery, shall bear interest from the date of delivery, shall be issued in the form of fully registered Bonds without coupons having installments of principal and interest due at the times, bearing interest at the rates set forth

hereinabove and being substantially the Form of Bond set forth in Exhibit A. The Bonds shall be payable at the places and in the manner set forth in said Form of Bond. The Bonds will be signed on behalf of the Issuer with the manual or facsimile signature of the Authorized Representative. The Person in whose name any Bond is registered at the close of business on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date, notwithstanding the cancellation of such Bond upon any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date. Any Bonds issued in exchange for Bonds of the same series surrendered for transfer or exchange or in place of mutilated, lost, stolen, destroyed or undelivered Bonds of the same series will bear interest from the last date to which interest has been paid on the Bonds being transferred, exchanged or replaced or, if no interest has been paid, as of the dated date of the Bonds. Bonds within each series will be numbered consecutively upwards. The Issuer hereby appoints the Company as Registrar. The Company shall keep a register of the Bonds in which shall be maintained the names and addresses of all Holders thereof, the numbers and amounts of each Bond and other information appropriate to the discharge of its duties hereunder (the "Bond Register"). The Company shall make the Bond Register available to the Issuer for its inspection during normal business hours. For purposes of determining whether a Purchaser holds a certain percentage or amount of aggregate principal amount of Bonds Outstanding for the purposes of this Agreement, ownership by Purchasers which are Affiliates shall be aggregated. The Issuer and the Company shall be entitled to rely upon a certificate of any two or more Purchasers with respect to their status as Affiliates.

The person in whose name a Bond is registered in the Bond Register shall be treated as the Purchaser thereof for all purposes, including the receipt of principal of, and premium, if any, and interest on such Bond.

**THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF WITHOUT REGISTRATION UNDER SAID ACT OR EXEMPTION THEREFROM. ANY SALE, TRANSFER OR DISPOSITION OF A BONDS SHALL COMPLY WITH THE TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE BOND.**

If any Bond is mutilated, lost, stolen or destroyed, the Issuer will execute a new Bond of the same denomination and the same Series if any mutilated Bond shall first be surrendered to the Issuer, and if, in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Issuer evidence of such loss, theft or destruction, together with an indemnity, reasonably satisfactory to it. If the Bond has matured, instead of issuing a duplicate Bond, the Issuer may pay the Bond without requiring surrender of the Bond and make such requirements as the Issuer deems fit for its protection, including a lost instrument bond. The Issuer may charge the Purchaser its reasonable fees and expenses in this connection.

**3.02 Closing Date.** On December 22, 2010, or on such other date as the Issuer, the Purchaser and the Company may mutually agree upon, the Purchaser agrees, subject to the conditions and provisions herein, to purchase from the Issuer the Bonds in the aggregate principal amount not to exceed the lesser of \$24,050,000 or seventy-one percent (71%) of the Costs of the Project payable by advances of the purchase price from time to time, (i) upon receipt

of the Bonds in such aggregate principal amount, and (ii) subject to the terms and conditions of this Bond Purchase Agreement.

The Bonds issued hereunder shall be issued as draw down bonds, and the principal and interest due thereon shall be only such amount as has been drawn down. The Purchaser shall make advances of the purchase price of the Bonds to the Issuer in payment for the purchase price of the Bonds in accordance with and subject to the terms of this Bond Purchase Agreement.

**Section 3.03. Conditions Precedent to Closing.** The obligation of the Issuer to issue the Bonds and of the Purchaser to purchase the Bonds as contemplated by this Bond Purchase Agreement and to make advances hereunder shall be subject to receipt by the Issuer and the Purchaser of all documents, fees and assurances required by the Financing Commitment and the receipt by the Issuer and the Purchaser of each of the following in form and substance reasonably satisfactory to the Issuer, the Purchaser and their respective counsel and Bond Counsel:

(a) The original, executed typewritten Bonds and executed originals of all of the other Bond Documents;

(b) A Title Policy which shall contain:

(i) full coverage against mechanics' liens;

(ii) no survey exceptions not theretofore approved by the Purchaser;

(iii) an undertaking by the title insurer selected by the Purchaser to provide the notice of title continuation or endorsement in such form as is acceptable to the Purchaser;

(iv) a pending disbursements clause; and

(v) such endorsements and provisions for affirmative insurance coverage with respect to any exceptions therein as the Purchaser may require.

(c) Evidence satisfactory to the Purchaser and its counsel as to:

(i) the valid existence of the Issuer and the Company;

(ii) the due authorization and execution by, and the valid and binding affect upon, the respective parties thereof of each of the Bond Documents;

(iii) that the Project is and will be in compliance with all applicable zoning ordinances, laws, regulations and building codes of the Governmental Authorities having jurisdiction over the Project, and that as of the closing date there are no outstanding violations of any applicable legal requirements with respect to any portion of the Project, which evidence shall include, if required by applicable law, a final

unconditional certificate of occupancy for the Project and such other permits and approval as may be required by any Governmental Authority for the use and occupancy of the Project; and

(iv) no litigation materially affecting the business, operations, properties, assets or business prospects of the Issuer or the Company; and no required consents and no defaults by the Issuer or the Company;

(v) the grant agreement for \$10,000,000 from New York State to Kaleida Health to be used for a portion of the Cost of the Project and the Funding Agreement;

(d) A certified copy of the Bond Resolution and proof of due corporate authorization, action, existence and good standing by and of the Issuer;

(e) A resolution, or other evidence of all appropriate action to authorize the execution, delivery and performance by the Company of the Bond Documents to which it is a party, in form and substance satisfactory to the Purchaser and its counsel, and the execution and delivery of all documents by the Company's authorized signer(s), together with the Company's general certificate with certified true copies of the Company's (a) Articles of Organization, (b) Operating Agreement, and (c) currently dated Certificate of Good Standing from the Secretary of the State of New York;

(f) A resolution, or other evidence of all appropriate action to authorize the execution, delivery and performance by the Corporation of the Bond Documents to which it is a party, in form and substance satisfactory to the Purchaser and its counsel, and the execution and delivery of all documents by the Corporation's authorized signer(s), together with the Corporation's general certificate with certified true copies of the Corporation's (a) Certificate of Incorporation, (b) By-laws, and (c) currently dated Certificate of Good Standing from the Secretary of the State of New York;

(g) An opinion of counsel to the Issuer as to the valid corporate existence of the Issuer, the due authorization, execution and delivery by the Issuer of the Bonds and the other Issuer Documents, the absence of material litigation involving the Issuer and such other matters as the Purchaser and its counsel or Bond Counsel may require;

(h) An opinion or opinions of counsel to the Company as to the valid existence of the Company, the due authorization, execution and delivery by the Company of the Company Documents, the absence of material litigation involving the Company or the Project and such other matters as the Purchaser and its counsel or Bond Counsel may require;

(i) An opinion or opinions of counsel to the Corporation as to the valid corporate existence of the Corporation, the due authorization, execution and delivery by the Corporation of the Corporation Documents, the absence of material litigation involving the Corporation and such other matters as the Purchaser and its counsel or Bond Counsel may require;



(j) An opinion of Bond Counsel as to the due existence and authority of the Issuer, the valid issuance of the Bonds under the Bond Resolution and that interest on such Bonds are exempt from federal income taxation and from personal income tax imposed by the state and each political subdivision;

(k) Certificates for insurance providing coverage required by the Loan Agreement;

(l) A construction budget providing a complete detailed estimate of all direct and indirect costs and expenses associated with the acquisition, construction and equipping of the Project and evidence satisfactory to the Purchaser that the available Bond Proceeds and other funds available to the Company are sufficient to pay said costs. The detailed estimate shall at least include a construction project schedule, a draw schedule, a cost breakdown of the Project by improvement and itemized as to trade category and subdivision of work to be done, the names of the General Contractor and the Major Subcontractors with whom a contract has been executed, a breakdown of the indirect (non-construction) costs, including such items as legal and accounting fees, escrow charges, payments in lieu of real estate taxes, Construction Period interest, insurance, marketing, management, leasing and advertising expenses, if any;

(m) A Phase I Environmental Site Assessment certified to the Purchaser and prepared by an environmental engineering firm satisfactory to Purchaser;

(n) A full Plan and Specification review by Purchaser's Consultant, paid for by the Company and acceptable to the Purchaser;

(o) Evidence satisfactory to the Purchaser and its counsel as to (i) the methods of access to and egress from the Project, and nearby or adjoining public ways, meeting the reasonable requirements of property of the type contemplated to be completed under the status of completion of any required improvements to such access; (ii) the availability of all required utilities, in location and capacity sufficient to meet the reasonable needs of the Project; and (iii) the securing of all governmental approvals from each applicable Governmental Authority which are required under applicable requirements for the construction, installation and equipping of the Project, together with copies of all such governmental approvals;

(p) Judgment and lien searches in all counties in which the Company or the Corporation is located;

(q) Docket search in all counties in which the Company or the Corporation is located and in the United States District Court for the Western District of New York;

(r) UCC-1 search in all counties in which the Company or the Corporation is located and with the Secretary of State of New York;

(s) Plans and Specifications;

(t) The original executed Construction Agreement;

(u) The original executed Major Subcontracts and list of all Major Subcontractors;

(v) Architect's Contract;

(w) The Bond Documents;

(x) A copy of the Ground Lease;

(y) Copies of all Parking Agreements;

(z) Payment and performance bonds in form and substance satisfactory to the Purchaser;

(aa) Copies of all licenses, permits, consents, approvals and authorizations required from any Governmental Authority for the construction and equipping of the Facility;

(bb) Any and all other documents required pursuant to the terms of the Financing Commitment; and

(cc) Payment of any fees due and payable on the Closing Date pursuant to the terms of the Commitment Letter, together with all fees and actual expenses incurred or payable by the Issuer or the Purchaser (including, without limitation, fees and actual expenses of counsel for the Purchaser) arising in connection with the negotiation, preparation and execution of this Agreement and the other Loan Documents and all other instruments and documents to be delivered hereunder or thereunder or arising in connection with the transactions contemplated hereunder or thereunder.

**Section 3.04. Hedging Contracts.** The Company may fix the interest rate on all or part of the Bonds with a Hedging Contract only upon such further terms and conditions as the Purchaser may require, including, without limitation, an acceptable schedule of draws during the Draw Down Period. A default or an event of default under any Hedging Contracts shall constitute an Event of Default under this Agreement and under any other loans and credit facilities made by the Purchaser to the Company.

## **ARTICLE IV**

### **BOND PROCEEDS AND APPLICATION THEREOF**

#### **Section 4.01. Advances of Purchase Price and Disbursement of Bond Proceeds.**

(a) Subject to the terms and conditions set forth herein, the Purchaser agrees to advance the purchase price of the Bonds and make disbursements thereof (each such disbursement, a "*Committed Disbursement*") to the Company as agent of the Issuer from time to time, on any Business Day during the Draw Down Period, in an aggregate amount not to exceed at any time the amount of the Purchaser's Commitment. A disbursement hereunder shall not be

deemed to be an approval by the Purchaser of any work or labor performed with respect to the Project, or approval or acceptance by the Purchaser as to the fitness of such work or materials.

(b) Each Committed Disbursement shall be made upon the Company's irrevocable notice to the Purchaser as required pursuant to Section 4.01(d)(1) of this Agreement. The Purchaser shall make the amount of its Committed Disbursement available to the Company in immediately available funds not later than 1:00 p.m. on the Business Day specified in the applicable Committed Disbursement Notice upon satisfaction of the applicable conditions set forth in Section 4.01(d) (and, if such disbursement is the initial Committed Disbursement, Section 3.03).

