

LOAN AGREEMENT

Dated as of [August] 1, 2020

Between

VERMONT EDUCATIONAL AND HEALTH BUILDINGS FINANCING AGENCY

and

THE PRESIDENT AND FELLOWS OF MIDDLEBURY COLLEGE

Revenue Bonds
(Middlebury College Project)
Series 2020

in the aggregate principal amount of \$[PAR]

CERTAIN RIGHTS OF THE AGENCY UNDER THIS AGREEMENT HAVE BEEN ASSIGNED TO THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS BOND TRUSTEE UNDER A BOND INDENTURE, DATED AS OF [AUGUST] 1, 2020, AS AMENDED OR SUPPLEMENTED FROM TIME TO TIME, BY AND AMONG VERMONT EDUCATIONAL AND HEALTH BUILDINGS FINANCING AGENCY AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

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LOAN AGREEMENT

This Loan Agreement, dated as of [August] 1, 2020, by and between VERMONT EDUCATIONAL AND HEALTH BUILDINGS FINANCING AGENCY, a body corporate and politic constituting a public instrumentality of the State of Vermont (the “Agency”), and THE PRESIDENT AND FELLOWS OF MIDDLEBURY COLLEGE, a private, nonprofit college duly incorporated and validly existing under and by virtue of the laws of the State of Vermont (the “College”),

WITNESSETH:

in consideration of the respective representations and agreements herein contained, the parties hereto agrees as follows:

ARTICLE I.

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions. All words and terms defined in Article I of the Bond Indenture shall have the same meanings in this Agreement, unless otherwise specifically defined herein. In addition to words and terms elsewhere defined in this Agreement the following words and terms shall have the following meanings:

“Act” means Title 16, Chapter 131, Sections 3851-3862 of Vermont Statutes Annotated, as amended, or any successor statute.

“Administrative Expenses” means the amounts payable pursuant to Section 5.05.

“Agency” means Vermont Educational and Health Buildings Financing Agency, and any successor thereto.

“Agency Representative” means each of the persons at the time designated to act on behalf of the Agency in a written certificate furnished to the College and the Bond Trustee, which certificate shall contain the specimen signature(s) of such person(s) and shall be signed on behalf of the Agency by its Executive Director.

“Agreement” means this Loan Agreement and any amendments and supplements hereto permitted by the Bond Indenture.

“Annual Administrative Fee” means the annual fee for the general administrative expenses of the Agency in an amount not to exceed 1/10 of 1% per annum of the principal amount of Bonds Outstanding, payable on [August] 1 of each year, commencing [August] 1, 2021.

“Bonds” means Vermont Educational and Health Buildings Financing Agency Revenue Bonds (Middlebury College Project) Series 2020 authorized to be issued pursuant to a resolution of the Agency, including such Bonds issued in exchange for other such Bonds pursuant to

Section 205 of the Bond Indenture, or in replacement for mutilated, destroyed, lost or stolen Bonds pursuant to Section 211 of the Bond Indenture.

“Bond Indenture” means the Bond Indenture, dated as of the date hereof, between the Agency and The Bank of New York Mellon Trust Company, N.A., as Bond Trustee, and any amendments and supplements thereto permitted thereby.

“Bond Trustee” means the bank, trust company or national banking association at the time serving as trustee under the Bond Indenture, whether original or successor.

“Campus” means all buildings and property now owned or hereafter acquired by the College and used in connection with its educational purposes.

“Code” means the Internal Revenue Code of 1986, as amended.

“College” means The President and Fellows of Middlebury College, an eligible institution within the meaning of the Act and a private nonprofit college organized and existing under the laws of the State.

“College Representative” means each of the persons at the time designated to act on behalf of the College by written certificate furnished to the Agency and the Bond Trustee containing the specimen signatures of such persons and signed on behalf of the College by the President or Treasurer of the College.

“Completion Date” means the date of the completion of the last component of the Project, as such date shall be certified pursuant to Section 3.04 of this Agreement.

“Construction Fund” means the fund created and so designated by Section 401 of the Bond Indenture.

“Contract of Purchase” means the Contract of Purchase, dated _____, 2020, with respect to the Bonds, among the Agency, the College and Goldman Sachs & Co. LLC, as representative of the underwriters.

“Costs of the Project” means those costs incurred by the College in connection with any component of the Project and in connection with the issuance of the Bonds, as set forth in Section 403 of the Bond Indenture.

“Default” or “Event of Default” shall have the meaning set forth in Section 7.01.

“Electronic Means” means telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

“Initial Administrative Fee” means the fee required to be paid to the Agency on the date of issuance of the Bonds for its administrative expenses in connection with its refinancing of the Project.

“Loan” means, with respect to the Bonds, the aggregate amount of the moneys loaned to the College pursuant to this Agreement and shall be equal to both the aggregate principal amount of the Bonds issued by the Agency and the aggregate principal amount of the Note issued by the College.

“Note” means the promissory note issued, authenticated and delivered under this Agreement, evidencing the obligation of the College to repay the Loan and perform its obligations under this Agreement and which was assigned by the Agency to the Bond Trustee as security for the Bonds.

“Note Payments” means the payments to be made by the College on the Note to provide, as required by this Agreement, for the timely payment of the principal of and premium, if any, and interest on the Bonds when and as the same become due and payable.

“Payment of the Bonds” means (i) payment of the principal of (by reason of maturity, scheduled amortization, acceleration or redemption) and premium, if any, and interest on the Bonds in accordance with their respective terms, or (ii) provision for such payment having been made in such a manner that the Bonds shall have been paid or be deemed to have been paid within the meaning of the Bond Indenture.

“Plans and Specifications” means collectively the plans and specifications, if any, or contracts of acquisition and installation, if any, prepared for each component of the Project, implemented and detailed from time to time, and as the same may be revised from time to time prior to the completion of acquisition or construction of the Project in accordance with this Agreement.

“Project” means (a) all or a portion of the costs of the acquisition, construction, renovation and equipping a renovation of Warner Hall, including, but not limited to, the installation of an elevator, new mechanical and fire protection systems, upgraded restrooms and other accessibility items, new windows, interior finishes, and classroom technology, together with certain other smaller capital projects to construct, install, maintain and renovate the College’s capital facilities, including, but not limited to, the renovation of Dana Auditorium and (b) when the context requires, those capital assets financed with the proceeds of the Refunded Bonds.

