

DRAFT

COUNTY OF ALBANY, NEW YORK

AND

ALBANY CONVENTION CENTER AUTHORITY

RESERVE FUND REPLENISHMENT AGREEMENT

DATED AS OF _____ 1, 2025

RELATING TO THE [TAX-EXEMPT REVENUE BOND (CIDC
ALBANY CENTER, LLC PROJECT), SERIES 2025] IN THE
PRINCIPAL AMOUNT OF [\$_____] ISSUED BY ALBANY
COUNTY CAPITAL RESOURCE CORPORATION.

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and is for convenience of reference only.)

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RESERVE FUND REPLENISHMENT AGREEMENT

This RESERVE FUND REPLENISHMENT AGREEMENT, dated as of _____ 1, 2025 (this “Replenishment Agreement”), by and between ALBANY COUNTY, NEW YORK, a municipal corporation duly organized and existing under the laws of the State of New York (the “County”), and ALBANY CONVENTION CENTER AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York (the “Authority”).Au

WITNESSETH:

WHEREAS, the Authority is a body corporate and politic constituting a public benefit corporation of the State of New York (the “State”), created and existing under and by virtue of Title 28-BB of Article 8 of the Public Authorities Law of the State (the “PAL”), Chapter 468 of the Laws of 2004 of the State, as amended from time to time (the “Act”), organized for the purpose of, among other things, constructing, transforming and improving new and existing facilities for a convention center in the City of Albany, Albany County, New York, such convention center to include a trade exhibition facility, hotel accommodations, transportation infrastructure, tourism facilities, theatre facilities, retail business, and commercial office space facilities; and

WHEREAS, to accomplish its stated purposes, the Authority is authorized and empowered under the Act to (A) enter into agreements with local entities, (B) to acquire, construct, and reconstruct convention facilities; (C) to borrow money, make contracts and leases, and execute all instruments necessary or convenient for its corporate purposes; and (D) to issue its negotiable bonds to finance the cost such project or for any other corporate purpose; and

WHEREAS, pursuant to a resolution adopted by the members of the board of directors of the Albany County Capital Resource Corporation (the “Issuer”) on _____, 2025 (the “Initial Bond Resolution”), the Issuer authorized the issuance of its [Tax-Exempt Revenue Bond (CIDC Albany Center, LLC Project), Series 2025A in the principal amount of \$_____] (the “Initial Bond”) for the purpose of financing a project (the “Initial Project”) consisting of the following: [(A) (1) the reconstruction and renovation of an existing building containing approximately 40,840 square feet and located on an approximately .84 acre parcel of land located at 120 and 126 State Street (Tax Map Nos.: 76.33-1-23 and 76.33-1-22) in the City of Albany, Albany County, New York (the “Land”), (2) the construction on the Land of an approximately 59,810 square foot building (the “New Facility,” and collectively with the Existing Facility, the “Facility”), and (3) the acquisition and installation thereon and therein of machinery and equipment (the “Equipment”) (the Land, the Facility, and the Equipment being hereinafter collectively referred to as the “Project Facility”), all of the foregoing to be owned by CIDC Albany Center, LLC (the “Borrower”) and leased to the Authority for use as a convention facility and any other directly and indirectly related activities;] (B) the financing of all or a portion of the costs of the foregoing, together with necessary incidental costs in connection therewith, by the issuance of the Initial Bond; and (C) the payment of a portion of the costs incidental to the issuance of the Initial Bond, including issuance costs of the Initial Bond and any reserve funds as may be necessary to secure the Initial Bond; and

WHEREAS, the Initial Bond will be issued pursuant to the terms of the Initial Bond Resolution, one or more certificates of determination (each, a “Certificate of Determination”) executed by an authorized officer of the Issuer and a trust indenture dated as of _____, 2025 (the “Indenture”) by and between the Issuer and _____, as trustee (the “Trustee”) for the holders of the Initial Bond; and

WHEREAS, prior to or simultaneously with the issuance of the Initial Bond, the Issuer and the Borrower will execute and deliver a loan agreement (the “Loan Agreement”) by and between the Issuer, as lender, and the Borrower, as borrower, pursuant to the terms of which Loan Agreement (A) the Issuer will

agree (1) to issue the Initial Bond, and (2) to make the Loan to the Borrower for the purpose of assisting in financing the Project, and (B) in consideration of the Loan, the Borrower will agree (1) to cause the Project to be undertaken and completed, (2) to use the proceeds of the Loan disbursed under the Indenture to pay (or reimburse the Borrower for the payment of) the costs of the Project, and (3) to make payments sufficient in amount to pay when due all amounts due with respect to the Initial Bond (the “Loan Payments”) to or upon the order of the Issuer in repayment of the Loan, which Loan Payments shall include amounts equal to the debt service payments due on the Initial Bond; and