(c) The Committed Disbursements made by the Purchaser shall be evidenced by one or more accounts or records maintained by the Purchaser in the ordinary course of business. The accounts or records maintained by the Purchaser shall be conclusive, absent manifest error of the amount of the Committed Disbursements made by the Purchaser to the Issuer and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Issuer or the Company hereunder to pay any amount owing with respect to the Bonds.

(d) Subject to Section 4.01(j) of this Agreement and to compliance by the Issuer and the Company with the terms and conditions of this Bond Purchase Agreement, the Purchaser covenants and agrees that the purchase price of the Bonds shall be advanced from time to time, but no more frequently than once a month, for the purpose of acquiring, constructing and equipping the Project and to pay certain costs and expenses associated with the issuance of the Bonds. The Bond Proceeds advanced to pay for the Cost of the Project shall be advanced by payment by the Purchaser of the amount of Bond Proceeds requisitioned by the Company, as agent for the Issuer, to the Company, less: (i) the Equity Portion of such requisition and (ii) a retainage of five percent (5%) of all construction cost items included in such requisition, upon the Purchaser being furnished with the following:

(1) A Committed Disbursement Notice received by the Purchaser not later than 11:00 a.m. at least ten (10) days prior to the date the disbursement is sought, but in no event more frequently than once every thirty (30) days (*provided, however*, that the Purchaser on the Closing Date may advance Bond Proceeds for disbursements, based on any requisition received on or before the Closing Date and otherwise complying with this Section 4.01), certified to by the Authorized Representative of the Company in form and substance satisfactory to the Purchaser, stating: (A) the name of the Person to whom payment is to be made if other than to the Company; (B) the amount of the payment; (C) that the disbursement is for a proper expenditure of Bond Proceeds; (D) the classification and the nature and purpose of the expenditure; (E) that there are no vendor's, mechanic's or other liens, bailment leases, conditional sale contracts, security interests or laborer's liens which should be satisfied or discharged before the payments as requisitioned are made or which will not be discharged by such payment; (F) that none of the items for which the requisition is made has been the basis for any prior disbursement of Bond Proceeds; (G) that all Persons furnishing materials to, or performing work on, the Project have been paid or will be fully paid to date from the proceeds of the requisition; and (H) that the undisbursed Bond Proceeds are sufficient to complete the

acquisition, construction and equipping of the Project in accordance with the Plans and Specifications;

(2) For construction items, a certificate of payment of the Architect on the Company's requisition and on AIA Documents G-701 and G-703, or such other similar document in a form reasonably acceptable to the Purchaser, certifying: (A) the Architect's approval of the requisition; (B) that the obligation was properly incurred; (C) that the amount requisitioned has been paid or is due and unpaid and shall be paid from the amount of moneys requisitioned; (D) the value of the work, labor and services and of materials, supplies and equipment being paid from such requisition; (E) the value of the completed portion of the Project; (F) that insofar as the payment is to be made for the work, materials, supplies or equipment, the work has been performed and the materials, supplies or equipment have been installed in the Project or have been delivered either at the Project or at a proper place for fabrication and are covered by adequate insurance insuring the Purchaser as secured party; and (G) that all work, materials, supplies and equipment for which payment is to be made are in accordance with the Plans and Specifications;

(3) For non-construction items, copies of all invoices, bills, receipts and other information relating to the amount being requisitioned and substantiating the actual incurrence by the Company of said items;

(4) Lien waivers signed by the General Contractor and all subcontractors for all work done and materials supplied that were included in the preceding requisition;

(5) A certificate executed by an Authorized Representative of the Company stating that the representations, covenants and warranties of the Company in the Bond Documents are true on the date of such disbursement, that the Company shall pay all Project Costs in excess of the Commitment including not less than 29% of the Project Costs set forth in such requisition, and that no Event of Default has occurred and is continuing as of such date; and

(6) An endorsement to the Purchaser's mortgagee title insurance policy showing nothing unacceptable to the Purchaser found of record to the date of such disbursement.

(7) Prior to the Committed Disbursement designated by the Purchaser, an updated survey of the Facility showing the foundation certified to and satisfactory to the Purchaser and the title insurer.

(8) Such other or further documents, data or information as the Purchaser shall reasonably request.

(e) The Purchaser shall not be obligated to make any disbursements of Bond Proceeds hereunder unless the Purchaser is satisfied, in its sole discretion, that the conditions precedent to the making of such advance have been satisfied by the Company. A disbursement hereunder shall not be deemed to be an approval by the Purchaser of any work or labor

performed with respect to the Project or acceptance by the Purchaser of the fitness of such work or materials. Further, and notwithstanding anything in subsection (a) of this Section 4.01 to the contrary, the Purchaser may, in its sole discretion, withhold any disbursement of moneys pursuant to a requisition for construction items, if, within the ten (10) day period following the Purchaser's receipt of the documentation requested by the Purchaser in accordance with such subsection (a), the Purchaser causes its duly authorized representatives, employees, architects engineers, agents and/or other consultants (collectively, the "*Purchaser's Consultant*") at the Company's expense to conduct an inspection of the applicable portion of the Project and, based upon such inspection, the Purchaser determines that the construction items in such requisition are not properly payable. In addition, the Company authorizes the Purchaser, at the Purchaser's discretion, to engage, at the Company's expense, the Purchaser's Consultant on behalf of the Purchaser to review the Plans and Specifications, the construction budget and progress schedule, all permits and approvals, soils reports, contracts (including, but not limited to, the Construction Agreement and all Major Subcontracts), and to conduct on-site inspections on behalf of the Purchaser in order to determine whether construction and installation of such portion of the Project has been in accordance with the Plans and Specifications, whether the necessary percentage or work has been completed in order to justify the advance requested, to review the progress, quality and completion of the construction and equipping of such portion of the Project, to approve all requests for payment, to determine whether other work shall be deemed necessary and/or appropriate in order to complete the construction and equipping of such portion of the Project in accordance with the Plans and Specifications and to determine the amount of time from the date of inspection which will be required to complete construction of such portion of the Project in accordance with the Plans and Specifications. The Purchaser shall not be required to approve the disbursement of funds for any line item in excess of the amount shown on any line item of the construction budget approved by the Purchaser pursuant to this Agreement unless (i) such an increase in a line item is accompanied by evidence satisfactory to the Purchaser and the Purchaser's Consultant that another budgeted line item has been reduced by at least an equal amount so as not to result in an increase in the guaranteed maximum price set forth in the Construction Agreement, and (ii) no material change is made to the Plans and Specifications other than as consented to in writing by the Purchaser. Any such reallocation shall not cause a deficiency with respect to the any "Company's Equity" category of the approved construction budget, and must be substantiated by a cost saving in the line item being reduced. No such reallocation will be permitted as to any interest reserve line item as set forth in the approved construction budget.

(f) The final disbursement of Bond Proceeds (excepting a retainage equal to five percent (5%) of the remaining undisbursed balance of such Bond Proceeds) shall be paid by the Purchaser to the Company at such time, if any, as the Purchaser has received the following items in form and substance satisfactory to the Purchaser:

(1) Evidence that the Project is in compliance with all applicable zoning ordinances, laws, regulations and building codes of the Governmental Authorities having jurisdiction over the Project, which evidence shall include, if required by applicable law, a final unconditional certificate of occupancy for the Project and such other permits and approvals as may be required by any Governmental Authority for the use and occupancy of the Project;

(2) A "Certificate of Substantial Completion" (AIA Document G-704 or such other form as is reasonably acceptable to the Purchaser) signed by the Architect, the General Contractor and the Company;

(3) Such waivers of Lien and other documents as may be required to insure that there are no mechanics' or materialmen's liens for labor furnished or materials supplied in connection with the construction, reconstruction and equipping of the Project;

(4) A certificate of completion properly executed by the Company in accordance with the terms of this Bond Purchase Agreement;

(5) Evidence that all sums due in connection with the Project have been paid in full (or will be paid out of the funds requested to be advanced), and that no party claims or has a right to claim any statutory or common law lien out of the construction of the Facility or the supplying of labor, materials and or services in connection therewith; and

(6) An "as-built" survey showing the location of the Facility, certified to the Purchaser and reasonably satisfactory to the Purchaser and its counsel.

(g) The remaining five percent (5%) retainage of Bond Proceeds shall be disbursed by the Purchaser to the Company upon completion in full to the satisfaction of the Purchaser and the Purchaser's Consultant of any and all incomplete, so-called "punch list" items with respect to the Project. Notwithstanding the foregoing, the Purchaser, in its sole discretion, may elect to release all or any portion of the retainage prior to completion of the Project for line items certified as completed by the Purchaser's Consultant.

(h) The Purchaser will authorize disbursements of amounts for the cost of materials if and only if such materials are (i) stored on site, (ii) physically secured against loss or damage, including, but not limited to, theft and/or vandalism, (iii) clearly identified as property of the Project, the Issuer and/or the Company (pursuant and subject to the Loan Agreement), and (iv) insured against loss or damage in an amount equal to the full replacement cost of the stored materials by an insurance company acceptable to the Purchaser.

(i) Regardless of whether the Company has submitted a requisition therefor, the Purchaser may from time to time advance a portion of the purchase price of the Bond to pay capitalized interest and other fees and payments due to the Purchaser under the Bond Purchase Agreement and shall deliver to the Company notice of the amount of each advance and reason therefor promptly following each such advance. The Purchaser may pay the amounts advanced directly to the Persons to whom such amounts are due or credit such amounts to reimburse or pay the Purchaser for sums due. All such advances shall be deemed to be advances made to the Company hereunder and shall be secured by the Collateral Documents to the same extent as if they had been paid directly to the Company.

(j) Notwithstanding anything in this Section 4.01 to the contrary, the Purchaser shall not be obligated to advance an aggregate amount in excess of \$6,000,000 unless the Company shall have furnished to the Purchaser an endorsement to the Title Policy reasonably satisfactory to the Purchaser omitting exception nos. 9, 10, 11, 12, 13 and 14 from Schedule B.

In the event the Company shall fail to deliver such endorsement on or prior to March 1, 2011, the Bonds shall at the election of the Purchaser be subject to mandatory redemption in whole at a redemption price equal to the principal amount then Outstanding plus accrued interest. The Purchaser may elect such redemption by ten (10) days' prior written notice to the Company given any time prior to delivery of such endorsement.

**Section 4.01A. Conditions to Conversion to Ten Year Interest Rate.** Upon the satisfaction of the following events, the interest rate on the Bond will convert to the Ten Year Interest Rate: (a) Substantial Project Completion, (b) proof satisfactory to the Purchaser that the Parking Agreements are in full force and effect, (c) the Project demonstrates on a pro forma basis for the first twelve months following the date of Substantial Project Completion a minimum Pro Forma Debt Service Coverage Ratio of 1.1 to 1.0 based on a certificate including calculation of such ratio by the Accountant, (d) the Company has executed a Hedging Contract with the Purchaser satisfactory to the Purchaser, and (e) no event of default or default or event which with giving of notice or passage of time or both would constitute an event of default under the Bonds or any Bond Document.