“Project Documents” means, collectively, the Plans and Specifications, construction contracts and amendments thereto, other contract documents and agreements, and surety bonds and instruments pertaining, as applicable, to each component of the Project.

“Refunded Bonds” means the Agency’s outstanding Revenue Refunding Bonds (Middlebury College Project) Series 2010.

“Tax Certificate” means the Tax Certificate and Agreement, dated the date of issuance of the Bonds, concerning certain matters pertaining to the use and investment of proceeds of the Bonds executed by the Agency and the College on the date of initial execution and delivery of the Bonds, including any and all exhibits attached thereto.

“Tax Regulations” means the applicable regulations under Section 103 of the Code whether at the time proposed, temporary, final or otherwise.

Section 1.02. Rules of Construction.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, the words “Bond,” “Bondowner” or “Owner”, and “person” shall include the plural as well as the singular number, and “person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

(c) Headings of Articles and Sections herein are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(d) All references in this Agreement to designated “Articles”, “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement. The words “herein” “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision. Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time may be amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

ARTICLE II.

REPRESENTATIONS

Section 2.01. Representations by the Agency. The Agency represents and warrants as follows:

(a) The Agency was duly created and is validly existing under the laws of the State as a body corporate and politic constituting a public instrumentality of the State.

(b) Under the provisions of the Act, the Agency is duly authorized to enter into, execute, deliver and undertake the transactions contemplated by this Agreement and the Bond Indenture and to carry out its obligations hereunder and thereunder.

(c) The Agency proposes to issue the Bonds to finance all or a portion of the Costs of the Project and to refund the Refunded Bonds.

(d) By duly adopted resolution, the Agency has duly authorized the execution and delivery of this Agreement, the Bond Indenture and the Contract of Purchase and the issuance, sale, execution and delivery of the Bonds and the assignment of the Note.

(e) The Bonds will be issued under the Bond Indenture and will mature, bear interest, and have the other terms and provisions set forth in the Bond Indenture.

(f) The Agency has obtained any and all approvals required by the Act and other laws of the State for the issuance of the Bonds.

(g) Under existing law all payments received by the Agency pursuant to this Agreement are exempt from taxation.

Section 2.02. Representations by the College. The College represents and warrants as follows:

(a) It is a duly organized and existing private, nonprofit college under the laws of the State and is an “eligible institution” within the meaning of such term as used in the Act.

(b) It has the corporate power to enter into this Agreement and the Contract of Purchase and to execute and deliver the Note and perform its obligations and agreements hereunder and thereunder.

(c) It has duly authorized the execution, delivery and performance of this Agreement, the Note, the Escrow Deposit Agreement and the Contract of Purchase.

(d) It is an organization described in Section 501(c)(3) of the Code, and as such is exempt from Federal income taxes under Section 501(a) of the Code.

(e) It has obtained or will obtain all approvals and permits required for the Project and its borrowing of the proceeds of the Bonds.

(f) The College will cause the proceeds of the Bonds to be applied to the payment of the Costs of the Project.

(g) The representations, warranties, certifications and other information contained in the Tax Certificate, together with any additional certificates and information supplied by the College, that have been relied upon by Bond Counsel with respect to the eligibility of the Project and the exclusion of interest on the Bonds from gross income for federal income tax purposes, are true and correct. The terms of the Tax Certificate are hereby made a part of this Agreement.

ARTICLE III.

CONSTRUCTION OF PROJECT; ISSUANCE OF BONDS

Section 3.01. Construction of Project. The College will acquire, construct and equip, or cause to be acquired, constructed and equipped, the Project substantially in accordance with the Bond Indenture, the Plans and Specifications therefor, the law, and all requirements of all governmental authorities having jurisdiction, with all reasonable dispatch; but if for any reason such acquisition, construction and equipping shall be delayed or shall not be completed, there shall be no resulting diminution in or postponement of the payments required under this Agreement to be paid by the College.

Section 3.02. Revision of Plans and Specifications. The College may revise the Plans and Specifications and the description of the Project from time to time; provided, however, that in the case of any change that would render materially inaccurate the description of the Project, there shall be delivered to the Bond Trustee and the Agency (i) a revised description of the Project as revised by the change in the Plans and Specifications, the accuracy of which shall have been certified by a College Representative and (ii) the approval of the Agency and any other approvals required by the Act.

Section 3.03. Agreement to Issue the Bonds. The Agency agrees that it will use its best efforts to issue, sell and deliver the Bonds for the purposes, among other things, of paying, together any other available funds, the Costs of the Project. The proceeds of the Bonds shall be applied as provided in the Bond Indenture.

Section 3.04. Disbursements from Construction Fund. The Agency and the College hereby agree that the moneys in the Construction Fund shall be applied to the payment of the Costs of the Project in accordance with Article IV of the Bond Indenture and such moneys shall be invested and reinvested in accordance with Article VI of the Bond Indenture.

Section 3.05. College Required to Pay Cost of Project. If the moneys in the Construction Fund available for the payment of the Costs of the Project should not be sufficient to pay the Costs of the Project, the College agrees to complete the Project and to pay all the portion of the Costs of the Project as may be in excess of the moneys available therefor in the Construction Fund. The Agency does not make any warranty, either express or implied, that the moneys which will be paid into the Construction Fund will be sufficient to pay the Costs of the Project. The College agrees that if, after exhaustion of the moneys in the Construction Fund, the College should pay any portion of the Costs of the Project, it shall not be entitled to any reimbursement therefor from the Agency or the Bond Trustee, and that it shall not be entitled to any abatement, diminution or postponement of the payments to be made pursuant to Article IV of this Agreement.

Section 3.06. Establishment of Completion Date. The Completion Date for the Project shall be evidenced to the Bond Trustee by a certificate signed by the College Representative setting forth the Costs of the Project and stating that, except for amounts not then due and payable or the liability for the payment of which is being contested or disputed by the College,

the acquisition, construction and equipping of the Project have been completed substantially in accordance with the Plans and Specifications therefor and the Costs of the Project has been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 3.07. Removal of Lien. Upon Payment of the Bonds and when the College has made all other payments required hereby, or otherwise has fully performed all its obligations hereunder and under the Bond Indenture, and when all other rights of the Bond Trustee, the Agency and the Bondowners have been satisfied (to the extent that such performance or satisfaction may then be required), the lien of this Loan Agreement shall terminate and the Bond Trustee, the Bondowners and the Agency shall promptly execute and deliver to the College an appropriate final discharge. All costs of preparing and recording such discharge shall be paid by the College.