WHEREAS, pursuant to a resolution adopted by the members of the Authority on _____, 2025 (the “Authority Resolution”), the members of the Authority authorized, among other things, (1) the lease of the Project Facility from the Borrower and the execution and delivery of various documents in connection therewith, and (2) execution and delivery by the Authority of this Replenishment Agreement; and

WHEREAS, pursuant to the Authority Resolution, the Authority and the Borrower will execute and deliver a [lease agreement dated as of _____, 2025 (the “Authority Lease”)] pursuant to which, among other things, the Authority will agree to lease the Project Facility from the Borrower and to make rental payments (the “Rental Payments”) to the Borrower in amounts sufficient to pay when due the Loan Payments; and

WHEREAS, pursuant to Section __ of the Indenture, the Issuer and the Trustee have established a Reserve Fund with respect to the Initial Bond, within which the Issuer is required to maintain an amount equal to [\$ _____] (the “Reserve Fund Requirement”) to provide a source of payment for the Initial Bond in the event the assets and revenues of the Authority are insufficient to make such Rental Payments; and

WHEREAS, the Authority has requested the County provide security for the Rental Payments in the form of a source of replenishment for the Reserve Fund in the event the assets and revenues of the Authority are insufficient to make the Rental Payments in amounts sufficient to pay debt service when due on the Initial Bond; and

WHEREAS, pursuant to the terms of the Act, the Authority’s purposes are deemed to be public purposes and involve the performance of an essential governmental function for which public funds may be expended and the Authority in carrying out its respective powers and duties under the Act is deemed to be acting in a governmental capacity; and

WHEREAS, pursuant to Local Law No. __ of 2025 of the County (the “County Law”), the County may, from time to time, appropriate sums of money toward project costs or other costs and expenses related to Convention Facility Projects (as defined in the County Law) and make, advances, loans, gifts, grants, subsidies or contributions of such funds to the Authority; and

WHEREAS, pursuant to a resolution duly adopted by the members of the County Legislature of Albany County (the “County Legislature”) on _____, 2025 (the “County Resolution”), the County Legislature authorized the County to enter into this Replenishment Agreement and to agree to make the Replenishment Payments (as defined herein) in amounts not to exceed the Reserve Fund Requirement, subject to annual appropriation by the County; and

WHEREAS, pursuant to this Replenishment Agreement, the County will pledge to the Authority, to secure the payments to be made by the County hereunder, a sufficient portion of any and all public funds to be apportioned or otherwise made available to the County for purposes of replenishing the Reserve Fund Requirement as necessary; and

WHEREAS, pursuant to this Replenishment Agreement, upon any replenishment by the County of the Reserve Fund Requirement, the County shall be entitled to reimbursement by the Authority in the amount of such replenishment;

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the Authority and the County each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Unless the context or use indicates another or different meaning or intent, capitalized terms used in this Replenishment Agreement and the preambles hereto not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Indenture as Appendix A and made a part hereof. In addition, as used herein, each capitalized term as used in this Replenishment Agreement (including the exhibits hereto) shall have the following meanings:

“Act” shall mean Title 28-BB of Article 8 of the Public Authorities Law of the State, as amended from time to time.

[“Administrative Fee Agreement” means the administrative fee agreement dated as of _____, 2025 by and between the County and the Authority.]

“Agreement” means collectively, the [Administrative Fee Agreement] and the Replenishment Agreement.

“Authority” means (A) Albany Convention Center Authority and its successors and assigns, and (B) any public instrumentality or political subdivision resulting from or surviving any consolidation or merger to which Albany Convention Center Authority, or its successors or assigns may be a party.

“Authority Resolution” means the resolution of the members of the Authority duly adopted on _____, 2025 authorizing the Authority to enter into the Agreement.

“Business Day” means any day of the year other than (A) a Saturday or Sunday, (B) a day on which the New York Stock Exchange is closed or (C) a day on which commercial banks in New York, New York, or the city or cities in which the Office of the Trustee is located, are authorized or required by law, regulation or executive order to close.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of said Code, and the applicable regulations (whether proposed, temporary or final) of the United States Treasury Department promulgated under said Code and the statutory predecessor of said Code, and any official rulings and judicial determinations under the foregoing applicable to the Initial Bond.

