

**\$24,700,000**

**DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
CATHOLIC HEALTH SYSTEM OBLIGATED GROUP  
REVENUE BONDS, SERIES 2008**

**Dated: Date of Delivery****Price: 100%****Due: July 1 as shown on the inside cover**

**Payment and Security:** The Catholic Health System Obligated Group Revenue Bonds, Series 2008 (the "Series 2008 Bonds") are to be issued as described herein and are special obligations of the Dormitory Authority of the State of New York (the "Authority") payable from amounts derived from draws under the Letter of Credit (as hereinafter defined). The Series 2008 Bonds are secured by the funds and accounts for the Series 2008 Bonds (except the Arbitrage Rebate Fund, the Purchase and Remarketing Fund and the Credit Facility Repayment Fund) authorized by the Authority's Catholic Health System Obligated Group Revenue Bond Resolution, adopted by the Authority on October 25, 2006 (the "General Resolution" or the "Resolution"), and established under the Series Resolution authorizing the issuance of the Series 2008 Bonds, adopted by the Authority on October 29, 2008 pursuant to the Resolution (the "Series 2008 Resolution") and by a pledge of certain payments to be made under the Loan Agreement (the "Loan Agreement"), dated as of October 29, 2008, between Mercy Hospital of Buffalo (the "Institution") and the Authority. The Series 2008 Bonds are secured by the Series 2008 Obligation issued by the Obligated Group which Series 2008 Obligation is a joint and several obligation of the Members of the Obligated Group (as such terms are defined herein).

From the date of original issuance of the Series 2008 Bonds through November 18, 2013, unless extended or earlier terminated or replaced, principal of and interest on the Series 2008 Bonds, and the Purchase Price of Series 2008 Bonds tendered for payment and not remarketed as described herein, will be payable from funds drawn under an irrevocable direct-pay letter of credit (the "Letter of Credit") issued by



HSBC Bank, USA, National Association (the "Bank"), in favor of The Bank of New York Mellon, as trustee (the "Trustee") for the benefit of the Holders of the Series 2008 Bonds. The Trustee is required to draw under the Letter of Credit in order to provide for the timely payment of the principal of and interest on the Series 2008 Bonds and the Purchase Price of Series 2008 Bonds tendered for purchase for which remarketing proceeds are not available. The Members of the Obligated Group and the Bank will enter into a Letter of Credit Reimbursement Agreement, dated as of November 1, 2008 (the "Reimbursement Agreement"), providing for reimbursement to the Bank of amounts drawn under the Letter of Credit. See "PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS - The Letter of Credit."

The Institution's obligation under the Loan Agreement is a general obligation of the Institution. Payment of the Series 2008 Bonds will be secured by payments to be made pursuant to an obligation (the "Series 2008 Obligation" as more fully described herein) issued pursuant to the Master Trust Indenture, dated as of November 29, 2006 (the "Master Trust Indenture") and a Supplemental Indenture dated the date of issuance that constitutes the joint and several general obligation of all the Members of the Obligated Group. The Members of the Obligated Group are the Institution, Catholic Health System, Inc. ("CHS"), Sisters of Charity Hospital of Buffalo, New York, Kenmore Mercy Hospital and St. Joseph Hospital of Cheektowaga, New York. No affiliate of the Institution, other than the Members of the Obligated Group, will be obligated for amounts due under the Series 2008 Obligation. See "PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS." The obligations of the Members under the Series 2008 Obligation are secured by a pledge of Gross Receipts (as defined herein) of each Member and by Mortgages (as defined herein) granted in favor of the Master Trustee on certain properties of the Members of the Obligated Group consisting of the core health care facilities of each Member of the Obligated Group that operates health care facilities.

**The Series 2008 Bonds will not be a debt of the State of New York (the "State") nor will the State be liable thereon. The Authority has no taxing power.**

**Description:** The Series 2008 Bonds will initially bear interest from their date of delivery at the Weekly Rate. Interest on the Series 2008 Bonds is payable on December 1, 2008 and thereafter on the first Business Day of each month for as long as the Series 2008 Bonds bear interest in the Weekly Rate Mode. **This Official Statement describes the terms of the Series 2008 Bonds only in the Weekly Rate Mode.**

The Series 2008 Bonds may be converted from time to time in accordance with the provisions of the Series 2008 Resolution to a different Interest Rate Mode, as set forth herein. At the time of a conversion from the Weekly Rate Mode to a different Rate Mode, the Series 2008 Bonds are subject to mandatory tender for purchase at the Purchase Price, as set forth herein. The Series 2008 Bonds are also subject to mandatory tender for purchase under other circumstances and to tender for purchase at the option of the Holders when bearing interest at the Weekly Rate, as set forth herein. The Series 2008 Bonds tendered for purchase are to be remarketed by DEPFA First Albany Securities LLC (the "Remarketing Agent").

As long as the Series 2008 Bonds bear interest at the Weekly Rate, the Series 2008 Bonds shall be issued in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof.

The Series 2008 Bonds will be issued initially under a Book-Entry Only System, registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"). Individual purchases of beneficial interests in the Series 2008 Bonds will be made in book-entry form (without certificates). So long as DTC or its nominee is the registered owner of the Series 2008 Bonds, payments of the principal, Purchase Price and Redemption Price of and interest on such Series 2008 Bonds will be made directly to DTC or its nominee. Disbursement of such payments to DTC participants is the responsibility of DTC and disbursement of such payments to the beneficial owners is the responsibility of DTC participants. See "PART 3 - THE SERIES 2008 BONDS -Book-Entry Only System" herein.

**Mandatory Tender and Redemption:** The Series 2008 Bonds are subject to mandatory tender and to redemption prior to maturity as more fully described herein.

**Tax Exemption:** In the opinion of Harris Beach PLLC, Bond Counsel to the Authority, under existing statutes, regulations, administrative rulings and court decisions, and assuming compliance with the tax covenants described herein, interest on the Series 2008 Bonds is excluded from gross income for federal income tax purposes pursuant to section 103 of the Internal Revenue Code of 1986, as amended, and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals and corporations. However, such interest is included in "adjusted current earnings" for purposes of calculating the federal alternative minimum tax liability of certain corporations. See "PART 13-TAX MATTERS" herein regarding certain other related federal tax considerations. Bond Counsel is also of the opinion that, under existing statutes, including the Act (as defined herein), interest on the Series 2008 Bonds is exempt from personal income taxes imposed by the State of New York and any political subdivision thereof. Bond Counsel expresses no opinion regarding any other consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Series 2008 Bonds.

*The Series 2008 Bonds are offered when, as, and if issued and received by the Underwriter. The offer of the Series 2008 Bonds may be subject to prior sale, or withdrawn or modified at any time without notice. The offer is subject to the approval of legality by Harris Beach PLLC, and to certain other conditions. Certain legal matters will be passed upon for the Institution and the Obligated Group by their counsel, Phillips Lytle LLP. Certain legal matters will be passed upon for the Underwriter by its counsel, Hawkins Delafield & Wood LLP, and for the Bank by its counsel, Hiscock & Barclay LLP. The Authority expects to deliver the Series 2008 Bonds in definitive form in New York, New York, on or about November 19, 2008.*

**DEPFA First Albany Securities LLC**

**\$24,700,000**

**DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
CATHOLIC HEALTH SYSTEM OBLIGATED GROUP  
REVENUE BONDS, SERIES 2008**

**due July 1, 2034 @ 100%,**

**CUSIP: 6499035D9**

All Series 2008 Bonds are issued initially in the Weekly Rate Mode. The initial Weekly Rate is effective through and including November 26, 2008.

CUSIP data herein is provided by Standard & Poor's, CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. CUSIP numbers have been assigned by an independent company not affiliated with the Authority and are included solely for the convenience of the holders of the Series 2008 Bonds. The Authority is not responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the Series 2008 Bonds or as indicated above. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2008 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of the Series 2008 Bonds.

*No dealer, broker, salesperson or other person has been authorized by the Authority, the Members of the Obligated Group, the Underwriter or the Bank to give any information or to make any representations with respect to the Series 2008 Bonds, other than the information and representations contained in this Official Statement. If given or made, any such information or representations must not be relied upon as having been authorized by the Authority, the Members of the Obligated Group, the Underwriter or the Bank.*

*This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be a sale of the Series 2008 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.*

*Certain information in this Official Statement has been supplied by the Members of the Obligated Group, the Bank and other sources that the Authority believes are reliable. The Authority does not guarantee the accuracy or completeness of such information, and such information is not to be construed as a representation of the Authority. The Underwriter has provided the following sentence for inclusion in this Official Statement. The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.*

*Other than with respect to information concerning the Letter of Credit and the Bank contained under the captions "THE BANK" in Part 7, and "The Letter of Credit" and "The Reimbursement Agreement" in Part 2, none of the information in the Official Statement has been supplied or verified by the Bank and the Bank makes no representation or warranty, expressed or implied, as to (i) the accuracy or completeness of such information; (ii) the validity of the Series 2008 Bonds; or (iii) the tax status of the interest on the Series 2008 Bonds.*

*References in this Official Statement to the Act, the Resolution, the Series 2008 Resolution, the Loan Agreement, the Remarketing Agreement, the Letter of Credit, the Reimbursement Agreement, the Intercreditor Agreement, the Master Trust Indenture, the 2008 Supplemental Indenture, and the Series 2008 Obligation (as each such term is defined in this Official Statement) do not purport to be complete. Investors should refer to the Act, the Resolution, the Series 2008 Resolution, the Loan Agreement, the Remarketing Agreement, the Letter of Credit, the Reimbursement Agreement, the Intercreditor Agreement, the Master Trust Indenture, the 2008 Supplemental Indenture and, the Series 2008 Obligation, for full and complete details of their provisions. Copies of the Act, the Resolution, the Series 2008 Resolution, the Loan Agreement, the Remarketing Agreement, the Letter of Credit, the Reimbursement Agreement, the Intercreditor Agreement, the Master Trust Indenture, the 2008 Supplemental Indenture, and the Series 2008 Obligation are on file with the Authority and the Trustee.*

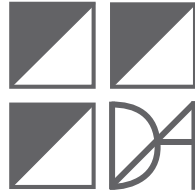
*The order and placement of material in this Official Statement, including its appendices, are not to be deemed a determination of relevance, materiality or importance, and all material in this Official Statement, including its appendices, must be considered in its entirety.*

*Under no circumstances shall the delivery of this Official Statement or any sale made after its delivery create any implication that the affairs of the Authority, the Bank or the Members of the Obligated Group, have remained unchanged after the date of this Official Statement.*

**IN CONNECTION WITH THE OFFERING OF THE SERIES 2008 BONDS, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICES OF THE SERIES 2008 BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

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**DORMITORY AUTHORITY - STATE OF NEW YORK - 515 BROADWAY, ALBANY, N.Y. 12207**

**PAUL T. WILLIAMS, JR. - EXECUTIVE DIRECTOR**

**GAIL H. GORDON, ESQ. - CHAIR**

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**OFFICIAL STATEMENT RELATING TO**  
**\$24,700,000**  
**DORMITORY AUTHORITY OF THE STATE OF NEW YORK**  
**CATHOLIC HEALTH SYSTEM OBLIGATED GROUP**  
**REVENUE BONDS, SERIES 2008**

**PART 1 - INTRODUCTION**

**Purpose of the Official Statement**

The purpose of this Official Statement is to provide information in connection with the offering by the Dormitory Authority of the State of New York (the "Authority") of \$24,700,000 aggregate principal amount of Catholic Health System Obligated Group Revenue Bonds, Series 2008 (the "Series 2008 Bonds"). The proceeds of the Series 2008 Bonds are to be applied as described below under the caption "Purpose of the Issue." The following is a brief description of certain information concerning the Series 2008 Bonds, the Authority, the Bank (as hereafter defined), Mercy Hospital of Buffalo, (the "Institution"), Catholic Health System, Inc. ("CHS" or the "Representative"), and Sisters of Charity Hospital of Buffalo, New York ("Sisters of Charity"), Kenmore Mercy Hospital ("Kenmore Mercy") and St. Joseph Hospital of Cheektowaga, New York ("St. Joseph"). The Institution, CHS, Sisters of Charity, Kenmore Mercy and St. Joseph are referred to herein collectively as the "Members of Obligated Group" or the "Obligated Group". A more complete description of such additional information that may affect a decision to invest in the Series 2008 Bonds is contained throughout this Official Statement, which should be read in its entirety. Certain terms used in this Official Statement and not otherwise defined herein, are defined in Appendix A, Appendix D or Appendix E hereto.

**As a general matter, this Official Statement describes the terms of the Series 2008 Bonds only in the Weekly Rate Mode.**

**Purpose of the Issue**

The proceeds of the Series 2008 Bonds will be loaned by the Authority to the Institution for the purpose of financing the cost of an approximately 48,300 square foot addition for a new emergency department, new CT/Radiology facilities, construction of a new main entrance and lobby area, a new ambulance entrance, construction of a rooftop helipad, renovation of library space into conference rooms, other mechanical and electrical improvements and associated demolition and equipping costs. Proceeds of the Series 2008 Bonds will also be applied to pay certain costs of issuing the Series 2008 Bonds including the cost of obtaining the Letter of Credit. See "PART 4 - THE PLAN OF FINANCE".

**Authorization of Issuance**

The Series 2008 Bonds will be issued pursuant to the Act, the Authority's Catholic Health System Obligated Group Revenue Bond Resolution, adopted by the Authority on October 25, 2006 (the "General Resolution" or the "Resolution"), and the Series Resolution authorizing the issuance of Catholic Health System Obligated Group Revenue Bonds, Series 2008, adopted by the Authority on October 29, 2008 (the "Series 2008 Resolution" and, together with the General Resolution, the "Resolutions"). The Series 2008 Bonds will be separately secured from any other Series of Bonds issued pursuant to the Resolution by (i) the funds and accounts established pursuant to the Series 2008 Resolution, (ii) the Loan Agreement dated as of October 29, 2008 by and

between the Authority and the Institution (the “Loan Agreement”), and (iii) the Obligation to be issued by the Obligated Group under the Master Trust Indenture (the “Series 2008 Obligation”). The Series 2008 Bonds and all other Series of Bonds issued pursuant to the Resolution are referred to as the “Bonds.” The Authority has previously issued \$68,820,000 of its Catholic Health System Obligated Group Revenue Bonds, Series 2006 in four series, 2006A through 2006D (collectively, the “Series 2006 Bonds”) under the General Resolution. See “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS.”

### **The Series 2008 Bonds**

The Series 2008 Bonds will be dated the date of their initial delivery, will bear interest from that date and will mature, subject to prior redemption or tender for purchase, as set forth on the inside cover page hereof. Commencing on the date of delivery, the Series 2008 Bonds will bear interest in the Weekly Rate Mode as determined by the Remarketing Agent on or before the date of delivery until the Series 2008 Bonds are converted to a Daily Rate, a Term Rate or a Fixed Rate. The Series 2008 Bonds may also be converted permanently to the Fixed Rate Mode. The Series 2008 Bonds may, however, be converted to a different Interest Rate Mode provided that all Series 2008 Bonds must be in the same Interest Rate Mode. See “PART 3 - THE SERIES 2008 BONDS - Description of the Series 2008 Bonds.”

**This Official Statement generally describes the Series 2008 Bonds only in the Weekly Rate Mode.**

Interest on the Series 2008 Bonds while in the Weekly Rate Mode is payable on December 1, 2008 and thereafter on the first Business Day of each month.

**A conversion of the Series 2008 Bonds to a Daily Rate, a Term Rate or a Fixed Rate will cause a mandatory tender of the Series 2008 Bonds. The expiration of the Credit Facility, delivery of a Substitute Credit Facility or certain Events of Default under the Reimbursement Agreement will cause a mandatory tender of all Series 2008 Bonds. See “PART 3 - THE SERIES 2008 BONDS - Tender of the Series 2008 Bonds”.**

Notwithstanding their stated maturity, the Series 2008 Bonds are subject to optional and mandatory redemption prior to maturity and are subject to mandatory tender for purchase upon the occurrence of certain events including an Event of Default under the Reimbursement Agreement.

While in the Weekly Rate Mode, the interest rate borne by the Series 2008 Bonds will be determined by the Remarketing Agent to be the lowest rate of interest that, in the judgment of the Remarketing Agent, under prevailing financial market conditions, enables such Series 2008 Bonds to be sold at a price of par (plus accrued interest, if any). The Resolution provides that in no event may the interest rate on any Series 2008 Bonds (except Pledged Bonds) exceed 12%.

Each Bondholder, at all times while the Series 2008 Bonds bear interest at the Weekly Rate, will have the right and, at certain other times, will have the obligation, to tender the Series 2008 Bonds (or portion thereof under certain circumstances) owned by such Bondholder for purchase at a Purchase Price of 100% of the principal amount of such Series 2008 Bonds, plus accrued interest, if any, as described herein, by delivering the tendered Series 2008 Bonds to the Tender Agent. See “PART 3 - THE SERIES 2008 BONDS - Description of the Series 2008 Bonds.”

**The Series 2008 Bonds will not be a debt of the State nor will the State be liable thereon. The Authority has no taxing power.**

### **The Authority**

The Authority is a public benefit corporation of the State of New York, created for the purpose of financing and constructing a variety of public-purpose facilities for certain educational and not-for-profit institutions. See “PART 10 - THE AUTHORITY.” Pursuant to the Health Care Consolidation Act, the Authority succeeded to the rights and powers of the New York State Medical Care Facilities Finance Agency.



## **The Institution**

Proceeds of the Series 2008 Bonds will be loaned to the Institution pursuant to the Loan Agreement as described above under the caption “Purpose of the Issue.” The Institution is a Member of the Obligated Group.

## **The Catholic Health System Obligated Group**

The current Members of the Obligated Group are: CHS, the Institution, Sisters of Charity, Kenmore Mercy, and St. Joseph. Each Member of the Obligated Group is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). Pursuant to the recommendations of the Commission on Health Care Facilities in the Twenty-First Century, St. Joseph is expected to merge into Sisters of Charity on or about March 31, 2009 and health care services on the current St. Joseph’s campus are to be provided by Sisters of Charity. See “PART 8 - THE OBLIGATED GROUP”.

The Members of the Obligated Group are each part of the Catholic Health System (the “CHS System”) which is an integrated health care delivery system comprised of hospitals, nursing homes, a program of all-inclusive care for the elderly, ambulatory care facilities, home health care agencies, and senior housing. The CHS System provides administrative and management services for its affiliated hospitals including the Institution. No affiliates of CHS other than the Members of the Obligated Group are obligated in any respect under the Series 2008 Bonds.

CHS is, directly or indirectly, the sole corporate member of each operating entity within the CHS System, including the Members of the Obligated Group and serves as the Representative of the Obligated Group under the Master Trust Indenture.

## **Payment of the Series 2008 Bonds**

The Series 2008 Bonds will be special obligations of the Authority payable solely from certain payments to be made by HSBC Bank USA, National Association (the “Bank”) under an irrevocable direct-pay letter of credit (the “Letter of Credit”). The Series 2008 Bonds are separately secured from any other Series of Bonds by the Revenues. The Revenues under the Resolution and the Series 2008 Resolution consist of certain payments to be made by the Institution under the Loan Agreement and by payments to be made by the Members of the Obligated Group under Obligation No. 7 issued under the Master Trust Indenture (as defined below). Obligation No. 7 is referred to herein individually as the “Series 2008 Obligation”). The Series 2008 Obligation is issued pursuant to the Master Trust Indenture, dated as of November 29, 2006 (the “Master Trust Indenture”), by and among the Members of the Obligated Group and The Bank of New York Mellon, as master trustee (the “Master Trustee”), and the Supplemental Indenture authorizing the issuance of the Series 2008 Obligation, dated as of November 1, 2008 (the “2008 Supplemental Indenture”), by and among the Members of the Obligated Group, and the Master Trustee. The Master Trust Indenture as so supplemented is hereinafter referred to as the “Master Trust Indenture.” See “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS.”

## **Security for the Series 2008 Bonds**

The Series 2008 Bonds will be secured by the funds and accounts authorized by the Resolutions and established under the Series 2008 Resolution (with the exception of the Arbitrage Rebate Fund, the Purchase and Remarketing Fund and the Credit Facility Repayment Fund), and by the pledge and assignment made by the Authority, pursuant to the Resolutions, to the Trustee of the Revenues consisting of (i) payments to be made by the Institution under the Loan Agreement and (ii) payments to be made by the Members of the Obligated Group under the Series 2008 Obligation.

The payments by the Institution pursuant to the Loan Agreement are general obligations of the Institution. The Series 2008 Obligation is the general, joint and several obligations of the Members of the Obligated Group, secured by a security interest in the Gross Receipts of each Member of the Obligated Group (see Appendix D hereto) and by a mortgage on certain property consisting of the core hospital facilities of the Institution (the “2008 Mortgage”) and by mortgages previously granted by the Institution, Sisters of Charity, Kenmore Mercy and St. Joseph in connection with the Series 2006 Bonds (collectively, the “Existing Mortgages”, and together with the 2008 Mortgage, the “Mortgages”). The pledge of Gross Receipts and the Mortgages secure all Obligations to be issued under the Master Trust Indenture, including the Series 2008 Obligation.

The respective rights, remedies and obligations of the Trustee, as assignee of the Authority, and the Bank with regard to the Master Trust Indenture and the Series 2008 Obligation are set forth in the Assignment and Intercreditor Agreement, dated as of November 29, 2006, by and among the Bank, the Authority and the Trustee which was entered into in connection with the issuance of the Series 2006 Bonds, as amended by the First Amendment to Assignment and Intercreditor Agreement, date as of November 19, 2008 (the Assignment and Intercreditor Agreement as so amended hereinafter referred to as the “Increditor Agreement”) in connection with the issuance of the Series 2008 Bonds. See “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS - Payment of and Security for the Series 2008 Bonds.”

**THE SERIES 2008 BONDS ARE BEING OFFERED SOLELY ON THE BASIS OF THE FINANCIAL STRENGTH OF THE BANK AND NOT ON THE FINANCIAL STRENGTH OF THE INSTITUTION, THE OBLIGATED GROUP OR OTHER SECURITY. ONLY A BRIEF DESCRIPTION OF THE OBLIGATED GROUP IS INCLUDED HEREIN. THE OWNERS OF THE SERIES 2008 BONDS WILL NOT BE ABLE TO ASSESS THE LIKELIHOOD THAT THE SERIES 2008 BONDS WILL BE SUBJECT TO MANDATORY TENDER BEFORE THE STATED MATURITY THEREOF BECAUSE OF AN EVENT OF DEFAULT UNDER THE REIMBURSEMENT AGREEMENT.**

**The Series 2008 Bonds will not be a debt of the State nor will the State be liable thereon. The Authority has no taxing power.**

For a more complete discussion of the security for the Series 2008 Bonds, see “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS.”

### **The Letter of Credit**

Concurrently with the issuance and delivery of the Series 2008 Bonds, the Bank will deliver the Letter of Credit in an initial stated amount equal to \$24,983,443 which may from time to time be reduced and reinstated (the “Available Amount”), in an amount not to exceed \$24,700,000 which may be drawn to pay principal or the principal portion of the Purchase Price of the Series 2008 Bonds bearing interest at the Weekly Rate, and up to \$283,443 (an amount equal to 35 days’ interest computed at the rate of twelve percent (12%) per annum computed on the basis of actual days elapsed over a year of 365/6 days) which may be drawn to pay interest on or the interest portion of the Purchase Price of the Series 2008 Bonds bearing interest at the Weekly Rate. The Letter of Credit will expire on November 18, 2013, unless earlier terminated, extended or replaced as provided therein. Subject to the terms of the Letter of Credit, the Trustee is required to draw under the Letter of Credit in order to provide for the timely payment of the principal of and interest on the Series 2008 Bonds and all or a portion of the Purchase Price of Series 2008 Bonds tendered for purchase and not remarketed or for which remarketing proceeds are otherwise not available. In the event the interest portion of the Letter of Credit is not sufficient to pay accrued interest on Series 2008 Bonds tendered and not remarketed, the Trustee will withdraw from the Credit Facility Account of the Debt Service Fund moneys previously drawn on the Letter of Credit and on deposit therein to pay the difference. The Members of the Obligated Group and the Bank will enter into a Letter of Credit Reimbursement Agreement, dated as of November 1, 2008 (the “Reimbursement Agreement”), providing for reimbursement to the Bank of amounts drawn under the Letter of Credit and the payment of certain fees to the Bank. See “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS - The Letter of Credit.”