Section 3.08. No Warranty of Condition or Suitability. The College acknowledges its full familiarity with the Project and that the Agency has no responsibility for the Plans and Specifications and other Project Documents. The Agency makes no representation or warranty, either express or implied, and offers no assurance that the proceeds of the Bonds will be sufficient to pay in full the Costs of the Project in accordance with the Project Documents or that the Plans and Specifications, other Project Documents, or the Project itself will be suitable for the College's purposes or needs.

ARTICLE IV.

THE LOAN

Section 4.01. Issuance of the Bonds to Fund Loan; Loan by the Agency; Repayment. To provide funds to refund the Refunded Bonds and to pay all or a portion of the Costs of the Project, the Agency agrees that it will sell, issue and deliver, the Bonds in the aggregate principal amount of \$[PAR] to the purchaser or purchasers thereof. The Bonds shall be issued in accordance with the Bond Indenture.

Upon the terms and conditions of this Agreement, the Agency shall lend to the College the proceeds of the sale of the Bonds. The principal amount of the Loan shall equal to the sum of the aggregate principal amount of the Bonds. The proceeds of the Loan shall be deposited with the Bond Trustee and applied in accordance with the Bond Indenture.

The College agrees that its obligation to repay the Loan is absolute and unconditional and is payable from moneys of the College lawfully available therefor. As consideration for the issuance of the Bonds and the making of the Loan to the College by the Agency, the College agrees to deliver the Note to the Agency for assignment to the Bond Trustee under the Bond Indenture.

The College shall make payments (“Note Payments”) on the dates, in the amounts and in the manner provided herein so that moneys will be available to the Bond Trustee, for the account of the Agency, to pay the principal (by reason of maturity, acceleration or redemption) of and premium, if any, and interest on the Bonds.

The Note Payments shall be due and payable as follows:

(i) into the Interest Account in the Bond Fund, on the Business Day next preceding each Interest Payment Date, that amount which shall be equal to the interest payable on the Bonds on such Interest Payment Date;

(ii) into the Principal Account in the Bond Fund, on the Business Day next preceding each [November] 1 on which any Serial Bond matures, that amount which shall be equal to the principal payable on such Bond on such [November] 1;

(iii) on the Business Day next preceding [November] 1, 20__ and on the Business Day next preceding each [November] 1 thereafter, into the Sinking Fund Account in the Bond Fund, the amount required to retire the Term Bonds to be called by mandatory redemption or to be paid at maturity on the next succeeding [November] 1 in accordance with the Sinking Fund Requirement therefor; and

(iv) any amount that may from time to time be required to enable the Agency to pay the redemption premiums as and when Bonds are called for redemption.

Any amount credited under the Bond Indenture against any payment required to be made by the Agency thereunder shall be credited against the corresponding payment required to be

made by the College under the Loan or Note Notwithstanding anything to the contrary contained herein, the College covenants that it will make Note Payments at such times and in such amounts to assure that payment of the principal of (by reason of maturity, acceleration or redemption) and premium, if any, and interest on the Bonds shall be made when due.

Section 4.02. No Set-Off. The obligation of the College to make the Note Payments and to perform and observe the other covenants and agreements contained in this Agreement is absolute and unconditional. The College will pay without abatement, diminution or deduction (whether for taxes or otherwise) all such amounts regardless of any cause or circumstance whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim that the College may have or assert against the Agency or the Bond Trustee or any other person.

Section 4.03. Prepayments. The College may at any time prepay all or any part of the Loan as provided in Section 8.01.

Section 4.04. Covenant to Maintain Campus. The College will, at its sole cost and expense, maintain, preserve and keep the Campus with the appurtenances and every major part and parcel thereof, in good repair, working order and condition, ordinary wear and tear excepted, and will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals; provided, however, that the College shall not be obligated to maintain, preserve, repair, replace or renew any element or unit of the Campus the maintenance, repair, replacement or renewal of which becomes uneconomic to the College because of damage or destruction or obsolescence, or change in economic or business conditions, or change in government standards and regulation, or the termination by the College of the operation of the facilities to which the element or unit of the Campus is an adjunct. The College covenants that it will not permit, commit or suffer any waste of the whole or any major part of the Campus and shall not use or permit the use of the Campus, or any part thereof, for any unlawful purpose or permit any nuisance to exist thereon. The College further covenants that it will not dispose of any substantial portion of its assets other than in the ordinary course of business without the consent of the Agency, which consent shall not be unreasonably withheld.

Section 4.05. Indemnification. The College will at all times indemnify and hold harmless each of the Agency and its members, and the Bond Trustee and its officers, directors and employees (collectively, “Indemnified Persons” and each, an “Indemnified Person”) against any and all losses, costs, damages, expenses and liabilities (collectively referred to hereinafter as “Losses”) of whatsoever nature (including but not limited to attorneys’ fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments) directly or indirectly resulting from, arising out of, or related to one or more Claims, as hereinafter defined. The word “Claims” as used herein shall mean all claims, lawsuits, causes of action, and other legal actions and proceedings of whatsoever nature, including but not limited to claims, lawsuits, causes of action and other legal actions and proceedings, involving bodily or personal injury or death of any person or damage to any property (including but not limited to persons employed by the Agency, the College or any other person) brought against any Indemnified Person or to which any Indemnified Person is a party, that directly or indirectly result from, arise out of, or relate to (i) the design, construction, transfer, sale, operation, use, occupancy, maintenance or ownership of the Project or any part thereof, (ii) any act or omission of the College or any of its