[“Continuing Disclosure Agreement” means the continuing disclosure agreement dated as of the date of issuance of the Initial Bond by and among the Trustee, the Borrower, the Authority, and the County.]

“County” means Albany County.

“County Resolution” means the resolution of the County Legislature duly adopted on _____, 2025 authorizing the County to enter into the Agreement.

“Hotel Occupancy Tax Receipts” means, for any given fiscal year of the Authority, the amount of the hotel occupancy tax received by the Authority pursuant to Local Law No. 5 of 2020 of the County.

“Indenture” means the trust indenture dated as of _____, 2025 by and between the Issuer and the Trustee, as said trust indenture may be amended or supplemented from time to time.

“Initial Bond” means the Issuer’s [Tax-Exempt Revenue Bond (CIDC Albany Center, LLC Project), Series 2025A in the principal amount of \$ _____], issued pursuant to the Initial Bond Resolution and Article [II] of the Indenture and sold to [KeyBanc Capital Markets Inc.] pursuant to the provisions of the [Initial Bond Purchase Agreement], in substantially the form attached to the Indenture as Schedule I thereto, and any Initial Bond issued in exchange or substitution therefor.

[“Initial Bond Purchase Agreement” means the bond purchase and continuing compliance agreement dated as of _____, 2025 by and between the Issuer and [KeyBanc Capital Markets Inc.] relating to the purchase of the Initial Bond by [KeyBanc Capital Markets Inc.], as said bond purchase and continuing compliance agreement may be amended or supplemented from time to time.]

“Initial Bond Resolution” means the resolution of the members of the board of directors of the Issuer duly adopted on _____, 2025 authorizing the Issuer to undertake the Initial Project, to issue and sell the Initial Bond and to execute and deliver the Initial Financing Documents (as defined therein) to which the Issuer is a party.

“Initial Project” shall have the meaning assigned to such term in the [fifth] recital clause to the Indenture.

“Issuer” means (A) Albany County Capital Resource Corporation and its successors and assigns, and (B) any public instrumentality or political subdivision resulting from or surviving any consolidation or merger to which Albany County Capital Resource Corporation, or its successors or assigns may be a party.

“Replenishment Payments” means the amounts appropriated by the County and paid to the Trustee pursuant to Section 3.1 of this Replenishment Agreement to cure a deficiency in the Reserve Fund as necessary to maintain the Reserve Fund Requirement.

“Reserve Fund” means the fund so designated established pursuant to Section ___ of the Indenture.

“Replenishment Agreement” the reserve fund replenishment agreement dated as of _____, 2025 by and between the County and the Authority.

“Reserve Fund Requirement” shall have the meaning assigned to such term in the eighth recital clause of this Replenishment Agreement.

“State” means the State of New York.

“Trustee” means [_____], a banking corporation organized and existing under the laws of the State of New York, or any successor trustee or co-trustee acting as trustee under the Indenture.

Section 1.2 Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Replenishment Agreement:

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

(B) Gender. Words importing the feminine, masculine and neuter genders shall each include correlative words of the other genders.

(C) Approvals and Consents. All approvals, consents and acceptances required to be given or made by any person or party hereunder shall be at the sole discretion of the person or party whose approval, consent or acceptance is required.

(D) References. All references herein to particular articles, sections or exhibits without reference to a specific document are references to articles or sections of or exhibits to this Replenishment Agreement.

(E) Headings. The captions and headings and table of contents herein are solely for convenience of reference and shall not constitute part of this Replenishment Agreement, nor shall they affect its meaning, construction or effect.

(F) Terms. The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Replenishment Agreement, refer to this Replenishment Agreement in its entirety and not the particular article or section of this Replenishment Agreement in which they appear, and the term “hereafter” means after, and the term “theretofore” means before, the date set forth on the cover page of this Replenishment Agreement.

Section 1.3 Exhibits and Appendices Incorporated. All exhibits and appendices to this Replenishment Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Replenishment Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the County. The County represents and warrants as follows:

(A) Existence and Authority; Legal Power. The County is a municipal corporation, duly created and existing under the laws of the State and has full legal right, power and authority to (i) conduct its business and own its properties, (ii) enter into this Replenishment Agreement [and the Continuing Disclosure Agreement] and various related documents to which the County is a party, (iii) adopt the County Resolution, and (iv) carry out and consummate all other transactions contemplated by each of the aforesaid documents.

