

## PRELIMINARY AGREEMENT

### **MILLBROOK SCHOOL Project, Series 2013**

**THIS PRELIMINARY AGREEMENT** (the “Preliminary Agreement”), made as of July 22, 2013 between the **DUTCHESS COUNTY LOCAL DEVELOPMENT CORPORATION**, a not-for-profit corporation, organized and existing under the Not-For-Profit Corporation Law of the State of New York, having offices at Three Neptune Road, Poughkeepsie, New York 12601 (the “Issuer”) and **MILLBROOK SCHOOL**, a New York education corporation, organized and existing under the Laws of the State of New York which is also an exempt organization under Section 501(c)(3) of the Internal Revenue Code, having offices at 131 Millbrook School Road, Millbrook, New York 12545 (the “School”).

**WHEREAS**, the Dutchess County Local Development Corporation (the “Issuer”) was duly formed under §102(a)(5) of the New York Not-for-Profit Corporation Law (“N-PCL”) as a local development corporation, a Type C Corporation under §201 of the N-PCL, for the purpose of conducting activities that will relieve and reduce unemployment in Dutchess County; promote and provide for additional and maximum employment in the County; better and maintain job opportunities in the County; instruct or train individuals in the County to improve or develop their capabilities for such jobs; carry on scientific research for the purpose of aiding the County by attracting new industry to the County; or by encouraging the development of, or retention of, an industry in the County; and lessening the burdens of government and acting in the public interest; and

**WHEREAS**, the Issuer’s corporate powers include, but are not limited to, the power to finance facilities for not-for-profit corporations, acquire, improve, maintain, equip and furnish projects, to lease such projects and collect rent; to sell and convey any and all of its property whenever the Board of Directors shall find such action to be in furtherance of the purposes for which it was organized; and to issue bonds for the purpose of carrying out any of its powers; all bonds to be payable solely out of revenues and receipts derived from the proceeds of the collateral securing such bonds; and

**WHEREAS**, Millbrook School, a New York not-for-profit corporation which is also an exempt organization under Section 501(c)(3) of the Internal Revenue Code (the “School”), has submitted an application to the Issuer, a copy of which application is on file at the office of the Issuer, which application requested that the Issuer consider undertaking a project (the “Project”) for the benefit of the School consisting of the following:

- (1) refunding the Dutchess County Industrial Development Agency’s Civic Facility Revenue Bonds, Series 2008 (Millbrook School Civic Facility) (the “2008 Bonds”), in the original aggregate principal amount of \$8,000,000 for the purposes of (i) The financing of the installation, construction, furnishing, and equipping of a new Math and Science Center

classroom building which will be three stories high and approximately 25,000 square feet on the existing 298.1 acre site of the School located at 10-48 West Road, Millbrook, Town of Stanford, New York (the "Property"); the building to house four (4) science classrooms with attached labs: chemistry, biology, physics, and general sciences, with appropriate prep and storage to support these labs and advanced study areas; five (5) new math classrooms, as well as storage for academic support materials; a shared faculty office, meeting space and conference area; (ii) Leasing (with option to purchase) or selling the Facility to the School, pursuant to Article 18-A of the N.Y. General Municipal Law, as amended, and Chapter 335 of the Laws of 1977 of the State of New York (collectively the "Act");

- (2) paying redemption premiums, if any, in connection with the 1998-A Bonds, the 2008 Bonds;
- (3) financing the construction, installation, furnishing and equipping of an approximately \_\_\_\_\_ square foot, \_\_\_\_-story a new girls dormitory consisting of 44 beds for girls and four (4) faculty housing units;
- (4) financing the construction, installation, furnishing and equipping of an approximately \_\_\_\_\_ square foot, \_\_\_\_\_-story facilities building as well as renovations to the existing \_\_\_\_\_ square foot Schoolhouse and the existing \_\_\_\_\_ square foot Callard House;
- (5) financing the construction, installation, furnishing and equipping of an approximately \_\_\_\_\_ square foot, \_\_\_\_-story dining hall;
- (6) the financing of a portion of the costs of the Project by the issuance of Tax-Exempt Revenue Bonds of the Issuer in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with the necessary incidental costs in connection therewith (including the costs described in paragraph (6)), all presently estimated to be approximately \$23,000,000.00 and in any event not to exceed \$30,000,000.00 (the "Bonds");
- (7) the paying of all or a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds and any reserve funds as may be necessary to secure the Bonds; and

- (8) the granting of certain other financial assistance with respect to the foregoing, including potential exemptions from mortgage recording taxes (collectively with the Bonds, the “Financial Assistance”); and

**WHEREAS**, the Issuer has determined that the financing of the Project will promote and further its corporate purposes; and

**WHEREAS**, on July 22, 2013, the Issuer adopted a Preliminary Resolution (the “Preliminary Resolution”) authorizing the Project and the execution of this Preliminary Agreement; and

**WHEREAS**, in the Preliminary Resolution the Issuer appointed the School its agent for the purposes of financing the Project and doing all things requisite and proper for completing the Project.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the Issuer and the Corporation agree as follows:

1. Undertakings of the Issuer. Based upon the statements, representations, and undertakings of the School and subject to the conditions set forth herein and in the Preliminary Resolution, the Issuer agrees as follows:

(a) The Issuer shall authorize, sell, and deliver an issue of its Bonds, pursuant to the terms of the N-PCL as then in force, in an aggregate principal amount presently estimated to be Twenty-three Million and 00/100 Dollars (\$23,000,000.00) and not to exceed Thirty Million and 00/100 Dollars (\$30,000,000.00) for the purpose of financing the Project and paying necessary incidental expenses in connection therewith, and funding any debt service reserve fund to be pledged to secure the Bonds.