### **The Master Trust Indenture**

Each Obligation issued pursuant to the Master Trust Indenture constitutes a general, joint and several obligation of each Member of the Obligated Group. Each Member of the Obligated Group is obligated, jointly and severally with the other Members of the Obligated Group, for the payment of all Obligations issued under the Master Trust Indenture. The issuance of Obligations (including the Series 2008 Obligation) is subject to the satisfaction of certain financial covenants set forth in the Master Trust Indenture that bind all Members of the Obligated Group. The financial covenants set forth in the Master Trust Indenture are subject to amendment, modification and waiver without the consent of or notice to holders of the Series 2008 Bonds.

### **Additional Indebtedness**

Each Member of the Obligated Group, upon compliance with the terms and conditions of the Master Trust Indenture, may incur additional Indebtedness. Such Indebtedness, if evidenced by an Obligation issued under the



Master Trust Indenture, will constitute a general, joint and several obligation of each Member of the Obligated Group secured on a parity basis with the Series 2008 Obligation, the Obligations issued to secure the Series 2006 Bonds and all other Obligations hereafter issued under the Master Trust Indenture. All Obligations previously issued as well as issued in the future under the Master Trust Indenture are secured by the security interest granted to the Master Trustee in the Gross Receipts of the Members of the Obligated Group and the Mortgages granted to the Master Trustee.

In addition, under certain conditions, the Members may also incur Indebtedness that is not evidenced or secured by an Obligation issued under the Master Trust Indenture. Any such other Indebtedness may be unsecured or secured by a Lien on Property to the extent such Lien is permitted under the Master Trust Indenture, including a Lien on Excluded Property. See “Appendix D - Summary of Certain Provisions of the Master Trust Indenture and the Supplemental Indentures.”

### **Additional Bonds**

The General Resolution authorizes the issuance by the Authority, from time to time, of Bonds in one or more Series, each such Series to be authorized by a separate Series Resolution and to be separately secured from each other Series of Bonds issued pursuant to the General Resolution for the benefit of the Members of the Obligated Group. The Holders of Bonds of a Series shall not be entitled to the rights and benefits conferred upon the Holders of Bonds of any other Series. Each Series of Additional Bonds shall be secured by an Obligation issued under the Master Trust Indenture secured on a parity basis with all other Obligations.

## **PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS**

*Set forth below is a narrative description of certain contractual provisions relating to the source of payment of and security for the Series 2008 Bonds. These provisions have been summarized and this description does not purport to be complete. Reference should be made to the Act, the Resolution, the Series 2008 Resolution, the Loan Agreement, the Master Trust Indenture, the 2008 Supplemental Indenture, the Series 2008 Obligation, the Intercreditor Agreement, the Letter of Credit, and the Reimbursement Agreement. Copies of the Act, the Resolution, the Series 2008 Resolution, the Loan Agreement, the Master Trust Indenture, the 2008 Supplemental Indenture, the Series 2008 Obligation, the Intercreditor Agreement, the Letter of Credit, and the Reimbursement Agreement are on file with the Authority and the Trustee. See also “Appendix B - Summary of Certain Provisions of the Loan Agreement,” “Appendix C - Summary of Certain Provisions of the Resolutions” and “Appendix D - Summary of Certain Provisions of the Master Trust Indenture and the 2008 Supplemental Indenture” for a more complete statement of the rights, duties and obligations of the parties thereto.*

### **Payment of and Security for the Series 2008 Bonds**

The Series 2008 Bonds and all other Series of Bonds issued or to be issued under the General Resolution will be special obligations of the Authority. The principal, Sinking Fund Installments, Redemption Price and Purchase Price of, and interest on the Series 2008 Bonds are payable, as applicable, from proceeds received by the Trustee from drawings under the Letter of Credit, any Substitute Credit Facility issued with respect to the Series 2008 Bonds and, in the event the Bank or provider of any Substitute Credit Facility fails to make payments under the Letter of Credit or Substitute Credit Facility, as the case may be, certain payments required to be made by the Institution under the Loan Agreement and to be made by the Members of the Obligated Group under the Series 2008 Obligation.

For Series 2008 Bonds in the Weekly Rate Mode, payments of principal and interest on the Series 2008 Bonds are to be made to the Holders of the Series 2008 Bonds from funds drawn under the Letter of Credit and, in the case of the Purchase Price of Tendered Bonds, from remarketing proceeds or, if remarketing proceeds are insufficient, from funds drawn on the Letter of Credit.

Upon compliance with the provisions of the Resolutions, a Substitute Credit Facility may be issued in substitution for the Letter of Credit or the Credit Facility then in effect. All of the Series 2008 Bonds are subject to mandatory tender (i) on each Conversion Date, (ii) on the effective date of a Substitute Credit Facility (or if such day is not a Business Day, the immediately preceding Business Day), (iii) on the date which is three days prior to the Expiration Date of the Letter of Credit or the Credit Facility then in effect (or if such day is not a Business Day, the

immediately preceding Business Day), unless such Credit Facility has been extended at least 20 days prior to such expiration date and (iv) on the date determined by the Credit Facility Issuer following certain Events of Default under the Reimbursement Agreement; in each case at a Purchase Price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to such Purchase Date. Such Purchase Price shall be payable from the proceeds of a drawing under the Letter of Credit or the Credit Facility then in effect or from Available Moneys on deposit in the Credit Facility Account from prior draws on the Letter of Credit. See “PART 3 - THE SERIES 2008 BONDS - Tender of the Series 2008 Bonds - Mandatory Tenders.”

The obligation of the Institution under the Loan Agreement is the general obligation of the Institution. Amounts payable by the Institution under the Loan Agreement will be deposited in the Credit Facility Repayment Fund and will be applied to reimburse the Bank for amounts drawn under the Letter of Credit. The Loan Agreement obligates the Institution to make payments to the Trustee in amounts sufficient to reimburse the Bank for draws on the Letter of Credit applied to pay, among other things, the principal, Sinking Fund Installments, Redemption Price and Purchase Price of and interest on the Outstanding Series 2008 Bonds as they become due.

The Series 2008 Obligation is a joint and several general obligation of each Member of the Obligated Group. Payments to be made by the Obligated Group pursuant to the Series 2008 Obligation to the Trustee for the benefit of the Series 2008 Bondholders constitute Revenues pledged to the Trustee. See “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS - The Master Trust Indenture”.

The respective rights, remedies and obligations of the Trustee, as assignee of the Authority, and the Bank with respect to the Master Trust Indenture, the 2008 Supplemental Indenture and the Series 2008 Obligation are set forth in the Intercreditor Agreement. The Intercreditor Agreement provides that for so long as the Bank is not the subject of a bankruptcy or insolvency proceeding, and provided further that the Letter of Credit is in effect and the Bank has not repudiated or failed to honor the Letter of Credit, the Bank shall be authorized to direct remedies under the Master Trust Indenture, the 2008 Supplemental Indenture and the Series 2008 Obligation, except with respect to certain reserved rights of the Authority or to the extent such remedies conflict with the tax-exempt status or statutory validity of the Series 2008 Bonds.

The Authority has directed the Institution, and the Institution has agreed, to make payments under the Loan Agreement directly to the Trustee in its capacity as Trustee for the Series 2008 Bonds. Any payments made on a Series 2008 Obligation will also be made directly to the Trustee in its capacity as the holder of such Series 2008 Obligation and Trustee for the Series 2008 Bonds.

Pursuant to the terms of the Resolution, the funds and accounts established and pledged by the Series 2008 Resolution (other than the Arbitrage Rebate Fund, the Purchase and Remarketing Fund and the Credit Facility Repayment Fund) secure only the Series 2008 Bonds, and do not secure any other Series of Bonds issued under the Resolution, regardless of their dates of issue.

**The Series 2008 Bonds will not be a debt of the State nor will the State be liable thereon. The Authority has no taxing power.** The Authority has never defaulted in the timely payment of principal or sinking fund installments of or interest on its bonds or notes. See “PART 10 - THE AUTHORITY.”

**THE SERIES 2008 BONDS ARE BEING OFFERED SOLELY ON THE BASIS OF THE FINANCIAL STRENGTH OF THE BANK AND NOT ON THE FINANCIAL STRENGTH OF THE INSTITUTION, THE OBLIGATED GROUP OR OTHER SECURITY. ONLY A BRIEF DESCRIPTION OF THE OBLIGATED GROUP IS INCLUDED HEREIN. THE OWNERS OF THE SERIES 2008 BONDS WILL NOT BE ABLE TO ASSESS THE LIKELIHOOD THAT PAYMENT OF THE SERIES 2008 BONDS WILL BE SUBJECT TO MANDATORY TENDER BEFORE THE STATED MATURITY THEREOF BECAUSE OF AN EVENT OF DEFAULT UNDER THE REIMBURSEMENT AGREEMENT.**

### **The Letter of Credit**

The following description is subject in all respect to the complete terms of the Letter of Credit, to which reference is made.

As security for the timely payment of the principal of and interest on the Series 2008 Bonds, and the timely payment of the Purchase Price of Series 2008 Bonds tendered for purchase on demand or subject to mandatory

tender, the Bank has agreed to issue the Letter of Credit to the Trustee pursuant to the Reimbursement Agreement concurrently with the issuance and delivery of the Series 2008 Bonds. The Letter of Credit will expire at the close of business on November 18, 2013 (the "Letter of Credit Expiration Date") unless earlier terminated or extended and is subject to reduction, as hereinafter described. The Letter of Credit permits drawings only from payment of amounts due with respect to the principal or Purchase Price of the Series 2008 Bonds and interest thereon, and not for amounts due with respect to any other bonds of the Authority.

The Letter of Credit constitutes the irrevocable obligation of the Bank to pay to the Trustee upon timely request up to \$24,983,443 which may from time to time be reduced and reinstated (the "Available Amount"), to be drawn from the Bank's funds consisting of \$24,700,000 to pay the principal or the principal component of the Purchase Price of the Series 2008 Bonds, plus \$283,443 to pay up to 35 days' interest on the Series 2008 Bonds, including the interest component of the Purchase Price of the Series 2008 Bonds, at an annual maximum interest rate of 12% computed on the basis of the actual number of days elapsed over a year of 365/6 days, provided however, that at no time will the Amount Available exceed the principal amount of the Series 2008 Bonds then outstanding plus an amount equal to 35 days' interest at an annual maximum interest rate of 12%. Drawings made for the purpose of paying interest (other than payment of accrued interest on Series 2008 Bonds being redeemed and other than payment of the interest component of the Purchase Price of Series 2008 Bonds being tendered) shall be automatically reinstated immediately after a drawing by an amount equal to the amount of such drawing. Drawings made for the purpose of paying the principal and interest components of the Purchase Price of Series 2008 Bonds shall be reinstated by the amount of any reimbursement paid to the Bank for such a drawing, provided that the amount drawn is repaid within forty-five (45) days of the date drawn and no Event of Default (as defined in the Reimbursement Agreement) has occurred. In the event, however, that such drawing is not reimbursed within forty-five (45) days of the date of such drawing, the amount available under the Letter of Credit shall be permanently reduced with respect to the amount of such drawing. There shall be no reinstatement of the amount available under the Letter of Credit following the reimbursement of a drawing, the proceeds of which were used to pay the principal of or accrued interest on Series 2008 Bonds upon redemption, acceleration or maturity and, in some cases, upon mandatory tender.

No drawing under the Letter of Credit may be made with respect to any Pledged Bond, or any Series 2008 Bond registered in the name of, or held by the Trustee for the account of, the Institution, any other Member of the Obligated Group, the Authority or any Affiliate thereof (each an "Excluded Bond").

Prior to its expiration, the Letter of Credit may be terminated or extended as provided therein or replaced with a Substitute Credit Facility in accordance with the provisions of the Resolutions. Expiration or termination of the Letter of Credit or substitution of a Substitute Credit Facility for the Letter of Credit will result in a mandatory tender of the Series 2008 Bonds pursuant to the Resolutions. The occurrence of certain Events of Default under the Reimbursement Agreement may, at the election of the Credit Facility Issuer, result in a mandatory tender of the Series 2008 Bonds.

See "PART 7 - THE BANK" herein for information regarding the Bank.

### **Substitute Credit Facility**

The Authority may at the request of the Institution replace a Credit Facility with a Substitute Credit Facility upon written notice to a Credit Facility Issuer, or the Institution may, at any time, at its option with the prior written consent of the Authority and upon written notice to a Credit Facility Issuer, deliver or cause to be delivered to the Trustee a Substitute Credit Facility provided by the Institution.

The replacement of the Credit Facility with a Substitute Credit Facility will cause a mandatory tender of all Series 2008 Bonds. In no event shall an existing Credit Facility be surrendered to the Credit Facility Issuer thereof upon delivery of a Substitute Credit Facility until a drawing to pay the Purchase Price of the Series 2008 Bonds tendered for purchase and not remarketed has been honored by such Credit Facility Issuer. No such Substitute Credit Facility shall be or become effective unless it meets the requirements set forth in the Series 2008 Resolution.

### **Requirements of Credit Facilities**

Any Credit Facility must provide money at the times and in the amounts specified in the Series 2008 Resolution. No Credit Facility may be amended without the consent of the Trustee. The Trustee shall not consent to

any such amendment of a Credit Facility that, in the reasonable judgment of the Trustee, would adversely affect the interests of any of the Bondholders, unless such amendment will not become effective until after the date on which there is a mandatory tender of Series 2008 Bonds to which the Credit Facility relates. The term “amendment” of the Credit Facility shall not include an extension thereof.

### **The Reimbursement Agreement**

The Letter of Credit is being issued pursuant to the Reimbursement Agreement, under which the Members of the Obligated Group will be jointly and severally obligated, among other things, to reimburse the Bank, with interest, for each drawing under the Letter of Credit.

The Reimbursement Agreement contains various representations, warranties and covenants of the Members of the Obligated Group and provides for various Events of Default thereunder, see “Appendix E - Summary of Certain Provisions of the Reimbursement Agreement.” After the occurrence of certain Events of Default under the Reimbursement Agreement, the Bank may require a mandatory tender of the Series 2008 Bonds.

The terms of the Reimbursement Agreement and certain related documents may be modified, waived, amended or supplemented by the Bank and the Members of the Obligated Group from time to time without giving notice to or obtaining the consent of the Bondholders. Any amendment, modification or supplement to the Reimbursement Agreement may contain amendments or modifications to the covenants of the Members of the Obligated Group or additional covenants of the Members of the Obligated Group and these amended or modified covenants may be more or less restrictive than those in effect at the date of issuance of the Series 2008 Bonds.

### **The Master Trust Indenture**

Pursuant to the Master Trust Indenture, each Obligation issued thereunder is a general, joint and several obligation of each Member of the Obligated Group. Each Member of the Obligated Group covenants in the Master Trust Indenture that it will not pledge or grant a security interest in any of its Property except as otherwise permitted by the Master Trust Indenture. The Master Trust Indenture contains the pledge of a security interest in the Gross Receipts of each Member of the Obligated Group to the Master Trustee and provides that the Mortgages of certain properties of the Institution, Sisters of Charity, Kenmore Mercy and St. Joseph be granted to the Master Trustee to secure on a parity basis all Obligations issued under the Master Trust Indenture. As described in “Appendix D - Summary of Certain Provisions of the Master Trust Indenture and the Supplemental Indenture - Limitations on Creation of Liens” and “ – Limitations on Indebtedness,” under certain circumstances the Members of the Obligated Group may create Liens on Property or incur Indebtedness. However, under the Master Trust Indenture, the Members may not create or suffer to be created any Lien on Property other than Permitted Liens.

The Members of the Obligated Group may issue additional Obligations which will be secured on a parity basis with all then existing Obligations, including the Series 2008 Obligation by the security interest in Gross Receipts and the Mortgages. See “Appendix D - Summary of Certain Provisions of the Master Trust Indenture and the Supplemental Indenture - Limitations on Indebtedness” for a description of the conditions whereby the Members of the Obligated Group may issue additional Obligations. In addition to four Obligations issued in connection with the Series 2006 Bonds, two other Obligations have previously been issued under the Master Indenture.

THE MASTER INDENTURE PERMITS MEMBERS OF THE OBLIGATED GROUP TO ISSUE OR INCUR ADDITIONAL INDEBTEDNESS EVIDENCED BY OBLIGATIONS THAT WILL SHARE THE SECURITY FOR THE SERIES 2008 OBLIGATION. SUCH ADDITIONAL OBLIGATIONS WILL NOT BE SECURED BY THE MONEY OR INVESTMENTS IN ANY FUND OR ACCOUNT HELD BY THE TRUSTEE FOR THE SECURITY OF ANY SERIES OF THE SERIES 2008 BONDS.

### **Events of Default and Acceleration under the Resolution**

The following constitute events of default under the General Resolution with respect to any Series 2008 Bonds: (i) a default by the Authority in the payment of the principal, Purchase Price, Sinking Fund Installments or Redemption Price of or interest on any Series 2008 Bond; (ii) a default by the Authority in the due and punctual performance of any covenants, conditions, agreements or provisions contained in the Series 2008 Bonds of such Series or in the General Resolution or in the Series 2008 Resolution which continues for 30 days after written notice thereof is given to the Authority by the Trustee (such notice to be given in the Trustee’s discretion or at the written



request of Holders of not less than 25% in principal amount of Outstanding Series 2008 Bonds), unless the default is not capable of being cured within 30 days, the Authority has commenced to cure the default within 30 days and is diligently prosecuting such cure; (iii) a default by the Authority in the due and punctual performance of any applicable tax covenant which results in the loss of the exclusion of interest on the Series 2008 Bonds of such Series from gross income under the Code; or (iv) an “Event of Default,” as defined in the Loan Agreement, shall have occurred and is continuing and all sums payable by the Institution under the Loan Agreement shall have been declared immediately due and payable (unless such declaration shall have been annulled).

The General Resolution provides that if an event of default occurs and continues (except in the case of an event of default described in clause (iii) of the preceding paragraph), the Trustee may, and, upon the written request of (i) the Applicable Credit Facility Issuers or the Holders of not less than twenty five per centum (25%) in principal amount of a Series of Outstanding Bonds, with the prior written consent of the Applicable Credit Facility Issuers or (ii) if one or more Applicable Credit Facility Issuers have deposited with the Trustee a sum sufficient to pay the principal of and interest on the Outstanding Bonds due upon the acceleration thereof, upon the request of a Credit Facility Issuer or Applicable Credit Facility Issuers making such deposit shall, upon the written request of the Holders of not less than 25% in principal amount of the Outstanding Series 2008 Bonds, declare the principal of and interest on all Outstanding Series 2008 Bonds to be due and payable immediately. At the expiration of 30 days from the giving of such notice, such principal and interest shall become immediately due and payable. The Trustee shall, with the written consent of the Holders of not less than 25% in principal amount of Series 2008 Bonds not yet due by their terms and then Outstanding, annul such declaration and its consequences under the terms and conditions specified in the General Resolution with respect to such annulment.

The General Resolution also provides that if any event of default (including the occurrence and continuance of an event of default described in clause (iii) of the first paragraph under this caption) occurs and continues, the Trustee may proceed, and upon the written request of the Holders of not less than 25% in principal amount of the Outstanding Series 2008 Bonds, shall proceed to protect and enforce its rights and the rights of the Holders under the Resolution.

The General Resolution provides that the Trustee shall give notice to the Holders of Series 2008 Bonds within 30 days of each event of default known to the Trustee, in each case after knowledge of the occurrence thereof unless such default has been remedied or cured before the giving of such notice; provided, however, that, except in the case of default in the payment of principal, Purchase Price, Sinking Fund Installment or Redemption Price of, or interest on, any of the Series 2008 Bonds, the Trustee shall be protected in withholding such notice thereof to the Holders if the Trustee in good faith determines that the withholding of such notice is in the best interests of the Holders of the Series 2008 Bonds.

### **PART 3 - THE SERIES 2008 BONDS**

#### **Description of the Series 2008 Bonds**

The Series 2008 Bonds will be issued pursuant to the Act, the Resolution, and the Series 2008 Resolution. The Series 2008 Bonds will be dated the date of their initial delivery, and will bear interest at the Weekly Rates established for the Series 2008 Bonds while in the Weekly Rate Mode until such time, if ever, as the Rate Mode for such Series 2008 Bonds is converted, as set forth herein. The Series 2008 Bonds to be converted to a different Rate Mode must be converted in whole. Under the Bond Series Certificate, the term “Weekly Rate Period” means a period commencing on a Conversion Date or the Thursday of a calendar week and extending to and including the next succeeding Wednesday. While in the Weekly Rate Mode, interest on the Series 2008 Bonds is payable on December 1, 2008 and the first Business Day of each month thereafter. Interest on Series 2008 Bonds payable during the Weekly Rate Mode shall be computed on the basis of a year of 365 or 366 days, as appropriate, for the actual number of days elapsed.

As a general matter, this Official Statement describes the terms of the Series 2008 Bonds only in the Weekly Rate Mode.

The Series 2008 Bonds, when issued, will be registered in the name of and held by Cede & Co., as nominee for The Depository Trust Company, New York, New York (“DTC”). So long as DTC or its nominee, Cede & Co., is the registered owner of the Series 2008 Bonds, payments of the principal, Redemption Price and Purchase Price of

and interest on the Series 2008 Bonds will be made by the Trustee directly to Cede & Co. Disbursement of such payments to the Direct Participants (as hereinafter defined) is the responsibility of DTC and disbursement of such payments to the Beneficial Owners (as hereinafter defined) of the Series 2008 Bonds is the responsibility of the Direct Participants and the Indirect Participants (as hereinafter defined). See “- Book-Entry Only System.”

If the Series 2008 Bonds are not registered in the name of DTC or its nominee, Cede & Co., the principal, Sinking Fund Installments, if any, Redemption Price or Purchase Price of Series 2008 Bonds will be payable upon presentation and surrender of such Series 2008 Bonds at the principal corporate trust office of The Bank of New York Mellon, as Trustee. Interest on the Series 2008 Bonds will be payable by check or draft mailed to the Holders of the Series 2008 Bonds at their addresses as shown on the registration books held by the Trustee on the Record Date; provided, however, that while the Series 2008 Bonds are in the Weekly Rate Mode, the Tender Agent shall, at the request of a Holder of Series 2008 Bonds, provide for the payment of interest by wire transfer to the wire transfer address within the United States of America designated by such Holder or may make arrangements for payment of interest satisfactory to it and the Holder. While the Series 2008 Bonds are in the Weekly Rate Mode, the Record Date shall be the Business Day immediately preceding each Interest Payment Date.

While bearing interest at the Weekly Rate, the Series 2008 Bonds are issuable in denominations of \$100,000 or any integral multiples of \$5,000 in excess thereof. The Series 2008 Bonds may be exchanged for other Series 2008 Bonds in any other authorized denominations upon surrender thereof at the corporate trust office of the Trustee, duly executed by the registered owner or his representative.

### **Interest Rate**

Interest shall be payable on each Interest Payment Date during the Weekly Rate Mode in immediately available funds payable by check mailed to each registered owner of a Series 2008 Bond on the Record Date immediately preceding such Interest Payment Date to the address thereof as it appears on the registry books of the Authority, or, at the request of a registered owner, by wire transfer to such registered owner at the wire transfer address in the continental United States to which such registered owner has not later than five (5) days prior to the Record Date immediately preceding such Interest Payment Date directed the Trustee to wire such interest payment. Notwithstanding the foregoing, interest payable on any Interest Payment Date during which the Series 2008 Bonds are Book Entry Bonds shall be paid by wire transfer to the Depository for the Series 2008 Bonds or its nominee, at the wire transfer address therefore.