**Section 4.02 Deficiency.** The Purchaser shall not be obligated to make any Committed Disbursements if, in the sole opinion of the Purchaser, the undisbursed amount of the Bond Proceeds (equal in amount to the Purchaser's Commitment less the Total Outstandings) is at any time less (the amount by which it is less being hereinafter referred to as the "*Deficiency*") than 71% of the actual sum, as estimated by the Purchaser and the Purchaser's Consultant, which will be required to complete the acquisition, construction and equipping of the Project in accordance with the Plans and Specifications and this Bond Purchase Agreement, and to pay all acquisition, construction and equipping costs, and all other costs and expenses of any nature whatsoever which will be incurred in connection with the completion of the Project. The Company shall, within fifteen (15) days after being notified by the Purchaser that there is or will be a Deficiency, either (and the failure of the Company to timely do either of the following shall, at the Purchaser's option, be an Event of Default) (i) invest in the Project, from the Company's own equity funds an amount equal to the Deficiency and deliver to the Purchaser evidence satisfactory to the Purchaser of such investment, which investment shall remain invested in the Project until the Bonds, plus interest, and all other sums which may or shall become due under the Bonds or the other Bond Documents (hereinafter referred to as the "*Debt*") have been paid in full, or (ii) deposit into an account established with the Purchaser an amount equal to the Deficiency from the Company's own equity funds.

**Section 4.03. Express Promise to Improve Real Property.** The Company hereby expressly promises and agrees to acquire, construct and equip the Project or cause the Project to be acquired, constructed and equipped in accordance with the Plans and Specifications.

**Section 4.04. Reports to Issuer.** The Purchaser shall notify the Issuer (a) upon payment of each requisition, the amount of the then Outstanding principal amount of each Bond; and (b) the payment of principal of each series of the Bonds or of the redemption and prepayment of each series of the Bonds upon such payment or prepayment. The Issuer shall note such principal amount and payment in the Bond Register.

**Section 4.05. Compliance with Section 13 of the Lien Law.** The Company and the Issuer covenant and agree that the Company shall receive the disbursements to be made hereunder to pay the Cost of the Project and will hold the same, together with the right to receive such disbursements, as a trust fund to be applied first for the purposes of paying the "cost of the improvements" (as such term is defined in the Lien Law), and the Company will apply the same first to the payment of the cost of the improvements before using any part thereof for any other purpose.

**Section 4.06. Lien Law Section 22 Statement.** A true statement verified by an Authorized Representative of the Company as required by Section 22 of the Lien Law is attached hereto as Exhibit B and made a part hereof. If so indicated in such affidavit, a portion of the Bond Proceeds will be used for reimbursement for payments made prior to the Closing Date, for items constituting a portion of the "cost of the improvements", as defined in the Lien Law.

## **ARTICLE V**

### **REPAYMENT BY ISSUER; PAYMENT OF FEES**

**Section 5.01. Payment of Principal and Interest.** The Issuer shall pay interest, premium, if any, the redemption price and the principal of the Bonds to the Purchaser in accordance with the terms thereof and this Agreement.

**Section 5.02. Taxes.** All payments by the Issuer and the Company under this Agreement shall be made free and clear of any restrictions or conditions, without setoff or counterclaim. If any such deduction or withholding is required by law to be made by the Issuer, the Company or any other Person (whether or not a party to, or on behalf of a party to, this Agreement) from any sum paid or payable by, or received or receivable from, the Issuer or the Company, the Company shall pay in the same manner and at the same time such additional amounts as will result in the Purchaser receiving and retaining (free from any liability other than tax on its overall net income) such net amount as would have been received by Purchaser had no such deduction or withholding been required to be made.

**Section 5.03. Expenses.** The Company shall pay all reasonable fees and actual expenses incurred or payable by the Purchaser (including, without limitation, reasonable fees and actual expenses of counsel for the Purchaser), arising in connection with the negotiation, preparation and execution of this Agreement and the other Loan Documents and all other instruments and documents to be delivered hereunder or thereunder, and arising from time to time in connection with the transactions contemplated hereunder or thereunder.

## **ARTICLE VI**

### **DEFAULT PROVISIONS AND REMEDIES**

**Section 6.01. Events of Default.** The following shall be "Events of Default" under this Bond Purchase Agreement, and the term "Event of Default" shall mean, when they are used in this Bond Purchase Agreement, any one or more of the following events:



(a) The failure by the Company or the Issuer to pay any Obligation within ten (10) days of when due or to observe and perform any other covenant, condition or agreement hereunder on their respective parts to be observed or performed for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Company or the Issuer, as the case may be, by the Purchaser; *provided, however*, if the covenant, condition or agreement which the Company or the Issuer has failed to observe or perform is of such a nature that it cannot reasonably be fully cured within such thirty (30) days, the Company or the Issuer shall not be in default if the Company or the Issuer, as the case may be, commences a cure within such thirty (30) days and thereafter diligently proceeds with all action required to complete the cure and, in any event, completes such cure within ninety (90) days of such written notice from the Purchaser;

(b) The occurrence of an Event of Default under any of the other Bond Documents, under the Ground Lease or the Funding Agreement;

(c) The occurrence of an Event of Default or an event which with the passage of time or giving of notice, or both, would constitute an event of default under any other agreement heretofore or hereafter entered into between the Company and the Purchaser;

(d) The Issuer, the Company or an Authorized Representative of either shall have made, in any certificate, statement, representation, warranty or financial statement furnished to the Purchaser in connection with the financing of the Project, a material representation which proves to have been false or misleading as of the time such statement was made, or any such certificate, statement, representation, warranty or financial statement shall omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading;

(e) If the Company (i) fails to pay any Indebtedness for borrowed money (other than as arising under the other Bond Documents) owing by the Company when due, whether at maturity, by acceleration or otherwise; or (ii) fails to perform any term, covenant or agreement on its part to be performed under any agreement or instrument (other than this Bond Purchase Agreement or any other Bond Document) evidencing, securing or relating to such Indebtedness when required to be performed, or is otherwise in default thereunder, if the effect of such failure is to accelerate, or to permit the holder(s) of such Indebtedness or the trustee(s) under any such agreement or instrument to accelerate, the maturity of such Indebtedness, unless waived by such holder(s) or trustee(s);

(f) If any of the following events occur: (i) any Reportable Event which the Purchaser determines in good faith might constitute grounds for the termination of any Plan or for the appointment by the appropriate United States District Court of a trustee to administer any Plan continues for thirty (30) days after the Purchaser has given written notice thereof to the Company; (ii) any Plan incurs any "accumulated funding deficiency" (as such term is defined in ERISA), whether waived or not; (iii) the Company engages in any Prohibited Transaction (as defined in Section 4975 of the Code); (iv) a trustee is appointed by an appropriate United States District Court to administer any Plan; or

(v) the Pension Benefit Guaranty Corporation, or any successor thereto, institutes proceedings to terminate any Plan or to appoint a trustee to administer any Plan;

(g) Any Loan Party or any of its Subsidiaries or the Corporation or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding;

(h) If the Company or the Corporation shall merge or consolidate with any other corporation or entity or sell, lease, transfer or otherwise dispose of a substantial part of its property or assets, or permit any Subsidiary to do so (except that any Subsidiary may merge into or consolidate with, or sell or otherwise dispose of its assets to, the Company or the Corporation) without first having obtained the Purchaser's written consent;

(i) The Collateral Documents shall for any reason fail to create a valid first priority lien and security interest in the Collateral in favor of the Purchaser, except for Permitted Encumbrances;

(j) Any Bond Document or any provision thereof, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party, any Guarantor or any other Person contests in any manner the validity or enforceability of any Bond Document or any provision thereof; or any Loan Party or the Corporation denies that it has any or further liability or obligation under any Bond Document, or purports to revoke, terminate or rescind any Bond Document or any provision thereof;

(k) An attachment or garnishment writ or the like is levied against all or any portion of any Collateral and such attachment or garnishment writ has not been discharged, vacated or modified to exclude any such Collateral within five (5) days and the Purchaser shall not be liable for contempt for failing to comply with such attachment or writ;

(l) Final judgment for the payment of money which shall be in excess of amounts covered by insurance is rendered against any Loan Party or the Corporation and within forty-five (45) days from the entry of such judgment has not been discharged or stayed pending appeal or has not been discharged within forty-five (45) days from the entry of a final order of affirmance on appeal;

(m) There is a change in Control of the Company or the Corporation unless approved in writing by the Purchaser in its sole and absolute discretion;

(n) The termination of the Ground Lease, any of the Parking Agreements or the Funding Agreement or direct or indirect sale, transfer or conveyance by the Company of the Project, or any portion thereof, or any interest (legal or equitable) therein unless approved by the Purchaser in its sole and absolute discretion;

(o) There occurs any event or circumstance that has a Material Adverse Effect;

(p) The occurrence of a default under any Hedging Contracts;

(q) A delay in the construction or discontinuance for a period of thirty (30) days after written notice from the Purchaser concerning such delay or discontinuance (other than due to force majeure), or in any event a delay in the construction so that the same is not, in the Purchaser's judgment, likely to be completed on or before the Completion Date;

(r) Any permit, approval or consent from any Governmental Authority required for the construction or equipping of the Project is withdrawn, cancelled, terminated or materially modified to the detriment of the Project unless the Company reinstates in all respects such permit, approval or consent within thirty (30) days;

(s) The failure to achieve Project Substantial Completion on or prior to the Completion Date; or

(t) The bankruptcy or insolvency of the General Contractor and failure of the Company to procure a contract with a new general contractor satisfactory to the Purchaser within sixty (60) days from the occurrence of such bankruptcy or insolvency.

#### **Section 6.02. Acceleration; Annulment of Acceleration.**

(a) Upon the occurrence of an Event of Default, the Purchaser shall not be obligated to make any further disbursements of Bond Proceeds and may declare the Bonds immediately due and payable without protest, presentment, any further notice or demand, all of which to the extent permitted by law are expressly waived by the Issuer. In such event, there shall be due and payable the total principal amount of the Bonds, all interest accrued thereon and which will accrue thereon to the date of payment and all other amounts due thereunder.

(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 Bond Purchase Agreement, the Purchaser may, at its sole option, annul in writing such declaration and its consequences.

### **Section 6.03. Other Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default, the Purchaser (i) shall have, in addition to all other rights of the Purchaser, the rights and remedies of a secured party under the UCC, (ii) may proceed to protect and enforce the Purchaser's rights by suit in equity, action of law and/or other appropriate proceeding either for specific performance of any covenant or condition contained in this Agreement, any other Bond Document or in any instrument or document delivered to the Purchaser pursuant hereto or thereto, and (iii) in the exercise of any rights, remedies or powers granted in this Agreement, any other Bond Document and/or any such instrument or document, may proceed to declare the Obligations to be due and payable pursuant to Section 6.02 hereof, and the Purchaser may proceed to enforce payment of such Obligations as provided herein or in any Bond Document, and may offset and apply toward the payment of such amount any Indebtedness of the Purchaser to the Company.

