

SUPPLEMENTAL TAX CERTIFICATE OF THE BANK

This certificate made and dated effective as of September 6, 2022 (the “Supplemental Tax Certificate”) from CITIZENS BANK, N.A., formerly known as RBS Citizens, N.A., a national banking association organized and existing under the laws of the United States of America having an office at 110 West Fayette Street, 12th Floor, Syracuse, New York, in its capacity as initial purchaser (the “Bank”) of the Series 2012A Bonds and the Series 2010A Bonds (each as hereinafter defined) and as the administrative agent (the “Agent”) for Citizens Funding Corp., as the initial purchaser (the “Series 2017A Holder”) of the Series 2017A Bonds (as hereinafter defined) for the benefit of (A) OTSEGO COUNTY CAPITAL RESOURCE CORPORATION, a not-for-profit corporation organized and existing under Section 1411 of the New York State Not-For-Profit Corporation Law having an office for the transaction of business located at 189 Main Street, Oneonta, New York (the “Issuer”), (B) MANUFACTURERS AND TRADERS TRUST COMPANY, a banking corporation organized and existing under the laws of the New York having an office for the transaction of business located at One M&T Plaza, 7th Floor, Buffalo, New York, as trustee (the “Trustee”) for the holders of the Issuer’s 1) Tax-Exempt Multi-Mode Variable Rate Civic Facility Revenue Bonds (The Springbrook NY, Inc. Project), Series 2010A in the original aggregate principal amount of \$25,200,000 (the “Series 2010A Bonds”) originally issued on September 24, 2010 and deemed reissued on December 31, 2018 (the “Series 2010A Closing Date”), (2) Tax-Exempt Multi-Mode Variable Rate Revenue Bonds (The Springbrook NY, Inc. Project), Series 2012A in the original aggregate principal amount of \$2,500,000 (the “Series 2012A Bonds”) originally issued on July 25, 2012 (the “Series 2012A Closing Date”) and (3) Tax-Exempt Multi-Mode Variable Rate Revenue Bonds (The Springbrook NY, Inc. Project), Series 2017A in the original aggregate principal amount of up to \$5,550,000 (the “Series 2017A Bonds” and collectively with the Series 2010A Bonds and the Series 2012A Bonds, the “Bonds”) originally issued on March 27, 2017 (the “Series 2017A Closing Date”) and (C) SPRINGBROOK NY, INC., a not-for-profit corporation organized under the laws of the State of New York, having its office and principal place of business at 105 Campus Drive, Oneonta, New York (the “Institution”), as beneficiary of the Bonds:

WITNESSETH

WHEREAS, the Series 2010A Bonds were deemed reissued pursuant to a resolution adopted by the members of the board of directors of the Issuer on May 31, 2018 (the “Series 2010A Bond Resolution”) and various other documents (collectively, the “Series 2010A Financing Documents”), including a bond purchase agreement and reimbursement agreement dated as of September 1, 2010 (the “Initial Bond Purchase Agreement”) by and between the Bank and the Institution, and a trust indenture dated as of September 1, 2010 (the “Initial Indenture”) by and between the Issuer and the Trustee; and

WHEREAS, in connection with the reissuance of the Series 2010A Bonds on the Series 2010A Closing Date, the Institution executed and delivered a tax regulatory agreement dated the Series 2010A Closing Date (the “Series 2010A Tax Regulatory Agreement”) relating to the Series 2010A Bonds, pursuant to which the Institution made certain representations and warranties relating to various requirements applicable to the Series 2010A Bonds contained in the Internal Revenue Code of 1986, as amended (the “Code”) and the applicable regulations (whether proposed, temporary or final) of the United States Treasury Department promulgated thereunder (the “Treasury Regulations”); and

WHEREAS, the Series 2012A Bonds were issued pursuant to a resolution adopted by the members of the board of directors of the Issuer on March 22, 2012 (the “Series 2012A Bond Resolution”) and various other documents (collectively, the “Series 2012A Financing Documents”), including the Initial Bond Purchase Agreement, as supplemented by a supplement to bond purchase agreement and

reimbursement agreement dated as of July 1, 2012 (the “Supplement to Initial Bond Purchase Agreement”) and the Initial Indenture, as supplemented by a supplemental trust indenture dated as of July 1, 2012 (the “Series 2012A Supplemental Indenture”) by and between the Issuer and the Trustee; and