(B) Compliance. The County has complied and will comply with the County Resolution and with all applicable laws of the State.

(C) Authorization. The County has duly approved the execution and delivery of this Replenishment Agreement [and the Continuing Disclosure Agreement] and has authorized the taking of any and all action as may be required on the part of the County to carry out, give effect to and consummate the transactions contemplated by each of the foregoing.

(D) Binding Obligation. This Replenishment Agreement has been duly authorized, executed and delivered by the County and, assuming due authorization and execution by the Authority, constitutes a legal, valid and binding obligation of the County enforceable in accordance with its terms. The County acknowledges and agrees that the defense of sovereign immunity is not available to the County in any proceedings by the Authority or the Trustee to enforce any of the obligations of the County under this Replenishment Agreement [or the Continuing Disclosure Agreement], and, to the fullest extent permitted by law, the County consents to the initiation of any such proceedings in any court of competent jurisdiction and agrees not to assert the defense of sovereign immunity in any such proceedings. The enforceability (but not the validity) of rights or remedies with respect to this Replenishment Agreement [or the Continuing Disclosure Agreement] may be limited by bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted.

(E) Consents and Approvals. All consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission, including but not limited to those required by the State Environmental Quality Review Act, which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the County of its obligations hereunder or the consummation of the transactions contemplated hereby have been duly obtained and are in full force and effect, except for the State approvals, which, if not already obtained, shall be obtained prior to the date of issuance and sale of the Initial Bond, and the provision of Replenishment Payments hereunder; provided, however, the County makes no representation or warranty as to any consents, approvals, authorizations, orders, filings, registrations or declarations that may be required by any federal or state securities law.

(F) No Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the County, threatened against the County, nor is there any basis therefor, (i) affecting the creation, organization or existence of the County or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution of this Replenishment Agreement [or the Continuing Disclosure Agreement], or (iii) in any way

contesting or affecting the validity or enforceability of the County Resolution, this Replenishment Agreement, [the Continuing Disclosure Agreement] or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by any of the foregoing.

(G) No Violation. The County is not in any material respect in breach of or in default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the County is a party or by which it or any of its properties is bound, and no event has occurred which with the passage of time, the giving of notice or both would constitute such a breach or default; and the execution and delivery of this Replenishment Agreement and the adoption of the County Resolution and compliance with the respective provisions thereof will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the County is a party or by which it or any of its property is bound.

(H) County Resolution. The County Resolution has been duly adopted by the County and remains in full force and effect as of the date of execution hereof.

(I) Reserved.

(J) No Default. The County is not in default under any loan agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness.

[(K) Disclosure Correct and Complete. The information supplied by the County to the Authority does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.]

(L) Representations Complete. All representations made herein by the County are true, complete and accurate as of the execution date of this Replenishment Agreement and will be true, complete and accurate as of the date of the issuance and sale of the Initial Bond and the provision of the Replenishment Payments hereunder.

Section 2.2 Representations and Warranties of the Authority. The Authority represents and warrants as follows:

(A) Existence and Authority; Legal Power. The Authority is duly organized and validly existing as a public benefit corporation of the State and has full legal right, power and authority to (i) conduct its business and own its properties, (ii) enter into this Replenishment Agreement [and the Continuing Disclosure Agreement], and various related documents to which the Authority is a party, (iii) adopt the Authority Resolution, and (iv) carry out and consummate all other transactions contemplated by each of the aforesaid documents.

(B) Compliance. The Authority has complied and will comply with the Authority Resolution and with all applicable laws of the State.

(C) Authorization. The Authority has duly approved the execution and delivery of this Replenishment Agreement, the Authority Lease, [the Continuing Disclosure Agreement], and various related documents and has authorized the taking of any and all action as may be required on the part of the

Authority to carry out, give effect to and consummate the transactions contemplated by each of the foregoing.

(D) Binding Obligation. This Replenishment Agreement has been duly authorized, executed and delivered by the Authority and, assuming due authorization and execution by the County, constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms. The enforceability (but not the validity) of rights or remedies with respect to this Replenishment Agreement may be limited by bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted.