(b) Upon the occurrence and during the continuance of an Event of Default, in addition to any other rights or remedies available to the Purchaser, the Purchaser may exercise any or all of the following rights and remedies as it, in its sole discretion, deems necessary or desirable:

(i) Enter upon the Project and complete the Project in accordance with the plans and specifications (with such changes therein as the Purchaser may deem appropriate) and take any action to preserve and protect the Project, all at the risk, cost and expense of the Company;

(ii) At any time discontinue any work commenced by the Company in respect to the Project or change any course of action undertaken by it and not be bound by any limitations or requirements of time, whether set forth in this Agreement or otherwise;

(iii) Assume the Construction Agreement or any other agreement, contract or subcontract made in any way relating to the Project and take over and use all or any part of the work, labor, services, materials, supplies or equipment contracted for, whether or not previously incorporated into the Project;

(iv) In connection with any undertaking by the Purchaser to complete the Project pursuant to the provisions of this Agreement, (A) engage architects, contractors, subcontractors, mechanics, materialmen, laborers, suppliers and others for the purpose of performing any work, labor or services or furnishing any materials, supplies or equipment required in connection with the completion of the Project, (B) pay, settle or compromise all bills or claims which may become, if unpaid, mechanic's liens or which have been or may be incurred in any manner in connection with completing the Project or for the discharge of liens, encumbrances or defects in the title to the Project and (C) take or refrain from taking such action hereunder as the Purchaser from time to time and in its discretion may determine in connection with the completing the Project.

(c) Upon the occurrence and during the continuance of an Event of Default, the Purchaser and each of its Affiliates in its discretion may also set off any or all of the Obligations against any securities, cash or other property of the Company in the possession of

the Purchaser or its Affiliates and against any obligations owed to the Company by the Purchaser or its Affiliates to the extent that it does not impact the Purchaser's or its Affiliate's ability to recover amounts owed to the Purchaser or its Affiliates. THE COMPANY UNDERSTANDS THAT, PURSUANT TO THE TERMS OF THIS AGREEMENT, THE COMPANY IS ALLOWING THE PURCHASER AND ITS AFFILIATES TO SET OFF ANY OR ALL OBLIGATIONS OF THE COMPANY TO THE PURCHASER OR ANY OF ITS AFFILIATES AND BY ALLOWING FOR THE PURCHASER'S AND THE AFFILIATE'S SETOFF, THE COMPANY IS WAIVING ALL OF ITS RIGHTS TO LIMIT SETOFF TO THOSE OBLIGATIONS WHICH ARE MUTUAL AS BETWEEN THE PURCHASER AND THE COMPANY.

**Section 6.04. Remedies Not Exclusive.** No failure by the Purchaser to exercise and no delay in exercising, and no course of dealing with respect to, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. No remedy conferred upon or reserved to the Purchaser by this Bond Purchase Agreement is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Purchaser now or hereafter existing at law or in equity or by statute or otherwise pursuant to any other Bond Documents.

## ARTICLE VII

### MISCELLANEOUS

**Section 7.01. Company to Pay Expenses.** The Company agrees to pay (a) the reasonable fees and expenses of the Issuer, the Purchaser and their respective counsel, and all other reasonable costs and expenses incidental to the financing hereunder, the issuance of the Bonds and the costs of producing the documents referred to herein, including, without limitation, the fees and expenses of Bond Counsel, plus disbursements; (b) all taxes, if any, upon all documents and transactions pursuant to, or contemplated by, this Bond Purchase Agreement; (c) all expenses of all recordings and filings pursuant to or contemplated by this Bond Purchase Agreement; and (d) all costs and expenses of collection and the enforcement of any and all remedies and rights (including, without limitation, legal fees and disbursements) in the event of the occurrence of an Event of Default under this Bond Purchase Agreement.

**Section 7.02. Recording and Filing.** The Company shall cause to be recorded or filed, as the case may be, in the appropriate office, this Bond Purchase Agreement, the Mortgage, the Notice of Lending, and all other security instruments in such manner and in such places as may be required by law to perfect the security interests contemplated herein and therein and all financing statements and continuation statements under the UCC in such manner and in such places as may be required by law to protect and maintain in force all such security interests.

**Section 7.03. Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Bond Purchase Agreement or the Bonds is intended or shall be construed to give to any Person, other than the parties hereto, and their successors and assigns, any right, remedy or claim under or with respect

to this Bond Purchase Agreement or any covenants, conditions and provisions herein contained. This Bond Purchase Agreement 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 7.04. Severability.**

(a) If any provision of this Bond Purchase 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 Bond Purchase Agreement shall not affect the remaining portion of this Bond Purchase Agreement or any part thereof.

**Section 7.05. Notices.** All notices, certificates or other communications hereunder shall be in writing and shall be (a) delivered personally, or (b) sent by United States Postal Service prepaid, first-class mail, or by registered or certified mail, return receipt requested, or (c) sent overnight via substantial national delivery service, addressed as set forth immediately following this paragraph, or at such other addresses as the Issuer, the Company or the Purchaser shall otherwise have given notice as herein provided:

To the Issuer:

Buffalo and Erie County Industrial  
Land Development Corporation  
275 Oak Street  
Buffalo, New York 14203  
Attention: President

With a copy to:

Harris Beach PLLC  
Larkin at Exchange  
726 Exchange Street  
Suite 1000  
Buffalo, New York 14210  
Attention: Robert Murray, Esq.

To the Purchaser:

First Niagara Bank, N.A.  
726 Exchange Street, Suite 900  
Buffalo, New York 14210  
Attention: Michael DeWitt

With a copy to:

Hodgson Russ LLP  
The Guaranty Building  
140 Pearl Street, Suite 100  
Buffalo, New York 14202  
Attention: Wendy K. Fechter, Esq.

To the Company:

134 High Street, LLC  
c/o Buffalo Niagara Medical Campus, Inc.  
Innovation Center  
640 Ellicott Street  
Buffalo, New York 14203

With a copy to:

Jaeckle Fleishmann & Mugal, LLP  
12 Fountain Plaza, Suite 800  
Buffalo, New York 14202  
Attention: George F. Bellows, Esq.

Attention: Executive Director

All notices shall be deemed given on the date of personal delivery or, if mailed, five (5) days after mailing, or if given by overnight service, on the date of receipt as indicated by the records of the overnight delivery service.

A duplicate copy of each notice, certificate or other communication given hereunder by any of the parties hereto to the addressee of such notice, certificate or other communication, shall be given to the remaining party hereto. The Issuer, the Company and the Purchaser may, by notice hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 7.06. Counterparts.** This Bond Purchase 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. Any executed counterpart may be introduced into evidence in any action or proceeding without having to produce any of the other counterparts.

**Section 7.07. Applicable Law.** This Bond Purchase Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

**Section 7.08.** This Section is Intentionally Omitted.

**Section 7.09. Amendment.** No amendment, waiver or modification of any provision of this Agreement shall be effective except pursuant to an agreement or agreements in writing entered into by the parties hereto.

**Section 7.10. No Recourse; Special Obligation of Issuer.** The Obligations of the Issuer contained herein shall not constitute or give rise to an Obligation of the State of New York, Erie County, New York, or the City of Buffalo, New York, and neither the State of New York, Erie County, New York or the City of Buffalo, New York shall be liable thereon, and further such Obligations shall not constitute or give rise to a general obligation of the Issuer and the Company, but rather shall constitute limited obligations of the Issuer and the Company payable solely from the revenues of the Issuer derived and to be derived from sources set forth herein.

**Section 7.11. Indemnity.** The Company hereby agrees to indemnify, defend and hold harmless the Purchaser and its officers, directors, employees, agents, representatives, successors and assigns (each, an "*Indemnified Person*") in connection with any losses, claims, damages, liabilities, obligations, penalties, actions, suits, costs, charges and actual expenses, including reasonable attorneys' fees, (i) of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement and any other Bond Document, or the transactions contemplated hereby or thereby, and with respect to any investigation, litigation or proceeding (including any bankruptcy, insolvency or appellate proceeding) related to this Agreement or the other Bond Documents or the transactions contemplated hereby or thereby or the use of any of the Bond Proceeds, whether or not any Indemnified Person is a party thereto; and (ii) which may be incurred by or asserted against such

Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding (including any bankruptcy or insolvency proceeding) or any action taken by any Person with respect to any environmental claim or suit arising out of or related to any property of the Issuer or the Company (all of the foregoing, the "*Indemnified Liabilities*"). Notwithstanding the foregoing, the Company shall have no obligation to any Indemnified Person for any Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person, or the breach by the Purchaser of its obligations under this Agreement or the other Bond Documents, in each case as determined in a final, non-appellable decision of a court of competent jurisdiction or of an arbitration panel.

#### **Section 7.12. Assignment, Etc.**

(a) Any Purchaser may sell, assign, transfer or negotiate its rights and obligations under this Agreement and the other Bond Documents, in whole or in part, at any time only to (i) any of its Affiliates without notice to the Issuer or the Company, or (ii) to any other domestic bank or entity upon notice to the Company and the Issuer, and with the consent of the Company, which consent will not be unreasonably withheld, conditioned or delayed, in each case, subject to subsection (b) of this Section 7.12. The Issuer agrees to execute any additional or replacement Bonds requested by such Purchaser to further document any such sale, assignment, transfer or negotiation and to execute and deliver to the Issuer such documents and instruments as they may require in connection with the same. Any assignee or transferee of such Purchaser's rights and/or obligations shall be entitled to the full benefit of this Agreement to the same extent as if it were an original party in respect of the rights or obligations assigned or transferred to it.

(b) Assignments shall be subject to the following additional conditions:

(i) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Purchaser's rights and obligations under this Agreement; and

(ii) the parties to each assignment shall execute and deliver to the Issuer an Assignment and Assumption, together with the fees and expenses of the Issuer with respect to each such assignment.

(iii) Subject to acceptance and recording thereof pursuant to subsection (b)(v) of this Section 7.12, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Purchaser under this Agreement, and the assigning Purchaser thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Purchaser's rights and obligations under this Agreement, such Purchaser shall cease to be a party hereto, but shall continue to be entitled to the benefits of Sections 6.03 and 7.11). Any assignment or transfer by a Purchaser of rights or obligations under this Agreement that does not comply with this Section 7.12 shall be treated for purposes of this Agreement as a sale by such Purchaser



of a participation in such rights and obligations in accordance with paragraph (c) of this Section 7.12.

(iv) The Company shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Purchasers, and the Commitment of, and principal amount of the Bonds owing to, the Purchaser pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Company, the Issuer, and the Purchasers may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Issuer and any Purchaser at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Purchaser and an assignee, and upon receipt of any applicable processing or recordation fee and any written consent to such assignment required by paragraph (a) of this Section, the Company shall accept such Assignment and Assumption and record the information contained therein in the Register, *provided that* if either the assigning Purchaser or the assignee shall have failed to make any payment required to be made by it pursuant to Sections 4.01(a) and 7.12(b)(ii), the Purchaser shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) Any Purchaser may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Purchaser, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest, *provided that* no such pledge or assignment of a security interest shall release a Purchaser from any of its obligations hereunder or substitute any such pledgee or assignee for such Purchaser as a party hereto.

(c) Any Purchaser may sell participating interests in the indebtedness evidenced by any Bond held by such Purchaser, any Bond held by such Purchaser or any other interest of such Purchaser under this Agreement and the other Bond Documents to one or more banks or other entities ("*Participants*") with the consent of the Company, which consent will not be unreasonably withheld, conditioned or delayed. In the event of any such sale by a Purchaser of participating interests to a Participant, such Purchaser's obligations under this Agreement and the other Bond Documents shall remain unchanged, such Purchaser shall remain solely responsible to the other parties hereto for the performance of such obligations, such Purchaser shall remain the owner of the indebtedness evidenced by the Bonds and the holder of any Bond issued to it in evidence thereof for all purposes under the Bond Documents, all amounts payable by the Issuer and the Company under this Agreement shall be determined as if such Purchaser had not sold such participating interests, and the Issuer and the Company shall continue to deal

solely and directly with such Purchaser in connection with such Purchaser's rights and obligations under the Bond Documents.