WHEREAS, in connection with the issuance of the Series 2012A Bonds on the Series 2012A Closing Date, the Institution executed and delivered a tax regulatory agreement dated the Series 2012A Closing Date (the “Series 2012A Tax Regulatory Agreement”) relating to the Series 2012A Bonds, pursuant to which the Institution made certain representations and warranties relating to various requirements applicable to the Series 2012A Bonds contained in the Code and the Treasury Regulations; and

WHEREAS, the Series 2017A Bonds were issued pursuant to a resolution adopted by the members of the board of directors of the Issuer on July 28, 2016 (the “Series 2017A Bond Resolution”) and various other documents (collectively, the “Series 2017A Financing Documents,” and collectively with the Series 2010A Financing Documents and the Series 2012A Financing Documents, the “Financing Documents”), including a bond purchase agreement and continuing covenants agreement dated as of March 1, 2017 (the “Continuing Covenants Agreement”) by and among the Issuer, the Institution, Citizens Funding Corp., as the initial purchaser of the Series 2017A Bonds (the “Series 2017A Holder”) and the Agent, and the Initial Indenture, as supplemented by a supplemental trust indenture dated as of March 1, 2017 (the “Series 2017A Supplemental Indenture”) by and between the Issuer and the Trustee; and

WHEREAS, the Initial Indenture and the Financing Documents were further supplemented pursuant to a first omnibus amendment to the indenture and related financing documents dated as of March 27, 2017 (the “First Omnibus Amendment”) by and among the Issuer, the Institution, the Trustee and the Bank, and a second omnibus amendment to the indenture and related financing documents dated as December 31, 2018 (the “Second Omnibus Amendment” and together with the First Omnibus Amendment and the Third Omnibus Amendment, the “Omnibus Amendments”) (the Initial Indenture, as supplemented by the Series 2012A Supplemental Indenture, the Series 2017A Supplemental Indenture and the Omnibus Amendments, being collectively referred to hereinafter as the “Indenture”) by and among the Issuer, the Institution, the Trustee, the Bank and the Agent; and

WHEREAS, in connection with the issuance of the Series 2017A Bonds on the Series 2017A Closing Date, the Institution executed and delivered a tax regulatory agreement dated the Series 2017A Closing Date (the “Series 2017A Tax Regulatory Agreement”) relating to the Series 2017A Bonds, pursuant to which the Institution made certain representations and warranties relating to various requirements applicable to the Series 2017A Bonds contained in the Code and the Treasury Regulations; and

WHEREAS, capitalized terms not otherwise defined herein will have the meanings ascribed to such terms in the Indenture; and

WHEREAS, the Bonds currently bear interest at the Bank Purchase Rate (as defined in the Indenture) which is determined by reference to the London interbank offer rate (“LIBOR”); and

WHEREAS, in connection with the announcement on March 5, 2021 by the Financial Conduct Authority, as the regulatory supervisor of the administrator of LIBOR, of the cessation or loss of representativeness of 35 LIBOR benchmark settings, including USD LIBOR, and that publication of USD LIBOR settings for most tenors will cease immediately after June 30, 2023, the Issuer and the Trustee have been notified by the Institution and the Bank (the “Modification Request”) that both parties have determined to adopt a daily Secured Overnight Financing Rate (SOFR) as a replacement for LIBOR with

respect to the Bonds (the “Benchmark Transition”) and to make modifications to the Bonds and the other Financing Documents necessary to implement the Benchmark Transition; and

WHEREAS, the Bank requested the Issuer furnish to the Bank an opinion from bond counsel with respect to each series of the Bonds (each, a “Bond Counsel Opinion”) stating that such implementation of the Modification Request will not, in and of themselves, adversely affect the tax-exempt status of interest paid and payable on the Bonds; and