(E) Consents and Approvals. All consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission, including but not limited to those required by the State Environmental Quality Review Act, which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the Authority of its obligations hereunder or the consummation of the transactions contemplated hereby have been duly obtained and are in full force and effect, except for the State approvals, which, if not already obtained, shall be obtained prior to the date of issuance and sale of the Initial Bond and the provision of the Replenishment Payments by the County hereunder; provided, however, the Authority makes no representation or warranty as to any consents, approvals, authorizations, orders, filings, registrations or declarations that may be required by any federal or state securities law.

(F) No Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Authority, threatened against the Authority, nor is there any basis therefor, (i) affecting the creation, organization or existence of the Authority or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution of this Replenishment Agreement [or the Continuing Disclosure Agreement], or (iii) in any way contesting or affecting the validity or enforceability of the Authority Resolution, this Replenishment Agreement, [the Continuing Disclosure Agreement], or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by any of the foregoing.

(G) No Violation. The Authority is not in any material respect in breach of or in default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Authority is a party or by which it or any of its properties is bound, and no event has occurred which with the passage of time, the giving of notice or both would constitute such a breach or default; and the execution and delivery of this Replenishment Agreement, [the Continuing Disclosure Agreement], and the adoption of the Authority Resolution and compliance with the respective provisions thereof will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Authority is a party or by which it or any of its property is bound.

(H) Authority Resolution. The Authority Resolution has been duly adopted by the Authority and remains in full force and effect as of the date of execution hereof.

(I) Authority to Act. The Authority has full legal right and authority and all necessary licenses and permits required as of the date hereof to lease the Project Facility, to carry on its activities relating thereto, and to carry out and consummate all transactions contemplated by this Replenishment Agreement [and the Continuing Disclosure Agreement].

(J) Initial Project. The description of the Initial Project set forth in Initial Bond Resolution is an accurate description of the Initial Project.

(K) No Default. The Authority is not in default under any loan agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness.

(L) Approvals. All consents, authorizations and approvals, if any, of any third party with respect to the lease by the Authority of the Project Facility, have been duly obtained.

(M) Disclosure Correct and Complete. The information supplied by the Authority does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(N) Representations Complete. All representations made herein by the Authority are true, complete and accurate as of the execution date of this Replenishment Agreement and will be true, complete and accurate as of the date of the issuance and sale of the Initial Bond and the provision of the Replenishment Payments hereunder.

ARTICLE III

REPLENISHMENT PROVISIONS

Section 3.1 Replenishment Clauses.

(A) Replenishment Consummation. Subject to the conditions and in accordance with the terms of this Replenishment Agreement, the County hereby agrees, subject to annual appropriation by the County (as necessary), to secure the Rental Payments by providing Replenishment Payments to the Trustee in the amounts and at such times as set forth in Section 3.1(B) below, and the Authority hereby agrees to reimburse the County for such Replenishment Payments as set forth in Section 3.1(B) below.

(B) Replenishment Payments. (1) County Payments. Upon receipt of written notice from the Trustee pursuant to Section [] of the Indenture that there is a deficiency in the Reserve Fund regarding the amount necessary to maintain the Reserve Fund Requirement as a result of a draw on the Reserve Fund to make a debt service payment due on the Initial Bond, the County shall deposit, or cause to be deposited, with the Trustee the amount necessary to cure such deficiency. Notwithstanding anything herein to the contrary, the County shall make such payment on or before January 31 of the County's first fiscal year following receipt of such notice from the Trustee. Amounts so deposited by the County shall be invested by the Trustee pursuant to the terms of the Indenture.

(2) Authority Reimbursements. Upon making any Replenishment Payments as may be required under subsection (1) above, the County shall prepare and deliver an invoice to the Authority for reimbursement of any amounts so paid by the County to the Trustee. Upon receipt of any such invoice from the County, the Authority shall deposit, or cause to be deposited, with the County the amount requested under such invoice. Notwithstanding anything herein to the contrary, the Authority shall make such payment to the County upon receipt by the Authority of the next succeeding quarterly distribution of Hotel Occupancy Tax Receipts, and in any event on or before the last day of the County's fiscal year in which the County made payment to the Trustee pursuant to subsection (1) above.