Interest payable on each Interest Payment Date shall be the interest accrued and unpaid to and including the day preceding such Interest Payment Date.

### **Determination of Weekly Rate**

Each Series 2008 Bond in a Weekly Rate Mode (other than a Pledged Bond) will bear interest at the Weekly Rate established for the Series 2008 Bonds. The Weekly Rate is required to be determined by DEPFA First Albany Securities LLC, the Remarketing Agent for the Series 2008 Bonds, to be the rate of interest that, if borne by the Series 2008 Bonds for such Weekly Rate Period, in the judgment of the Remarketing Agent, having due regard for the prevailing financial market conditions for bonds or other securities the interest on which is excludable from gross income for federal income tax purposes of the same general nature as the Series 2008 Bonds and that are comparable as to credit and maturity or tender dates with the credit and maturity or tender dates of the Series 2008 Bonds, would be the lowest interest rate that would enable the Series 2008 Bonds to be sold on the first day of the applicable Weekly Rate Period at a price of par, plus accrued interest, if any.

The Remarketing Agent shall make the Weekly Rate available to any Holder, the Trustee, the Tender Agent, the Authority and the Credit Facility Issuer requesting the same.

The Remarketing Agent shall determine a Weekly Rate for each Weekly Rate Period by 4:00 p.m., New York City time, on Wednesday of each week, or the next succeeding Business Day if any Wednesday is not a Business Day. If for any reason (i) the Weekly Rate for a Weekly Rate Period is not established as aforesaid, (ii) no Remarketing Agent is serving hereunder, (iii) the Weekly Rate so established is held to be invalid or unenforceable with respect to a Weekly Rate Period or (iv) pursuant to the Remarketing Agreement the Remarketing Agent is not then required to establish a Weekly Rate, then the Weekly Rate for such Weekly Rate Period shall be the SIFMA Municipal Swap Index on the date such Weekly Rate was to have been determined by the Remarketing Agent.



## Redemption Prices and Terms

The Series 2008 Bonds bearing interest in the Weekly Rate Mode will be subject to redemption prior to maturity as provided below.

Pledged Bonds are to be redeemed prior to any other Series 2008 Bonds.

*Optional Redemption.* The Series 2008 Bonds in the Weekly Rate Mode are subject to redemption prior to maturity at the election of the Authority upon the request of the Obligated Group, in whole or in part, on any Business Day at a Redemption Price equal to 100% of the principal amount of each Series 2008 Bond or portion thereof to be redeemed, plus accrued interest to the redemption date.

*Mandatory Sinking Fund Redemption.* Prior to any conversion to a Term Rate or a Fixed Rate and any serialization of Bonds (if any) in connection therewith, the Series 2008 Bonds shall be subject to redemption, in part, through application of Sinking Fund Installments beginning on July 1, 2011, upon notice given as prescribed in the Resolutions, at a Redemption Price equal to 100% of the principal amount of each Series 2008 Bond or portion thereof to be redeemed, plus accrued interest, if any, to the date of redemption. Unless none of the Series 2008 Bonds of a maturity to be so redeemed are then Outstanding and, subject to the provisions of the Series 2008 Resolution permitting amounts to be credited to part or all of any one or more Sinking Fund Installments, there shall be due and the Authority shall be required to pay for the retirement of the Series 2008 Bonds maturing on July 1 of each of the years set forth in the following table, the amount set forth opposite such year:

<u>July 1,</u>	<u>Principal Amount</u>	<u>July 1,</u>	<u>Principal Amount</u>
2011	\$580,000	2023	\$1,005,000
2012	610,000	2024	1,050,000
2013	635,000	2025	1,100,000
2014	665,000	2026	1,150,000
2015	695,000	2027	1,200,000
2016	730,000	2028	1,260,000
2017	765,000	2029	1,315,000
2018	800,000	2030	1,375,000
2019	835,000	2031	1,440,000
2020	875,000	2032	1,510,000
2021	915,000	2033	1,580,000
2022	960,000	2034*	1,650,000

\*Maturity

*Redemption of Pledged Bonds.* Any Series 2008 Bonds that are Pledged Bonds are subject to redemption prior to maturity in whole or in part at the election of the Authority upon the request of the Obligated Group at a Redemption Price equal to 100% of the principal amount of the Pledged Bonds or portion thereof to be redeemed plus accrued interest to the date of redemption at the times and in the principal amounts required by the Reimbursement Agreement.

*Special Redemption.* The Series 2008 Bonds are also subject to redemption prior to maturity, in whole or in part, at 100% of the principal amount thereof plus accrued interest to the date of redemption, at the option of the Authority on any interest payment date, (i) from proceeds of a condemnation or insurance award, which proceeds are not used to repair, restore or replace the Series 2008 Project and are on deposit with the Trustee, and (ii) from moneys on deposit with the Trustee upon the abandonment of all or a portion of the Series 2008 Project due to a legal or regulatory impediment.

*Notice of Redemption.* As long as the Series 2008 Bonds to be redeemed bear interest at a Weekly Rate, each notice of redemption shall be given not less than fifteen (15) days prior to the redemption date. Each notice of redemption of Series 2008 Bonds in the Weekly Rate Mode to be redeemed at the option of the Authority shall state, in addition to any other condition, that the redemption is conditioned upon the availability on the redemption date of available moneys sufficient to pay the Redemption Price of the Series 2008 Bonds to be redeemed.

*Purchase In Lieu of Redemption.* Any Series 2008 Bond which is subject to optional redemption may be purchased by the Trustee at the direction of the Institution with the consent of the Authority. Such Series 2008 Bond need not be cancelled upon purchase, but may be resold with the same terms or such different terms as may be agreed upon by as the Institution and the purchasers with the consent of the Authority.

*Selection of Series 2008 Bonds to be Redeemed.* If less than all of the Series 2008 Bonds are to be redeemed after redemption of all Series 2008 Bonds which are Pledged Bonds, the Trustee shall select for redemption Series 2008 Bonds of each maturity subject to redemption using such method of selection as it deems proper in its discretion, in accordance with the Resolution.

### **Tender of the Series 2008 Bonds**

*Optional Tender of Book Entry Bonds.* For so long as a Series 2008 Bond bears interest in a Weekly Rate Mode during which such Series 2008 Bond is a Book Entry Bond, a Direct Participant, acting on behalf of a Beneficial Owner, shall have the right to tender all or any portion, in an Authorized Denomination, of the principal amount of such Beneficial Owner's interest in any Series 2008 Bond for purchase on any Optional Tender Date, by giving or delivering to the Remarketing Agent and the Tender Agent at their respective principal offices a Tender Notice stating (i) the aggregate principal amount in an Authorized Denomination and CUSIP number of each Series 2008 Bond or portion thereof to be purchased, and (ii) that such principal amount of the Series 2008 Bond (in an Authorized Denomination) must be purchased on such Optional Tender Date pursuant to the Series 2008 Resolution. Optional Tender Date means any Business Day while the Series 2008 Bonds bear interest in the Daily Rate Mode or Weekly Rate Mode.

Such Tender Notice must be delivered in the case of Series 2008 Bonds bearing interest a Weekly Rate, not later than 5:00 P.M., New York City time, on the seventh calendar day prior to the Optional Tender Date.

Any Tender Notice so given or delivered shall be irrevocable and shall be binding on the Direct Participant, the Beneficial Owner on whose behalf such notice was given and any transferee of such Beneficial Owner. The principal amount of the Series 2008 Bonds for which a Tender Notice has been given or delivered shall be deemed tendered on the Optional Tender Date without presentation or surrender of the Series 2008 Bonds to the Tender Agent. If there is on deposit with the Tender Agent on the Optional Tender Date an amount sufficient to pay the Purchase Price of the aggregate principal amount of Series 2008 Bonds to be tendered on such Optional Tender Date pursuant to a Tender Notice given pursuant to this paragraph, ownership of such aggregate principal amount of Series 2008 Bonds shall be recorded in the records of DTC as transferred to the Remarketing Agent.

*Mandatory Tenders.* The Series 2008 Bonds in the Weekly Rate Mode are subject to mandatory tender and purchase at the Purchase Price on the following dates:

- (i) on each Conversion Date for Series 2008 Bonds being converted to a different Rate Mode;
- (ii) on a date that is not less than three Business Days prior to the Expiration Date of any Credit Facility then in effect with respect to a Series 2008 Bond, which Credit Facility will be drawn upon to pay the Purchase Price of Tendered Bonds (or if such day is not a Business Day, on the immediately preceding Business Day), unless such Credit Facility has been extended at least 20 days prior to such expiration date;
- (iii) on the effective date of a Substitute Credit Facility delivered with respect to a Series 2008 Bond (or if such day is not a Business Day, on the immediately preceding Business Day); provided, however, the Credit Facility in effect prior to delivery of the Substitute Credit Facility shall be drawn upon to pay the Purchase Price of Tendered Bonds that have not been remarketed; and
- (iv) on the date specified in a notice delivered by the Credit Facility Provider or its agent to the Trustee and the Authority, with a copy to the Remarketing Agent (provided that failure to send such copy shall not affect the validity of the notice) stating that:

(A) an Event of Default has occurred under the Reimbursement Agreement or there has not been a reinstatement of a draw on the Credit Facility (other than a draw relating to a permanent reduction of the stated amount of the Credit Facility),

(B) the Credit Facility Issuer has elected to require a mandatory tender of the Series 2008 Bonds as provided in the Reimbursement Agreement, and

(C) the mandatory tender will occur on a date set forth in such notice, which may not be less than two Business Days after the receipt by the Trustee and the Authority of such notice.

*Notices of Mandatory Tenders.* The Tender Agent will give notice of the mandatory tender to the Remarketing Agent and the Depository:

(i) when the Series 2008 Bonds are to be tendered for purchase on Conversion to a new Rate Mode, not less than three Business Days after the Conversion Notice is received;

(ii) when Series 2008 Bonds are to be tendered for purchase on the Expiration Date of a Credit Facility or in connection with the delivery of a Substitute Credit Facility, not less than five Business Days prior to the earlier of the Expiration Date of the Credit Facility or the effective date of the Substitute Credit Facility; and

(iii) when Series 2008 Bonds are to be tendered for purchase at the direction of a Credit Facility Issuer, not less than one Business Day prior to the date of the mandatory tender specified by the Credit Facility Issuer.

If the Series 2008 Bonds are not held by a Depository, notices will be sent by first class mail to the Holder of the Series 2008 Bonds.

*Tendered and Deemed Tendered Bonds.* If a Bondholder fails to deliver to the Tender Agent, on or before the applicable Tender Date, all or any portion of a Series 2008 Bond subject to mandatory tender for purchase or any Series 2008 Bond, other than a Book Entry Bond, for which an election to tender has been duly made, such Series 2008 Bond (or portion thereof in an Authorized Denomination) shall be deemed to have been properly tendered to the Tender Agent. To the extent that there is on deposit with the Tender Agent on the purchase date thereof an amount sufficient to pay the Purchase Price of the Tendered Bonds, such Tendered Bonds will cease to constitute or represent a right to payment of principal or interest thereon and will constitute and represent only the right to the payment of the Purchase Price payable on such date. The foregoing shall not limit the right of any person who on a Record Date is the Holder of a Series 2008 Bond to receipt of interest, if any, due thereon on the date such Series 2008 Bond is required to be purchased.

*Purchase of Tendered Bonds.* On each Tender Date the Tendered Bonds shall be purchased (but solely from Available Moneys) at the applicable Purchase Price, which will be paid by 3:00 P.M., New York City time, on the Tender Date. The Purchase Price for the Tendered Bonds shall be paid by the Tender Agent from the proceeds of remarketing of the Tendered Bonds, amounts drawn on a Credit Facility or certain other Available Moneys under the Series 2008 Resolution. No Tendered Bond so purchased with moneys made available by a Credit Facility Issuer shall cease to be Outstanding solely by reason of the purchase thereof.

*Remarketing of Series 2008 Bonds.* Upon receipt of any notice given pursuant to the Series 2008 Resolution that any Series 2008 Bonds will be or are required to be tendered for purchase, the Remarketing Agent shall use its best efforts to remarket such Tendered Bond on its Tender Date at a price equal to the Purchase Price or, if all Series 2008 Bonds have been Pledged Bonds, such Series 2008 Bonds will be remarketed at a price equal to par with an interest accrual date of the date they are remarketed.

Notwithstanding any other provision of the Series 2008 Resolution to the contrary, so long as any Series 2008 Bond is registered in the name of Cede & Co, as nominee of The Depository Trust Company, all payments with respect to principal of, interest, Purchase Price and premium, if any, and all deliveries to be made and all notices to be delivered with respect to such Series 2008 Bonds shall be made and given, respectively, pursuant to The Depository Trust Company's rules and procedures.

*Limitations on Remarketings.* Remarketing of the Series 2008 Bonds is subject to the following limitations:

(i) The Remarketing Agent shall not, during any period during which a Credit Facility is in effect, remarket Tendered Bonds if:

(A) upon such remarketing the amount available to be drawn under the Credit Facility for the payment of the principal or Purchase Price of the Outstanding Series 2008 Bonds is less than the principal of such Series 2008 Bonds that are not Pledged Bonds, plus an amount available to be drawn under such Credit Facility for payment of the interest on such Outstanding Series 2008 Bonds, is less than the minimum amount required to be available under Credit Facilities in accordance with the Series 2008 Resolution;

(B) the Credit Facility then in effect will expire or terminate within 20 days after the Tender Date of the Tendered Bonds, unless and until such Credit Facility has been extended or a Substitute Credit Facility has been delivered to the Tender Agent; or

(C) the Tendered Bonds were tendered pursuant to a mandatory tender required by a Credit Facility Issuer following an Event of Default under the Reimbursement Agreement.

(ii) No Tendered Bonds shall be remarketed by the Remarketing Agent for purchase by the Authority or the Members of the Obligated Group, unless there has been delivered to the Trustee an Opinion of Bond Counsel and an opinion of counsel reasonably satisfactory to the Trustee to the effect that payment of the Purchase Price of Tendered Bonds from moneys paid by or on behalf of the Authority or the Members of the Obligated Group for the purchase of such Tendered Bonds will not constitute a voidable preference under Section 547 of the United States Bankruptcy Code in a proceeding commenced by or against the Authority or a Member of the Obligated Group thereunder.

### **Conversion to Other Interest Rate Modes**

The Authority, at the direction of the Obligated Group, may, from time to time, by written direction to the Remarketing Agent, the Trustee, the Tender Agent, the Credit Facility Issuer, and each Rating Service maintaining a rating on the Series 2008 Bonds, elect that all (but not less than all) of the Series 2008 Bonds be converted from the Weekly Rate Mode to a Daily Rate Mode, a Term Rate Mode or a Fixed Rate Mode. Upon such direction, the Authority shall, not less than 20 days prior to any Conversion Date, deliver a written notice specifying (A) the Conversion Date, (B) the Rate Mode that will be effective upon such Conversion, (C) if the Conversion is to a Term Rate Mode, the Term Rate Period, and (D) the ratings expected to be effective on the Series 2008 Bonds after such conversion. At the time of a conversion from the Weekly Rate Mode to a different Rate Mode, the Series 2008 Bonds are subject to mandatory tender for purchase at the Purchase Price, as set forth herein. See “Appendix C - Summary of Certain Provisions of the Resolution”.

The Resolution provides that no conversion of a Rate Mode will occur thereunder unless (i) on the Conversion Date no event of default under the Resolution has occurred and is continuing, (ii) the Authority receives an opinion from Bond Counsel with respect to the proposed conversion, and (iii) such other requirements as are set forth in the Resolution with respect to a conversion from the Term Rate are met. In the event the requirements described in the preceding sentence are not met, or the Remarketing Agent notifies the Trustee, the Authority, the Obligated Group and the Credit Facility Issuer, that the Series 2008 Bonds to be converted cannot be remarketed, or the Authority notifies the Remarketing Agent, the Credit Facility Issuer and the Trustee in writing that it does not want the Series 2008 Bonds to be converted to a new Rate Mode, the succeeding Rate Mode shall be the existing Rate Mode and the Rate thereon shall be calculated without regard to the proposed conversion.

All Series 2008 Bonds to be converted to a different Rate Mode are required to be converted in whole to the same Rate Mode.

### **The Remarketing Agent**

The Obligated Group has appointed DEPFA First Albany Securities LLC as the Remarketing Agent for the Series 2008 Bonds. In accordance with the Bond Series Certificate and the Remarketing Agreement, the Remarketing Agent will use its best efforts to find purchasers for tendered Series 2008 Bonds. The Remarketing

Agent can be contacted at DEPFA First Albany Securities LLC, 444 Madison Avenue, 4<sup>th</sup> Floor, New York, New York 10022, telephone number (212) 461-9605, Attention: Municipal Short-Term Desk.

### **Book-Entry Only System**

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Series 2008 Bonds. The Series 2008 Bonds will be issued as fully-registered securities in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be registered by an authorized representative of DTC. One fully-registered Series 2008 Bond will be issued for each maturity of such Series 2008 Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over two million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 85 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Government Securities Clearing Corporation, MBS Clearing Corporation, and Emerging Markets Clearing Corporation (NSCC, GSCC, MBSCC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information on DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of the Series 2008 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2008 Bonds on DTC’s records. The ownership interest of each actual purchaser of a Series 2008 Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2008 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Series 2008 Bonds, except in the event that use of the book-entry system for the Series 2008 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2008 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2008 Bonds with DTC and their registration in the name of Cede & Co. or such other nominee effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2008 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2008 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.



Redemption notices shall be sent to DTC. If less than all of the Series 2008 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in the Series 2008 Bonds to be redeemed.

Any failure of DTC to advise any DTC Participant or of any DTC Participant to notify any Indirect Participant, or of any DTC Participant or Indirect Participant to notify any Beneficial Owner, of any such notice and its content or effect will not affect the validity of the redemption of the Series 2008 Bonds called for redemption or of any other action premised on such notice.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to Series 2008 Bonds. Under its usual procedures, DTC mails an omnibus proxy (the "Omnibus Proxy") to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2008 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, redemption premium, if any, and interest payments on the Series 2008 Bonds will be made to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC). DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the Authority or the Trustee or payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name", and will be the responsibility of such Participant and not of DTC, the Trustee or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, redemption premium, if any, and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or the Trustee, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

The Authority and the Trustee may treat DTC (or its nominee) as the sole and exclusive registered owner of the Series 2008 Bonds registered in its name for the purposes of payment of the principal or redemption premium, if any, of, or interest on, the Series 2008 Bonds, giving any notice permitted or required to be given to registered owners under the Resolution, registering the transfer of the Series 2008 Bonds, or other action to be taken by registered owners and for all other purposes whatsoever. The Authority and the Trustee shall not have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Series 2008 Bonds under or through DTC or any Participant, or any other person which is not shown on the registration books of the Authority (kept by the Trustee) as being a registered owner, with respect to the accuracy of any records maintained by DTC or any Participant; the payment by DTC or any Participant of any amount in respect of the principal, redemption premium, if any, or interest on the Series 2008 Bonds; any notice which is permitted or required to be given to registered owners thereunder or under the conditions to transfers or exchanges adopted by the Authority; or other action taken by DTC as a registered owner. Interest, redemption premium, if any, and principal will be paid by the Trustee to DTC, or its nominee. Disbursement of such payments to the Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of the Direct or the Indirect Participants.

For every transfer and exchange of beneficial ownership of the Series 2008 Bonds, a Beneficial Owner may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto.

A Beneficial Owner shall give notice to elect to have its Series 2008 Bonds purchased or tendered, through its Participant, to the Tender Agent, and shall effect delivery of such Series 2008 Bonds by causing the Direct Participant to transfer the Participant's interest in the Series 2008 Bonds, on DTC's records, to the Tender Agent. The requirement for physical delivery of Series 2008 Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Series 2008 Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Series 2008 Bonds to the Tender Agent's DTC account.

DTC may discontinue providing its service with respect to the Series 2008 Bonds at any time by giving reasonable notice to the Authority and the Trustee and discharging its responsibilities with respect thereto under



applicable law, or the Authority may terminate its participation in the system of book-entry transfer through DTC at any time by giving notice to DTC. In either event, the Authority may retain another securities depository for the Series 2008 Bonds or may direct the Trustee to deliver bond certificates in accordance with instructions from DTC or its successor. If the Authority directs the Trustee to deliver such bond certificates, such Series 2008 Bonds may thereafter be exchanged for an equal aggregate principal amount of Series 2008 Bonds in other authorized denominations and of the same maturity as set forth in the Resolution, upon surrender thereof at the principal corporate trust office of the Trustee, who will then be responsible for maintaining the registration books of the Authority.

Unless otherwise noted, certain of the information contained in the preceding paragraphs of this subsection “Book-Entry Only System” has been extracted from information given by DTC. Neither the Authority, the Trustee nor the Underwriter makes any representation as to the completeness or the accuracy of such information or as to the absence of material adverse changes in such information subsequent to the date hereof.

NEITHER THE AUTHORITY NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO SUCH DTC DIRECT PARTICIPANTS, INDIRECT PARTICIPANTS, OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO THE PAYMENTS TO OR THE PROVIDING OF NOTICE FOR SUCH DIRECT PARTICIPANTS, THE INDIRECT PARTICIPANTS, OR THE BENEFICIAL OWNERS. PAYMENTS MADE TO DTC OR ITS NOMINEE SHALL SATISFY THE AUTHORITY’S OBLIGATION UNDER THE ACT, THE RESOLUTION AND THE SERIES 2008 RESOLUTION TO THE EXTENT OF SUCH PAYMENTS.

So long as Cede & Co. is the registered owner of the Series 2008 Bonds, as nominee for DTC, references herein to the Bondholders, Holders, or registered owners of the Series 2008 Bonds (other than under the captions “PART 13 - TAX MATTERS”) shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Series 2008 Bonds.

#### **PART 4 - THE PLAN OF FINANCE**

The Authority will loan the proceeds of the Series 2008 Bonds to the Institution, which will deliver the Loan Agreement. The Series 2008 Bonds will be secured by the Series 2008 Obligation that is secured, pursuant to the Master Indenture, by a pledge of Gross Receipts of the Obligated Group and the Mortgages.

Proceeds of the Series 2008 Bonds will be loaned to the Institution for the purpose of financing a new emergency department to include three triage stations, 32 treatment stations and two resuscitation stations. Proceeds will also be applied to new CT/Radiology facilities, a new main entrance and lobby area, a new ambulance entrance, renovation of library space into conference rooms, mechanical and electric facilities, a rooftop helipad with dedicated elevator and stairway connections to the new emergency department, and associated demolition and equipping costs (collectively, the “Project”). The Project will consist of an approximately 48,300 square foot addition. Proceeds of the Series 2008 Bonds shall also be applied to pay costs of issuing the Series 2008 Bonds including the costs of obtaining the Letter of Credit.

#### **PART 5 – ESTIMATED ANNUAL DEBT SERVICE REQUIREMENTS**

The following table sets forth, for each year ending June 30 and reflecting the principal and interest payment due the next day, the amounts required to be paid by the Obligated Group in each Fiscal Year for the payment of principal of (whether at maturity or pursuant to sinking fund redemptions) and interest on the Series 2008 Bonds. See “PART 3 - THE SERIES 2008 BONDS - Redemption Prices and Terms - Mandatory Sinking Fund Redemption” for a schedule of the mandatory sinking fund requirements for the Series 2008 Bonds. In some cases, totals column may not equal the sum of the column due to rounding.