WHEREAS, by resolution adopted by the board of directors of the Issuer on June 23, 2022 (the “Authorization Resolution”), the Issuer authorized implementation of the Modification Request, including but not limited to the execution of the modifications to the Bonds and the related Financing Documents necessary to implement the Modification Request; and

WHEREAS, by a third omnibus amendment to the indenture and related financing documents dated as of September 6, 2022 (the “Third Omnibus Amendment”) by and among the Issuer, the Trustee, the Institution, the Bank and the Agent, for the purpose of implementation of the Modification Request, the Institution, the Trustee and the Bank authorized the Issuer to amend the (A) Series 2010A Bonds by entering into an allonge effective as of September 1, 2022 (the “Series 2010A Allonge”) executed by the Issuer with the approval of the Trustee, the Bank and the Institution, (B) the Series 2012A Bonds by entering into an allonge effective as of September 1, 2022 (the “Series 2012A Allonge”) executed by the Issuer with the approval of the Trustee, the Bank and the Institution and (C) Series 2017A Bonds by entering into an allonge effective as of September 1, 2022 (the “Series 2017A Allonge” and together with the Series 2010A Allonge and the Series 2012A Allonge, the “Allonge”) executed by the Issuer with the approval of the Trustee, the Agent and the Institution, and (B) the Issuer, the Trustee, the Institution, the Bank and the Agent made certain other modifications to the Financing Documents necessary to implement the Modification Request (such modifications, together with the Allonge, being collectively referred to as the “Modifications”); and

WHEREAS, in order to induce Hodgson Russ LLP, bond counsel to the Issuer (“Bond Counsel”) to provide the required Bond Counsel Opinion to the Bank and the Trustee, the Bank has agreed to deliver this Certificate to be relied upon by Bond Counsel and the Issuer for purposes of the delivery of the Bond Counsel Opinion;

THE UNDERSIGNED OFFICER OF CITIZENS BANK, N.A. HEREBY CERTIFIES THAT:

1. I am an officer of the Bank and am duly authorized to execute and deliver this certificate in the name and on behalf of the Bank.
2. On the date hereof, (A) the Issuer, the Institution, the Trustee, the Bank and the Agent will implement the Modifications by entering into the Third Omnibus Amendment and (B) pursuant to the Third Omnibus Amendment, the Issuer will execute the Allonge and the Institution, the Trustee, the Bank and the Agent (with respect to the Series 2017A Bonds only) will consent to the Allonge.
3. With the exception of implementation of the Modifications and those modifications implemented pursuant to the Omnibus Amendments, no other changes or modifications have been made to the (a) Series 2010A Bonds (or to the terms thereof) during the period commencing with the Series 2010A Closing Date and ending on the date hereof, (b) Series 2012A Bonds (or to the terms thereof) during the period commencing with the Series 2012A Closing Date and ending on the date hereof and (c) the Series 2017A Bonds (or to the terms thereof) during the period commencing with the Series 2017A Closing Date and ending on the date hereof. In particular, the interest rate payable on the Bonds and the maturity date of the Bonds has not changed during such time period.

4. Neither the Agent nor the Bank require the payment of any fees for the implementation of the Modifications, other than reasonable out of pocket expenses incurred in connection with the holding of the Bonds and the implementation of the Modifications.

5. The Modifications (collectively, the “Action”) and the waiver of the demand purchase option by the Bank with respect to the Series 2012A Bonds are the only modifications to the Bonds occurring on the date hereof (the “Modification Date”).

6. The Bank understands that Section 1001 of the Code provides rules for determining the amount and recognition of gain or loss from the sale or other disposition of property. Treasury Regulation Section 1.1001-1(a) generally provides that gain or loss is realized upon the exchange of property for other property differing materially either in kind or in extent. In the case of a debt instrument such as the Bonds, Treasury Regulation Section 1.1001-3 provides rules for determining whether a modification of the terms of the debt instrument results in an exchange of the original debt instrument for a modified debt instrument that differs materially either in kind or in extent for purposes of Treasury Regulation Section 1.1001-1(a). The Bank understands that pursuant to Treasury Regulation Section 1.1001-3(a)(1) and Treasury Regulation Section 1.1001-3(e)(2), a “significant” modification of the terms of the Bonds may result in a “reissuance” of the Bonds for federal tax purposes.