(C) Nature of Replenishment. (1) The County is obligated only to pay such Replenishment Payments as may lawfully be made from funds budgeted and appropriated for that purpose during the County's first fiscal year following receipt of written notice from the Trustee pursuant to Section [] of the Indenture. The County agrees to deliver notice to the Authority and the Trustee promptly after any decision to not appropriate is made. The Authority and the County hereby agree that this Replenishment Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of this Replenishment Agreement, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this Replenishment Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of this Replenishment Agreement. This Replenishment Agreement shall not constitute indebtedness of the County for purposes of the State Constitution or Section 20.00 of the Local Finance Law. This Replenishment Agreement is not a general obligation of the County. Neither the faith and credit nor the taxing power of the County are pledged to the payment of any amount due or to become due under this Replenishment Agreement.

(2) The Authority's obligation to reimburse the County for any Replenishment Payments made by the County pursuant to this Section 3.1 hereof shall be subject and subordinate to at all times the Authority's obligations to pay the Rental Payments.

Section 3.2 Other Amounts Payable.

- (A) The County hereby expressly agrees to pay as such expenses are incurred, the amount of any expenses incurred by the Authority as a result of the County's failure to make any payment under this Replenishment Agreement when due or failure to otherwise comply with the terms of this Replenishment Agreement (including but not limited to the reasonable fees and expenses of the Authority, the Trustee, the owners of Initial Bond, and attorneys representing any of the foregoing); and
- (B) The Authority hereby expressly agrees to pay:
 - (i) When due, costs payable to consultants and attorneys utilized by the Authority and the County in connection with the execution and delivery of this Replenishment Agreement, including, but not limited to, costs incurred by the County through CMA Consulting Services ("CMA") in connection with the execution and delivery of this Replenishment Agreement and any future reviews completed by CMA in connection with the Project, the Initial Bond, and/or the ratings thereof; and
 - (ii) As such expenses are incurred, the amount of any expenses (including but not limited to the reasonable fees and expenses of the Authority, the Trustee, the owners of Initial Bond, and attorneys representing any of the foregoing) incurred as a result of the Authority's failure to make any payment under this Replenishment Agreement when due or failure to otherwise comply with the terms of this Replenishment Agreement.

Section 3.3 Project Facility Use and Inspection.

- (A) Subject to the conditions hereof, the Authority will lease, occupy, and operate the Project Facility.
- (B) The Authority shall permit the County and its authorized representatives, at all reasonable times and upon reasonable notice, to enter upon the property of the Authority and the Project Facility, and to examine all documents relating thereto.

ARTICLE IV

GENERAL PROJECT CONDITIONS, COVENANTS AND REPRESENTATIONS

Section 4.1 Compliance with Laws and Agreements.

(A) Compliance. The Authority agrees that the Project Facility shall at all times during the term of this Replenishment Agreement be in compliance with applicable federal and State laws and regulations. The Authority will at all times maintain and operate (or cause to be maintained and operated) the Project Facility, in compliance with all applicable federal, State and local laws, ordinances, rules, regulations and this Replenishment Agreement, and with all other applicable laws and regulations to the extent necessary to ensure the availability of the Project Facility for its intended purposes and to ensure the safety of the public.

(B) SEQRA. The Authority certifies with respect to the Project Facility that it has complied, and agrees to continue to comply, with all requirements of the State Environmental Quality Review Act, as so applicable to the Authority.

Section 4.2 Effective Date and Term. The date of this Replenishment Agreement is for reference purposes only and this Replenishment Agreement shall become effective upon the date of execution and delivery hereof by the parties hereto, shall remain in full force and effect from such date and shall expire on such date as the Initial Bond shall be discharged and satisfied in accordance with the provisions thereof and all obligations of the County to the Authority hereunder are satisfied.

Section 4.3 Execution and Delivery of Other Documents.

(A) Execution and Delivery of Documents Upon Sale of Initial Bond. Prior to or on the date of sale of the Initial Bond, the County agrees to deliver to the Authority such other documents, instruments and certificates as the Authority may reasonably request from the County as may be required by the Borrower in connection with sale of the Initial Bond.

(B) Execution and Delivery of Closing Documents. The County further agrees to deliver to the Authority:

(i) a closing certificate in the form of Exhibit A hereof as to confirmation of certain matters set forth in this Replenishment Agreement, signatures and incumbency of authorized signatories and certain other matters;

(ii) the opinion of the County Attorney, dated the date of issuance of the Initial Bond, in the form of Exhibit B hereto; and

(iii) such additional certificates, documents and opinions as may be reasonably requested by the Authority.