Year ending June 30,	<u>Debt Service on the 2008 Bonds</u>		Total Debt Service on the Series 2008 Bonds
	Principal	Interest <sup>1</sup>	
2009		\$609,266.64	\$609,266.64
2010		987,999.96	987,999.96
2011	\$580,000	987,999.96	1,567,999.96
2012	610,000	964,800.00	1,574,800.00
2013	635,000	940,400.04	1,575,400.04
2014	665,000	915,000.00	1,580,000.00
2015	695,000	888,399.96	1,583,399.96
2016	730,000	860,600.04	1,590,600.04
2017	765,000	831,399.96	1,596,399.96
2018	800,000	800,799.96	1,600,799.96
2019	835,000	768,800.04	1,603,800.04
2020	875,000	735,399.96	1,610,399.96
2021	915,000	700,400.04	1,615,400.04
2022	960,000	663,800.04	1,623,800.04
2023	1,005,000	625,400.04	1,630,400.04
2024	1,050,000	585,200.04	1,635,200.04
2025	1,100,000	543,200.04	1,643,200.04
2026	1,150,000	499,200.00	1,649,200.00
2027	1,200,000	453,200.04	1,653,200.04
2028	1,260,000	405,200.04	1,665,200.04
2029	1,315,000	354,800.04	1,669,800.04
2030	1,375,000	302,199.96	1,677,199.96
2031	1,440,000	247,200.00	1,687,200.00
2032	1,510,000	189,600.00	1,699,600.00
2033	1,580,000	129,200.04	1,709,200.04
2034	<u>1,650,000</u>	<u>66,000.00</u>	<u>1,716,000.00</u>
Total	\$24,700,000	\$16,055,466.84	\$40,755,466.84

<sup>1</sup> Debt service for Series 2008 Bonds has been estimated using 4.00% as a proxy for interest rates. Actual interest rates may be higher resulting in debt service payments higher than those set forth in this table.

#### PART 6 - ESTIMATED SOURCES AND USES OF FUNDS

The following table sets forth the estimated sources and uses of funds related to the Series 2008 Bonds:

Sources of Funds	
Principal Amount	\$24,700,000
Institution Equity	<u>7,100,000</u>
Total Sources of Funds	<u>\$31,800,000</u>
Uses of Funds	
Project Costs	\$30,271,085
Costs of Issuance	<u>1,528,915</u>
Total Uses of Funds	<u>\$31,800,000</u>

<sup>1</sup> Estimated amount to provide for Underwriter's discount, New York State bond Issuance fee, Department of Health fee, title insurance, legal, consulting and printing fees, letter of credit fees and associated costs relating to the Series 2008 Bonds.

## PART 7 - THE BANK

The Bank is the principal subsidiary of HSBC USA Inc. (“HSBC USA”), a New York state-based bank holding company registered under the Bank Holding Company Act of 1956, as amended. HSBC USA had its origin in Buffalo, New York in 1850 as The Marine Trust Company, which later became Marine Midland Banks, Inc. In 1980, The Hongkong and Shanghai Banking Corporation (now HSBC Holdings plc (“HSBC Holdings”)) acquired 51 percent of the common stock of Marine Midland Banks, Inc. and the remaining 49 percent in 1987. In December 1999, HSBC Holdings acquired Republic New York Corporation and merged it with HSBC USA. The Bank maintains a principal office at 452 Fifth Avenue, New York, New York 10018 (telephone 212-525-5000).

HSBC USA and the Bank are indirect wholly owned subsidiaries of HSBC Holdings. HSBC Holdings, headquartered in London, England, is one of the largest banking and financial services organizations in the world. HSBC Holdings’ ordinary shares are listed or admitted to trading on the London Stock Exchange, and are listed on the Hong Kong Stock Exchange, Euronext Paris, the New York Stock Exchange and the Bermuda Stock Exchange and its American depository. The shares are listed on the New York Stock Exchange in the form of American Depositary Shares.

The Bank is chartered as a national banking association under the laws of the United States and, as such, is regulated primarily by the Office of the Comptroller of the Currency (“OCC”). The Bank’s deposits are insured by the FDIC up to applicable limits. The Bank’s domestic operations are primarily in New York State. The Bank also has banking branch offices and/or representative offices in Florida, California, New Jersey, Delaware, Pennsylvania, Washington, Oregon, Massachusetts, Virginia, Washington, D.C., Connecticut, Illinois and Texas. In addition to its domestic offices, the Bank maintains foreign branch offices, subsidiaries and/or representative offices in the Caribbean, Europe, Panama, Asia, Latin America, Australia and Canada.

The Bank offers a full range of commercial banking products and services to individuals, including high net worth individuals, small businesses, corporations, institutions and governments. The affiliation with HSBC Holdings enables the Bank to offer its customers access to global markets and services. In turn, the Bank plays a role in the delivery and processing of other HSBC products. The Bank also has mortgage banking operations and is an international dealer in derivative instruments denominated in U.S. dollars and other currencies, focusing on structuring transactions to meet client needs, as well as for proprietary purposes.

At September 30, 2008, the Bank represented approximately 97% of the consolidated assets of HSBC USA and had assets of approximately \$182 billion, total liabilities of approximately \$169 billion, including approximately \$125 billion in deposits and approximately \$17 billion of long-term debt, and shareholder’s equity of approximately \$12 billion.

As of the date hereof, the long-term debt of the Bank has been assigned a rating of AA by Standard & Poor’s and Aa2 by Moody’s Investors Services. As of the date hereof, the short-term debt of the Bank has been assigned a rating of A-1+ by Standard & Poor’s and P-1 by Moody’s Investors Services.

The Bank is required to submit to the FDIC certain reports entitled “Consolidated Reports of Condition and Income” (each, a “Call Report” and collectively, the “Call Reports”). The Bank’s Call Reports are prepared in accordance with regulatory instructions issued by the Federal Financial Institutions Examination Council and consist of a balance sheet, income statement, changes in equity capital and other supporting schedules as of the end of the period to which each such Call Report relates. The publicly available portions of the Bank’s Call Reports are available (i) on the FDIC’s website at [www.fdic.gov](http://www.fdic.gov) and (ii) at the FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

HSBC USA files annual, quarterly and special reports, information statements and other information with the Securities and Exchange Commission (the “SEC”) under File No. 1-7436. Copies of HSBC USA’s SEC filings (including the reports referred to above) are available (i) on the SEC’s website at <http://www.sec.gov> and (ii) at the SEC’s public reference room at 100 F Street, N.E., Washington D.C. 20549.

## PART 8 - THE OBLIGATED GROUP

The current Members of the Obligated Group are: CHS, the Institution, Sisters of Charity, Kenmore Mercy, and St. Joseph. Each Member of the Obligated Group is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

The Members of the Obligated Group are each part of the Catholic Health System (the "CHS System") which is an integrated health care delivery system comprised of hospitals, nursing homes, adult homes, a program for all-inclusive care for the elderly, ambulatory care facilities, home health care agencies, and senior housing. The CHS System provides administrative and management services for its affiliated hospitals including the Institution. No affiliates of CHS other than the Members of the Obligated Group are obligated in any respect under the Series 2008 Bonds.

CHS is, directly or indirectly, the sole corporate member of each operating entity within the CHS System, including the Members of the Obligated Group and serves as the Representative of the Obligated Group under the Master Trust Indenture.

In connection with the adoption of the State's 2005-2006 fiscal year budget, the Legislature authorized the creation of the Commission on Health Care Facilities in the Twenty-First Century (the "Commission"). See "PART 9 - BONDHOLDER CONSIDERATIONS - State Commission on Healthcare". Recommendations of the Commission were made to the State Commissioner of Health in November 2006. Among such recommendations was the closure of St. Joseph. CHS and St. Joseph challenged such recommendation and a Memorandum of Understanding was signed on June 17, 2008 which provides that St. Joseph will be merged into Sisters of Charity, St. Joseph will surrender its Operating Certificate and 123 authorized but unused beds included in the Sisters of Charity Operating Certificate will be used at the current St. Joseph site. The new facility will be referred to as "Sisters of Charity - St. Joseph Campus". The transaction described above is expected to occur on or about March 31, 2009. The Memorandum of Understanding provides that the Department of Health will review the operations of Sisters of Charity - St. Joseph Campus again in June 2011, at which time it will evaluate the continued need for the facility.

Management of the Obligated Group believes that the March 2009 merger will not have a material adverse effect on the Obligated Group, as the transaction is solely between Members of the Obligated Group.

## PART 9 - BONDHOLDER CONSIDERATIONS

**THE SERIES 2008 BONDS ARE BEING OFFERED SOLELY ON THE BASIS OF THE FINANCIAL STRENGTH OF THE BANK AND NOT ON THE FINANCIAL STRENGTH OF THE OBLIGATED GROUP OR OTHER SECURITY. ONLY A BRIEF DESCRIPTION OF THE OBLIGATED GROUP IS INCLUDED HEREIN. THE OWNERS OF THE SERIES 2008 BONDS WILL NOT BE ABLE TO ASSESS THE LIKELIHOOD THAT PAYMENT OF THE SERIES 2008 BONDS WILL BE SUBJECT TO MANDATORY TENDER BEFORE THE STATED MATURITY THEREOF BECAUSE OF AN EVENT OF DEFAULT UNDER THE REIMBURSEMENT AGREEMENT.**

The following discussion of risks to holders of the Series 2008 Bonds is not intended to be exhaustive, but rather to summarize certain matters which could affect payment of the Series 2008 Bonds, in addition to other risks described throughout this Official Statement.

### General

The Series 2008 Bonds are not a debt or liability of the State of New York or any political subdivision thereof, but are special and limited obligations of the Authority and are payable solely from the Letter of Credit and the Revenues pledged to such Series 2008 Bonds, which consist of payments payable by the Institution under the Loan Agreement, payments by the Obligated Group pursuant to the Series 2008 Obligation, and which are secured by the funds and accounts held by the Trustee pursuant to the Series 2008 Resolution (except the Applicable Arbitrage Rebate Fund, the Purchase and Remarketing Fund and the Applicable Credit Facility Repayment Fund) and certain investment income thereon. The Authority has no taxing power. No representation or assurance can be made that revenues will be realized from the Obligated Group in amounts sufficient to provide funds for payment of

debt service on the Series 2008 Bonds when due and to make other payments necessary to meet the obligations of the Members of the Obligated Group. Further, there is no assurance that such revenues of the Obligated Group can be increased sufficiently to match increased costs that may be incurred.

The receipt of future revenues by the Obligated Group is subject to, among other factors, federal and state regulations and policies affecting the healthcare industry and the policies and practices of managed care providers, private insurers and other third party payors, and private purchasers of healthcare services. The effect on each Member of the Obligated Group of recently enacted statutes, regulatory changes and future changes in federal, state and private policies cannot be determined at this time. Loss of established managed care contracts by certain Members of the Obligated Group could also adversely affect the future revenues of the Obligated Group.

### **Rights of the Bank**

So long as the Bank has not repudiated the Letter of Credit nor wrongfully dishonored a drawing on the Letter of Credit which has not been cured, for all purposes of the Resolution, the Bank shall be treated as the Holder of all Series 2008 Bonds, for purposes of obtaining directions, consents, waivers or other actions from the Holders of all or a certain percentage of Series 2008 Bondholders, including, but not limited to, consents to amendments to the Resolution; provided, however, that when the provisions of the Resolution require the consent of all of the Holders of the Series 2008 Bonds, such consent of all Holders shall be required. To the extent that the Bank makes payment of the principal of Purchase Price of or interest on the Series 2008 Bonds and has not been reimbursed therefor, it shall become the owner of such Series 2008 Bonds, such Series 2008 Bonds shall be deemed to be Outstanding and it shall be entitled to the right to payment of principal or interest on such Series 2008 Bond and it shall be fully subrogated to all of the owner's rights thereunder and under the Resolution, including the owner's rights to receive payment thereof. Upon the retirement of the Series 2008 Bonds and the final repayment by the Institution or the Obligated Group of all Reimbursement Obligations or in the event of the repudiation of the Letter of Credit by the Bank, the Bank's consent rights and right of subrogation shall cease.

### **Special Considerations Relating to the Variable Rate Bonds**

*The Remarketing Agent is Paid by the Institution.* The Remarketing Agent's responsibilities include determining the interest rates from time to time and remarketing the Series 2008 Bonds that are optionally or mandatorily tendered by the owners thereof (subject, in each case, to the terms of the Remarketing Agreement), all as further described in this Official Statement. The Remarketing Agent is appointed by the Institution and is paid by the Institution for its services. As a result, the interests of the Remarketing Agent may differ from those of existing holders and potential purchasers of the Series 2008 Bonds.

*The Remarketing Agent May Purchase Bonds for its Own Account.* The Remarketing Agent acts as Remarketing Agent for a variety of variable rate demand obligations and, in its sole discretion, may purchase such obligations for its own account. The Remarketing Agent is permitted, but not obligated, to purchase tendered Series 2008 Bonds for its own account and, in its sole discretion, may acquire such tendered Series 2008 Bonds in order to achieve a successful remarketing the Series 2008 Bonds (*i.e.*, because there otherwise are not enough buyers to purchase such Series 2008 Bonds) or for other reasons. However, the Remarketing Agent is not obligated to purchase the Series 2008 Bonds, and may cease doing so at any time without notice. The Remarketing Agent may also make a market in the Series 2008 Bonds by purchasing and selling the Series 2008 Bonds other than in connection with an optional or mandatory tender and remarketing. Such purchases and sales may be at or below par. However, the Remarketing Agent is not required to make a market in the Series 2008 Bonds. The Remarketing Agent may also sell any Series 2008 Bonds it has purchased to one or more affiliated investment vehicles for collective ownership or enter into derivative arrangements with affiliates or others in order to reduce its exposure to the Series 2008 Bonds. The purchase of Series 2008 Bonds by the Remarketing Agent may create the appearance that there is greater third party demand for the Series 2008 Bonds in the market than is actually the case. The practices described above also may result in fewer Series 2008 Bonds being tendered in a remarketing.

*The Series 2008 Bonds May be Offered at Different Prices on Any Date Including a Reset Date.* Pursuant to the Remarketing Agreement, the Remarketing Agent is required to determine the applicable rate of interest that, in its judgment, is the lowest rate that would permit the sale of the Series 2008 Bonds bearing interest at the interest rate at par plus accrued interest, if any, on and as of the applicable date on which the interest rate is determined. The interest rate will reflect, among other factors, the level of market demand for the Series 2008 Bonds (including whether the Remarketing Agent is willing to purchase the Series 2008 Bonds for its own account). There may or



may not be the Series 2008 Bonds tendered and remarketed on such date, the Remarketing Agent may or may not be able to remarket any Series 2008 Bonds tendered for investors on such date or any other date. The Remarketing Agent is not obligated to advise purchasers in a remarketing if it does not have third party buyers for all of the Series 2008 Bonds at the remarketing price. In the event a Remarketing Agent owns any Series 2008 Bonds for its own account, it may, in its sole discretion in a secondary market transaction outside the tender process, offer such Series 2008 Bonds on any date, at a discount to par to some investors.

*The Ability to sell the Series 2008 Bonds other than through Tender Process May Be Limited.* The Remarketing Agent may buy and sell the Series 2008 Bonds other than through the tender process. However, it is not obligated to do so and may cease doing so at any time without notice and may require holders that wish to tender their Series 2008 Bonds to do so through the Tender Agent with appropriate notice. Thus, investors who purchase the Series 2008 Bonds, whether in a remarketing or otherwise, should not assume that they will be able to sell such Series 2008 Bonds other than by tendering such Series 2008 Bonds in accordance with the tender process.

*Under Certain Circumstances, the Remarketing Agent May Be Removed, Resign, or Cease Remarketing the Series 2008 Bonds, Without a Successor Being Named.* Under certain circumstances the Remarketing Agent may be removed or have the ability to resign or cease remarketing efforts, without a successor having been named, subject to the terms of the Remarketing Agreement.

### **Secondary Market**

There can be no assurance that there will be a secondary market for the purchase or sale of the Series 2008 Bonds. From time to time, there may be no market for the Series 2008 Bonds depending upon prevailing market conditions, including the financial condition or market position of firms who may make the secondary market, the evaluation of the Institution's capabilities and the financial condition and results of operations of the Institution.

### **Bond Ratings**

There can be no assurance that the ratings assigned to the Series 2008 Bonds at the time of issuance will not be lowered or withdrawn at any time, the effect of which could adversely affect the market price for, and marketability of, the Series 2008 Bonds.

### **Legislative, Regulatory and Contractual Matters Affecting Revenue**

The healthcare industry is heavily regulated by the federal and state governments. A substantial portion of revenue comes from governmental sources. Governmental revenue sources are subject to statutory and regulatory changes, administrative rulings, interpretations of policy, determinations by fiscal intermediaries, and government funding restrictions, all of which may materially increase or decrease the rates of payment and cash flow to hospitals. In the past, there have been frequent and significant changes in the methods and standards used by government agencies to reimburse and regulate the operation of hospitals. No assurances can be given that further substantial changes will not occur in the future or that payments made under such programs will remain at levels comparable to the present levels or be sufficient to cover all existing costs. While changes are anticipated, the impact of such changes on the Obligated Group cannot be predicted.

Legislation is periodically introduced in Congress and in the New York Legislature that could result in limitations on the Obligated Group's revenue, third-party payments, and costs or charges, or that could result in increased competition or an increase in the level of indigent care required to be provided by the Members of the Obligated Group. From time to time, legislative proposals are made at the federal and state level to engage in broader reform of the healthcare industry, including proposals to promote competition in the healthcare industry, to contain healthcare costs, to provide national health insurance and to impose additional requirements and restrictions on healthcare insurers, providers and other healthcare entities. The effects of future reform efforts on the Obligated Group cannot be predicted.

### **State Commission on Healthcare**

In connection with the adoption of the budget for the State's fiscal year 2005-2006, the Legislature authorized the creation of a Commission on Health Care Facilities in the Twenty-First Century charged with studying the State's hospital and nursing home systems and making recommendations for closure, resizing,



conversion, consolidation and restructuring. The Commission is comprised of 18 statewide commissioners and 6 regional commissioners from each of the six regions in the State (Long Island, New York City, Hudson Valley, Northern, Central, and Western). The Commission was charged with considering hospital and nursing home capacity in each region of the State, the economic impact of rightsizing actions, capital debt of affected facilities, the existence of other health care providers in the region, the availability of services for the uninsured, underinsured, and Medicaid populations, and additional factors as determined by the Commissioner of Health or the Commission. The Commission made recommendations to the State Commissioner of Health in November 2006, including recommendations with respect to St. Joseph Hospital. See “PART 8 - THE OBLIGATED GROUP”.

### **Not-for-Profit Status**

From time to time, legislation affecting the tax-exempt status of not-for-profit organizations, has been introduced into Congress. Taxing authorities in certain jurisdictions have sought to impose or increase taxes related to the property and operations of such organizations, particularly where such authorities have been dissatisfied with the amount of service provided to indigents. Any legislation affecting the tax-exempt status of the Members of the Obligated Group or the imposition or increase in taxes related to their respective property and operations, could have a material adverse effect on such operations.

### **Internal Revenue Code Limitations**

The Code contains restrictions on the issuance of tax-exempt bonds for the purpose of financing and refinancing different types of healthcare facilities for not-for-profit organizations, including facilities generating taxable income. Consequently, the Code could adversely affect the Obligated Group’s ability to finance the future capital needs and could have other adverse effects on the Members of the Obligated Group that cannot be predicted at this time. The Code continues to subject unrelated business income of nonprofit organizations to taxation.

As tax-exempt organizations, the Members of the Obligated Group are limited with respect to the use of practice income guarantees, reduced rent on medical office space, below market rate interest loans, joint venture programs, and other means of recruiting and retaining physicians. The Internal Revenue Service (“IRS”) has recently intensified its scrutiny of a broad variety of contractual relationships commonly entered into by hospitals and affiliated entities and has issued detailed hospital audit guidelines suggesting that field agents scrutinize numerous activities of hospitals in an effort to determine whether any action should be taken with respect to limitations on, or revocation of, their tax-exempt status or assessment of additional tax. The IRS has also commenced intensive audits of select healthcare providers to determine whether the activities of these providers are consistent with their continued tax-exempt status. The IRS has indicated that, in certain circumstances, violation of the fraud and abuse statutes could constitute grounds for revocation of a hospital’s tax-exempt status.

Any suspension, limitation, or revocation of the tax-exempt status of any of the Members of the Obligated Group or assessment of significant tax liability could have a material adverse effect on the Obligated Group and might lead to loss of tax exemption of interest on the Series 2008 Bonds.

Revocation of the tax-exempt status of any Member of the Obligated Group under Section 501(c)(3) of the Code could subject the interest paid to Bondholders to federal income tax retroactively to the date of the issuance of the Series 2008 Bonds. Section 501(c)(3) of the Code specifically conditions the continued exemption of all Section 501(c)(3) organizations upon the requirement, among others, that no part of the net earnings of the organization inure to the benefit of any private individual. Any violation of the prohibition against private inurement may cause the organization to lose its tax-exempt status under Section 501(c)(3) of the Code. The IRS has issued guidance in informal private letter rulings and general counsel memoranda on some situations that give rise to private inurement, but there is no definitive body of law and no regulations or public advisory rulings that address many common arrangements between exempt healthcare providers and nonexempt individuals or entities. While management believes that the Obligated Group’s arrangements with private persons and entities are generally consistent with guidance by IRS, there can be no assurance concerning the outcome of an audit or other investigation given the lack of clear authority interpreting the range of activities undertaken by the Members of the Obligated Group.

Intermediate sanctions legislation enacted in 1996 imposes penalty excise taxes in cases where an exempt organization is found to have engaged in an “excess benefit transaction” with a “disqualified person.” Such penalty excise taxes may be imposed in lieu of revocation of exemption or in addition to such revocation in cases where the magnitude or nature of the excess benefit calls into question whether the organization functions as a public charity.

The tax is imposed both on the disqualified person receiving such excess benefit and on any officer, director, trustee or other person having similar powers or responsibilities who participated in the transaction willfully or without reasonable cause, knowing it will involve “excess benefit.” “Excess benefit transactions” include transactions in which a disqualified person receives unreasonable compensation for services or receives other economic benefit from the organization that either exceeds fair market value or, to the extent provided in regulations yet to be promulgated, is determined in whole or in part by the revenues of one or more activities of such organization. “Disqualified persons” include “insiders” such as board members and officers, senior management, and members of the medical staff, who in each case are in a position to substantially influence the affairs of the organization; their family members; and entities which are more than 35% controlled by a disqualified person. The legislative history sets forth Congress’ intent that compensation of disqualified persons shall be presumed to be reasonable if it is: (1) approved by disinterested members of the organization’s board or compensation committee; (2) based upon data regarding comparable compensation arrangements paid by similarly situated organizations; and (3) adequately documented by the board or committee as to the basis for its determination. A presumption of reasonableness will also arise with respect to transfers of property between the exempt organization and disqualified persons if a similar procedure with approval by an independent board is followed.

Although the Obligated Group believes that the sanction of revocation of the tax-exempt status of any of its Members is likely to be imposed only in cases of pervasive excess benefit, the imposition of penalty excise tax in lieu of revocation, based upon a finding that any Member of the Obligated Group engaged in an excess benefit transaction, is likely to result in negative publicity and other consequences that could have a materially adverse effect on the operations, property or assets of the Members of the Obligated Group.

### **Tax Audits**

Taxing authorities have recently been conducting general tax audits on non-profit organizations to confirm that such organizations are in compliance with applicable tax rules and in some instances have collected significant payments as part of the settlement process. Although no Member of the Obligated Group is the subject of any such audit at this time, other hospitals located in the State have been the subject of such audits.

### **Relating to Security Interests in Gross Receipts**

The effectiveness of the security interest in the Gross Receipts of the Members of the Obligated Group pursuant to the Master Trust Indenture may be limited by a number of factors, including: (1) provisions prohibiting the direct payment of amounts due to healthcare providers from Medicare, Medicaid and certain other programs to persons other than such providers; (2) present or future prohibitions against assignments contained in any applicable statutes or regulations; (3) commingling of proceeds of Gross Receipts with other monies which are not subject to the security interests in Gross Receipts; (4) statutory liens; (5) rights arising in favor of the United States or any agency thereof; (6) federal bankruptcy laws which may affect the enforceability of the Master Trust Indenture or the security interest in the Gross Receipts; (7) rights of third parties in Gross Receipts converted to cash and not in the possession of the Trustee or the Master Trustee; (8) regulatory restrictions imposed by the New York State Department of Health; and (9) claims that might arise if appropriate financing or continuation statements are not filed or extended in accordance with the applicable Uniform Commercial Code in effect from time to time.