(d) Neither the Issuer nor the Company may assign its rights or obligations under this Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and permitted assigns of all the parties to this Agreement.

(e) The Purchaser may at any time change the office through which it is acting for the purpose of this Agreement and may at any time act for this purpose through more than one office. The Purchaser may disclose to an assignee or transferee permitted by this Agreement such information about the Issuer, the Company and the Bond Documents as it may deem appropriate, so long as such assignee or transferee has agreed in writing to treat such information as confidential to the same extent and in the same manner as the Purchaser is required to treat such information as confidential.

**Section 7.13. Table of Contents and Section Headings Not Controlling.** The Table of Contents and the headings of the several Articles and Sections of this Bond Purchase Agreement 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 Bond Purchase Agreement.

**Section 7.14. Survival.** This Bond Purchase Agreement shall survive the purchase and sale of the Bonds and shall remain in full force and effect until the Bonds, together with interest thereon, and all amounts payable under this Bond Purchase Agreement and all of the other Bond Documents shall have been paid in full.

**Section 7.15. Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties.** In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the construction, acquisition, construction, and equipping of the Project or in the event of a breach of warranty with respect to any materials, workmanship or performance guaranty, the Company may proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and/or the Issuer against the contractor, construction manager, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the Issuer's prior written consent, in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving any such contractor, construction manager, subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event, the Issuer hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Issuer in any such action or proceeding. The Company shall notify the Issuer and the Purchaser of any actions or proceedings taken hereunder. The Net Proceeds of any amount recovered by way of damages, refunds, adjustments or otherwise pursuant to the provisions of this Section 7.15 shall first be deposited with the Purchaser and applied to correct any defects in material, workmanship or performance and the remaining Net Proceeds, if any, shall be applied to redeem the Series 2010A Bonds.

**Section 7.16. Reinstatement of Obligations.** If and to the extent the Purchaser receives any payment with respect to the Obligations or this Agreement and all or any part of such

payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by the Purchaser or paid over to a trustee, receiver or any other entity, whether under any bankruptcy law or otherwise (any such payment is referred to as a "*Returned Payment*"), then this Agreement shall continue to be effective or shall be reinstated, as the case may be, to the extent of such payment or repayment by the Purchaser, and the Obligations or part thereof intended to be satisfied by such Returned Payments shall be revived and continued in full force and effect as if the Returned Payment had not been made.

**Section 7.17. USA Patriot Act.** The Purchaser hereby notifies the Company that, pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Company, which information includes the names and addresses of the Company and other information that will allow the Purchaser to identify the Company in accordance with the USA Patriot Act.


**IN WITNESS WHEREOF**, the parties hereto have caused this Bond Purchase Agreement to be executed in their respective names by their duly-authorized representatives, and have caused this Bond Purchase Agreement to be dated as the date first set forth above.

**BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION**


By:   
David W. Kerenoff, Assistant Treasurer

**134 HIGH STREET, LLC**

By: Buffalo Niagara Medical Campus, Inc.,  
Member


By:   
Matthew K. Enstice, Executive Director

**FIRST NIAGARA BANK, N.A.**

By:   
Michael DeWitt, Vice President


STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

On the 22<sup>nd</sup> day of December in the year 2010 before me, the undersigned, personally appeared **David W. Kerchoff**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
JO-ANN KILMER  
Notary Public, State of New York  
No. 01KI5052388  
Qualified in Saratoga County  
Commission Expires Nov. 20, 2013


STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

On the 22<sup>nd</sup> day of December in the year 2010 before me, the undersigned, personally appeared **Matthew K. Enstice**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
JO-ANN KILMER  
Notary Public, State of New York  
No. 01KI5052388  
Qualified in Saratoga County  
Commission Expires Nov. 20, 2013

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

On the 22<sup>nd</sup> day of December in the year 2010 before me, the undersigned, personally appeared **Michael DeWitt**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
JO-ANN KILMER  
Notary Public, State of New York  
No. 01KI5052388  
Qualified in Saratoga County  
Commission Expires Nov. 20, 2013

**EXHIBIT A**

**FORM OF BOND**

**THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF WITHOUT REGISTRATION UNDER SAID ACT OR EXEMPTION THEREFROM. ANY SALE, TRANSFER OR DISPOSITION OF THIS BOND SHALL COMPLY WITH THE TERMS AND CONDITIONS SET FORTH IN THIS BOND.**

**BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION  
TAX-EXEMPT REVENUE BOND  
(BUFFALO NIAGARA MEDICAL CAMPUS, INC. PROJECT), SERIES 2010**

**NO.: RA-1**

**MATURITY DATE: July 1, 2022**

**INTEREST RATE: INITIAL LIBOR RATE  
2010**

**DATED DATE: December 22,**

**REGISTERED OWNER: FIRST NIAGARA BANK, N.A.**

**PRINCIPAL AMOUNT: TWENTY-FOUR MILLION FIFTY THOUSAND AND 00/100  
DOLLARS (\$24,050,000)**

The Buffalo and Erie County Industrial Land Development Corporation, a not for profit corporation constituting a local development corporation duly organized and existing under the laws of the State of New York, having its principal office at 275 Oak Street, Buffalo, New York 14203 (the "*Issuer*"), for value received, hereby promises to pay, solely from the sources hereinafter described, to the Registered Owner identified above or registered assigns, on the Maturity Date identified above (subject to any right of prior redemption hereinafter provided for), the Principal Amount set forth above, or so much thereof as may be advanced from time to time (subject to reduction as hereinafter provided), and interest thereon from the Dated Date set forth above, to the Maturity Date identified above (or such earlier date on which the principal hereof has been paid or duly provided for). Interest shall be payable at the Interest Rate provided for herein and above on the first day of each month, commencing February 1, 2011 (an "*Interest Payment Date*"). Principal in the amounts set forth in Schedule A attached hereto shall be payable on (a) each Interest Payment Date, commencing on the Interest Payment Date immediately following the Conversion Date (as defined herein), and (b) the Maturity Date, and any optional, mandatory or extraordinary redemption date; provided that, if any such date shall not be a Business Day, then such payment shall be made on the next succeeding Business Day (with interest payable through the stated Maturity Date or redemption date). In no event shall the interest rate payable hereon exceed the maximum permitted by, or enforceable under, applicable law. 134 High Street, LLC, a New York limited liability company (the "*Company*"), and First Niagara Bank, N.A., or its registered assigns (the "*Bondholder*") may amend Schedule A following the Completion Date based on the final Principal Amount and provided that the

Company shall furnish any amendment to the Issuer and the Bondholder prior to the effective date thereof, accompanied by an opinion of Bond Counsel that such amendment to Schedule A shall not cause interest on this Bond to be includable in gross income of the Bondholder for federal income tax purposes under the Code.

Upon payment of a Requisition under the Bond Purchase Agreement, the Company shall note in the Register (as defined in the Bond Purchase Agreement described below) the amount of the then outstanding principal amount of this Bond.

The principal of, and LIBOR Breakage Fee (as defined below), if any, and interest on this Bond are payable in coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts. Any payment required hereunder prior to the final payment of this Bond, including partial redemption of principal, may be made for the account of the Issuer by check delivered or mailed by the Company to the Bondholder at 726 Exchange Street, Suite 900, Buffalo, New York 14210 or such other location as may be designated by the Bondholder to the Company in writing. The final payment of this Bond upon maturity, acceleration, purchase or redemption shall be made upon surrender of this Bond to the Company.

This Bond constitutes the entire issue of the duly issued bond of the Issuer, designated "Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bond (Buffalo Niagara Medical Campus, Inc.. Project), Series 2010," and issued in the original aggregate principal amount of up to \$24,050,000 (the "*Bond*"). This Bond was issued for the purpose of funding a loan by the Issuer to the Company to finance a portion of the costs of the demolition, construction and/or renovation, expansion, upgrading and equipping of new improvements to be sited on a parcel of real property to be ground leased by Kaleida Health, a New York not-for-profit corporation, to the Company located at 134 High Street in the City of Buffalo, County of Erie (the "*Land*") related to the construction of an approximately 600,000 square foot multi-modal transportation structure to house an approximately 1,800 vehicle-capacity parking ramp located on the Land (the "*Facility*"); (ii) the acquisition of and installation in the Facility of various machinery, equipment and furnishings (the "*Equipment*") (the Facility and Equipment are hereinafter collectively referred to as the "*Project*"), and (iii) the payment of certain costs of issuance in connection with the issuance of the Bond.

This Bond is secured by (i) a Pledge and Assignment from the Issuer to the Bondholder; and (ii) certain Collateral Documents. The Pledge and Assignment assigns to the Bondholder certain of the rights and remedies of the Issuer under the Loan Agreement, including the right to collect and receive certain amounts payable thereunder. The Mortgage grants to the Issuer for the benefit of the Bondholder of a first priority leasehold mortgage and a security interest in the interest of the Company in and to the Project. The Issuer has assigned the Mortgage to the Bondholder. The Assignment of Leases and Rents assigns to the Issuer a first priority Lien in the leases relating to and rents from the Project. The Issuer has assigned the Assignment of Leases and Rents to the Bondholder. The Security Agreement grants to the Bondholder a first priority security interest in the Pledged Revenues and other personal property of the Company. Reference is hereby made to the Loan Agreement, the Pledge and Assignment, the Mortgage, the Assignment of Leases and Rents and the Security Agreement and to all amendments and supplements thereto for a description of the property mortgaged, pledged and assigned, the

provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Bondholder and the terms upon which this Bond is issued and secured.

Reference is made to the Bond Purchase Agreement and Building Loan Contract dated December 22, 2010 (the "*Bond Purchase Agreement*"), among the Issuer, the Company and the Bondholder for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security for this Bond, the rights, duties and obligations of the Issuer, the Company and the Bondholder, and the terms and conditions upon which this Bond is issued and secured. All terms used herein with initial capitalization and which are not expressly defined herein, and where the rules of grammar or context do not otherwise require, shall have the meanings as set forth in the Bond Purchase Agreement. The Bondholder assents, by its acceptance hereof, to all of the provisions of the Bond Purchase Agreement.

**THE OBLIGATIONS OF THE ISSUER CONTAINED HEREIN SHALL NOT CONSTITUTE OF GIVE RISE TO AN OBLIGATION OF THE STATE OF NEW YORK, ERIE COUNTY, NEW YORK OR THE CITY OF BUFFALO, NEW YORK, AND NEITHER THE STATE OF NEW YORK, ERIE COUNTY, NEW YORK OR THE CITY OF BUFFALO, NEW YORK SHALL BE LIABLE THEREON, AND FURTHER SUCH OBLIGATIONS SHALL NOT CONSTITUTE OR GIVE RISE TO A GENERAL OBLIGATION OF THE ISSUER AND THE COMPANY, BUT RATHER SHALL CONSTITUTE LIMITED OBLIGATIONS OF THE ISSUER AND THE COMPANY PAYABLE SOLELY FROM THE REVENUES OF THE ISSUER DERIVED AND TO BE DERIVED FROM THE SOURCES SET FORTH HEREIN. OTHER RECEIPTS, FUNDS OR MONEYS OF THE ISSUER PLEDGED UNDER THE BOND PURCHASE AGREEMENT AND FROM ANY AMOUNTS OTHERWISE AVAILABLE UNDER THE COLLATERAL DOCUMENTS FOR THE PAYMENT OF THIS BOND. THIS BOND DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.**

In case any Event of Default (as defined in the Bond Purchase Agreement) occurs and is continuing, the principal amount of this Bond, together with LIBOR Breakage Fee, if applicable, and accrued interest, may be declared due and payable in the manner and with the effect provided in the Bond Purchase Agreement. After the occurrence and during the continuance of any such Event of Default, this Bond will, at the option of the Bondholder, bear interest at a rate per annum which at all times shall be equal to the sum of (i) six percent (6%) per annum plus (ii) the Interest Rate then payable with respect thereto (but in no event in excess of the maximum rate from time to time permitted by then applicable law). In addition, if the entire amount of any required principal and/or interest payment is not paid within ten (10) days after the same is due, the Company shall pay to the Bondholder a late fee equal to six percent (6%) of such overdue payment.