7. The Bank understands that, pursuant to Treasury Regulation Section 1.1001-3(e)(2)(iii), the Yield on the Modified Bonds is the annual yield of a debt instrument with:

(A) an issue price equal to the adjusted issue price of the Unmodified Bonds on the Modification Date (increased by any accrued but unpaid interest and decreased by any accrued bond issuance premium not yet taken into account, and increased or decreased, respectively, to reflect payments made to the Issuer or the Bank as consideration for the Modifications); and

(B) payments equal to the payments on the Modified Bonds from the Modification Date.

8. The Bank further understands that, for purposes of paragraph 7 above:

(A) The criterion is a change in Yield, not a change in stated interest rate.

(B) Changes in Yield may result from, among other things, (i) reductions to principal, (ii) payment of consent fees or (iii) a change in timing of payments for debt issued at a discount to principal.

(C) Change in Yield is measured on a cumulative basis.

(D) A commercially reasonable prepayment penalty for a pro rata prepayment (as defined in Treasury Regulation Section 1.1275-2(f)) is not consideration for a modification of the Bonds and is not taken into account in determining the Yield of the Modified Bonds.

(E) Pursuant to Treasury Regulation Section 1.1001-3(e)(3)(ii), deferral of one or more scheduled payments within the safe-harbor period is not a material deferral if the deferred payments are unconditionally payable at the end of the safe harbor period.

(F) Pursuant to Treasury Regulation Section 1.1001-6, the replacement of a LIBOR index with a qualified floating rate and any associated modifications is a covered modification

which is not treated as an exchange of property for other property differing materially in kind or in extent for purposes of Treasury Regulation Section 1.1001-1 and accordingly does not constitute a reissuance. The replacement of Adjusted LIBOR with Daily Simple SOFR Rate plus 10 basis points is a “covered modification” since Daily SOFR is a qualified floating rate and the 10 basis point replacement adjustment is an associated modification. The addition of fallback language (Benchmark Replacement) to the Bonds is also a covered modification if the likelihood of a rate being determined under the benchmark replacement provision is remote.

9. The Bank reasonably expects that the likelihood of a rate being determined under the Benchmark Replacement provisions of the Indenture is remote. The Bank has determined that based on the factors itemized in paragraph 8 above, no modifications which are not covered modifications have occurred to the Bonds since the date of reissuance of the Series 2010A Bonds or the date of issuance of the Series 2012 Bonds and the Series 2017A Bonds which have or will cause the Yield on the Bonds to change by more than 0.25%.

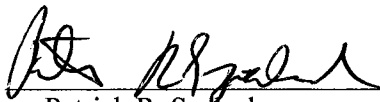
10. This Supplemental Tax Certificate supplements and forms a part of the Series 2010A Tax Regulatory Agreement, the Series 2012A Tax Regulatory Agreement and the Series 2017A Tax Regulatory Agreement, and unless otherwise specifically set forth in this Supplemental Tax Certificate, the representations and certifications set forth in the Series 2010A Tax Regulatory Agreement, the Series 2012A Tax Regulatory Agreement and the Series 2017A Tax Regulatory Agreement remain true and accurate as of the date hereof, and the covenants, agreements and undertakings made in the Series 2010A Tax Regulatory Agreement, the Series 2012A Tax Regulatory Agreement and the Series 2017A Tax Regulatory Agreement remain in full force and effect.

The representations and other information contained in this Supplemental Tax Certificate are provided solely for the benefit of, and may be relied upon by, (A) the Issuer, in connection with the Issuer’s consent to the Modifications, and (B) Hodgson Russ LLP, Bond Counsel, in connection with their opinion stating that the implementation of the Modifications will not, in and of itself, adversely affect the tax status of the Bonds.

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IN WITNESS WHEREOF, on behalf of the Bank, I have hereunto set my hand as of the 6th day of September, 2022.

CITIZENS BANK, N.A.,
formerly known as RBS Citizens, N.A.

By: 
Patrick R. Szalach
Senior Vice President

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