### **Certain Matters Affecting the Enforceability of the Master Trust Indenture**

Possible federal and state law limitations on the enforceability of the obligations of the Members of the Obligated Group under the Master Trust Indenture and the Series 2008 Obligation may constitute risks specifically related to master indenture financings. The accounts of the Members of the Obligated Group will be used collectively in determining whether various covenants and tests contained in the Master Trust Indenture (including tests relating to the issuance of additional Obligations thereunder) are met. This is the case notwithstanding uncertainties as to the enforceability of the joint and several obligations of the Members of the Obligated Group to make payments on Obligations under the Master Trust Indenture, including the Series 2008 Obligation, which uncertainties bear on the availability of the assets of the Members of the Obligated Group for payment of debt service on such Obligations.

Counsel to the Obligated Group will deliver an opinion concurrently with the delivery of the Series 2008 Bonds that the Master Trust Indenture and the Series 2008 Obligation are obligations enforceable in accordance with their terms. Such opinion will be qualified, however, as to enforceability by limitations imposed by bankruptcy,

insolvency, fraudulent conveyance, reorganization or other laws affecting the enforceability of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

The state of insolvency, fraudulent conveyance and bankruptcy laws relating to the enforceability of guaranties or obligations issued by a corporation in favor of the creditors of another, or the obligation of a Member of the Obligated Group to make debt service payments on behalf of another Member of the Obligated Group, is unsettled. The ability to enforce the Master Trust Indenture or any Obligation, including the Series 2008 Obligations, against any Member of the Obligated Group, which would be rendered insolvent thereby, may be subject to challenge.

There is no clear precedent in the law as to whether payments by a Member of the Obligated Group on an Obligation issued for the benefit of another Member of the Obligated Group may be voided by a trustee in bankruptcy in the event of a bankruptcy of such Member or by third party creditors in an action brought pursuant to state fraudulent conveyance statutes. Under the United States Bankruptcy Code a trustee in bankruptcy and, under state fraudulent conveyance statutes, a creditor of a related guarantor, may avoid any obligation incurred by a related guarantor if, among other bases therefor, (1) the guarantor has not received fair consideration or reasonably equivalent value in exchange for the guarantee and (2) the guarantee renders the guarantor "insolvent," as defined in the United States Bankruptcy Code or state fraudulent conveyance statutes, or the guarantor is undercapitalized. Application by courts of the tests of "insolvency," "reasonably equivalent value" and "fair consideration" has resulted in a conflicting body of case law. It is possible that, in an action to force a Member of the Obligated Group to make a payment on an Obligation issued for the benefit of another Member of the Obligated Group, a court might not enforce such a payment in the event it is determined that sufficient consideration for the Member's payment obligation was not received or that the incurrence of such obligation has rendered or will render the Member insolvent.

Payment on an Obligation issued for the benefit of a Member of the Obligated Group also may not be enforceable to the extent payments are requested to be made from any monies or assets which are donor restricted or which are subject to a direct, express or charitable trust which does not permit the use of such monies or assets for such payment or which are otherwise excluded from the definition of Gross Receipts. Due to the absence of clear legal precedent in this area, the extent to which the assets of any present or future Member of the Obligated Group constitute monies or assets which are so restricted or subject to such trusts cannot now be determined. The amount of such assets could be substantial.

In addition, there exists common law authority and authority under state statutes for the ability of the state courts to terminate the existence of a not for profit corporation or undertake supervision of its affairs on various grounds, including a finding that such corporation has insufficient assets to carry out its stated charitable purposes or has taken some action which renders it unable to carry out such purposes. Such court action may arise on the court's own motion or pursuant to a petition of the state attorney general or such other persons who have interests different from those of the general public, pursuant to common law and statutory power to enforce charitable trusts and to see to the application of their funds to their intended charitable uses.

An action to enforce a charitable trust and to see to the application of its funds could also arise if an action to enforce the obligation to make payments on an Obligation issued for the benefit of a Member of the Obligated Group would result in the cessation or discontinuation of any material portion of the healthcare or related services previously provided by a different Member of the Obligated Group from which payment is requested.

Finally, such payment by a Member of the Obligated Group may not be enforceable if payments are requested to be made for a purpose which is not consistent with the charitable purposes of the Member of the Obligated Group from which such transfer is requested or which are issued for the benefit of any entity other than a not for profit corporation which is exempt from federal income taxes under Sections 501(a) and 501(c)(3) of the Code and is not a "private foundation" as defined in Section 509(a) of the Code.

### **Exercise of Remedies Under Master Trust Indenture**

"Events of Default" under the Master Trust Indenture include the failure of the Obligated Group to make payments on any Obligation outstanding under the Master Trust Indenture (such as the Series 2008 Obligation) and may include nonpayment related defaults under documents such as the Loan Agreements. The Master Trust Indenture provides that upon an "Event of Default" thereunder, the Master Trustee may in its discretion, by notice in

writing to Members of the Obligated Group, declare the principal of all (but not less than all) Obligations outstanding thereunder to be due and payable immediately and may exercise other remedies thereunder. However, the Master Trustee is not required to declare amounts under the Master Trust Indenture to be due and payable immediately unless requested to do so by the holders of not less than 25% in aggregate principal amount of all Obligations then outstanding under the Master Trust Indenture. Consequently, upon the occurrence of an “Event of Default” under the Resolution with respect to the Series 2008 Bonds and an acceleration of the maturity of the Series 2008 Bonds, the Master Trustee is not required to accelerate the maturity of all Obligations outstanding under the Master Trust Indenture upon direction from the Trustee unless (i) the principal amount of Series 2008 Bonds outstanding is at least equal to 25% of the principal amount of all Obligations Outstanding under the Master Trust Indenture, or (ii) the Trustee and all other holders of Obligations requesting such acceleration hold at least 25% of all Obligations outstanding under the Master Trust Indenture.

### **Considerations Relating to Additional Debt**

Subject to the coverage and other tests set forth therein, the Master Trust Indenture permits the Members of the Obligated Group to incur additional indebtedness, including Additional Bonds. Such indebtedness would increase the Obligated Group’s debt service requirements and may adversely affect debt service coverage on the Series 2008 Bonds. In addition, additional indebtedness of the Obligated Group could be secured by the same collateral as that which secures the Series 2008 Bonds thereby diluting the security interests of the holders of the Series 2008 Bonds.

## **PART 10 - THE AUTHORITY**

### **Background, Purposes and Powers**

The Authority is a body corporate and politic constituting a public benefit corporation. The Authority was created by the Act for the purpose of financing and constructing a variety of facilities for certain independent colleges and universities and private hospitals, certain not-for-profit institutions, public educational institutions including The State University of New York, The City University of New York and Boards of Cooperative Educational Services (“BOCES”), certain school districts in the State, facilities for the Departments of Health and Education of the State, the Office of General Services, the Office of General Services of the State on behalf of the Department of Audit and Control, facilities for the aged and certain judicial facilities for cities and counties. The Authority is also authorized to make and purchase certain loans in connection with its student loan program. To carry out this purpose, the Authority was given the authority, among other things, to issue and sell negotiable bonds and notes to finance the construction of facilities of such institutions, to issue bonds or notes to refund outstanding bonds or notes and to lend funds to such institutions.

On September 1, 1995, the Authority through State legislation (the “Consolidation Act”) succeeded to the powers, duties and functions of the New York State Medical Care Facilities Finance Agency (the “Agency”) and the Facilities Development Corporation (the “Corporation”), each of which will continue its corporate existence in and through the Authority. Under the Consolidation Act, the Authority has also acquired by operation of law all assets and property, and has assumed all the liabilities and obligations, of the Agency and the Corporation, including, without limitation, the obligation of the Agency to make payments on its outstanding bonds, and notes or other obligations. Under the Consolidation Act, as successor to the powers, duties and functions of the Agency, the Authority is authorized to issue and sell negotiable bonds and notes to finance and refinance mental health services facilities for use directly by the New York State Department of Mental Hygiene and by certain voluntary agencies. As such successor to the Agency, the Authority has acquired additional authorization to issue bonds and notes to provide certain types of financing for certain facilities for the Department of Health, not-for-profit corporations providing hospital, medical and residential health care facilities and services, county and municipal hospitals and nursing homes, not-for-profit and limited profit nursing home companies, qualified health maintenance organizations and health facilities for municipalities constituting social services districts. As successor to the Corporation, the Authority is authorized, among other things, to assume exclusive possession, jurisdiction, control and supervision over all State mental hygiene facilities and to make them available to the Department of Mental Hygiene, to provide for construction and modernization of municipal hospitals, to provide health facilities for municipalities, to provide health facilities for voluntary non-profit corporations, to make its services available to the State Department of Correctional Services, to make its services available to municipalities to provide for the design and construction of local correctional facilities, to provide services for the design and construction of municipal



buildings, and to make loans to certain voluntary agencies with respect to mental hygiene facilities owned or leased by such agencies.

The Authority has the general power to acquire real and personal property, give mortgages, make contracts, operate dormitories and other facilities and fix and collect rentals or other charges for their use, contract with the holders of its bonds and notes as to such rentals and charges, make reasonable rules and regulations to assure the maximum use of facilities, borrow money, issue negotiable bonds or notes and provide for the rights of their holders and adopt a program of self-insurance.

In addition to providing financing, the Authority offers a variety of services to certain educational, governmental and not-for-profit institutions, including advising in the areas of project planning, design and construction, monitoring project construction, purchasing of furnishings and equipment for projects, designing interiors of projects and designing and managing projects to rehabilitate older facilities. In succeeding to the powers, duties and functions of the Corporation as described above, the scope of design and construction services afforded by the Authority has been expanded.

### **Outstanding Indebtedness of the Authority (Other than Indebtedness Assumed by the Authority)**

At September 30, 2008, the Authority had approximately \$36.9 billion aggregate principal amount of bonds and notes outstanding, excluding indebtedness of the Agency assumed by the Authority on September 1, 1995 pursuant to the Consolidation Act. The debt service on each such issue of the Authority's bonds and notes is paid from moneys received by the Authority or the trustee from or on behalf of the entity having facilities financed with the proceeds from such issue or from borrowers in connection with its student loan program.

The Authority's bonds and notes include both special obligations and general obligations of the Authority. The Authority's special obligations are payable solely from payments required to be made by or for the account of the institution for which the particular special obligations were issued or from borrowers in connection with its student loan program. Such payments are pledged or assigned to the trustees for the holders of respective special obligations. The Authority has no obligation to pay its special obligations other than from such payments. The Authority's general obligations are payable from any moneys of the Authority legally available for the payment of such obligations. However, the payments required to be made by or for the account of the institution for which general obligations were issued generally have been pledged or assigned by the Authority to trustees for the holders of such general obligations. The Authority has always paid the principal of and interest on its special and general obligations on time and in full.

The total amounts of the Authority bonds and notes (excluding debt of the Agency assumed by the Authority on September 1, 1995 pursuant to the Consolidation Act) outstanding at September 30, 2008 were as follows:

<b>Public Programs</b>	<b>Bonds Issued</b>	<b>Bonds Outstanding</b>	<b>Notes Outstanding</b>	<b>Bonds and Notes Outstanding</b>
State University of New York Dormitory Facilities.....	\$ 2,250,196,000	\$ 974,760,000	\$ 0	\$ 974,760,000
State University of New York Educational and Athletic Facilities.....	11,757,912,999	4,849,608,949	0	4,849,608,949
Upstate Community Colleges of the State University of New York .....	1,397,910,000	577,550,000	0	577,550,000
Senior Colleges of the City University of New York.....	8,950,698,549	2,778,741,000	0	2,778,741,000
Community Colleges of the City University of New York.....	2,250,831,563	468,219,000	0	468,219,000
BOCES and School Districts .....	1,911,191,208	1,444,745,000	0	1,444,745,000
Judicial Facilities .....	2,161,277,717	731,557,717	0	731,557,717
New York State Departments of Health and Education and Other .....	4,675,320,000	3,257,740,000	0	3,257,740,000
Mental Health Services Facilities .....	6,198,585,000	3,794,045,000	0	3,794,045,000
New York State Taxable Pension Bonds .....	773,475,000	0	0	0
Municipal Health Facilities Improvement Program.....	<u>985,555,000</u>	<u>802,230,000</u>	<u>0</u>	<u>802,230,000</u>
<b>Totals Public Programs .....</b>	<b><u>\$43,312,953,036</u></b>	<b><u>\$19,679,196,666</u></b>	<b><u>\$ 0</u></b>	<b><u>\$19,679,196,666</u></b>

<b><u>Non-Public Programs</u></b>	<b><u>Bonds Issued</u></b>	<b><u>Bonds Outstanding</u></b>	<b><u>Notes Outstanding</u></b>	<b><u>Bonds and Notes Outstanding</u></b>
Independent Colleges, Universities and Other Institutions .....	\$16,554,756,020	\$8,083,977,833	\$184,725,000	\$ 8,268,702,833
Voluntary Non-Profit Hospitals .....	13,397,904,309	7,931,815,000	0	7,931,815,000
Facilities for the Aged.....	1,996,020,000	1,017,785,000	0	1,017,785,000
Supplemental Higher Education Loan Financing Program .....	<u>95,000,000</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Totals Non-Public Programs.....</b>	<b><u>\$32,043,680,329</u></b>	<b><u>\$17,033,577,833</u></b>	<b><u>\$184,725,000</u></b>	<b><u>\$17,218,302,833</u></b>
<b>Grand Totals Bonds and Notes.....</b>	<b><u>\$75,356,633,365</u></b>	<b><u>\$36,712,774,499</u></b>	<b><u>\$184,725,000</u></b>	<b><u>\$36,897,499,499</u></b>

### **Outstanding Indebtedness of the Agency Assumed by the Authority**

At September 30, 2008, the Agency had approximately \$382.8 million aggregate principal amount of bonds outstanding, the obligations as to all of which have been assumed by the Authority. The debt service on each such issue of bonds is paid from moneys received by the Authority (as successor to the Agency) or the trustee from or on behalf of the entity having facilities financed with the proceeds from such issue.

The total amounts of the Agency's bonds (which indebtedness was assumed by the Authority on September 1, 1995) outstanding at September 30, 2008 were as follows:

<b><u>Public Programs</u></b>	<b><u>Bonds Issued</u></b>	<b><u>Bonds Outstanding</u></b>
Mental Health Services Improvement Facilities.....	<u>\$ 3,817,230,725</u>	<u>\$ 0</u>
<b><u>Non-Public Programs</u></b>	<b><u>Bonds Issued</u></b>	<b><u>Bonds Outstanding</u></b>
Hospital and Nursing Home Project Bond Program.....	\$ 226,230,000	\$ 3,605,000
Insured Mortgage Programs .....	6,625,079,927	370,965,939
Revenue Bonds, Secured Loan and Other Programs .....	<u>2,414,240,000</u>	<u>8,255,000</u>
<b>Total Non-Public Programs .....</b>	<b><u>9,265,549,927</u></b>	<b><u>\$382,825,939</u></b>
<b>Total MCFFA Outstanding Debt .....</b>	<b><u>\$13,082,780,652</u></b>	<b><u>\$382,825,939</u></b>

### **Governance**

The Authority carries out its programs through an eleven-member board, a full-time staff of approximately 660 persons, independent bond counsel and other outside advisors. Board members include the Commissioner of Education of the State, the Commissioner of Health of the State, the State Comptroller or one member appointed by him or her who serves until his or her successor is appointed, the Director of the Budget of the State, one member appointed by the Temporary President of the State Senate, one member appointed by the Speaker of the State Assembly and five members appointed by the Governor, with the advice and consent of the Senate, for terms of three years. The Commissioner of Education of the State, the Commissioner of Health of the State and the Director of the Budget of the State each may appoint a representative to attend and vote at Authority meetings. The members of the Authority serve without compensation, but are entitled to reimbursement of expenses incurred in the performance of their duties.

The Governor of the State appoints a Chair from the members appointed by him or her and the members of the Authority annually choose the following officers, of which the first two must be members of the Authority: Vice-Chair, Secretary, Treasurer, Assistant Secretaries and Assistant Treasurers.



The current members of the Authority are as follows:

GAIL H. GORDON, Esq., *Chair*, Slingerlands.

Gail H. Gordon was appointed as a Member of the Authority by the Governor on May 10, 2004. Ms. Gordon served as Deputy Commissioner and General Counsel for the Office of Children and Family Services from September 15, 1997 to December 31, 2006. She previously was of counsel to the law firm of Helm, Shapiro, Anito & McCale, P.C., in Albany, New York, where she was engaged in the private practice of law. From 1987 to 1993, Ms. Gordon served as Counsel to the Comptroller of the State of New York where she directed a legal staff of approximately 40 attorneys, was responsible for providing legal and policy advice to the State Comptroller and his deputies in all areas of the State Comptroller's responsibilities, including the supervision of accounts of public authorities and in the administration, as sole trustee, of the New York State Employees Retirement System and the Policemen's and Firemen's Retirement System. She served as Deputy Counsel to the Comptroller of the State of New York from 1983 to 1987. From 1974 to 1983, Ms. Gordon was an attorney with the law firm of Hinman, Howard & Kattell, Binghamton, New York, where she concentrated in areas of real estate, administrative and municipal law. Ms. Gordon holds a Bachelor of Arts degree from Smith College and a Juris Doctor degree from Cornell University School of Law. Ms. Gordon's term expired on March 31, 2007 and by law she continues to serve until a successor shall be chosen and qualified.

JOHN B. JOHNSON, JR., *Vice-Chair*, Watertown.

John B. Johnson, Jr. was appointed as a Member of the Authority by the Governor on April 26, 2004. Mr. Johnson is Chairman of the Board and Chief Executive Officer of the Johnson Newspaper Corporation, which publishes the Watertown Daily Times, Batavia Daily News, Malone Telegram, Catskill Daily Mail, Hudson Register Star, Ogdensburg Journal, Massena-Potsdam Courier Observer, seven weekly newspapers and three shopping newspapers. He is director of the New York Newspapers Foundation, a member of the Development Authority of the North Country and the Fort Drum Regional Liaison Committee, a trustee of Clarkson University and president of the Bugbee Housing Development Corporation. Mr. Johnson has been a member of the American Society of Newspaper Editors since 1978, and was a Pulitzer Prize juror in 1978, 1979, 2001 and 2002. He holds a Bachelor's degree from Vanderbilt University, and Master's degrees in Journalism and Business Administration from the Columbia University Graduate School of Journalism and Business. Mr. Johnson was awarded an Honorary Doctor of Science degree from Clarkson University. Mr. Johnson's term expires on March 31, 2010.

JOSE ALBERTO CORVALAN, M.D., *Secretary*, Armonk.

Dr. Corvalan was appointed as a Member of the Authority by the Governor on June 22, 2005. Dr. Corvalan is currently an Attending Surgeon at St. Vincent's Hospital in Manhattan. Dr. Corvalan was Chief of Laparoscopic Surgery at St. Vincent's Hospital in Manhattan. Previously, Dr. Corvalan served as Chief of Surgery and President of the Medical Staff at St. Vincent's Midtown Hospital in Manhattan. He is a Diplomate of the American Board of Surgery, and is a Fellow of the American College of Surgeons and the New York Academy of Medicine. Dr. Corvalan has held a number of teaching positions and is Associate Professor of Surgery at New York Medical College, Valhalla, New York. His current term expired on March 31, 2008 and by law he continues to serve until a successor shall be chosen and qualified.

BRIAN RUDER, Scarsdale.

Mr. Ruder was appointed as a Member of the Authority on June 23, 2006. He is Chief Executive Officer of Skylight Partners, a strategic marketing and business development consulting group that he founded in 2001. Prior to Skylight Partners, Mr. Ruder served for four years as Executive Vice President of Global Marketing for Citigroup. He spent 16 years at the H.J. Heinz Co. in progressively responsible positions, including President of Heinz USA, President of Weight Watchers Food Company and corporate Vice President of Worldwide Infant Feeding. He also served as Director of Marketing, New Products and Sales for Pepsi USA in the mid-1980s. Mr. Ruder is a member of the board of the New York State Foundation for Science, Technology and Academic Research (NYSTAR), and also serves as chair of the board of the Adirondack Council, board member and secretary of the New York Metro Chapter of the World Presidents' Organization, and an advisory board member of PNC Private Client Advisors. Mr. Ruder earned a Bachelor of Arts degree in American History in 1976 from Washington University in St. Louis, Mo., and a Master of Business Administration degree in Marketing in 1978 from the Tuck School at Dartmouth College. His current term expires on March 31, 2009.

ANTHONY B. MARTINO, CPA, Buffalo.

Mr. Martino was appointed as a Member of the Authority by the Governor on April 26, 2004. A certified public accountant with more than 37 years of experience, Mr. Martino is a retired partner of the Buffalo CPA firm Lumsden & McCormick, LLP. He began his career at Price Waterhouse where he worked in the firm's Buffalo and Washington, DC, offices. He is a member of the Board of Directors of Natural Health Trends Inc., a public company, where he chairs the Audit Committee. Mr. Martino is a member of the American Institute of CPAs and the New York State Society of CPAs. Long involved in community organizations, he serves on the boards of the Buffalo Niagara Medical Campus as Vice Chairman, Mount Calvary Cemetery as Chair of the Investment Committee, Cradle Beach Camp of which he is a former Chair, the Kelly for Kids Foundation and Key Bank. Mr. Martino received a Bachelor of Science degree in accounting from the University at Buffalo. Mr. Martino's current term expired on August 31, 2007 and by law he continues to serve until a successor shall be chosen and qualified.

SANDRA M. SHAPARD, Delmar.

Ms. Shapard was appointed as a Member of the Authority by the State Comptroller on January 21, 2003. Ms. Shapard served as Deputy Comptroller for the Office of the State Comptroller from January, 1995 until her retirement in 2001, during which time she headed the Office of Fiscal Research and Policy Analysis and twice served as Acting First Deputy Comptroller. Previously, Ms. Shapard held the positions of Deputy Director and First Deputy Director for the New York State Division of Budget, from 1991 to 1994, and Deputy Assistant Commissioner for Transit for the State Department of Transportation, from 1988 to 1991. She began her career in New York State government with the Assembly in 1975 where, over a thirteen year period, she held the positions of Staff Director of the Office of Counsel to the Majority, Special Assistant to the Speaker, and Deputy Director of Budget Studies for the Committee on Ways and Means. Ms. Shapard also served as Assistant to the County Executive in Dutchess County. A graduate of Mississippi University for Women, Ms. Shapard received a Masters of Public Administration from Harvard University, John F. Kennedy School of Government, where she has served as visiting lecturer, and has completed graduate work at Vanderbilt University.

ROMAN B. HEDGES, Ph.D., Delmar.

Dr. Hedges was appointed as a Member of the Authority by the Speaker of the State Assembly on February 24, 2003. Dr. Hedges serves on the Legislative Advisory Task Force on Demographic Research and Reapportionment. He is the former Deputy Secretary of the New York State Assembly Committee on Ways and Means. Dr. Hedges previously served as the Director of Fiscal Studies of the Assembly Committee on Ways and Means. He was an Associate Professor of Political Science and Public Policy at the State University of New York at Albany where he taught graduate and undergraduate courses in American politics, research methodology, and public policy. Dr. Hedges holds a Doctor of Philosophy and a Master of Arts degree from the University of Rochester and a Bachelor of Arts degree from Knox College.

KEVIN R. CARLISLE, Averill Park.