agents, contractors, servants, employees or licensees or (iii) the execution, delivery or performance of this Agreement, the Contract of Purchase, the Note, the Escrow Deposit Agreement, the Bond Indenture or any related instruments or documents, including but not limited to any instruments or documents executed, delivered and performed in connection with any rating of the Bonds. The obligations of the College under this Section 4.05 shall apply to all losses or Claims, or both, that result from, arise out of, or are related to any event, occurrence, condition or relationship prior to termination of this Agreement, whether such losses or Claims, or both, are asserted prior to termination of this Agreement or thereafter. The Agency shall reimburse the College for payments made by the College pursuant to this Section 4.05 to the extent of any proceeds, net of all expenses of collection, actually received by the Agency from any insurance covering such Claims with respect to the losses sustained. The Agency shall have the duty to claim any such insurance proceeds, and the Agency shall assign its right to such proceeds, to the extent of such required reimbursement, to the College. In case any action shall be brought against any Indemnified Person in respect of which indemnity may be sought against the College, such Indemnified Person shall promptly notify the College in writing, and the College shall have the right to assume the investigation and defense thereof including the employment of counsel and the payment of all expenses. The Indemnified Person shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Person unless (i) the employment of such counsel has been authorized by the College, (ii) the College fails to engage promptly and maintain counsel reasonably acceptable to such Indemnified Person, or (iii) such counsel or such Indemnified Person determines at any time that such counsel designated by the College is unable to properly represent the interests of such Indemnified Person (whether by reason of conflict of interest, or the existence of adverse interests among any co-defendants or the availability to such Indemnified Person of a defense not available to the other co-defendants represented by such counsel, or otherwise). The College shall not be liable for any settlement of any such action without its consent but, if any such action is settled with the consent of the College or if there be a final, unappealable judgment for the plaintiff in any such action, the College agrees to indemnify and hold harmless each Indemnified Person from and against any loss by reason of such settlement or judgment. The College shall not, without the written consent of any affected Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which such Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement (x) includes an unconditional release of such Indemnified Person from all liability on such claims and (y) does not include a statement or admission of fault or culpability or failure to act, by or on behalf of such Indemnified Person. Nothing herein shall be construed as requiring the Agency to acquire or maintain insurance of any form or nature with respect to the Project or any portion thereof or with respect to any phrase, term, provision, condition or obligation of this Agreement or any other matter in connection herewith. The provisions of this Section 4.05 shall survive the expiration or termination of this Agreement.

Section 4.06. Past Due Payments. In the event the College shall fail to pay amounts required to be paid under Section 4.01, any such amounts attributable to principal of the Bonds shall continue to bear interest from the maturity date, redemption date or Interest Payment Date

on the Bonds to which such defaulted amounts relate at the rate of interest on such Bonds at such date.

ARTICLE V.

SPECIAL COVENANTS

Section 5.01. Compliance with Covenants, Conditions and Agreements in the Agreement and the Bond Indenture. The College covenants that so long as the Bonds and the Note are outstanding it shall comply with each and every one of its covenants, conditions and agreements in this Agreement and the Bond Indenture.

Section 5.02. Examination of Books and Records of the College. The Agency Representative and the Bond Trustee shall be permitted, at all reasonable times, to examine the books and records of the College with respect to the Project and the obligations of the College hereunder.

Section 5.03. Further Assurances and Corrective Instruments. Subject to the provisions of Article XII of the Bond Indenture, the Agency and the College agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments hereto and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement.

Section 5.04. Arbitrage. The Agency and the College shall take no action, and shall not approve any action of or the making of any investment or use of the proceeds of the Bonds by the Bond Trustee, that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code or that would otherwise cause the interest on the Bonds to be includable in the gross income of any holder thereof for federal income tax purposes pursuant to the Code and the regulations thereunder as such may be applicable to the Bonds at the time of such action, investment or use.

Section 5.05. Administrative Expenses. The College agrees to pay to or for the account of the Agency and the Bond Trustee upon notice thereof all reasonable costs and expenses incurred by the Agency or the Bond Trustee in connection with the refinancing of the Project, except such as may be paid out of the proceeds of the Bonds, including, without limitation, the Initial Administrative Fee and the Annual Administrative Fee (commencing [August] 1, 2021) of the Agency, the reasonable ordinary annual fees and expenses and the reasonable and necessary extraordinary fees and expenses (including indemnities) of the Bond Trustee, the costs of administering this Agreement and the Bond Indenture and the fees and expenses of attorneys, consultants and others retained by them in connection with the Project or the refinancing thereof. Any such costs and expenses, if not paid when due, shall be subject to interest at the base rate of the Bond Trustee.

Section 5.06. Covenant to Maintain Corporate Existence and Tax Status. The College covenants that so long as the Bonds are Outstanding it will not dispose of all or substantially all its assets and will not acquire, consolidate with or merge into another corporation; provided, however, that the College may acquire, consolidate with or merge into another corporation, or transfer to another corporation all or substantially all its assets, if the successor or transferee corporation is an “eligible institution” within the meaning of such term as used in the Act and

irrevocably and unconditionally assumes in writing all the obligations of the College herein and under the Note and the Contract of Purchase.

The College covenants and agrees (i) that it will use diligence so that it will not perform any acts nor enter into any agreements or omit to perform any act or fulfill any requirement that shall have the effect of prejudicing the College's tax exempt status under Section 501(c)(3) of the Code and (ii) that it will maintain, extend and renew its corporate existence under the laws of the State and all franchises, rights and privileges to it granted and upon it conferred, and will not do, suffer or permit any act or thing to be done whereby its right to transact its functions might or could be terminated or its operations and activities restricted or whereby the payment under this Agreement or the Note might or could be hindered, delayed or otherwise impeded. The College further covenants that it will use due diligence so that it will maintain its tax exempt status under Federal income tax laws and regulations thereunder and none of its gross revenues, income or profits, either realized or unrealized, and none of its other assets or property will be distributed to any of its employees, or inure to the benefit of any private person, association or corporation, other than for the lawful corporate purpose of the College; provided, however, that this is not intended to prevent the College's paying the reasonable value of services or property, real or personal, provided to the College by any person, association or corporation.