Determination of Interest Rate.

"*Closing Date*" means the date of sale and delivery of the Bond.



**"Conversion Conditions"** means the conditions set forth in Section 4.01A of the Bond Purchase Agreement.

**"Conversion Date"** means July 1, 2012.

**"Interest Rate"** means the Initial LIBOR Interest Rate, the Ten Year Interest Rate or the LIBOR Interest Rate, as applicable.

**"LIBOR"** means the rate of interest (rounded upwards, if necessary, to the next 1/100 of 1%) determined by Bondholder by dividing (i) the average rate per annum as determined by Bondholder to be the rate offered for deposits in United States dollars in the London Interbank Eurodollar Market for the outstanding principal amount of the Bond and for a one month period by (ii) a number equal to 1.0 less the Reserve Requirement. LIBOR will be adjusted on the first day of each LIBOR Interest Period to the then current LIBOR.

**"LIBOR Interest Period"** means:

(i) initially, the period beginning on (and including) the Closing Date and ending on (but excluding) the day which numerically corresponds to such date one month thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month);

(ii) thereafter, each period commencing at the end of the next preceding LIBOR Interest Period and ending one month thereafter;

provided, however, that

(a) if such LIBOR Interest Period would otherwise end on a day which is not a Business Day, such LIBOR Interest Period shall end on the next following Business Day unless such day falls in the next calendar month, in which case such LIBOR Interest Period shall end on the first preceding Business Day.

**"LIBOR Interest Rate"** means prior to conversion to the Ten Year Interest Rate an annual rate of interest equal to the greater of (i) an annual rate of interest equal to the sum of LIBOR as determined by the Bondholder for each LIBOR Interest Period, plus 2.5%, or (ii) 2.9% and while the Ten Year Interest Rate is in effect an annual rate of interest equal to the sum of LIBOR as determined by the Bondholder for each LIBOR Interest Period plus 2.4%.

**"Initial LIBOR Interest Rate"** means an annual rate of interest equal to the greater of (i) an annual rate of interest equal to 65% of the sum of LIBOR as determined by the Bondholder for each LIBOR Interest Period plus 2.5%, or (ii) 1.9%.

**"Ten Year Interest Rate"** means an annual rate of interest equal to 65% of the sum of LIBOR as determined by the Bondholder for each LIBOR Interest Period plus 2.4%.

**"Reserve Requirement"** means the percentage which Bondholder determines to be the maximum reserve requirement (including, without limitation, any emergency, marginal, special or supplemental reserve requirement) prescribed for so-called "Eurocurrency liabilities" (or any

other category of Eurocurrency funding) by the Board of Governors of the Federal Reserve System (or under any successor regulation which Bondholder determines to be applicable) with each change in such maximum reserve requirement automatically, immediately and without notice changing the LIBOR thereafter applicable.

The Company shall also pay the LIBOR Breakage Fee, determined as described below, upon any acceleration of this Bond, any purchase or redemption of this Bond from the Bondholder on any payment date, Purchase Date (as defined below) or redemption date that is not the last day of the relevant LIBOR Interest Period.

If the adoption, effectiveness or phase-in, after the date hereof, of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bondholder with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency (each, a "*Regulatory Change*");

(1) shall subject the Bondholder to any imposition or other charge with respect to any amounts due under the Bond Purchase Agreement or this Bond (except for changes in the rate of tax on the overall net income of the Bondholder); or

(2) shall impose, modify or deem applicable any reserve, special deposit, deposit insurance or similar requirement (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System) against assets of, deposits with or for the account of, or credit extended by, the Bondholder or shall impose on the Bondholder any other condition affecting payments under the Bond Purchase Agreement or any Bond or the Bondholder's rights to receive such payment

and the result of any of the foregoing is to increase the cost to the Bondholder of making or maintaining the investment evidenced by this Bond or to reduce the amount of any sum received or receivable by the Bondholder under the Bond Purchase Agreement or under this Bond by an amount deemed by the Bondholder to be material, then, upon demand by the Bondholder and receipt by the Company of a certificate from the Bondholder setting forth its calculation of the amount owed, the Company shall forthwith pay to the Bondholder such additional amount or amounts as will compensate the Bondholder for such increased costs or reduction in receipts.

If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other governmental authority affects or would affect the amount of capital required or expected to be maintained by the Bondholder, or any person controlling the Bondholder, and the Bondholder determines (in its sole and absolute discretion) that the rate of return on its or such controlling person's capital as a consequence of the Bondholder's ownership of this Bond is reduced to a level below that which the Bondholder or such controlling person could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice from time to time by the Bondholder to the Company, the Company shall immediately pay directly to the Bondholder additional amounts sufficient to compensate the Bondholder or such controlling person for such

reduction in rate of return. A statement of the Bondholder as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Company. In determining such amount, the Bondholder may use any method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable. A certificate of the Bondholder claiming compensation shall be conclusive in the absence of manifest error. Such certificate shall set forth the nature of the occurrence giving rise to such compensation, the additional amount or amounts to be paid to the Bondholder hereunder and the method by which such amounts were determined. In determining such amounts, the Bondholder may use any reasonable averaging and attribution methods. Notwithstanding the foregoing, the "Regulatory Changes" referred to above will not be deemed to include any change the result of which is an Event of Taxability (as described hereinbelow). An Event of Taxability means (A) a final determination by any court of competent jurisdiction or a final determination by the Internal Revenue Service to which the Company shall consent or from which no timely appeal shall be taken to the effect that interest on this Bond is includable in the gross income of the Bondholder thereof for Federal income tax purposes; (B) ninety (90) days after receipt by the Issuer, the Bondholder or the Company of written notice that the Internal Revenue Service has issued a "notice of deficiency" or similar notice to any present or former Bondholder of this Bond assessing a tax in respect of any interest on this Bond as a result of such interest being includable in gross income for Federal income tax purposes, provided that such notice has not been withdrawn by the Internal Revenue Service and from which such Bondholder (or the Company or the Bondholder on behalf of the Bondholder, if allowable) has not filed a timely petition in the United States Tax Court contesting the same; (C) the delivery to the Company, the Bondholder and the Issuer of an opinion of Bond Counsel to the effect that interest on this Bond is includable in the gross income of a Bondholder thereof for Federal income tax purposes or (D) demand by the Internal Revenue Service for payment or asserting in writing that this Bond does not constitute a "qualified tax-exempt obligation" under the Code. Upon a Determination of Taxability, the Interest Rate shall be the LIBOR Interest Rate.

If the maximum marginal statutory rate of federal tax imposed upon income of corporations generally (whether or not the Bondholder is actually taxed at said maximum marginal statutory rate) decreases for any period during which this Bond is outstanding, the factor of 65% used in calculating the interest rate on this Bond shall be increased, effective upon the effective date of such decrease, to equal the product of:

$$\frac{[\text{Original Tax-Effective Factor}]}{[\text{Original Tax Rate}]} \times [1 - \text{New Tax Rate}]$$

where (1) "Original Tax-Effective Factor" means 65%, (2) "Original Tax Rate" means the maximum marginal statutory rate of federal tax, expressed as a decimal, which may be imposed upon income of corporations generally at the Closing Date, and (3) "New Tax Rate" means a maximum marginal statutory rate of federal tax, expressed as a decimal, which may be imposed upon income of corporations generally which (a) is less than the Original Tax Rate and (b) comes into effect after the Closing Date.

The Company will promptly reimburse the Bondholder of this Bond subject to an Event of Taxability an amount which (after deduction of all federal, state and local taxes required to be paid by such owner in respect of the receipt of such amount less any tax benefit resulting from the deductibility of such amount for purposes of such taxes) is equal to all interest and penalties, if any, paid to the United States as a consequence of the failure to include the interest on this Bond in the federal gross income of such owner prior to notice of the determination or the failure of this Bond to constitute a "qualified tax-exempt obligation" under the Code, provided that any amounts paid as reimbursement under this sentence shall be repaid by the owner to the extent of any recovery thereof from the United States. Upon notice of the determination of the failure of this Bond to constitute a "qualified tax-exempt obligation" under the Code, the interest rate on this Bond shall equal the LIBOR Interest Rate.

Upon (i) any redemption of all or any portion of the principal of this Bond (including, for the purposes of this paragraph, any purchase of this Bond from the Bondholder or acceleration) on any day that is not the last day of the relevant LIBOR Interest Period (regardless of the source of such redemption and whether voluntary, by acceleration or otherwise), (ii) the failure by the Company to draw down or accept, in whole or in part, a Committed Disbursement after giving a Committed Disbursement Notice therefor under the Bond Purchase Agreement, (iii) the Company attempting to revoke such a Committed Disbursement, or (iv) the occurrence of an event of bankruptcy or insolvency, as defined in the Bond Purchase Agreement, with respect to the Issuer or the Company, the Company shall pay an amount (a "*LIBOR Breakage Fee*"), as calculated by the Bondholder, equal to the amount of any losses, expenses, costs, funding losses and liabilities (including, without limitation, any loss of margin and anticipated profits) that the Bondholder may sustain as a direct or indirect result of such redemption. The Company understands, agrees and acknowledges that (i) the Bondholder has no obligation to purchase, sell and/or match funds in connection with the use of the LIBOR Interest Rate as a basis for calculating the rate of interest on this Bond; (ii) the LIBOR Interest Rate may be used merely as a reference in determining such rate; and (iii) the Company has accepted such losses, expenses, costs, funding losses and liabilities as a reasonable and fair basis for calculating the LIBOR Breakage Fee and other funding losses incurred by the Bondholder. The Company further agrees to pay the LIBOR Breakage Fee and other funding losses, if any, whether or not the Bondholder or the Bondholder elects to purchase, sell and/or match funds.

Interest on this Bond shall be calculated on the basis of a 360-day year for the actual number of days elapsed. If any payment on this Bond is due on a non-Business Day, it will be made on the next Business Day, and no additional interest will accrue as a result.

Conversion to Ten Year Interest Rate. The interest rate on the Bond will convert to the Ten Year Interest Rate on the Conversion Date provided that the Conversion Conditions have been satisfied.

Optional Redemption. This Bond is subject to redemption, in whole or in part, prior to maturity at the election of the Issuer upon the direction of the Company, at a price equal to one hundred percent (100%) of the principal amount of this Bond to be redeemed, together with the LIBOR Breakage Fee, if any, and interest accrued thereon to the redemption date. The Company shall notify the Issuer and the Bondholder of the date and amount of principal directed to be redeemed in writing at least thirty (30) days in advance thereof.