The obligation of the Authority to lease, occupy and operate the Project Facility are conditioned upon the delivery of the opinions, certificates and documents required by this Section 4.3, in form and substance satisfactory to the Authority. With respect to such opinions, certificates and documents the forms of which are appended hereto, the County hereby acknowledges that it and its counsel have reviewed such forms and the County hereby agrees to deliver or cause to be delivered such items in the forms appended hereto (except for the insertion of the appropriate names and titles).

Section 4.4 Accounting and Records.

(A) Access to Records. To the extent the Authority is in possession of records relating to the Project, the Authority agrees to (i) permit any authorized representatives of the County to review or audit all records relative to the Project Facility; and (ii) promptly fulfill information requests by the County or its authorized representatives relating to same.

(B) Record Retention. The Authority agrees to retain all files and records in its possession relating to the Project Facility for at least six (6) years after Initial Project completion and to retain all other files and records in its possession relating to the Initial Bond for the term of this Replenishment Agreement.

Section 4.5 Remediation. The Authority agrees to rectify promptly any breach of this Article IV with or without notice from the County.

ARTICLE V

COVENANTS

Section 5.1 Payment of Replenishment Payments. The County covenants and agrees that it shall duly and punctually pay or cause to be paid the Replenishment Payments in amounts not to exceed any deficiency in the Reserve Fund necessary to maintain the Reserve Fund Requirement as a result of a draw on the Reserve Fund to make a debt service payment due on the Initial Bond, subject to annual appropriation, at the dates and places and in the manner stated in Section 3.1 hereof and that such obligation shall not be subject to any defense (other than payment) or any rights of setoff, recoupment, abatement, counterclaim or deduction and shall be without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Authority, the Issuer, the Trustee or the owner(s) of the Initial Bond.

Section 5.2 County Appropriation. (A) The County intends, subject to Section 3.1 hereof, to make all Replenishment Payments due hereunder. The County reasonably believes that an amount sufficient to make all Replenishment Payments due hereunder can be obtained from legally available funds of the County.

(B) The County covenants and agrees that it will direct an officer from the County's Department of Management and Budget to include within each Fiscal Year budget during the term of this Replenishment Agreement a request for funds sufficient to discharge its obligation to make Replenishment Payments due hereunder for such Fiscal Year.

(C) If at any time during any Fiscal Year, the amount appropriated in the budget is determined to be insufficient to pay when due amounts due under this Replenishment Agreement, the County will direct an officer from the County's Department of Management and Budget to submit a written request to the County Legislature at its next scheduled meeting, or at least within sixty (60) days from such request, for a supplemental appropriation sufficient to cover the deficiency.

ARTICLE VI

DEFAULTS

Section 6.1 Defaults. An “event of default” or a “default” shall mean, whenever they are used herein, any one or more of the following events:

(A) Failure by the County to pay or cause to be paid when due the Replenishment Payments to be paid under this Replenishment Agreement, other than a failure to pay pursuant to Section 3.1 hereof due to an event of non-appropriation;

(B) Failure by the County to pay or to cause to be paid when due any other payment required to be made hereunder, which failure continues for a period of thirty (30) days after payment thereof was due, provided that written notice thereof shall have been given to the County not less than thirty (30) days prior to the due date thereof, other than a failure to pay pursuant to Section 3.1 hereof due to an event of non-appropriation;

(C) Failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsections (A) and (B) of this Section and other than in Section 5.2, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the County by the Authority or such longer period, as is required to cure such default, if by reason of the nature of such failure the same cannot be remedied within such thirty (30) day period and the County has within such thirty (30) day period commenced to take appropriate actions to remedy such failure and is diligently pursuing such actions;

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

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

ARTICLE VII

REMEDIES

Section 7.1 Remedies. Whenever any event of default referred to in Section 6.1 hereof shall have happened and be continuing, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the County hereunder.

Section 7.2 No Remedy Exclusive. No remedy herein conferred upon or reserved hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 7.3 Waiver and Non-Waiver. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No delay or omission by the Authority to exercise any right or power accruing upon default shall impair any right or power or shall be construed to be a waiver of any such default or acquiescence therein.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given, and shall be deemed given, when delivered in writing to the address or fax number (if expressly permitted in the provision requiring such communication) of the identified party or parties set forth below:

IF TO THE AUTHORITY:

Albany Convention Center Authority
55 Eagle Street
Albany, New York 12207
Attention: Monica Kurzejeski, Executive Director

WITH A COPY TO:

Harris Beach Murtha Cullina PLLC
677 Broadway – Suite 1101
Albany, New York 12207
Attention: Robert J. Ryan, Esq.