Section 5.07. Officers of Agency and College Not Liable. All covenants, stipulations, promises, agreements and obligations of the Agency and the College contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Agency and the College and not of any member of the Board of the Agency or the Board of Trustees of the College or any officer, agent, servant or employee of the Agency or the College in his individual capacity, and no recourse shall be had for the payment of the principal of or redemption premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any member of the Board of the Agency or the Board of Trustees of the College or any officer, agent, servant or employee of the Agency or the College or any natural person executing the Bonds. Neither any member of the Board of the Agency or the Board of Trustees of the College nor any person executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 5.08. Compliance With Applicable Law. The College covenants that it shall comply with all provisions of applicable laws, ordinances, orders, rules, regulations and requirements of all Federal, State and municipal governments, and appropriate departments, commissions, boards and officers thereof pertaining to the Project, whether now or hereafter in force. The College further covenants that, so long as the Bonds are outstanding, it shall, at its sole cost and expense, comply or cause there to be compliance with all applicable law whether or not requiring structural repairs or alterations to, or relating to the use or occupancy or manner of use of, the Project. The College further covenants that it shall also observe and comply with the requirements of all policies of insurance at any time in force with respect to any of the buildings, improvements, machinery or equipment constituting a part of the Project. Nothing contained in this Section shall prevent the College from contesting in good faith the applicability or validity of any law, ordinance, order, rule, regulation or requirement.

Section 5.09. Agency's Performance of the College's Obligations. In the event the College at any time neglects, refuses or fails to perform any of its obligations under this Agreement, the Agency, at its option and following at least thirty (30) days' written notice to the College (except where a shorter period of notice is necessary to avoid a default on the Bonds), may perform or cause to be performed such obligations, and all expenditures incurred by the Agency thereby shall be promptly paid or reimbursed by the College to the Agency.

Section 5.10. Financial Statements. The College covenants that it will furnish to the Agency copies of the annual audited financial statements of the College within 120 days of the end of its fiscal year.

Section 5.11. Payment of Other Charges. The College covenants and agrees to pay directly to the appropriate party, when due, all assessments, levies, taxes and insurance premiums of every kind and nature relating to the whole or any part of the Project or any interest therein, and all costs, expenses, liabilities and charges of every kind and nature, including wages and charges for gas, electricity, water, sewer and other utilities, relating to maintenance, operation, repair, replacement and improvement of the Project or any part thereof, or any facilities, machinery or equipment thereon, or to the operation or services conducted or provided thereon or in connection therewith which may arise or accrue. Nothing in this Section shall require the College to pay any such amounts so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, and such contest does not jeopardize the interest of the Agency and the College in the Project or any part thereof.

Section 5.12. Operation of Project. The College covenants that it shall use, maintain and operate the Project for its lawful corporate purposes and activities related or incident to such purposes. Except as permitted by the Tax Certificate, the College agrees that the Project shall be used or occupied only by students, members of the faculty, or members of the staff of the College, or, on a temporary basis, individuals connected with educational or other related activities.

Section 5.13. Religious Use of Project. Except to the extent permitted by law, the College covenants that it will not use the Project or any part thereof for sectarian instruction, nor primarily as a place of religious worship, or as a facility used primarily as a part of a program of a school or a department of divinity.

Section 5.14. Secondary Market Disclosure. (a) The College covenants for the benefit of the persons who from time to time are the owners of the Bonds for federal income tax purposes (the "Beneficial Owners"):

(A) to file within 150 days after the end of each of its fiscal years, beginning with its fiscal year ending June 30, 2021, with the Municipal Securities Rulemaking Board (the "MSRB") in an electronic format as prescribed by the MSRB, core financial information for the prior fiscal year, including (i) the College's audited financial statements, prepared in accordance with generally accepted accounting principles in effect from time to time, and (ii) material historical quantitative data concerning the College of the type generally found under the captions "Faculty

and Staff”, “Student Enrollment”, “Tuition and Fees”, “Financial Aid” and “Gifts, Grants and Bequests” in Appendix A to the Official Statement of the Agency, dated _____, 2020, relating to the Bonds; and

(B) to file in a timely manner, not in excess of ten business days after the occurrence of the applicable event, with the MSRB, notice of any of the following events with respect to the Bonds:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) modifications to rights of security Bondowners, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Bonds, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or similar event of the College¹;

¹ For the purposes of the event specified in Section 5.14(B)(xii), the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for the College in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the College, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the College.

(xiii) the consummation of a merger, consolidation, or acquisition involving the College or the sale of all or substantially all of the assets of the College, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(xiv) the appointment of a successor or additional trustee or the change of name of a trustee, if material;

(xv) incurrence of a financial obligation of the College, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the College, any of which affect security Bondowners, if material; and

(xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the College, any of which reflect financial difficulties; and

(C) to file in a timely manner, with the MSRB, notice of a failure of the College to provide required annual financial information described in (a) above on or before the date specified.

Unless otherwise required by the MSRB, all notices, documents and information provided to the MSRB shall be provided to the MSRB's Electronic Municipal Market Access (EMMA) system, the current Internet address of which is www.emma.msrb.org. All notices, documents and information provided to the MSRB shall be provided in an electronic format prescribed by the MSRB (currently, portable document format (pdf), which must be word-searchable except for non-textual elements) and shall be accompanied by identifying information as prescribed by the MSRB.

No Beneficial Owner may institute any suit, action or proceeding at law or in equity ("Proceeding") for the enforcement of any covenant in the first paragraph of this Section (the "Disclosure Covenant") or for any remedy for breach thereof, unless such Owner shall have filed with the College written notice of and request to cure such breach, and the College shall have refused to comply within a reasonable time. All Proceedings shall be for the equal benefit of all Beneficial Owners of the outstanding Bonds benefited by the same or a substantially similar covenant, and no remedy shall be sought or granted other than specific performance of the Disclosure Covenant at issue. Notwithstanding the foregoing, no challenge to the adequacy of the information provided in accordance with the filings mentioned in clauses (A) and (B) may be prosecuted by any Beneficial Owner except in compliance with the remedial and enforcement provisions of this Agreement.

Any amendment to the Disclosure Covenant may only take effect if:

(1) the amendment is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of

the College, or type of business conducted; this Section, as amended, would have complied with the requirements of Rule 15c2-12 (the “Rule”) of the Securities and Exchange Commission (the “SEC”) at the time of issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and the amendment does not materially impair the interests of Beneficial Owners, as determined by parties unaffiliated with the College or the Agency; or

(2) all or any part of the Rule, as interpreted by the staff of the SEC at the date of the Closing, ceases to be in effect for any reason, and the College elects that this Section shall be deemed amended accordingly.