Mr. Carlisle was appointed as a Member of the Authority by the Temporary President of the Senate on January 29, 2007. After a career in public housing and business consulting, Mr. Carlisle retired in 2003 as Assistant Commissioner of the state Division of Housing and Community Renewal ("DHCR") and Vice President of the New York State Housing Trust Fund Corporation. He was responsible for capital development programs which financed approximately 4,000 units annually, with a total development cost of \$500 million. He conceived the state's Homes for Working Families Program, which received the 1999 Award for Program Excellence from the National Council of State Housing Finance Agencies. Similarly, Mr. Carlisle implemented the Rural Leveraging Partnership Program, which was cited as a national model by U.S. Rural Housing Services. He also served at DHCR as Director of Underwriting, Deputy Director of the Office of Rural Development, and designed the housing strategy that met the state's off-site commitment to induce the U.S. Army's 10th Mountain Division to locate at Fort Drum. Before he joined DHCR in 1982, Mr. Carlisle was a partner in Barrett Carlisle & Co., a real estate development and consulting firm, and served the City of Troy and the City of Cohoes in economic planning and real estate project management. Mr. Carlisle earned both a Bachelor's degree in Economics and a Master's degree in Urban and Environmental Studies from Rensselaer Polytechnic Institute.

RICHARD P. MILLS, *Commissioner of Education of the State of New York, Albany; ex-officio.*

Dr. Mills became Commissioner of Education on September 12, 1995. Prior to his appointment, Dr. Mills served as Commissioner of Education for the State of Vermont since 1988. From 1984 to 1988, Dr. Mills was Special Assistant to Governor Thomas H. Kean of New Jersey. Prior to 1984, Dr. Mills held a number of positions within the New Jersey Department of Education. Dr. Mills' career in education includes teaching and administrative experience at the secondary and postsecondary education levels. Dr. Mills holds a Bachelor of Arts degree from Middlebury College and a Master of Arts, a Master of Business Administration and a Doctor of Education degree from Columbia University.

LAURA L. ANGLIN, *Budget Director of the State of New York, Albany; ex-officio.*

Ms. Anglin was appointed Budget Director on January 1, 2008. As Budget Director, she is responsible for the overall development and management of the State's fiscal policy, including overseeing the preparation of budget recommendations for all State agencies and programs, economic and revenue forecasting, tax policy, fiscal planning, capital financing and management of the State's debt portfolio, as well as pensions and employee benefits. Ms. Anglin previously served as First Deputy Budget Director from January 2007 to December 2007. She was appointed Deputy Comptroller of the Division of Retirement Services in January 2003 and was responsible for overseeing the administration and managing the operations of the New York State and Local Retirement System. From 1996-2003, Ms. Anglin worked in the New York State Assembly where she served as Director of Budget Studies for the Assembly Ways and Means Committee and as First Deputy Fiscal Director for the Committee. Ms. Anglin has also held the position of Econometrician in the Department of Taxation and Finance from 1992-1996 and began her career as an Economist for the Department of Environmental Conservation. Ms. Anglin holds a Bachelor of Arts degree and a Masters degree in Economics from the State University of New York at Albany.

RICHARD F. DAINES, M.D., *Commissioner of Health, Albany; ex-officio.*

Richard F. Daines, M.D., became Commissioner of Health on March 21, 2007. Prior to his appointment he served as President and CEO at St. Luke's-Roosevelt Hospital Center since 2002. Before joining St. Luke's-Roosevelt Hospital Center as Medical Director in 2000, Dr. Daines served as Senior Vice President for Professional Affairs of St. Barnabas Hospital in the Bronx, New York since 1994 and as Medical Director from 1987 to 1999. Dr. Daines received a Bachelor of History degree from Utah State University in 1974 and served as a missionary for the Church of Jesus Christ of Latter-day Saints in Bolivia, 1970-1972. He received his medical degree from Cornell University Medical College in 1978. He served a residency in internal medicine at New York Hospital and is Board Certified in Internal Medicine and Critical Care Medicine.

The principal staff of the Authority is as follows:

PAUL T. WILLIAMS, JR. is the Executive Director and chief administrative and operating officer of the Authority. Mr. Williams is responsible for the overall management of the Authority's administration and operations. He most recently served as Senior Counsel in the law firm of Nixon Peabody LLP. Prior to working at Nixon Peabody, Mr. Williams helped to establish a boutique Wall Street investment banking company. Prior thereto, Mr. Williams was a partner in, and then of counsel to, the law firm of Bryan Cave LLP. He was a founding partner in the law firm of Wood, Williams, Rafalsky & Harris, which included a practice in public finance and served there from 1984-1998. Mr. Williams began his career as an associate at the law firm of Walker & Bailey in 1977 and thereafter served as a counsel to the New York State Assembly. Mr. Williams is licensed to practice law in the State of New York and holds professional licenses in the securities industry. He holds a Bachelor's degree from Yale University and a Juris Doctor degree from Columbia University School of Law.

MICHAEL T. CORRIGAN is the Deputy Executive Director of the Authority, and assists the Executive Director in the administration and operation of the Authority. Mr. Corrigan came to the Authority in 1995 as Budget Director, and served as Deputy Chief Financial Officer from 2000 until 2003. He began his government service career in 1983 as a budget analyst for Rensselaer County, and served as the County's Budget Director from 1986 to 1995. Immediately before coming to the Authority, he served as the appointed Rensselaer County Executive for a short period. Mr. Corrigan holds a Bachelor's degree in Economics from the State University of New York at Plattsburgh and a Master's degree in Business Administration from the University of Massachusetts.

PORTIA LEE is the Managing Director of Public Finance and Portfolio Monitoring. She is responsible for supervising and directing Authority bond issuance in the capital markets, through financial feasibility analysis and financing structure determination for Authority clients; as well as implementing and overseeing financing programs, including interest rate exchange and similar agreements; overseeing the Authority's compliance with continuing disclosure requirements and monitoring the financial condition of existing Authority clients. Ms. Lee previously served as Senior Investment Officer at the New York State Comptroller's Office where she was responsible for assisting in the administration of the long-term fixed income portfolio of the New York State Common Retirement Fund, as well as the short-term portfolio, and the Securities Lending Program. From 1995 to 2005, Ms. Lee worked at Moody's Investors Service where she most recently served as Vice President and Senior Credit Officer in the Public Finance Housing Group. In addition, Ms. Lee has extensive public service experience working for over 10 years in various positions in the Governor's Office, NYS Department of Social Services, as well as the New York State Assembly. She holds a Bachelor's degree from the State University of New York at Albany.

JOHN G. PASICZNYK is the Chief Financial Officer of the Authority. Mr. Pasicznyk is responsible for investment management and accounting, as well as the development of the financial policies for the Authority. Before joining the Authority in 1985, Mr. Pasicznyk worked in audit positions at KPMG Peat Marwick and Deloitte & Touche. He holds a Bachelor's degree from Syracuse University and a Master of Business Administration degree from the Fuqua School of Business at Duke University.

JEFFREY M. POHL is General Counsel to the Authority. Mr. Pohl is responsible for all legal services including legislation, litigation, contract matters and the legal aspects of all Authority financings. He is a member of the New York State Bar, and most recently served as a counsel in the public finance group of a large New York law firm. Mr. Pohl had previously served in various capacities in State government with the Office of the State Comptroller and the New York State Senate. He holds a Bachelor's degree from Franklin and Marshall College and a Juris Doctor degree from Albany Law School of Union University.

STEPHEN D. CURRO, P.E. is the Managing Director of Construction. In that capacity, he is responsible for the Authority's construction groups, including design, project management, purchasing, contract administration, interior design, and engineering and other technology services. Mr. Curro joined the Authority in 2001 as Director of Technical Services, and most recently served as Director of Construction Support Services. He is a registered Professional Engineer in New York and Rhode Island and has worked in the construction industry for over 20 years as a consulting structural engineer and a technology solutions provider. Mr. Curro is also an Adjunct Professor at Hudson Valley Community College and Bryant & Stratton College. He holds a Bachelor of Science in Civil Engineering from the University of Rhode Island, a Master of Engineering in Structural Engineering from Rensselaer Polytechnic Institute and a Master of Business Administration from Rensselaer Polytechnic Institute's Lally School of Management.

### **Claims and Litigation**

Although certain claims and litigation have been asserted or commenced against the Authority, the Authority believes that these claims and litigation are covered by the Authority's insurance or by bonds filed with the Authority should the Authority be held liable in any of such matters, or that the Authority has sufficient funds available or the legal power and ability to seek sufficient funds to meet any such claims or judgments resulting from such litigation.

### **Other Matters**

#### *New York State Public Authorities Control Board*

The New York State Public Authorities Control Board (the "PACB") has authority to approve the financing and construction of any new or reactivated projects proposed by the Authority and certain other public authorities of the State. The PACB approves the proposed new projects only upon its determination that there are commitments of funds sufficient to finance the acquisition and construction of the projects. The Authority has obtained the approval of the PACB for the issuance of the Series 2008 Bonds.



### *Legislation*

From time to time, bills are introduced into the State Legislature which, if enacted into law, would affect the Authority and its operations. The Authority is not able to represent whether such bills will be introduced or become law in the future. In addition, the State undertakes periodic studies of public authorities in the State (including the Authority) and their financing programs. Any of such periodic studies could result in proposed legislation which, if adopted, would affect the Authority and its operations.

### *Environmental Quality Review*

The Authority complies with the New York State Environmental Quality Review Act and with the New York State Historic Preservation Act of 1980, and the respective regulations promulgated thereunder respecting the Project to the extent such acts and regulations are applicable.

### *Independent Auditors*

The accounting firm of KPMG LLP audited the financial statements of the Authority for the fiscal year ended March 31, 2008. Copies of the most recent audited financial statements are available upon request at the offices of the Authority.

## **PART 11 - LEGALITY OF THE SERIES 2008 BONDS FOR INVESTMENT AND DEPOSIT**

Under New York State law, the Series 2008 Bonds are securities in which all public officers and bodies of the State and all municipalities and municipal subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, administrators, guardians, executors, trustees, committees, conservators and other fiduciaries in the State may properly and legally invest funds in their control. However, enabling legislation or bond resolutions of individual authorities and public benefit corporations of the State may limit the investment of funds of such authorities and corporations in the Series 2008 Bonds.

## **PART 12 - NEGOTIABLE INSTRUMENTS**

The Series 2008 Bonds shall be negotiable instruments as provided in the Act, subject to the provisions for registration and transfer contained in the Resolution and in the Series 2008 Bonds.

## **PART 13 - TAX MATTERS**

### **Federal Income Taxes**

In the opinion of Harris Beach PLLC, Bond Counsel to the Authority, under existing statutes, regulations, administrative rulings and court decisions as of the date of such opinion, and assuming compliance with the representations, certifications and covenants described in the immediately succeeding paragraph, interest on the Series 2008 Bonds is excluded from gross income for federal income tax purposes. Furthermore, Bond Counsel is of the opinion that interest on the Series 2008 Bonds is not an "item of tax preference" for purposes of computing the federal alternative minimum tax imposed on individuals and corporations. However, interest on the Series 2008 Bonds is included in "adjusted current earnings" for purposes of calculating the federal alternative minimum tax imposed on certain corporations. Corporate purchasers of the Series 2008 Bonds should consult their tax advisors regarding the computation of any alternative minimum tax.

The Interest Revenue Code of 1986, as amended (the "Code") establishes certain requirements which must be met at the time of, and subsequent to, the issuance and delivery of the Series 2008 Bonds in order that interest on the Series 2008 Bonds be and remain excluded from gross income for federal income tax purposes. Included among these continuing requirements are certain restrictions and prohibitions on the use of bond proceeds, restrictions on the investment of bond proceeds and other moneys or properties, required ownership of a facility by an organization described in Section 501(c)(3) of the Code or a governmental unit, and the rebate to the United States of certain earnings in respect of investments. Noncompliance with such continuing requirements may cause the interest on the Series 2008 Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance



of the Series 2008 Bonds irrespective of the date on which such noncompliance occurs. In the Resolution and the Loan Agreement and accompanying documents, exhibits and certificates, the Authority and the Institution have made certain representations and certifications, and have covenanted to comply with certain procedures, designed to assure compliance with the requirements of the Code. In rendering the above-described opinion, Bond Counsel has assumed the accuracy of such representations and certifications and the continuing compliance by the Authority and the Institution with such covenants.

Bond Counsel expresses no opinion regarding any other federal tax consequences related to the ownership or disposition of, or the receipt or accrual of interest on, the Series 2008 Bonds. The proposed form of the approving opinion of Bond Counsel is attached to this Official Statement as Appendix F.

In addition to the matters referred to in the preceding paragraphs, prospective purchasers of the Series 2008 Bonds should be aware that the accrual or receipt of tax-exempt interest on the Series 2008 Bonds may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences may depend upon the recipient's particular tax status or other items of income or deduction. Bond Counsel expresses no opinion regarding any such consequences. Examples of collateral federal income tax consequences of acquiring or holding the Series 2008 Bonds include, without limitation, that (i) with respect to certain insurance companies, the Code reduces the deduction for loss reserves by a portion of the sum of certain items, including interest on the Series 2008 Bonds, (ii) interest on the Series 2008 Bonds earned by certain foreign corporations doing business in the United States may be subject to a branch profits tax imposed by the Code, (iii) passive investment income, including interest on the Series 2008 Bonds, may be subject to federal income taxation under the Code for certain S corporations that have certain earnings and profits, and (iv) the Code requires recipients of certain Social Security and certain other federal retirement benefits to take into account in determining gross income, receipts or accruals of interest on the Series 2008 Bonds. In addition, the Code denies the interest deduction for indebtedness incurred or continued by a taxpayer, including without limitation, banks, thrift institutions, and certain other financial institutions to purchase or carry tax-exempt obligations, such as the Series 2008 Bonds. All prospective purchasers of the Series 2008 Bonds should consult with their tax advisors in order to understand the implications of the Code as to these and other federal and state tax consequences, as well as any local tax consequences, of purchasing or holding the Series 2008 Bonds.

Certain requirements and procedures contained or referred to in the General Resolution and other relevant documents may be changed, and certain actions may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of a nationally recognized bond counsel. Bond Counsel expresses no opinion as to any tax consequences with respect to the Series 2008 Bonds, or the interest thereon, if any such change occurs or actions are taken upon the advice or approval of bond counsel other than Harris Beach PLLC.

### **State and Local Income Tax**

Bond Counsel is also of the opinion that under existing statutes, including the Act, interest on the Series 2008 Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof.

Any noncompliance with the Federal income tax requirements set forth above would not, however, affect the exemption of interest on the Series 2008 Bonds from personal income taxes imposed by New York State or any political subdivision thereof.

Bond Counsel expresses no opinion regarding any other state or local tax consequences related to the ownership or disposition of, or the receipt or accrual of interest on, the Series 2008 Bonds.

Interest on the Series 2008 Bonds may or may not be subject to state or local income taxes in jurisdictions other than the State of New York under applicable state or local tax laws. Bond Counsel expresses no opinion, however, as to the tax treatment of the Series 2008 Bonds under other state or local jurisdictions. Each purchaser of Series 2008 Bonds should consult his or her own tax advisor regarding the taxable status of the Series 2008 Bonds in a particular state or local jurisdiction other than the State of New York.

## **Other Considerations**

Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the Series 2008 Bonds may adversely affect the value of, or the tax status of, interest on, the Series 2008 Bonds.

No assurance can be given that any future legislation, including amendments to the Code or the State income tax laws, regulations, administrative rulings, or court decisions, will not, directly or indirectly, cause interest on the Series 2008 Bonds to be subject to federal, State or local income taxation, or otherwise prevent Bondholders from realizing the full current benefit of the tax status of such interest. Further, no assurance can be given that the introduction or enactment of any such future legislation, or any judicial decision or action of the Internal Revenue Service or any State taxing authority, including but not limited to a regulation or ruling, or the selection of the Series 2008 Bonds for audit examination or the course or result of an audit examination of the Series 2008 Bonds or of obligations which present similar tax issues, will not affect the market price or marketability of the Series 2008 Bonds. Prospective purchasers of the Series 2008 Bonds should consult their own tax advisors regarding the forgoing matters.

All summaries and explanations of provisions of law do not purport to be complete and reference is made to such laws for full and complete statements of their provisions.

### **PART 14 - STATE NOT LIABLE ON THE SERIES 2008 BONDS**

The Act provides that notes and bonds of the Authority shall not be a debt of the State nor shall the State be liable thereon, nor shall such notes or bonds be payable out of any funds other than those of the Authority. The Resolution specifically provides that the Series 2008 Bonds shall not be a debt of the State nor shall the State be liable thereon.

### **PART 15 - COVENANT BY THE STATE**

The Act states that the State pledges and agrees with the holders of the Authority's notes and bonds that the State will not limit or alter the rights vested in the Authority to provide projects, to establish and collect rentals therefrom and to fulfill agreements with the holders of the Authority's notes and bonds or in any way impair the rights and remedies of the holders of such notes or bonds until such notes or bonds and interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of such notes or bonds are fully met and discharged. Notwithstanding the State's pledges and agreements contained in the Act, the State may in the exercise of its sovereign power enact or amend its laws which, if determined to be both reasonable and necessary to serve an important public purpose, could have the effect of impairing these pledges and agreements with the Authority and with the holders of the Authority's notes or bonds.

### **PART 16 - LEGAL MATTERS**

Certain legal matters incidental to the authorization and issuance of the Series 2008 Bonds by the Authority are subject to the approval of Harris Beach PLLC, Rochester, New York, Bond Counsel, whose approving opinion will be delivered with the Series 2008 Bonds. The proposed form of Bond Counsel's opinion is set forth in Appendix F hereto.

Certain legal matters will be passed upon for the Institution, the Representative and the Members of the Obligated Group by their counsel, Phillips Lytle LLP, Buffalo, New York, for the Bank by its counsel, Hiscock & Barclay LLP, Albany, New York, and for the Underwriter by its counsel, Hawkins Delafield & Wood LLP, New York, New York.

There is not now pending any litigation restraining or enjoining the issuance or delivery of the Series 2008 Bonds or questioning or affecting the validity of the Series 2008 Bonds or the proceedings and authority under which they are to be issued.

## **PART 17 - UNDERWRITING AND REMARKETING**

The Series 2008 Bonds are being purchased by DEPFA First Albany Securities LLC (the “Underwriter”). The Underwriter has agreed, subject to certain conditions, to purchase the Series 2008 Bonds from the Authority at an aggregate purchase price of \$24,378,300, reflecting an underwriter’s discount of \$321,700, and to make a public offering of the Series 2008 Bonds at a price that is not in excess of the public offering price stated on the cover of this Official Statement. The Underwriter will be obligated to purchase all such Series 2008 Bonds if any are purchased.

DEPFA First Albany Securities LLC is also serving as Remarketing Agent with respect to the Series 2008 Bonds.

The Series 2008 Bonds may be offered and sold to certain dealers (including the Underwriter) at prices lower than such public offering prices, and such public offering prices may be changed, from time to time, by the Underwriter.

## **PART 18 - CONTINUING DISCLOSURE**

So long as the Series 2008 Bonds bear interest at the Weekly Rate, the Series 2008 Bonds are exempt from Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission, and the Authority, the Members of the Obligated Group and the Bank will not be required to provide any continuing disclosure in accordance with the Rule.

## **PART 19 - RATINGS**

Moody’s Investors Service, Inc. has assigned the Series 2008 Bonds long-term and short-term ratings of “Aa2” and “VMIG-1,” respectively, based upon the Letter of Credit. An explanation of the significance of such ratings may be obtained only from the rating agency furnishing the same. Certain information and materials not included in this Official Statement were furnished to the rating agency. There is no assurance that such ratings will remain in effect for any given period of time or that they will not be revised downward or withdrawn entirely by any or all of such rating agency, if, in the judgment of any or all of them, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market prices of the Series 2008 Bonds.

## **PART 20 - MISCELLANEOUS**

Reference in this Official Statement to the Act, the Resolution, the Series 2008 Resolution, the Letter of Credit, the Reimbursement Agreement, the Loan Agreement, the Intercreditor Agreement, the Master Trust Indenture, the 2008 Supplemental Indenture, and the Series 2008 Obligation, do not purport to be complete. Investors should refer to the Act, the General Resolution, the Series 2008 Resolution, the Letter of Credit, the Reimbursement Agreement, the Loan Agreement, the Master Trust Indenture, the 2008 Supplemental Indenture, and the Series 2008 Obligation for full and complete details of their provisions. Copies of the General Resolution, the Series 2008 Resolution, the Letter of Credit, the Reimbursement Agreement, the Loan Agreement, the Master Trust Indenture, the 2008 Supplemental Indenture, and the Series 2008 Obligation, are on file with the Authority and the Trustee.

The agreements of the Authority with Holders of the Series 2008 Bonds are fully set forth in the General Resolution and the Series 2008 Resolution. Neither any advertisement of the Series 2008 Bonds nor this Official Statement is to be construed as a contract with purchasers of the Series 2008 Bonds.

Any statements in this Official Statement involving matters of opinion, whether or not expressly stated, are intended merely as expressions of opinion and not as representations of fact.

The information regarding the Members of the Obligated Group, the CHS System and in “PART 9 - BONDHOLDER CONSIDERATIONS” was supplied by the Members of the Obligated Group. The Authority

believes that this information is reliable, but the Authority makes no representations or warranties whatsoever as to the accuracy or completeness of this information.

The information regarding DTC and DTC's book-entry system has been furnished by DTC. The Authority believes that this information is reliable, but the Authority makes no representations or warranties whatsoever as to the accuracy or completeness of this information.

"Appendix A - Certain Definitions," "Appendix B - Summary of Certain Provisions of the Loan Agreement," "Appendix C - Summary of Certain Provisions of the Resolution" and "Appendix F - Proposed Form of Approving Opinion of Bond Counsel" have been prepared by Harris Beach PLLC, Rochester, New York, Bond Counsel.

"Appendix D - Summary of Certain Provisions of the Master Trust Indenture and the 2008 Supplemental Indenture" has been prepared by Phillips Lytle LLP, Buffalo, New York, counsel to the Obligated Group and the Representative.

"Appendix E - Summary of Certain Provisions of the Reimbursement Agreement" has been prepared by Hiscock & Barclay LLP, Albany, New York, Bank Counsel.

Each Member of the Obligated Group has reviewed the parts of this Official Statement describing the Obligated Group, the Members thereof, the CHS System, the Plan of Finance, the Estimated Sources and Uses of Funds and Bondholder Considerations. Each Member of the Obligated Group shall certify as of the date hereof and of delivery of the Series 2008 Bonds that such parts do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements are made, not misleading.

The Members of the Obligated Group have agreed to indemnify the Authority, the Underwriter, the Remarketing Agent and certain others against losses, claims, damages and liabilities arising out of any untrue statements or omissions of statements of any material fact as described in the preceding paragraph.

The execution and delivery of this Official Statement by an Authorized Officer have been duly authorized by the Authority.

DORMITORY AUTHORITY OF  
THE STATE OF NEW YORK

By:           /s/ Paul T. Williams Jr.            
          Authorized Officer

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**Appendix A**  
**Certain Definitions**

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## APPENDIX A

### CERTAIN DEFINITIONS

In addition to the other terms defined in this Official Statement, when used herein and in the summaries of the provisions of the Resolution and the Loan Agreement, the following terms have the meanings ascribed to them below.