IF TO THE COUNTY:

County of Albany
112 State Street, Room 1210
Albany, New York 12207
Attention: M. David Reilly, Jr., Commissioner of Management and Budget

WITH A COPY TO:

Office of the County Attorney
County of Albany
112 State Street, Room 600
Albany, New York 12207
Attention: Jeffery Jamison, County Attorney

and

Roemer Wallens Gold & Mineaux LLP
13 Columbia Circle
Albany, New York 12203
Attention: John R. Mineaux, Esq.

IF TO THE TRUSTEE:

[]
[]
[]

Attention: []

WITH A COPY TO:

[]

[]

[]

Attention: []

Any of the foregoing parties may designate any further or different addresses or fax numbers to which subsequent notices, certificates or other communications shall be sent by notice in writing given to the others.

Section 8.2 Binding Effect. Upon execution and delivery by the County and the Authority, this Replenishment Agreement shall inure to the benefit of and shall be binding upon the Authority and the County and their respective successors and assigns.

Section 8.3 Severability. In the event that any provision of this Replenishment Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 8.4 Amendments, Supplements and Modifications. This Replenishment Agreement shall not be amended, supplemented or modified except by a written instrument executed by the Authority and the County.

Section 8.5 Execution in Counterparts. This Replenishment Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.6 Applicable Law. This Replenishment Agreement shall be governed by and construed in accordance with the laws of the State, including the Act.

Section 8.7 Captions. The captions or headings in this Replenishment Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Replenishment Agreement.

Section 8.8 Benefit of Agreement. This Replenishment Agreement is executed, among other reasons, to induce the issuance and sale of the Initial Bond by the Issuer, to induce the provision of the Replenishment Payments by the County, to induce the lease, occupation, and operation of the Project Facility by the Authority, and, to the extent necessary from time to time, to secure the Initial Bond. Accordingly, those rights of the Authority to enforce the duties, covenants, obligations and agreements of the County set forth herein, including the right to enforce the payment by the County of any deficiency in the Reserve Fund in order to maintain the Reserve Fund Requirement, may at any time, in whole or in part, be assigned and pledged by the Authority to the Trustee for the benefit of the owners of the Initial Bond and thereafter such duties, covenants, obligations and agreements so assigned and pledged shall be for the benefit of and enforceable by the Trustee and the Authority[, except that beneficial owners of the Initial Bond shall be third-party beneficiaries of Section 8.9(B) of this Replenishment Agreement].

Section 8.9 Further Assurances; Disclosure of Financial Information, Operating Data and Other Information.

(A) The County shall, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other

instruments as may be deemed necessary or desirable by the Authority, in its sole discretion, for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Replenishment Agreement. The County also agrees to furnish to the Authority such additional information concerning the financial condition of the County as the Authority may from time-to-time reasonably request.

(B) [Without limiting the generality of the foregoing, the County agrees to comply with the terms of the Continuing Disclosure Agreement.]

(C) If and so long as the offering of the Initial Bond continues the County will furnish such information with respect to itself as the owner(s) of the Initial Bond may from time-to-time reasonably request in writing.

Section 8.10 Assignment of Agreement. The County consents to the pledge and assignment at any time of any portion of the Authority's estate, right, title and interest and claim in, to and under this Replenishment Agreement and the right to make all related waivers and agreements in the name and on behalf of the Authority, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Replenishment Agreement, if any.

Section 8.11 Agreement Supersedes Prior Agreements. This Replenishment Agreement supersedes any other prior or contemporaneous agreements or understandings, written or oral, between the parties relating to the financing of the Initial Project.

IN WITNESS WHEREOF, the County and the Authority have each caused this Replenishment Agreement to be executed and delivered as of the date first above written.

ALBANY COUNTY, NEW YORK

BY: _____
Hon. Daniel P. McCoy
County Executive

ALBANY CONVENTION
CENTER AUTHORITY

BY: _____
Monica Kurzejeski
Executive Director

[Reserve Fund Replenishment Agreement Signature Page]

EXHIBIT A

FORM OF GENERAL CERTIFICATE OF THE COUNTY

[TO BE INSERTED WHEN FINALIZED]

EXHIBIT B

FORM OF OPINION OF COUNTY ATTORNEY

[TO BE INSERTED WHEN FINALIZED]