In the case of any amendment, the annual financial information containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

Any assertion of Beneficial Ownership must be filed, with full documentary support, as part of the written request described in the third preceding paragraph.

ARTICLE VI.

ASSIGNMENT, LEASING AND SELLING

Section 6.01. No Assignment of this Agreement by the College. Except as permitted by Section 5.06 of this Agreement, the rights of the College under this Agreement may not be assigned as a whole or in part.

Section 6.02. Restrictions on Transfer of Agency's Rights. The Agency agrees that, except for the assignment of certain of its rights, title and interest under this Agreement (including its rights to receive Note Payments) and the Note to the Bond Trustee pursuant to the Bond Indenture, it will not during the term of this Agreement sell, assign, transfer or convey its interests in this Agreement and the Note except pursuant to the Bond Indenture and as hereinafter in Section 6.03 provided.

Section 6.03. Assignment by the Agency. It is understood, agreed and acknowledged that the Agency will assign to the Bond Trustee pursuant to the Bond Indenture certain of its rights, title and interests in and to the Note and this Agreement (reserving its rights, however, pursuant to sections of this Agreement providing that notices, reports and other statements be given to the Agency and also reserving its rights to reimbursement and payment of costs and expenses under Sections 5.05 and 7.05, its right of examination under Section 5.02, its rights to indemnification under Sections 4.05 and 5.09, and its individual and corporate rights to exemption from liability under Sections 9.15 and 9.16, all of this Agreement), and the College hereby assents to such assignment and pledge.

ARTICLE VII.

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default Defined. The terms “Event of Default” and “Default” shall mean any one or more of the following events:

- (a) The College shall fail to make any Note Payment.
- (b) An Event of Default shall exist under the Bond Indenture.
- (c) The College shall fail duly to perform, observe or comply with any covenant, condition or agreement on its part under this Agreement (other than a failure to make any Note Payment required under this Agreement), and such failure continues for a period of 30 days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the College and the Agency by the Bond Trustee, or to the College and the Agency and the Bond Trustee by the Owners of at least 25% in aggregate principal amount of the Bonds then Outstanding; provided, however, that if such performance, observation or compliance requires work to be done, action to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied, as the case may be, within such 30-day period, no Event of Default shall be deemed to have occurred or to exist if, and so long as the College shall commence such performance, observation or compliance within such period and shall diligently and continuously prosecute the same to completion.
- (d) Under any present or future bankruptcy law, the College shall apply for or consent to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of itself or of any part of its property, or shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors, or shall institute proceedings to be adjudged a bankrupt or insolvent, or shall seek reorganization in a proceeding under any present or future bankruptcy law or shall admit the material allegations of a petition filed against the College in any such proceeding, or shall seek relief under the provisions of any other present or future bankruptcy, insolvency or other similar law providing for the reorganization or winding up of corporations, or the College or its directors shall take action looking to the dissolution or liquidation of the College or an arrangement, composition, extension or adjustment with its creditors generally (except in connection with a consolidation or a merger of the College with or into another corporation or sale, transfer or other disposition of all or substantially all the assets of the College not prohibited by Section 5.06 hereof).
- (e) The entry of a decree or order by a court having jurisdiction in the premises adjudging the College a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the College under the Federal Bankruptcy Code or any other applicable law, or under any present or future bankruptcy law appointing a receiver, liquidator, custodian, assignee, trustee, sequestrator (or other similar official) of the College or of any substantial part of its property, or ordering the winding up or

liquidation of its affairs, and the continuance of such decree or order unstayed and in effect for a period of 60 consecutive days.

(f) If the College shall default in the payment of the principal of or interest on any other obligation of the College for borrowed money in an amount in excess of \$1,000,000 as and when the same shall become due and payable by lapse of time, by declaration, by call for redemption or otherwise and such default shall continue beyond the period of grace, if any, allowed with respect thereto; provided, however, that such default shall not constitute an Event of Default within the meaning of this Section if within 30 days, or within the time allowed for service of a responsive pleading if any proceeding to enforce payment of the indebtedness is commenced, (i) the College in good faith commences proceedings to contest the existence or payment of such indebtedness, and (ii) sufficient moneys are escrowed with a bank or trust company for the payment of such indebtedness.

(g) If the College shall default under any indenture, agreement or other similar instrument under which any evidence of indebtedness of the College in an amount in excess of \$1,000,000 may be issued and such default results in the formal acceleration of the maturity of any indebtedness of the College outstanding thereunder; provided, however, that such default shall not constitute an Event of Default within the meaning of this Section if within 30 days, or within the time allowed for service of a responsive pleading if any proceeding to enforce payment of the indebtedness is commenced, (i) the College in good faith commences proceedings to contest the existence or payment of such indebtedness, and (ii) sufficient moneys are escrowed with a bank or trust company for the payment of such indebtedness.

Section 7.02. Remedies on Default. Whenever any Event of Default referred to in Section 7.01 shall have happened and be subsisting, the Agency may take the following remedial steps:

(a) in the case of an Event of Default described in Section 7.01(a), the Agency may take whatever action at law or in equity necessary or desirable to collect the Note Payments then due, including declaring the payment obligation evidenced by the Note to be immediately due and payable;

(b) in the case of an Event of Default described in Section 7.01 other than in Section 7.01(a), the Agency may take whatever action at law or in equity necessary or desirable to enforce the performance, observance or compliance by the College with any covenant, condition or agreement by the College under this Agreement; or

(c) in the case of an Event of Default described in Section 7.01 other than in Section 7.01(a) which results in the Bonds being declared immediately due and payable, the Agency shall declare the payment obligation evidenced by the Note to be immediately due and payable.

In the enforcement of the remedies provided in this Section 7.02, the Agency may treat all expenses of enforcement, including, without limitation, legal, accounting and advertising fees and expenses, as additional amounts payable by the College then due and owing.

Section 7.03. Application of Amounts Realized in Enforcement of Remedies. Any amounts collected pursuant to action taken under Section 7.02 shall be paid to the Bond Trustee for deposit in the Bond Fund and applied in accordance with the provisions of the Bond Indenture, or, if Payment of the Bonds shall have been made, shall be applied according to the provisions of Section 9.17.