**Act** means the Dormitory Authority Act (being Chapter 524 of the Laws of 1944 of the State, and constituting Title 4 of Article 8 of the Public Authorities Law), as the same may be amended from time to time, by including, but not limited to, the Health Care Financing Consolidation Act and, as incorporated thereby, the New York State Medical Care Facilities Finance Agency Act being Chapter 392 of Laws of New York 1973, as amended;

**Annual Administrative Fee** means the annual fee for the general administrative and supervising expenses of the Authority in the amount or percentage stated in the Loan Agreement;

**Applicable** means (i) with respect to any Construction Fund, Arbitrage Rebate Fund, Debt Service Fund, Debt Service Reserve Fund or any other fund, the fund so designated and established by an Applicable Series Resolution authorizing an Applicable Series of Bonds relating to a particular Project, (ii) with respect to any Debt Service Reserve Fund Requirement, the said Requirement established in connection with a Series of Bonds by the Applicable Series Resolution or Bond Series Certificate, (iii) with respect to any Series Resolution, the Series Resolution relating to a particular Series of Bonds, (iv) with respect to any Series of Bonds, the Series of Bonds issued under a Series Resolution for particular Projects, (v) with respect to any Loan Agreement, the Loan Agreement by and between the Authority and any one or more Institutions and the contractual obligations contained therein relating to particular Projects for such Institution, (vi) with respect to any Institution, the Institution identified in the Applicable Series Resolution, (vii) with respect to a Bond Series Certificate, such certificate authorized pursuant to an Applicable Series Resolution, (viii) with respect to a Credit Facility, if any, or Credit Facility Issuer, if any, the Credit Facility or Credit Facility Issuer relating to one or more Series of Bonds, and (ix) with respect to a Supplemental Indenture and an Obligation authorized to be issued thereunder, the Supplemental Indenture and Obligation issued under the Master Indenture for the purpose of securing a particular Series of Bonds;

**Arbitrage Rebate Fund** means each fund so designated and established by the Applicable Series Resolution pursuant to the terms of the Resolution with respect to a Series of Tax-Exempt Bonds;

**Authority** means the Dormitory Authority of the State of New York, a body corporate and politic constituting a public benefit corporation of the State created by the Act, or any body, agency or instrumentality of the State which shall hereafter succeed to the rights, powers, duties and functions of the Authority;

**Authority Fee** means a fee payable to the Authority relating to the issuance of a Series of Bonds in an amount set forth in the Applicable Loan Agreement, unless otherwise provided in the Applicable Series Resolution;

**Authorized Newspaper** means *The Bond Buyer* or any other newspaper of general circulation printed in the English language and customarily published at least once a day for at least five days (other

than legal holidays) in each calendar week in the Borough of Manhattan, City and State of New York, designated by the Authority;

**Authorized Officer** means (i) in the case of the Authority, the Chair, the Vice-Chair, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Executive Director, the Deputy Executive Director, the Chief Financial Officer, the Managing Director of Public Finance, the Managing Director of Construction, the Managing Director of Portfolio Management, the General Counsel and any other person authorized by a resolution or the by-laws of the Authority, from time to time, to perform any specific act or execute any specific document; (ii) in the case of an Institution, the person or persons authorized by a resolution or the by-laws of such Institution to perform any act or execute any document; and (iii) in the case of the Trustee, the President, a Vice President, an Assistant Vice President, a Corporate Trust Officer, a Trust Officer or an Assistant Trust Officer of the Trustee, and when used with reference to any act or document also means any other person authorized to perform any act or sign any document by or pursuant to a resolution of the Board of Directors of such Trustee or the by-laws of such Trustee;

**Available Moneys** means: (i) proceeds of any Series of Bonds, including, without limitation, Refunding Bonds, or proceeds of other bonds, notes or obligations, issued to refund the Series 2008 Bonds expressly available to pay the principal or Redemption Price of or interest on the Series 2008 Bonds, provided that, as to such proceeds, an opinion of counsel experienced in bankruptcy matters is delivered to the Trustee and each Rating Service, and with respect to Moody's Investors Service, Inc., reasonable satisfaction of such opinion by such Rating Service, to the effect that the payment of such proceeds to the holders of the Series 2008 Bonds would not constitute transfers avoidable under 11 U.S.C. § 547(b) and recoverable from the holders of the Series 2008 Bonds under 11 U.S.C. § 550(a) if the Authority or the Institution were the debtor in a case under the Bankruptcy Code; (ii) money derived from drawings under any Credit Facility or Liquidity Facility relating to the Series 2008 Bonds and the investment earnings thereon that are not commingled with any other moneys; (iii) with respect to Option Bonds, moneys derived from the remarketing of such Bonds that are directly paid to or held by the Tender Agent for the payment of the Purchase Price of such Bonds in accordance with the Bond Series Certificate; (iv) money held by the Trustee (other than in the Arbitrage Rebate Fund or the Credit Facility Repayment Fund) and subject to a first-priority perfected lien under the Resolution for a period of at least 123 days (or, in the case of any money provided by a person that is an "insider" of the Institution under 11 U.S.C. § 101(31), one year) and not commingled with any moneys so held for less than said period and during which period no petition in bankruptcy was filed by or against, and no receivership, insolvency, assignment for the benefit of creditors or other similar proceeding has been commenced by or against, the Authority or any Institution unless such petition or proceeding was dismissed and all applicable appeal periods have expired without an appeal having been filed, and the investment earnings thereon, that are not commingled with any other moneys, or (v) any money as to which an opinion of counsel experienced in bankruptcy matters is delivered to the Trustee and each Rating Service, and with respect to Moody's Investors Service, Inc., satisfaction of such opinion by such Rating Service, to the effect that the payment of such moneys to the holders of the Series 2008 Bonds as debt service or as the Purchase Price would not constitute transfers avoidable under 11 U.S.C. § 547(b) and recoverable from the holders of the Series 2008 Bonds under 11 U.S.C. § 550(a) if the Authority or an Institution were the debtor in a case under the Bankruptcy Code.

**Bankruptcy Code** means Title 11 of the United States Code.

**Beneficial Owner** means a Person owning the right to receive payments and notices with respect to Series 2008 Bonds held by the Depository, as evidenced to the satisfaction of the Trustee.

**Bonds or Series of Bonds** means any of the Bonds or Series of Bonds of the Authority authorized pursuant to the Resolution and issued pursuant to an Applicable Series Resolution;

**Bond Counsel** means an attorney or a law firm, appointed by the Authority with respect to a particular Series of Bonds, having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds;

**Bond Series Certificate** means a certificate of the Authority fixing terms, conditions and other details of Bonds of a Series in accordance with the delegation of power to do so under the Applicable Series Resolution;

**Bond Year** means, unless otherwise stated in the Applicable Series Resolution, a period of twelve (12) consecutive months beginning July 1 in any calendar year and ending on June 30 of the succeeding calendar year;

**Bondholder, Holder of Bonds, Holder, owner** or any similar term, when used with reference to a Bond or Bonds of a Series, means the registered owner of any Bonds of such Series, except as provided in the Resolution;

**Business Day** means any day other than a Saturday, Sunday or a day on which the Trustee is authorized by law to remain closed;

**Code** means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder;

**Construction Fund** means each such fund so designated and established by the Applicable Series Resolution pursuant to the Resolution;

**Contract Documents** means any general contract or agreement for the construction of a Project, notice to bidders, information for bidders, form of bid, general conditions, supplemental general conditions, general requirements, supplemental general requirements, bonds, plans and specifications, addenda, change orders, and any other documents entered into or prepared by or on behalf of the Institution relating to the construction of a Project, and any amendments to the foregoing;

**Cost or Costs of Issuance** means the items of expense incurred in connection with the authorization, sale and issuance of a Series of Bonds, which items of expense shall include, but not be limited to, document printing and reproduction costs, filing and recording fees, costs of credit ratings, initial fees and charges of the Trustee and any Credit Facility Issuer and Remarketing Agent, legal fees and charges, professional consultants' fees, fees and charges for execution, transportation and safekeeping of such Bonds, premiums, commitment fees or similar costs in connection with obtaining the Credit Facility and any Liquidity Facility, Reserve Fund Facility, or interest rate exchange agreement or other hedge instrument, costs and expenses of refunding of other bonds or notes of the Authority with proceeds of such Series including termination fees for any interest rate exchange agreement in connection with such refunding, and other costs, charges and fees, including those of the Authority, in connection with the foregoing;

**Cost or Costs of the Project** means, with respect to a Project, the costs and expenses or the refinancing of costs and expenses determined by the Authority to be necessary in connection with such Project, including, but not limited to, (i) costs and expenses of the acquisition of the title to or other interest in real property, including easements, rights-of-way and licenses, (ii) costs and expenses incurred for labor and materials and payments to contractors, builders and materialmen, for the acquisition,



construction, reconstruction, rehabilitation, repair and improvement of the Project, (iii) the cost of surety bonds and insurance of all kinds, including premiums and other charges in connection with obtaining title insurance, that may be required or necessary prior to completion of the Project, which is not paid by a contractor or otherwise provided for, (iv) the costs and expenses for design, environmental inspections and assessments, test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction of the Project, (v) costs and expenses required for the acquisition and installation of equipment or machinery, (vi) all other costs which the Institution shall be required to pay or cause to be paid for the acquisition, construction, reconstruction, rehabilitation, repair, improvement and equipping of the Project, (vii) any sums required to reimburse the Institution or the Authority for advances made by them for any of the above items or for other costs incurred and for work done by them in connection with the Project (including interest on moneys borrowed from parties other than the Institution), (viii) interest on the Bonds prior to, during and for a reasonable period after completion of the acquisition, construction, reconstruction, rehabilitation, repair, improvement or equipping of the Project, and (ix) fees, expenses and liabilities of the Authority incurred in connection with such Project or pursuant to the Resolution or to the Applicable Loan Agreement, or a Reserve Fund Facility relating to such Project;

***Credit Facility*** means (i) any municipal bond insurance policy satisfactory to the Authority which insures payment of principal, interest and, if agreed to by the Credit Facility Issuer and the Institution, redemption premium on the Bonds of any Series when due and issued and delivered to the Trustee, (ii) a letter of credit issued by a Credit Facility Issuer with respect to one or more Series of Bonds on the date of issuance of such Series of Bonds, or (iii) similar insurance or guarantee if so designated, all in accordance with the Applicable Series Resolution;

***Credit Facility Default*** means, with respect to a Credit Facility Issuer, any of the following: (a) there shall occur a default in the payment of principal of or any interest on any Bond or Purchase Price thereof by the Credit Facility Issuer when required to be made under the terms of the Credit Facility, (b) a Credit Facility shall have been declared null and void or unenforceable in a final determination by a court of law of competent jurisdiction, or (c) such Credit Facility Issuer shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of such Credit Facility Issuer or for any substantial part of its property, or shall make a general assignment for the benefit of creditors;

***Credit Facility Issuer*** means, with respect to any Series of Bonds for which a Credit Facility is held by the Trustee, the firm, association or corporation, including public bodies and governmental agencies, acceptable to the Authority, which has issued such Credit Facility in connection with such Series of Bonds, and any successors or assigns of the obligations of such firm, association or corporation under such Credit Facility;

***Credit Facility Repayment Fund*** means each fund so designated, created and established by the Applicable Series Resolution pursuant to the Resolution;

***Debt Service Fund*** means each such fund so designated, created and established by the Applicable Series Resolution pursuant to the Resolution;

***Debt Service Reserve Fund*** means each such fund so designated, created and established by the Applicable Series Resolution pursuant to the Resolution;

***Debt Service Reserve Fund Requirement*** means, unless otherwise specified in the Applicable Series Resolution or Applicable Bond Series Certificate, as of any particular date of computation, an amount equal to the greatest amount required in the then current or any future calendar year to pay the sum of (i) interest on the Outstanding Bonds of a Series payable during such year, excluding interest accrued thereon prior to July 1 of the next preceding year and (ii) the principal and the Sinking Fund Installments of such Bonds except that if, upon the issuance of a Series of Bonds, such amount would require a deposit of moneys therein, in an amount in excess of the maximum amount permitted under the Code to be deposited therein from the proceeds of such Series of Bonds, the Debt Service Reserve Fund Requirement shall mean the maximum amount permitted under the Code to be deposited therein from the proceeds of such Series of Bonds, as certified by an Authorized Officer of the Authority;

***Defeasance Security*** means, unless otherwise provided in an Applicable Series Resolution, any of the following: (a) a Government Obligation of the type described in clauses (i), (ii), (iii) or (iv) of the definition of Government Obligations (other than an obligation subject to variation in principal repayment); Federal Agency Obligations described in clauses (i) or (ii) of the definition of Federal Agency Obligations; and an Exempt Obligation, *provided* such Exempt Obligation (i) is not subject to redemption prior to maturity other than at the option of the holder thereof or as to which irrevocable instructions have been given to the trustee of such Exempt Obligation by the obligor thereof to give due notice of redemption and to call such Exempt Obligation for redemption on the date or dates specified in such instructions and such Exempt Obligation is not otherwise subject to redemption prior to such specified date other than at the option of the holder thereof, (ii) is secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or Government Obligations, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such Exempt Obligation on the maturity date thereof or the redemption date specified in the irrevocable instructions referred to in clause (i) above, (iii) as to which the principal of and interest on the direct obligations of the United States of America which have been deposited in such fund, along with any cash on deposit in such fund, are sufficient to pay the principal of and interest and redemption premium, if any, on such Exempt Obligation on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in clause (i) above, and (iv) is rated by at least two nationally recognized statistical rating services in the highest rating category for such Exempt Obligation; *provided, however*, that (1) such term shall not include any interest in a unit investment trust or mutual fund or (2) any obligation that is subject to redemption prior to maturity other than at the option of the holder thereof;

***Department of Health*** means the Department of Health of the State of New York;

***Depository*** means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State, or its nominee, or any other person, firm, association or corporation designated in the Series Resolution authorizing a Series of Bonds or a Bond Series Certificate relating to a Series of Bonds to serve as securities depository for the Bonds of such Series;

***Excess Earnings*** means, with respect to the Applicable Series of Bonds, the amount equal to the rebatable arbitrage and any income attributable to the rebatable arbitrage as required by the Code;

***Exempt Obligation*** means any of the following: (i) an obligation of any state or territory of the United States of America, any political subdivision of any state or territory of the United States of America, or any agency, authority, public benefit corporation or instrumentality of such state, territory or political subdivision, the interest on which is excludable from gross income under Section 103 of the Code, which is not a “specified private activity bond” within the meaning of Section 57(a)(5) of the Code and which, at the time an investment therein is made or such obligation is deposited in any fund or account hereunder, is rated, without regard to qualification of such rating by symbols such as “+” or “-”

and numerical notation, no lower than the second highest rating category for such obligation by at least two nationally recognized statistical rating services; (ii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing; and (iii) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations;

**Facility Provider** means the issuer of a Reserve Fund Facility delivered to the Trustee pursuant to the Resolution;

**Federal Agency Obligation** means any of the following: (i) an obligation issued by any federal agency or instrumentality approved by the Authority; (ii) an obligation the principal of and interest on which are fully insured or guaranteed as to payment by a federal agency approved by the Authority; (iii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing; and (iv) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations;

**Fitch** means Fitch Ratings, and its successors and assigns;

**Government Obligation** means any of the following: (i) a direct obligation of the United States of America; (ii) an obligation the principal of and interest on which are fully insured or guaranteed as to payment of principal and interest by the United States of America; (iii) an obligation to which the full faith and credit of the United States of America are pledged; (iv) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing; and (v) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations;

**Governmental Requirements** means any present and future laws, rules, orders, ordinances, regulations, statutes, requirements and executive orders applicable to a Project or any Mortgaged Property, of the United States, the State and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them, now existing or hereafter created, and having or asserting jurisdiction over a Project or any part thereof, Mortgaged Property or any part of either including, but not limited to, Article 28, Article 28-A or 28-B, as applicable, of the Public Health Law of the State of New York;

**Gross Proceeds** means, with respect to any Series of Tax-Exempt Bonds, to the extent not inconsistent with the provisions of the Code, (i) amounts received by the Authority from the sale of such Series of Bonds (other than amounts used to pay underwriters' fees and other expenses of issuing such Series of Bonds), (ii) amounts treated as transferred proceeds of such Series of Bonds in accordance with the Code, (iii) amounts treated as proceeds under the provisions of the Code relating to invested sinking funds, including any necessary allocation between two or more Series of Bonds in the manner required by the Code, (iv) amounts in the Debt Service Reserve Fund, (v) securities or obligations pledged by the Authority or the Institution as security for payment of debt service on such Bonds, (vi) amounts received with respect to obligations acquired with Gross Proceeds, (vii) amounts used to pay debt service on such Series of Bonds, and (viii) amounts received as a result of the investment of Gross Proceeds at a yield equal to or less than the yield on such Series of Bonds as such yield is determined in accordance with the Code;

**Institution** means, with respect to any Series of Bonds or any portion thereof, the not for profit hospital corporation, nursing home corporation or other entity or person that is a Member of the Obligated Group and for whose benefit the Authority has, as authorized under the Public Health Law or any other law or regulation, issued such Series of Bonds or any portion thereof;

**Insurance Trustee** means the person, if any, designated in the municipal bond insurance policy issued by a Credit Facility Issuer in connection with a Series of Outstanding Bonds with whom funds are to be deposited by such Credit Facility Issuer to make payment pursuant to such policy on account of the principal and Sinking Fund Installments of, and interest on the Bonds of such Series;

**Interest Payment Date** means, during any Weekly Rate Period, the first Business Day of each month; provided, however, that if so provided in a Certificate of Determination the first Interest Payment Date may be a date that is different from the date on which interest would otherwise be payable; provided, further, that interest on Pledged Bonds will be payable at the times required by the Reimbursement Agreement. If any such date is not a Business Day, the Interest Payment Date shall be the succeeding Business Day.

**Investment Agreement** means an agreement for the investment of moneys with a Qualified Financial Institution;

**Loan Agreement** means the Loan Agreement, executed by the Authority and an Applicable Institution, or other agreement, by and between the Authority and an Applicable Institution, as the same may from time to time be amended, supplemented or otherwise modified as permitted by the Resolution and by such Loan Agreement;

**Mandatory Tender Date** means any date on which a Series 2008 Bond is required to be tendered for purchase in accordance with the Bond Series Certificate;

**Master Indenture** means the Master Trust Indenture by and among the Obligated Group and the Master Trustee, as the same may be amended and supplemented from time to time;

**Master Trustee** means The Bank of New York Mellon and any successor under the Master Indenture;

**Maximum Interest Rate** means, with respect to any particular Series of Variable Interest Rate Bonds, the rate of interest, if any, set forth in the Applicable Series Resolution authorizing such Series of Bonds or Applicable Bond Series Certificate relating thereto as the maximum rate of interest Bonds of such Series may bear at any time;

**Member of the Obligated Group** or **Member** means the Institution and any other Person becoming a Member of the Obligated Group pursuant to the Master Indenture;

**Minimum Interest Rate** means, with respect to any particular Series of Variable Interest Rate Bonds, the rate of interest, if any, set forth in the Applicable Series Resolution authorizing such Series of Bonds or Applicable Bond Series Certificate relating thereto as the minimum rate of interest Bonds of such Series may bear at any time;

**Moody's** means Moody's Investors Service, Inc., and its successors and assigns;

**Mortgage** means a mortgage granted by any Member of the Obligated Group to the Master Trustee under the Master Indenture to secure all Obligations issued by the Obligated Group thereunder;

**Mortgaged Property** means the real property, fixtures, personal property and other property interests described in and mortgaged pursuant to any Mortgage;

**Obligated Group** means the Catholic Health System Obligated Group which is comprised of Catholic Health System, Inc., Mercy Hospital of Buffalo, Sisters of Charity Hospital of Buffalo, New York, Kenmore Mercy Hospital and St. Joseph Hospital of Cheektowaga, New York, the current members; and such other organizations as may from time to time be added as members of such Obligated Group, but excluding such organizations as may from time to time withdraw as members of such Obligated Group, all as provided in the Master Indenture, pursuant to which such Obligated Group was created;

**Obligation**, (A) as used in the Resolution, means each Obligation issued under the Master Indenture and a Supplemental Indenture to secure a Series of Bonds issued under the Resolution; and (B) as used in the Loan Agreement, means each Obligation issued under the Master Indenture and a Supplemental Indenture to secure payment of a Series of Bonds issued by the Authority under the Resolution, the proceeds of which are loaned to the Institution pursuant to the Loan Agreement;

**Official Statement** means an official statement or other offering document relating to and in connection with the sale of the Bonds, as the same may be amended or supplemented;

**Option Bond** means any Bond which by its terms may be or is required to be tendered by the Holder thereof for redemption by the Authority prior to the stated maturity thereof or for purchase thereof, or the maturity of which may be extended by and at the option of the Holder thereof in accordance with the Applicable Series Resolution authorizing such Bonds or the Applicable Bond Series Certificate related to such Bonds;

**Optional Tender Date** means any Business Day during a Weekly Rate Period.

**Outstanding**, when used in reference to Bonds of any Series means, as of a particular date, all Bonds of such Series authenticated and delivered under the Resolution and under the Applicable Series Resolution except: (i) any such Bond cancelled by the Trustee at or before such date; (ii) any such Bond deemed to have been paid in accordance with the Resolution; (iii) any such Bond in lieu of or in substitution for which another such Bond shall have been authenticated and delivered pursuant to the Resolution; and (iv) Option Bonds tendered or deemed tendered in accordance with the provisions of the Applicable Series Resolution authorizing such Bonds or the Applicable Bond Series Certificate relating to such Bonds on the applicable adjustment or conversion date, if interest thereon shall have been paid through such applicable date and the purchase price thereof shall have been paid or amounts are available for such payment as provided in the Resolution and in the Applicable Series Resolution authorizing such Bonds or the Applicable Bond Series Certificate relating to such Bonds;

**Paying Agent** means, with respect to any Series of Bonds, the Trustee and any other bank or trust company and its successor or successors, appointed pursuant to the provisions of the Resolution or of an Applicable Series Resolution, an Applicable Bond Series Certificate or any other resolution of the Authority adopted prior to authentication and delivery of such Series of Bonds for which such Paying Agent or Paying Agents shall be so appointed;

**Permitted Collateral** means any of the following: (i) Government Obligations described in clauses (i), (ii) or (iii) of the definition of Government Obligations; (ii) Federal Agency Obligations described in clauses (i) or (ii) of the definition of Federal Agency Obligations; (iii) commercial paper that (a) matures within two hundred seventy (270) days after its date of issuance, (b) is rated in the highest short term rating category by at least one nationally recognized statistical rating service and (c) is issued by a domestic corporation whose unsecured senior debt is rated by at least one nationally recognized statistical rating service no lower than in the second highest rating category; and (iv) financial guaranty agreements, surety or other similar bonds or other instruments of an insurance company that has an equity



capital of at least \$125,000,000 and is rated by Bests Insurance Guide or a nationally recognized statistical rating service in the highest rating category;

**Permitted Investments** means any of the following: (i) Government Obligations; (ii) Federal Agency Obligations; (iii) Exempt Obligations; (iv) Uncollateralized certificates of deposit that are fully insured by the Federal Deposit Insurance Corporation and issued by a banking organization authorized to do business in the State; (v) Collateralized certificates of deposit that are (a) issued by a banking organization authorized to do business in the State that has an equity capital of not less than \$125,000,000, whose unsecured senior debt, or debt obligations fully secured by a letter or credit, contract, agreement or surety bond issued by it, are rated by at least one nationally recognized statistical rating service in at least the second highest rating category, and (b) are fully collateralized by Permitted Collateral; and (vi) Investment Agreements that are fully collateralized by Permitted Collateral;

**Project** means, any eligible hospital project, nursing home project or other project qualified under the Act or otherwise eligible to be financed by the Authority through the issuance of obligations under the laws of the State of New York, as defined in the Applicable Loan Agreement;

**Provider Payments** means any payments made by a Facility Provider pursuant to its Reserve Fund Facility on deposit in the Applicable Debt Service Reserve Fund;

**Qualified Financial Institution** means any of the following entities that has an equity capital of at least \$125,000,000 or whose obligations are unconditionally guaranteed by an affiliate or parent having an equity capital of at least \$125,000,000: (i) a securities dealer, the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation, and (a) that is on the Federal Reserve Bank of New York list of primary government securities dealers and (b) whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one nationally recognized statistical rating service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one nationally recognized statistical rating service no lower than in the highest rating category for such short term debt; provided, however, that no short term rating may be utilized to determine whether an entity qualifies under this paragraph as a Qualified Financial Institution if the same would be inconsistent with the rating criteria of any Rating Service or Applicable Credit Facility Issuer; (ii) a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provisions of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provisions of law, a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, a savings bank, a savings and loan association, or an insurance company or association chartered or organized under the laws of any state of the United States of America, (iii) a corporation affiliated with or which is a subsidiary of any entity described in (i) or (ii) above or which is affiliated with or a subsidiary of a corporation which controls or wholly owns any such entity or which is a subsidiary of a foreign insurance company, (iv) the Government National Mortgage Association or any successor thereto, the Federal National Mortgage Association or any successor thereto, or any other federal agency or instrumentality approved by the Authority and the Applicable Credit Facility Issuer, if any, or (v) a corporation whose obligations including any investments purchased from such corporation for the account of an Applicable Trustee, are insured by the Applicable Credit Facility Issuer, if any; *provided, that*, in the case of any entity described in clause (i), (ii), (iii) or (iv) above, the unsecured or uncollateralized long-term debt obligations of which, or obligations secured or supported by a letter of credit, contract, agreement, insurance policy or surety bond issued by any such organization, have been assigned a credit rating by the Rating Service(s) rating the Bonds which is not lower than "A", without regard to plus or minus, or which bank, trust company, national banking association or securities dealer or affiliate or subsidiary thereof is approved by the Applicable Credit Facility Issuer, if any;

**Rating Service(s)** means each of Moody's, S&P, and Fitch, or their respective successors and assigns, in each case, which has, at the time of reference, assigned a rating to the Series 2008 Bonds at the request of the Authority.