**Extraordinary Mandatory Redemption:** This Bond is subject to extraordinary redemption prior to the Maturity Date (a) on the Conversion Date, if the Conversion Conditions are not satisfied, at a redemption price equal to one hundred percent of the outstanding principal amount of this Bond, together with the LIBOR Breakage Fee, if any, and interest accrued thereon to the redemption date and (b) at the election of the Bondholder pursuant to Section 4.01(j) of the Bond Purchase Agreement upon ten (10) days prior written notice to the Company at a redemption price equal to one hundred percent of the outstanding principal amount of this Bond, together with the LIBOR Breakage Fee, if any, and interest accrued thereon to the redemption date specified in such election notice.

**Extraordinary Redemption.** This Bond shall be redeemed on any Interest Payment Date in whole or in part prior to maturity in the event the Project shall have been damaged or destroyed or title to, or the temporary use of, all or substantially all of the Project shall have been taken or condemned by a competent authority and the Company elects not to repair, replace or restore the same, or the affected portion thereof, as set forth in the Loan Agreement, or fails to obtain Bondholder's consent therefor, all of property casualty insurance, condemnation or eminent domain proceeds shall be applied to the redemption of the this Bond on an Interest Payment Date next following such transfer in each case at a redemption price equal to one hundred percent (100%) of the principal amount of this Bond to be redeemed, together with the LIBOR Breakage Fee, if applicable, and interest accrued thereon to the redemption date.

If an Event of Default as defined in the Bond Purchase Agreement occurs, the principal of this Bond may become due and payable upon the conditions and in the manner and with the effect provided in the Bond Purchase Agreement.

This Bond is transferable by the registered Bondholder hereof or its duly authorized attorney upon surrender of this Bond to the Company, as Registrar, accompanied by a duly executed instrument of transfer in form and with guaranty of signature satisfactory to the Registrar, subject to such reasonable regulations as the Company, the Issuer or the Registrar may prescribe. Upon any such transfer, a new Bond or Bonds in the same aggregate principal amount will be issued to the transferee. No service charge shall be made for any transfer or exchange of Bond, but the Issuer or the Company may make a charge for transfer or exchange of this Bond sufficient to reimburse them for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange, and such charge shall be paid before any new Bond shall be delivered.

Except as set forth in this Bond and as otherwise provided in the Bond Purchase Agreement, the person in whose name this Bond is registered shall be deemed the Bondholder hereof for all purposes, and payment on or account of the principal of, or LIBOR Breakage Fee, if applicable, and interest on, this Bond shall be made only to or upon the order of the registered Bondholder thereof or its duly authorized legal representative, and the Issuer and the Company shall not be affected by any notice to the contrary. Such registration may be changed only as provided in this Bond and in the Bond Purchase Agreement, and no other notice to the Issuer or the Company shall affect the rights or obligations with respect to the transfer of any Bond or be effective to transfer any Bond. All payments to the Person in whose name any Bond shall be registered shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

This Bond shall not be entitled to any benefit under the Bond Purchase Agreement or become valid or obligatory for any purpose until executed by an Authorized Representative of the Issuer.

Authorized Denominations; Transfer; Exchange. This Bond is in registered form in minimum denominations of \$1,000,000 and integral multiples of \$5,000 in excess thereof ("*Authorized Denominations*"). The Bondholder may transfer or exchange this Bond in accordance with the Bond Purchase Agreement. In connection with such transfer or exchange, the Company may require an Bondholder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law (but no other charges).

Limitation on Transfers. Any transfer of this Bond shall be made only to "qualified institutional buyers" or "accredited investors," as such terms are used in the Securities Act of 1933, as amended, and each transferee, by taking delivery of this Bond, is deemed to have represented that it qualifies as a "qualified institutional buyer" or an "accredited investor." No transfer of this Bond shall be effective unless the Issuer shall have received either (a) evidence that the transferee is a "qualified institutional buyer" or "accredited investor," or (b) if the transfer is to a Person that is not a "qualified institutional buyer" or "accredited investor," then an Opinion of Counsel addressed to Issuer that the transfer of this Bond or any interest therein will not result in a violation of, or require registration or qualification of this Bond under, any federal or state securities laws.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Bond Purchase Agreement, and the issuance of this Bond, do exist, have happened and have been performed in the time, form and manner as required by law, and that the issuance of this Bond does not violate any constitutional or statutory limitation.

**IN WITNESS WHEREOF**, the Buffalo and Erie County Industrial Land Development Corporation has caused this Bond to be duly executed in its name by the manual or facsimile signature of its Authorized Representative, as of the Dated Date identified above.

**BUFFALO AND ERIE COUNTY  
INDUSTRIAL LAND DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_  
David W. Kerchoff  
Authorized Representative

**Schedule A  
Principal Payments**

<b>Payment No.</b>	<b>Due Date</b>	<b>Principal Due</b>
1	July 1, 2012	24,315.09
2	August 1, 2012	24,315.09
3	September 1, 2012	24,315.09
4	October 1, 2012	24,315.09
5	November 1, 2012	24,315.09
6	December 1, 2012	24,315.09
7	January 1, 2013	24,315.09
8	February 1, 2013	24,315.09
9	March 1, 2013	24,315.09
10	April 1, 2013	24,315.09
11	May 1, 2013	24,315.09
12	June 1, 2013	24,315.09
13	July 1, 2013	25,422.27
14	August 1, 2013	25,422.27
15	September 1, 2013	25,422.27
16	October 1, 2013	25,422.27
17	November 1, 2013	25,422.27
18	December 1, 2013	25,422.27
19	January 1, 2014	25,422.27
20	February 1, 2014	25,422.27
21	March 1, 2014	25,422.27
22	April 1, 2014	25,422.27
23	May 1, 2014	25,422.27
24	June 1, 2014	25,422.27
25	July 1, 2014	26,579.86
26	August 1, 2014	26,579.86
27	September 1, 2014	26,579.86
28	October 1, 2014	26,579.86
29	November 1, 2014	26,579.86
30	December 1, 2014	26,579.86
31	January 1, 2015	26,579.86
32	February 1, 2015	26,579.86
33	March 1, 2015	26,579.86
34	April 1, 2015	26,579.86
35	May 1, 2015	26,579.86
36	June 1, 2015	26,579.86
37	July 1, 2015	27,552.94
38	August 1, 2015	27,552.94
39	September 1, 2015	27,552.94
40	October 1, 2015	27,552.94
41	November 1, 2015	27,552.94
42	December 1, 2015	27,552.94
43	January 1, 2016	27,552.94
44	February 1, 2016	27,552.94
45	March 1, 2016	27,552.94



46	April 1, 2016	27,552.94
47	May 1, 2016	27,552.94
48	June 1, 2016	27,552.94
49	July 1, 2016	29,044.78
50	August 1, 2016	29,044.78
51	September 1, 2016	29,044.78
52	October 1, 2016	29,044.78
53	November 1, 2016	29,044.78
54	December 1, 2016	29,044.78
55	January 1, 2017	29,044.78
56	February 1, 2017	29,044.78
57	March 1, 2017	29,044.78
58	April 1, 2017	29,044.78
59	May 1, 2017	29,044.78
60	June 1, 2017	29,044.78
61	July 1, 2017	30,367.32
62	August 1, 2017	30,367.32
63	September 1, 2017	30,367.32
64	October 1, 2017	30,367.32
65	November 1, 2017	30,367.32
66	December 1, 2017	30,367.32
67	January 1, 2018	30,367.32
68	February 1, 2018	30,367.32
69	March 1, 2018	30,367.32
70	April 1, 2018	30,367.32
71	May 1, 2018	30,367.32
72	June 1, 2018	30,367.32
73	July 1, 2018	31,750.08
74	August 1, 2018	31,750.08
75	September 1, 2018	31,750.08
76	October 1, 2018	31,750.08
77	November 1, 2018	31,750.08
78	December 1, 2018	31,750.08
79	January 1, 2019	31,750.08
80	February 1, 2019	31,750.08
81	March 1, 2019	31,750.08
82	April 1, 2019	31,750.08
83	May 1, 2019	31,750.08
84	June 1, 2019	31,750.08
85	July 1, 2019	32,973.70
86	August 1, 2019	32,973.70
87	September 1, 2019	32,973.70
88	October 1, 2019	32,973.70
89	November 1, 2019	32,973.70
90	December 1, 2019	32,973.70
91	January 1, 2020	32,973.70
92	February 1, 2020	32,973.70
93	March 1, 2020	32,973.70
94	April 1, 2020	32,973.70
95	May 1, 2020	32,973.70

96	June 1, 2020	32,973.70
97	July 1, 2020	34,697.26
98	August 1, 2020	34,697.26
99	September 1, 2020	34,697.26
100	October 1, 2020	34,697.26
101	November 1, 2020	34,697.26
102	December 1, 2020	34,697.26
103	January 1, 2021	34,697.26
104	February 1, 2021	34,697.26
105	March 1, 2021	34,697.26
106	April 1, 2021	34,697.26
107	May 1, 2021	34,697.26
108	June 1, 2021	34,697.26
109	July 1, 2021	36,277.18
110	August 1, 2021	36,277.18
111	September 1, 2021	36,277.18
112	October 1, 2021	36,277.18
113	November 1, 2021	36,277.18
114	December 1, 2021	36,277.18
115	January 1, 2022	36,277.18
116	February 1, 2022	36,277.18
117	March 1, 2022	36,277.18
118	April 1, 2022	36,277.18
119	May 1, 2022	36,277.18
120	June 1, 2022	20,498,511.42

**[Form of Assignment for Transfer]**

**FOR VALUE RECEIVED**, the undersigned sells, assigns and transfers unto (please insert name, address and social security or tax identification number of assignee):

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ to transfer the said Bond on the books kept for registration thereof, with full power of substitution in the premises.

**DATED:** \_\_\_\_\_

**NOTICE:** The signature(s) on this assignment must correspond with the name(s) as it (they) appear(s) on the face of the within Bond in every particular.

In the presence of:

\_\_\_\_\_

## EXHIBIT B

### FORM OF LIEN LAW SECTION 22 AFFIDAVIT

STATE OF NEW YORK     )  
COUNTY OF ERIE        ) ss:

**Matthew K, Enstice**, being sworn says: I am the **Executive Director** of **134 HIGH STREET, LLC** (the "**Company**"), which is undertaking the acquisition, construction, and equipping of the Project described in the foregoing building loan contract entitled Bond Purchase Agreement and Building Loan Contract, among the Buffalo and Erie County Industrial Land Development Corporation ("**Issuer**"), the Company, First Niagara Bank, N.A. (the "**Purchaser**"). I am making and I do verify this affidavit in the name and behalf of the Company which is the borrower under said Bond Purchase Agreement and Building Loan Contract.

The Bond Proceeds are: \$24,050,000 all of such proceeds will be advanced, pursuant and subject to the terms and conditions of this Agreement, for the purposes of paying "cost of improvement" items pursuant to Section 22 of the Lien Law.

**The building loan portion of the Bond Proceeds, which is the subject of this Affidavit, is \$24,050,000 or such lesser amount thereof as may be advanced pursuant to the terms of said Bond Purchase Agreement and Building Loan Contract.**

1. The Company has paid to the Holders as consideration for this loan evidenced by the Bond (as defined by the foregoing building loan contract) the sum of Ninety Thousand Two Hundred Dollars (\$90,200), of which the amount set forth in Section 2H(viii) will be paid from Bond Proceeds.