Section 7.04. No Remedy Exclusive. Subject to Section 7.02, no remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon 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.

Section 7.05. Agreement to Pay Attorneys' Fees and Expenses. In any Event of Default, if the Agency or the Bond Trustee employs attorneys or incurs other expenses for the collection of amounts payable hereunder or the enforcement of the performance or observance of any covenants or agreements on the part of the College herein contained, whether or not suit is commenced, the College agrees that it will on demand therefor pay to the Agency and the Bond Trustee, as the case may be, the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Agency or the Bond Trustee.

Section 7.06. Agency and College to Give Notice of Default. The Agency and the College severally covenant that they will, at the expense of the College, promptly give to the Bond Trustee written notice of any Event of Default under this Agreement of which they shall have actual knowledge or written notice, but the Agency shall not be liable (except as provided in Section 9.16) for failing to give such notice.

Section 7.07. Correlative Waivers. If an Event of Default under Section 802 of the Bond Indenture shall be cured or waived and any remedial action by the Bond Trustee rescinded, any correlative Default under this Agreement shall be deemed to have been cured or waived.

ARTICLE VIII.

PREPAYMENTS

Section 8.01. Optional Prepayments.

(a) The College is hereby granted, and shall have, the option to prepay, together with accrued interest, all or any portion of the unpaid aggregate amount of the Loan in accordance with the terms and provisions of the Bond Indenture. Said prepayment shall be made by the College taking, or causing the Agency to take, the actions required (i) for Payment of the Bonds, whether by redemption prior to maturity or by payment at maturity or (ii) to effect the purchase, redemption or payment at maturity of less than all of the Bonds according to their terms.

(b) To make a prepayment pursuant to this Section 8.01, the College shall give written notice to the Agency and the Bond Trustee, which notice shall specify therein (i) the date of the intended prepayment, which date shall not be less than 45 nor more than 60 days from the date the notice is mailed, and (ii) the aggregate principal amount of the Bonds to be purchased, redeemed or paid at maturity and the date or dates on which the purchase, redemption or payment are to occur.

ARTICLE IX.

MISCELLANEOUS

Section 9.01. Termination. This Agreement shall terminate upon (i) Payment of the Bonds and (ii) payment or satisfaction of all other obligations incurred by the Agency or the College under this Agreement with respect to the Bonds, including (without limitation) interest, premiums and other charges, if any, thereon. Upon such termination, any amounts remaining in the Funds held by the Bond Trustee not needed for payment of the aforesaid items shall belong to and be paid to the College by the Bond Trustee in accordance with the provisions of the Bond Indenture.

Section 9.02. References to the Bonds Ineffective After Bonds Paid. Upon Payment of the Bonds, all references in this Agreement to the Bonds shall be ineffective, and the Agency and any Owner of the Bonds shall not thereafter have any rights hereunder, excepting those that shall have theretofore vested.

Section 9.03. No Third Party Beneficiary. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to make the public or any member thereof, other than as expressly provided herein or as contemplated in the Bond Indenture, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations, and responsibilities, if any, of the parties to this Agreement with respect to third parties shall remain as imposed by law.

Notwithstanding the foregoing, it is intended that the Bond Trustee shall be a third party beneficiary of, and be entitled to enforce, the terms of Sections 4.05, 5.05, 6.03 and 7.05 hereof.

Section 9.04. No Implied Waiver. In the event any agreement contained in this Agreement 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 thereunder or hereunder.

Section 9.05. Agency Representative. Whenever under the provisions of this Agreement the approval of the Agency is required or the Agency is required to take some action at the request of the College, such approval shall be made or such action shall be taken by the Agency Representative; and the College and the Bond Trustee shall be authorized to act on any such approval or action.

Section 9.06. College Representative. Whenever under the provisions of this Agreement the approval of the College is required or the College is required to take some action at the request of the Agency, such approval shall be made or such action shall be taken by the College Representative; and the Agency and the Bond Trustee shall be authorized to act on any such approval or action.

Section 9.07. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered by hand delivery or on the third day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

(a) If to the Agency:

Vermont Educational and Health Buildings Financing Agency
20 Winooski Falls Way
Suite 305
Winooski, Vermont 05404
Attention: Executive Director

(b) If to the College:

Middlebury College
Old Chapel
Middlebury, Vermont 05753
Attention: Treasurer

(c) If to the Bond Trustee:

The Bank of New York Mellon Trust Company, N.A.
500 Ross Street, 12th Floor
Pittsburgh, Pennsylvania 15262
Attention: Corporate Trust Department

A duplicate copy of each notice, certificate or other communication given hereunder by either the Agency or the College to the other shall be given to the Bond Trustee. The Agency, the College and the Bond Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.08. If Performance Date a Legal Holiday. If the last date for performance of any act or the exercising of any right, as provided in this Agreement, shall be a legal holiday or a day on which banking institutions in the State or the State of New York are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed.

Section 9.09. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency, the College and their respective successors and assigns, subject, however, to the provisions contained in Section 6.03.

Section 9.10. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.11. Amendments, Changes and Modifications. Subsequent to the issuance of the Bonds and prior to Payment of the Bonds, this Agreement and the Bond Indenture may not be effectively amended, changed, modified, altered or terminated except in accordance with the Bond Indenture.

Section 9.12. [Reserved].

Section 9.13. Execution in Counterparts; Electronic Signatures. This 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. The exchange of copies of this Agreement and of signature pages by Electronic Means shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement and signature pages for all purposes.

The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. For purposes hereof, “electronic signature” means a manually signed original signature that is then transmitted by Electronic Means.

Section 9.14. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 9.15. No Charge Against Agency Credit. No provision hereof shall be construed to impose a charge against the general credit of the Agency or any personal or pecuniary liability upon any member, official or employee of the Agency.

Section 9.16. Agency Not Liable. Notwithstanding any other provision of this Agreement, the Agency shall not be obligated to take any action under this Agreement unless the Agency (i) is requested in writing by an appropriate person to take such action, (ii) is assured of payment of or reimbursement for any expenses in such action, and (iii) is afforded, under the existing circumstances, a reasonable period to take such action. In acting under this Agreement, or in refraining from acting under this Agreement, the Agency may conclusively rely on the advice of its counsel.