(b) The Issuer shall adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) the authorization, issuance, and sale of the Bonds, (ii) the Financial Assistance contemplated by the Project, and (iii) the loaning of the proceeds of the Bonds to the School, all as shall be authorized by law and be mutually satisfactory to the Issuer and the School.

(c) The Issuer shall enter into an agreement to loan the proceeds of the Bonds to the School pursuant to a loan agreement by and between the Issuer and the School (the “Loan Agreement”), whereby the School will be obligated under the Loan Agreement, among other things to make payments to the Issuer in amounts and at times so that payments will be adequate to pay the principal of, premium, if any, and interest on all such Bonds.

(d) The Issuer shall appoint and does hereby appoint the School the true and lawful agent of the Issuer: (i) to finance the Project; (ii) to make, execute, acknowledge, and

deliver any contracts, orders, receipts, writings, and instructions, as the stated agent for the Issuer, and in general, to do all things which may be requisite or proper for completing the Project; and (iii) to prepare, publish and, upon approval of the Chief Executive Officer and/or the Chairman (or Vice Chairman) of the Issuer, to distribute a Preliminary Official Statement (or Preliminary Offering Circular or Private Placement Memorandum) with respect to the Bonds (the "Preliminary Official Statement"), all with the same powers and the same validity as the Issuer could do if acting on its own behalf. In addition, the School is hereby authorized to advance such funds as may be necessary to accomplish such purposes and, to the extent permitted by law, the Issuer agrees to reimburse the School therefor out of the proceeds of the Bonds, when, as, and if, the Bonds are issued.

(e) The Issuer shall take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

2. Representations of the School. The School hereby represents to the Issuer that:

(a) The Project is located in the Dutchess County, New York;

(b) The financing of the Project through the issuance of the Bonds will encourage and assist the School in providing the Project;

(c) The School intends that the proposed financing will contribute to increased employment opportunities in Dutchess County, New York and the retention of employment at the School and will enhance the competitiveness of the School; and

(d) The School intends that the Project will comply with all applicable federal, state, and local laws, ordinance, rules, and regulations and the School shall have obtained all necessary approvals and permits required thereunder.

3. Undertakings of the School. Based upon the statements, representations, and undertakings of the Issuer and subject to the conditions set forth herein and in the Preliminary Resolution, the School agrees as follows:

(a) The School shall use all reasonable efforts to find, or cause to be found, one or more purchasers for the Bonds.

(b) The School shall use all reasonable efforts necessary or desirable to enter into a contract or contracts to borrow the proceeds of the Bonds from the Issuer and execute the Loan Agreement.

(c) The School shall contemporaneously with the delivery of the Bonds, enter into the Loan Agreement with the Issuer containing the terms and conditions described in ¶1(c) hereof.

(d) (i) The School shall defend and indemnify the Issuer and hold the Issuer harmless from all losses, expenses, claims, damages and liabilities arising out of or based on: (1) labor, services, materials and supplies, including equipment, ordered or used in connection with the financing (including any expense incurred by the Issuer in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the School acting as agent for the Issuer pursuant to this Preliminary Agreement or otherwise; or (2) any untrue statement or alleged untrue statement of a material fact included in the Preliminary Official Statement or the omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that the School shall not indemnify the Issuer for such untrue or omitted information supplied by the Issuer about the Issuer or its actions in relation to the issuance of the Bonds).

(ii) The School shall indemnify and hold the Issuer harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project, including any expenses incurred by the Issuer in defending any claims, suits or actions which may arise as a result of the foregoing, except that the School shall not be required to indemnify the Issuer for the willful misconduct or grossly negligent conduct of the Issuer.

(e) The School shall, as agent for the Issuer, comply with the requirements of Article 8 of the Labor Law of the State of New York, as amended, to the extent, if any, such Article is applicable to the Project.

(f) The School shall take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

#### 4. General Provisions.

(a) This Preliminary Agreement shall take effect on the date of execution hereof until the Loan Agreement becomes effective. It is the intent of the Issuer and the School that this Preliminary Agreement be superseded in its entirety by the Loan Agreement.

(b) It is understood and agreed by the Issuer and the School that the issuance of the Bonds and the execution of the Loan Agreement and related documents are subject to: (i) obtaining all necessary governmental approvals, (ii) approval of the members of the Issuer; and (iii) agreement by the Issuer, the School and the purchasers of the Bonds upon mutually acceptable terms for the Bonds and for the Loan Agreement.

(c) The School agrees that it will reimburse the Issuer for all reasonable and necessary direct out-of-pocket expenses which the Issuer may incur as a consequence of executing this Preliminary Agreement or performing its obligations hereunder, including but not limited to, the cost of causing a notice of any public hearing held with respect to the Project to be published, the cost of making and transcribing records of said hearings and the reasonable fees and expenses charged and incurred by Bond Counsel and Issuer's Counsel in connection with their representation of Issuer in this matter and their preparation of any documents pertaining to the issuance of the Bonds.

(d) All commitments of the Issuer under ¶1 hereof and of the School under ¶¶2 and 3 hereof (excepting the obligations of the School set forth in subparagraphs 3(d) and 4(c) hereof, which shall survive the termination of this Preliminary Agreement) are subject to the condition that the Bonds have been issued no later than fifteen (15) months from the date hereof (or such other date as shall be mutually satisfactory to the Issuer and the School).

**IN WITNESS WHEREOF**, the parties hereto have entered into this Preliminary Agreement as of the 22<sup>nd</sup> day of July, 2013.

DUTCHESS COUNTY LOCAL DEVELOPMENT  
CORPORATION

By: \_\_\_\_\_  
Catherine A. Maloney, Chief Executive Officer

MILLBROOK SCHOOL

By: \_\_\_\_\_  
Robert Connolly, Chief Financial Officer