2. All other expenses incurred, or to be incurred in connection with the loan made by the Purchaser and paid from Bond Proceeds are as follows:

A.	Architect's, Engineer's and similar fees:	\$80,940.00
B.	Broker's fees and costs of constructing the Project:	\$649,008.16
	i. Permits:	\$201,640.00
	ii. Payment of Performance Bonds:	\$284,000.00
	iii. Sitework Construction:	\$143,772.16
	iv. Site geotechnical & Archeological studies:	\$19,596.00
C.	Fees and other expenses for recording and filing:	\$674.50
D.	Consultant Fees:	\$19,525.00

E.	FFE:	\$20,945.00
F.	Insurance premiums:	\$745,500.00
G.	Construction Period interest:	\$642,906.00
H.	Legal, accounting, investment banking, etc. fees:	\$215,951.38
	i. Company Counsel (Jaeckle):	\$30,641.85
	ii. Company Counsel (Rupp):	\$22,968.53
	iii. Holders' Counsel:	\$24,353.00
	iii. Issuer's Counsel:	\$18,176.00
	iv. Bond Counsel:	\$49,700.00
	v. Arrangement Fee:	\$0
	vi. Bond Structuring Fee:	\$0
	vii. Commitment Fee:	\$64,042.00
	viii. Construction Monitoring Fee:	\$6,070.00
I.	Administrative fee of the Issuer:	\$170,755.00
J.	Taxes paid during construction:	\$0
K.	Title insurance and surveying fees:	\$75,748.66
L.	Appraisal Fees	\$5,840.00
M.	Tax Service Fee	\$3,585.00
N.	Flood Certification Fee	\$36.00
O.	Environmental Reports	21,868.00
P.	Reimbursement for payment by the Company of items in A-N above:	\$ <u>0</u>
	<b>TOTAL</b>	<b><u>\$2,653,282.70</u></b>

The Company is to be reimbursed from the net sum available for the improvement for the following payments made in connection with the improvement prior to the date of the first advance but subsequent to the commencement of the improvement: \$0.


The net sum available to the Issuer and the Company for the improvement is:  
\$21,396,717.30

This statement is made for the purpose of complying with Lien Law Section 22. The facts herein stated are true to the knowledge of the deponent. Certain of the foregoing amounts are based upon good faith estimates of costs or expenses not yet incurred and certain items listed above may cost more or less than such estimates. The Company reserves the right to use unexpended amounts from any of said items to defray increases incurred in any other item or items listed above so long as the total amount of Bond Proceeds expended on said items does not exceed the total amount of said items shown above.

The representations set forth herein are made with the understanding that the Issuer shall have no liability under the foregoing building loan contract to any third party.

**134 HIGH STREET, LLC**

By: Buffalo Niagara Medical Campus, Inc.,  
Member

By:   
Matthew K. Enstice, Executive Director

Sworn to before me this 22<sup>nd</sup>  
day of December, 2010.

  
Notary Public

JO-ANN KILMER  
Notary Public, State of New York  
No. 01K15052388  
Qualified in Saratoga County  
Commission Expires Nov. 20, 2013

**EXHIBIT C**  
**FORM OF NOTICE OF LENDING**

## NOTICE OF LENDING

### Pursuant to Section 73 of the Lien Law

1. FIRST NIAGARA BANK, N.A., a national banking association having an office at 726 Exchange Street, Suite 900, Buffalo, New York 14210 is the person making the advances;

2. 134 High Street, LLC, a limited liability company having an office and principal place of business at Innovation Center, 640 Ellicott Street, Suite 400, Buffalo, New York 14203 (the "Borrower") is the person to whom or on whose behalf the advances are made.

3. The Borrower is the lessee.

4. The real property for which the advances are being made is 134 High Street, Buffalo, New York.

5. The record owner of the real property described above is: Kaleida Health.


6. The improvements being made to the real property described above consist of: construction of an approximately 600,000 square foot multi-modal transportation structure to house an approximately 1,800 vehicle capacity parking ramp and related improvements.

7. Advances on or before the date of filing hereof and for which this Notice of Lending is intended to be effective were made on the date of this Notice of Lending.

8. The maximum balance of advances made or to be made pursuant to this Notice of Lending is \$24,050,000.

DATED: December 22, 2010

**FIRST NIAGARA BANK, N.A.**

By:   
Michael DeWitt, Vice President



**EXHIBIT D**

**FORM OF REQUISITION FOR PAYMENT AND  
DISBURSEMENT UPON WRITTEN REQUEST OF COMPANY**

**To:** First Niagara Bank, N.A.  
726 Exchange Street, Suite 900  
Buffalo, New York 14210

**Re:** \$24,050,000 Tax-Exempt Revenue Bonds (Buffalo Niagara Medical Campus, Inc.  
Project), Series 2010

Requisition Number: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Gentlemen:

You are hereby authorized to make an advance to the Company in the amount of \$\_\_\_\_\_, consisting of the aggregate amount of the following advances and disbursements of the Bond Proceeds totaling \$\_\_\_\_\_, less the sum of \$\_\_\_\_\_, representing not less than 29% of the aggregate amount of this requisition in accordance with Section 4.01 of that certain Bond Purchase Agreement, dated as of December \_\_, 2010 (the "*Bond Purchase Agreement*"), by and among the Buffalo and Erie County Industrial Land Development Corporation (the "*Issuer*"), 134 High Street, LLC (the "*Company*") and First Niagara Bank, N.A. (the "*Purchaser*").

(i) Name(s) and address(es) of the person(s) to whom payment is to be made, and the amount to be paid to each:

<b>Payee</b>	<b>Amount</b>	<b>Fund</b>
--------------	---------------	-------------

(ii) General classification of the expenditure:

1. Architect's, Engineer's and similar fees: \$\_\_\_\_\_

2. Broker's fees and costs of constructing the Project: \$ \_\_\_\_\_
- a. Broker's Fees: \$ \_\_\_\_\_
- b. Sitework Construction: \$ \_\_\_\_\_
- c. Miscellaneous Construction: \$ \_\_\_\_\_
3. Fees and other expenses for recording and filing: \$ \_\_\_\_\_
4. Fees or expenses relating to actions to protect the Purchaser's security interest in the Project: \$ \_\_\_\_\_
5. Expenses: \$ \_\_\_\_\_
6. Insurance premiums: \$ \_\_\_\_\_
- [7. Construction Period interest: \$ \_\_\_\_\_]
8. Legal, accounting, etc. fees: \$ \_\_\_\_\_
- a. Company Counsel: \$ \_\_\_\_\_
- b. Purchasers' Counsel: \$ \_\_\_\_\_
- c. Issuer's Counsel: \$ \_\_\_\_\_
- d. Bond Counsel: \$ \_\_\_\_\_
- e. Commitment Fee: \$ \_\_\_\_\_
9. Administrative fee of the Issuer: \$ \_\_\_\_\_
10. Taxes paid during installation: \$ \_\_\_\_\_
11. Reimbursement for payment by the Company of items in 1-11 above: \$ \_\_\_\_\_
12. AGGREGATE AMOUNT OF REQUISITION: \$ \_\_\_\_\_

With respect to the obligation(s) referred to above, the undersigned, an Authorized Representative of the Company, hereby certifies that:

- (A) Items (i) and (ii) have been completed correctly and accurately;
- (B) The disbursement hereby requested is for a proper expenditure of Bond Proceeds pursuant to the Bond Purchase Agreement and the Tax Compliance Agreement;
- (C) With respect to items covered in this requisition, the undersigned has no knowledge of any vendors', mechanics' or other liens, bailment leases, conditional sale

contracts, security interests or laborers' claims which should be satisfied or discharged before the payments as requisitioned are made or which will not be discharged by such payment;

(D) None of the items for which this requisition is made has been the basis for any prior disbursement of Bond Proceeds;

(E) All Persons furnishing materials to, or performing work on, the Project have been paid to date or will be fully paid to date from the proceeds of this requisition;

(F) The undisbursed Bond Proceeds and \$\_\_\_\_\_ of funds to be provided by the Company are sufficient to complete the acquisition, construction and equipping of the Project in accordance with the Plans and Specifications;

(G) The amount hereby requested has been paid or is to be paid or shall be paid from the moneys requested and that, insofar as the payment is for work, materials, supplies or equipment, the work has been performed and the materials, supplies or equipment have been installed in the Project or have been delivered either at the Project or at a proper place for fabrication and are covered by adequate insurance;

(H) There exists no Event of Default under any of the Bond Documents; and

(I) The Company shall pay or has paid (as evidenced by invoices attached hereto) \$\_\_\_\_\_ of the Aggregate Amount of this requisition.

The capitalized terms herein, unless otherwise defined, will have the meaning provided in the Bond Purchase Agreement.

**134 HIGH STREET, LLC**

By: Buffalo Niagara Medical Campus, Inc.,  
Member

By: \_\_\_\_\_  
Matthew K. Enstice, Executive Director

## EXHIBIT E

### FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "*Assignment and Assumption*") is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the "*Assignor*") and [Insert name of Assignee] (the "*Assignee*"). Capitalized terms used but not defined herein shall have the meanings given to them in the Bond Purchase Agreement identified below (as amended, the "*Bond Purchase Agreement*"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Bond Purchase Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Purchaser under the Bond Purchase Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any guarantees included in such facilities), and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Purchaser) against any Person, whether known or unknown, arising under or in connection with the Bond Purchase Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity, related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "*Assigned Interest*"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_  
[and is an Affiliate of [identify Lender]]
3. Company: 134 High Street, LLC
4. Issuer: Buffalo and Erie County Industrial Land Development Corporation
5. Bond Purchase Agreement: The Bond Purchase Agreement dated as of December \_\_\_\_, 2010, among the Issuer, the Company and First Niagara Bank, N.A.

6. Assigned Interest:

Assignor[s]	Assignee(s)	Aggregate Amount of Commitment for All Purchasers	Amount of Commitment Assigned	Percentage Assigned of Commitment

Effective Date: \_\_\_\_\_, 20\_\_ [to be inserted by Issuer and which shall be the Effective Date of recordation of transfer in the Register therefor.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

**ASSIGNOR:**

**[NAME OF ASSIGNOR]**

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

**ASSIGNEE:**

**[NAME OF ASSIGNEE]**

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

## **ANNEX 1**

### **BOND PURCHASE AGREEMENT AND BUILDING LOAN CONTRACT, DATED AS OF DECEMBER 22, 2010, AMONG BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, 134 HIGH STREET, LLC AND FIRST NIAGARA BANK, N.A.**

#### **STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION**

##### **1. Representations and Warranties.**

**1.1. Assignor.** The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Bond Purchase Agreement or any other Bond Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Bond Documents or any collateral thereunder, (iii) the financial condition of the Issuer, the Company or any of their respective Subsidiaries or Affiliates or any other Person obligated in respect of any Bond Document, or (iv) the performance or observance by the Issuer, the Company or any of their respective Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Bond Document.

**1.2. Assignee.** The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Purchaser under the Bond Purchase Agreement, (ii) it satisfies the requirements, if any, specified in the Bond Purchase Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Purchaser, (iii) from and after the Effective Date, it shall be bound by the provisions of the Bond Purchase Agreement as a Purchaser thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Purchaser thereunder, and (iv) it has received a copy of the Bond Purchase Agreement, together with copies of the most recent financial statements delivered pursuant to Section 27 of the Loan Agreement, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Purchaser; and (b) agrees that (i) it will, independently and without reliance on the Assignor or any other Purchaser, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Bond Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Bond Documents are required to be performed by it as a Purchaser.

**2. Payments.** From and after the Effective Date, the Company shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and

other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

**3. General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without regard or reference to its conflict of laws principles.