Section 9.17. Amounts Remaining with Bond Trustee. Any amounts remaining in the Bond Fund, or otherwise in trust with the Bond Trustee under the Bond Indenture or under this Agreement shall, after Payment of the Bonds and of all Administrative Expenses in accordance with this Agreement, belong to and be paid to the College by the Bond Trustee in accordance with the provisions of Section 1301 of the Bond Indenture.

IN WITNESS WHEREOF, Vermont Educational and Health Buildings Financing Agency has caused these presents to be signed in its name and on its behalf by its Executive Director and its official seal to be hereunto affixed and The President and Fellows of Middlebury College has caused these presents to be signed in its name and on its behalf by its Vice President for Finance and Treasurer and its corporate seal to be hereunto affixed, all as of the 1st day of [August], 2020.

VERMONT EDUCATIONAL AND HEALTH
BUILDINGS FINANCING AGENCY

By: _____

Executive Director

THE PRESIDENT AND FELLOWS OF
MIDDLEBURY COLLEGE

By: _____

Executive Vice President for Finance and
Administration and Treasurer

FORM OF PROMISSORY NOTE

\${PAR}

The President and Fellows of Middlebury College
Series 2020 Note

FOR VALUE RECEIVED, THE PRESIDENT AND FELLOWS OF MIDDLEBURY COLLEGE (the “College”), promises to pay to **VERMONT EDUCATIONAL AND HEALTH BUILDINGS FINANCING AGENCY** (the “Agency”), or registered assigns, the principal sum of _____ Dollars (\$[PAR]), whether by reason of maturity, scheduled amortization, acceleration or redemption together with (a) interest thereon at such rate or rates as in the aggregate will produce an amount equal to the total of all interest becoming due and payable on the Vermont Educational and Health Buildings Financing Agency Revenue Bonds (Middlebury College Project) Series 2020 (the “Bonds”), in the aggregate principal amount of \$[PAR] issued pursuant to a Bond Indenture, dated as of [August] 1, 2020 (the “Bond Indenture”), between the Agency and The Bank of New York Mellon Trust Company, N.A., as Trustee (the “Trustee” or the “Bond Trustee”), which indenture is incorporated herein by reference and made a part hereof, and (b) such redemption premium, if any, and other amounts as are required to be paid by the College to the Agency as part of the Note Payments as provided in the Loan Agreement, dated as of [August] 1, 2020 (the “Agreement”), between the College and the Agency, which agreement is incorporated herein by reference and made a part hereof.

The foregoing amounts shall be paid by means of the Note Payments which shall be due and payable as provided in Section 4.01 of the Agreement.

This Series 2019 Note, designated as “The President and Fellows of Middlebury College Series 2019 Note” (the “Note”) is issued for the purpose of evidencing and securing the indebtedness of the College resulting from the loan of the proceeds of the Bonds to the College. The Bonds are issued under and pursuant to the Constitution and Laws of the State of Vermont, and particularly Title 16, Chapter 131, Sections 3851-3862, Vermont Statutes Annotated, as amended (the “Act”), and the Bond Indenture, for the purpose of providing funds for refunding the Refunded Bonds (as defined in the Agreement).

Notwithstanding any schedule of payments to be made on this Note set forth or incorporated herein, the College agrees to make payments on this Note at the times and in the amounts equal to the amounts to be paid as principal (by reason of maturity, acceleration or redemption) of and redemption premium, if any, and interest on the Bonds as the same shall become due.

The obligation of the College evidenced by this Note is absolute and unconditional, is secured by the general credit of the College, and is payable from any available moneys of the College.

The College shall receive credit for payment on this Note, in addition to any credits resulting from payment or prepayment from other sources, as set forth in the Bond Indenture.

The College shall also have, and is hereby granted, the option to prepay all or any portion (in any multiples of \$5,000) of the amounts payable hereunder in respect of the Bonds at any time by taking, or causing the Agency to take, the actions required (i) for Payment of the Bonds or (ii) to effect a partial redemption of the Bonds, all as more fully set forth in the Agreement.

Upon payment by the College, in accordance with Article XIII of the Bond Indenture, of a sum, in cash or obligations, or both, sufficient, together with any other cash and obligations held by the Bond Trustee and available for such purpose, to cause all Outstanding Bonds to be deemed to have been paid within the meaning of Section 1301 of the Bond Indenture and to pay all other amounts referred to in Section 1301 of the Bond Indenture, accrued and to be accrued to the date of such deemed payment, this Note shall be deemed to have been paid and to be no longer outstanding under the Agreement.

Upon the occurrence of certain "Events of Default" (as defined in the Agreement), the principal of the Note may be declared, and thereupon shall become, due and payable as provided in the Agreement.

This Note shall be issued as a fully registered Note and shall be registered on the registration books to be maintained by the College for that purpose. The transfer of this Note in registered form shall be registrable only upon presentation of this Note to the College by the registered owner or by his duly authorized attorney. Such registration of transfer shall be without charge to the registered owner hereof, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the registered owner requesting such registration of transfer as a condition precedent to the exercise of such privilege. Upon any such registration of transfer, the College shall execute and deliver in exchange for this Note, a new Note, registered in the name of the transferee.

Prior to due presentment hereof for registration of transfer, the College shall deem and treat the person in whose name this Note is registered as the absolute owner hereof for all purposes; and the College shall not be affected by any notice to the contrary. All payments made to the registered owner hereof shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable on this Note.

No covenant or agreement contained in this Note shall be deemed to be a covenant or agreement of any officer, agent or employee of the College in his individual capacity and no employee, agent, officer or member of the Board of Trustees of the College shall be liable personally on this Note or be subject to any personal liability or accountability by reason of the issuance of this Note.

This Note shall not be entitled to any benefit under the Agreement or be valid or become obligatory for any purpose, until this Note shall have been executed by the College.

IN WITNESS WHEREOF, the College has caused this Note to be executed in its name and on its behalf by the manual signature of its Executive Vice President for Finance and Administration and Treasurer all as of the __ day of [August], 2020.

THE PRESIDENT AND FELLOWS OF
MIDDLEBURY COLLEGE

By: _____

Executive Vice President for Finance and
Administration and Treasurer