**Record Date** means, unless the Applicable Series Resolution authorizing a Series of Bonds or Applicable Bond Series Certificate relating thereto provides otherwise with respect to Bonds of such Series, the fifteenth (15th) day (whether or not a Business Day) of the month preceding each interest payment date;

**Redemption Price** when used with respect to a Bond of any Series, means the principal amount of such Bond plus the applicable premium, if any, payable upon redemption thereof pursuant to the Resolution or to the Applicable Series Resolution or Applicable Bond Series Certificate;

**Refunding Bonds** means all Bonds, whether issued in one or more Series of Bonds, authenticated and delivered pursuant to the Resolution, and originally issued pursuant to the Resolution, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds;

**Reimbursement Agreement** means the agreement pursuant to which the provider of a Credit Facility (and Liquidity Facility, if applicable) has agreed to provide the Credit Facility (and Liquidity Facility, if applicable), and initially means the Letter of Credit Reimbursement Agreement dated as of November 1, 2008 between HSBC Bank, USA, National Association and the Members of the Obligated Group;

**Remarketing Agent** means the person or entity, appointed by or pursuant to the Applicable Series Resolution authorizing the issuance of a particular Series of Variable Interest Rate Bonds, to remarket such Variable Interest Rate Bonds tendered or deemed to have been tendered for purchase in accordance with such Series Resolution or the Applicable Bond Series Certificate relating to such Variable Interest Rate Bonds;

**Remarketing Agreement** means, with respect to a particular Series of Variable Interest Rate Bonds, an agreement between the Authority and the Remarketing Agent, between the Institution and the Remarketing Agent, or among the Authority, the Institution and the Remarketing Agent, relating to the remarketing of such Variable Interest Rate Bonds;

**Reserve Fund Facility** means a surety bond, insurance policy or letter of credit which constitutes any part of the Debt Service Reserve Fund authorized to be delivered to the Trustee pursuant to the Resolution.

**Resolution** means the "Catholic Health System Obligated Group Revenue Bond Resolution" adopted by the Authority on October 25, 2006, as the same may be amended, supplemented or modified from time to time pursuant to the terms thereof;

**Revenues** means all payments payable by the Applicable Institution to the Authority pursuant to an Applicable Loan Agreement, and payments made under the Master Indenture or payable by the Obligated Group to the Authority pursuant to an Applicable Obligation and all amounts realized upon liquidation of collateral securing the Applicable Obligation, which payments and amounts are pledged and assigned to the Trustee by the Authority pursuant to the Resolution and the Loan Agreement, and the Obligation is to be paid to the Trustee (except payments to the Trustee for the administrative costs and expenses or fees of the Trustee and payments to the Trustee for deposit to the Applicable Arbitrage

Rebate Fund and Applicable Credit Facility Repayment Fund and except as otherwise provided in an Applicable Series Resolution or Applicable Bond Series Certificate relating to a Series of Bonds);

**SIFMA Municipal Index** means the SIFMA Municipal Swap Index disseminated by Municipal Market Data, a Thomson Financial Services Company or its successor; or, if at the time a Rate is to be determined Municipal Market Data has not provided the relevant information on the SIFMA Municipal Index for the most recent Wednesday, then the rate determined by Municipal Market Data on the Wednesday next preceding the beginning of the Rate Period for which such Rate is to be determined.

**S&P** means Standard & Poor's Ratings Services, and its successors and assigns;

**Securities** means, except as may be provided in a Series Resolution, (i) cash, (ii) Government Obligations, (iii) Federal Agency Obligations, (iv) Exempt Obligations, (v) interest-bearing time deposits, certificates of deposit or other similar investment arrangements, *provided, that*, all moneys in each such interest-bearing time deposit, certificate of deposit or other similar investment arrangement shall be continuously and fully insured by the Federal Deposit Insurance Corporation, or (v) Investment Agreements;

**Serial Bonds** means the Bonds so designated in an Applicable Series Resolution or an Applicable Bond Series Certificate;

**Series** means all of the Bonds of any Series authenticated and delivered on original issuance and pursuant to the Resolution and the Applicable Series Resolution, and any Bonds of such Series thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Resolution, regardless of variations in maturity, interest rate, Sinking Fund Installments or other provisions;

**Sinking Fund Installment** means, with respect to any Series of Bonds, as of any date of calculation and with respect to any Bonds of such Series, so long as any such Bonds thereof are Outstanding, the amount of money required by the Applicable Series Resolution pursuant to which such Bonds were issued or by the Applicable Bond Series Certificate, to be paid on a single future sinking fund payment date for the retirement of any Outstanding Bonds of said Series which mature after said future sinking fund payment date, but does not include any amount payable by the Authority by reason only of the maturity of such Bonds, and said future sinking fund payment date is deemed to be the date when such Sinking Fund Installment is payable and the date of such Sinking Fund Installment and said Outstanding Bonds are deemed to be Bonds entitled to such Sinking Fund Installment;

**State** means the State of New York;

**Substitute Credit Facility** means any municipal bond insurance policy, a letter of credit issued by a Credit Facility Issuer or similar insurance or guarantee constituting a Credit Facility within the meaning of the Resolution issued and delivered to the Trustee in connection with a particular Series of Bonds upon the expiration or earlier termination of the then existing Credit Facility relating to such Series of Bonds to replace such existing Credit Facility, all in accordance with the provisions of the Applicable Series Resolution and the Applicable Bond Series Certificate;

**Supplemental Indenture** or **Series Supplemental Indenture** means any Supplemental Indenture created under the Master Indenture authorizing the issuance of an Obligation to secure a Series of Bonds;

**Supplemental Resolution** or **Series Supplemental Resolution** means any Applicable Series Resolution or any Supplemental Resolution adopted and becoming effective in accordance with the terms of the Resolution;

**Tax Certificate** means the certificate of the Authority, including the appendices, schedules and exhibits thereto, executed in connection with the issuance of a Series of Bonds in which the Authority makes representations and agreements as to arbitrage compliance with the provisions of Sections 141 through 150, inclusive, of the Code, or any similar certificate, agreement or other instrument made, executed and delivered in lieu of said certificate, in each case as the same may be amended or supplemented;

**Tax-Exempt Bonds** means any Bonds authorized to be issued under the Resolution and under an Applicable Series Resolution, the interest on which Bonds is not included in gross income for purposes of federal income taxation pursuant to Section 103 of the Code;

**Tender Agent** means the Trustee, who is appointed as Tender Agent pursuant to the Bond Series Certificate and having the duties, responsibilities and rights provided therein, and its successor or successors and any successor Trustee which may at any time be substituted in its place pursuant thereto;

**Tender Date** means each Optional Tender Date or Mandatory Tender Date;

**Tender Notice** means the notice delivered by the Holders of a Series 2008 Bond subject to Optional Tender pursuant to the Bond Series Certificate;

**Tendered Bond** means a Series 2008 Bond or portion thereof in an Authorized Denomination mandatorily tendered or tendered at the option of the Holder thereof for purchase in accordance with the Bond Series Certificate, including a Series 2008 Bond or portion thereof deemed tendered, but not surrendered on the applicable Tender Date;

**Termination Date** when used in connection with a Credit Facility means the date on which such Credit Facility will terminate as set forth in the Credit Facility or the Reimbursement Agreement;

**Term Bonds** means, with respect to Bond of a Series, the Bonds so designated in an Applicable Series Resolution or an Applicable Bond Series Certificate and payable from Sinking Fund Installments;

**Trustee** means The Bank of New York, appointed as Trustee for a Series of Bonds pursuant to the Resolution and having the duties, responsibilities and rights provided for in the Resolution and in the Applicable Series Resolution and Applicable Bond Series Certificate with respect to each such Series of Bonds, and its successor or successors and any other bank or trust company which may at any time be substituted in its place pursuant to the Resolution.

**Variable Interest Rate** means the rate or rates of interest to be borne by a Series of Bonds or any one or more maturities within a Series of Bonds which is or may be varied from time to time in accordance with the method of computing such interest rate or rates specified in the Applicable Series Resolution authorizing such Bonds or the Applicable Bond Series Certificate relating to such Bonds and which shall be based on (i) a percentage or percentages or other function of an objectively determinable interest rate or rates (e.g., a prime lending rate) which may be in effect from time to time or at a particular time or times; *provided, however*, that such variable interest rate may be subject to a Maximum Interest Rate and a Minimum Interest Rate and that there may be an initial rate specified, in each case, as provided in such Applicable Series Resolution or Applicable Bond Series Certificate or (ii) a stated interest rate that may be changed from time to time as provided in such Applicable Series Resolution or Applicable Bond Series Certificate; *provided, further*, that such Applicable Series Resolution or Applicable Bond Series Certificate shall also specify either (x) the particular period or periods of time or manner of determining such period or periods of time for which each variable interest rate shall remain in effect or

(y) the time or times at which any change in such variable interest rate shall become effective or the manner of determining such time or times;

***Variable Interest Rate Bond*** means any Bond which bears a Variable Interest Rate; provided, however, that a Bond, the interest rate on which shall have been fixed for the remainder of the term thereof, shall no longer be a Variable Interest Rate Bond.

***Weekly Rate*** means the rate at which a Series 2008 Bond bear interest during a Weekly Rate Period, as established in accordance with the Bond Series Certificate;

***Weekly Rate Mode*** means a Rate Mode in which a Series 2008 Bond in such Rate Mode bear interest at a Weekly Rate;

***Weekly Rate Period*** means a period commencing on a Conversion Date or the Thursday of a calendar week and extending to and including the next succeeding Wednesday.



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## **Appendix B**

### **Summary of Certain Provisions of the Loan Agreement**

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## **APPENDIX B**

### **SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT**

The following is a brief summary of certain provisions of the Loan Agreement. Such summary does not purport to be complete and reference is made to the Loan Agreement for full and complete statements of such and all provisions. Defined terms used herein have the meanings ascribed to them in Appendix A.

#### **Termination**

The Loan Agreement will remain in full force and effect until no Bonds are Outstanding and until all other payments, expenses and fees payable under the Loan Agreement by the Institution have been made or provision has been made for the payment thereof; provided, however, that the provisions under the section heading "Arbitrage" under the Loan Agreement and the liabilities and the obligations of the Institution to provide reimbursement for or indemnification against expenses, costs or liabilities made or incurred pursuant to the provisions of the Loan Agreement under the section heading "Indemnity by Institution" under the Loan Agreement, will nevertheless survive any such termination. Upon such termination, an Authorized Officer of the Authority will deliver such documents as may be reasonably requested by the Institution to evidence such termination and the discharge of its duties under the Loan Agreement, including the release or surrender of any security interests granted by the Institution to the Authority pursuant to the Loan Agreement.

(Section 38)

#### **Project Financing**

The Authority agrees to use its best efforts to issue and deliver the Bonds. The proceeds of the Bonds will be applied as specified in the Resolution, the Series 2008 Resolution or the Bond Series Certificate relating to such Series 2008 Bonds.

(Section 4)

#### **Construction of Projects**

The Institution agrees that, whether or not there are sufficient moneys available to it under the provisions of the Resolution and the Loan Agreement, the Institution will complete the acquisition, design, construction, reconstruction, rehabilitation and improving or otherwise providing and furnishing and equipping of the Project in connection with which the Authority has issued the Bonds for the benefit of the Institution, substantially in accordance with the Contract Documents relating thereto. Subject to the conditions of the Loan Agreement, the Authority will, to the extent of moneys available in the Construction Fund, cause the Institution to be reimbursed for, or pay, any costs and expenses incurred by the Institution which constitute Costs of the Project, provided such costs and expenses are approved by an Authorized Officer of the Authority and the Commissioner of Health.

(Section 5)

#### **Amendment of a Project; Cost Increases; Additional Obligations**

The Project may be amended by the Institution upon compliance with Governmental Requirements and with the prior written consent of an Authorized Officer of the Authority, the Credit Facility Issuer, if any, and the Department of Health to decrease, increase or otherwise modify the scope thereof. Any such increase may provide for the addition of any further acquisition, design, construction, reconstruction, rehabilitation, improving, or otherwise providing, furnishing and equipping of the Project which the Authority is authorized to undertake.

The Institution covenants that it will not transfer, sell, encumber or convey any interest in the Project or any part thereof or interest therein, including development rights (relating to any Project financed with proceeds of Tax-Exempt Bonds), without complying with Governmental Requirements and obtaining the prior written consent of the Authority in accordance with the terms of the Loan Agreement.

(Section 6)

## **Financial Obligations of the Institution; General and Unconditional Obligation; Voluntary Payments**

1. Except to the extent that moneys are available therefor under the Resolution or under the Loan Agreement, including moneys in the Debt Service Fund, but excluding moneys from the Debt Service Reserve Fund, if any, and excluding interest accrued but unpaid on investments held in the Debt Service Fund, the Institution unconditionally agrees to pay or cause to be paid, so long as the Bonds are Outstanding, to or upon the order of the Authority, from its general funds or any other moneys legally available to it, including payments to be made under the Obligation No. 7 pursuant to the Master Indenture:

(a) On or before the date of delivery of the Bonds, payment of the Authority Fee and payment of the Department of Health fee;

(b) On or before the date of delivery of the Bonds, such amount, if any, as is required in addition to the proceeds of the Bonds available therefor, to pay the Costs of Issuance of the Bonds, and other costs in connection with the issuance of the Bonds;

(c) (I) For all Variable Interest Rate Bonds, on or before the tenth (10th) day of the month prior to an interest payment date on Outstanding Variable Interest Rate Bonds, an amount in immediately available funds equal to the interest coming due on such Variable Interest Rate Bonds on such interest payment date, assuming that such Bonds will, from and after the next succeeding date on which the rates at which such Bonds bear interest are to be determined, bear interest at a rate per annum equal to the rate per annum for such Bonds on the immediately preceding Business Day, plus one percent (1%) per annum; or (II) for any Series of Bonds other than Variable Interest Rate Bonds, on the tenth (10th) day of each month commencing on the tenth (10th) day of the sixth (6th) month immediately preceding the date on which such interest becomes due, one-sixth (1/6) of the interest coming due on the Bonds, on the immediately succeeding interest payment date for the Bonds; provided, however, that, if there are less than six (6) such payment dates prior to the first such interest payment date on the Bonds of such Series, on each payment date prior to such interest payment date the Institution shall pay with respect to such Bonds an amount equal to the interest coming due on such Bonds on such interest payment date multiplied by a fraction, the numerator of which is one (1) and the denominator of which is the number of payment dates prior to the first interest payment date on the Bonds of such Series;

(d) On the tenth (10<sup>th</sup>) day of each month commencing on the tenth (10<sup>th</sup>) day of the twelfth month immediately preceding the July on which the principal or a Sinking Fund Installment of Bonds becomes due, one-twelfth (1/12) of the principal of and Sinking Fund Installments on the Bonds coming due on such July; provided, however, that, if there are less than twelve (12) such payment dates prior to the July on which principal or Sinking Fund Installments come due on Bonds of a Series, on each payment date prior to such July the Institution will pay with respect to such Bonds an amount equal to the principal of and Sinking Fund Installments, if any, on such Bonds coming due on such July, multiplied by a fraction, the numerator of which is one (1) and the denominator of which is the number of payment dates prior to such July;

(e) At least forty-five (45) days prior to any date on which the Redemption Price or purchase price in lieu of redemption of Bonds previously called for redemption or contracted to be purchased is to be paid, the amount required to pay the Redemption Price or purchase price in lieu of redemption of such Bonds;

(f) On December 10 of each Bond Year one-half (1/2) of the Annual Administrative Fee payable during such Bond Year in connection with the Bonds, and on June 10 of each Bond Year the balance of the Annual Administrative Fee payable during such Bond Year; provided, however, that the Annual Administrative Fee with respect to the Bonds payable during the Bond Year during which such Annual Administrative Fee became effective shall be equal to the Annual Administrative Fee with respect to such Bonds multiplied by a fraction the numerator of which is the number of calendar months or parts thereof remaining in such Bond Year and the denominator of which is twelve (12);

(g) Promptly after notice from the Authority, but in any event not later than fifteen (15) days after such notice is given, the amount set forth in such notice as payable to the Authority (i) for the Authority



Fee then unpaid, (ii) to reimburse the Authority for payments made pursuant to the Loan Agreement, and any liabilities incurred by the Authority pursuant to the provisions of the Loan Agreement, (iii) for the costs and expenses incurred to compel full and punctual performance of all the provisions of the Loan Agreement, the Resolution, the Master Indenture and Obligation No. 7 issued under the Master Indenture securing the Bonds in accordance with the terms thereof, (iv) for the fees and expenses of any Trustee and any Paying Agent and reasonable attorneys fees in connection with performance of their respective duties under the Resolution, and (v) to reimburse the Authority for any external costs or expenses incurred by it attributable to the issuance of the Bonds or the financing or construction of the Project;

(h) On the date a Series of Bonds, other than the Series 2008 Bonds is issued, an amount equal to the Authority Fee for such Series of Bonds issued;

(i) Promptly upon demand by an Authorized Officer of the Authority (a copy of which will be furnished to the Trustee), all amounts required to be paid by the Institution as a result of an acceleration pursuant to the provisions of the Loan Agreement;

(j) Promptly upon demand by an Authorized Officer of the Authority, the difference between the amount on deposit in the Arbitrage Rebate Fund available to be rebated in connection with the Bonds of a Series or otherwise available therefor under the Resolution, and the amount required to be rebated or otherwise paid to the Department of the Treasury of the United States of America in accordance with the Code in connection with the Bonds of such Series;

(k) On the Business Day immediately preceding an interest payment date, if the amount on deposit in the Debt Service Fund is less than the amounts required for the payment of principal of or Sinking Fund Installments, if any, or interest on Bonds due and payable on such interest payment date, the amount of such deficiency;

(l) On the tenth day of each month, an amount equal to one-twelfth (1/12) of the annual Department of Health fee for a Series of Bonds as described in the regulations of the Commissioner of Health;

(m) Promptly after notice from the Trustee, the Authority, or the Credit Facility Issuer, if the amount on deposit in the Credit Facility Repayment Fund is insufficient to reimburse the Credit Facility Issuer for an amount drawn upon the Credit Facility, the amount required to reimburse the Credit Facility Issuer; and

(n) Promptly upon demand by an Authorized Officer of the Authority, the amount required to pay the purchase price of Option Bonds tendered for purchase that have not been remarketed or were remarketed at less than the principal amount thereof, which amount is not to be paid from the Credit Facility, and which amount shall be paid in immediately available funds.

Subject to the provisions of the Resolution and the Loan Agreement, the Institution shall receive a credit against the amount required to be paid by the Institution during a Bond Year pursuant to the Loan Agreement on account of any Sinking Fund Installments if, prior to the date notice of redemption is given pursuant to the Resolution with respect to Bonds to be redeemed through Sinking Fund Installments on the next succeeding July 1, the Institution delivers to the Trustee for cancellation one or more Bonds of the Series and maturity to be so redeemed on such July 1. The amount of the credit will be equal to the principal amount of the Bonds so delivered.

The Authority directs the Institution, and the Institution agrees, to make the payments required by paragraphs (c), (d), (e), (i), and (k) above directly to the Trustee for deposit and application in accordance with the provisions of the Resolution under the section entitled "Enforcement of Obligations, Deposit of Revenues and Allocation Thereof", the payments required by paragraphs (b), (m) and (n) above directly to the Trustee for deposit in the Construction Fund, Credit Facility Repayment Fund, or other fund, as applicable, established under the Resolution and Series Resolution, as directed by an Authorized Officer of the Authority, the payments required by paragraphs (a), (f), (g) and (h) above directly to the Authority, the payments required by paragraph (j) above to or upon the order of the Authority and the payments required by paragraph (l) above, directly to the Commissioner of

Health. In the event that the payments required to be made directly to the Trustee pursuant to the preceding sentence are less than the total amount required to be paid to the Trustee and such payments relate to more than one Series of Bonds, the payments will be applied pro rata to each such Series of Bonds based upon the amounts then due and payable on each Series of Bonds pursuant to paragraphs (c), (d), (e), (i) and (k) above bears to the total amount then due and payable on all Series of Bonds.

The Institution agrees that it is also obligated to make all payments when due on Obligation No. 7 to the holders of Obligation No. 7, and that the holders will be entitled to so receive all payments when due on Obligation No. 7, it being the intention of the parties to the Loan Agreement that Obligation No. 7 and the Loan Agreement are separate (but not duplicative) obligations of the Institution (and, to the extent provided in such Obligation No. 7, of the Obligated Group), that payments by the Institution (or the Obligated Group) to the Trustee pursuant to the Obligation No. 7 will serve as a credit against amounts due from the Institution to the Authority pursuant to the Loan Agreement with regard to the Series 2008 Bonds and that payments by the Institution to or upon the order of the Authority pursuant to the Loan Agreement will serve as a credit against respective amounts due from the Institution (or the Obligated Group) to the Trustee pursuant to Obligation No. 7.

2. Notwithstanding any provisions in the Loan Agreement or in the Resolution to the contrary (except as otherwise specifically provided for in the Loan Agreement), all moneys paid by the Institution to the Trustee pursuant to the Loan Agreement or otherwise held by the Trustee will be applied in reduction of the Institution's indebtedness to the Authority under the Loan Agreement, first, with respect to interest and, then, with respect to the principal amount of such indebtedness, but only to the extent that, with respect to interest on such indebtedness, such moneys are applied by the Trustee for the payment of interest on Outstanding Bonds, and, with respect to the principal of such indebtedness, such moneys have been applied to, or are held for, payments in reduction of the principal amount of Outstanding Bonds and as a result thereof Bonds have been paid or deemed to have been paid in accordance with the provisions of the Resolution under the section entitled "Defeasance". Notwithstanding any provision in the Loan Agreement or in the Resolution or the Series 2008 Resolution to the contrary (except as otherwise specifically provided for in the Loan Agreement), (i) all moneys paid by the Institution to the Trustee pursuant to paragraphs (c), (d), (e), (i), (k), (m) and (n) above (other than moneys received by the Trustee pursuant to the section of the Resolution entitled "Compensation", which shall be retained and applied by the Trustee for its own account) shall be received by the Trustee as agent for the Authority in satisfaction of the Institution's indebtedness to the Authority with respect to the interest on and principal, purchase price or Redemption Price of the Bonds to the extent of such payment and (ii) the transfer by the Trustee of any moneys (other than moneys described in clause (i) above) held by it in the Construction Fund to the Debt Service Fund in accordance with the applicable provisions of the Loan Agreement or of the Resolution shall be deemed, upon such transfer, receipt by the Authority from the Institution of a payment in satisfaction of the Institution's indebtedness to the Authority with respect to the Redemption Price of the Bonds to the extent of the amount of moneys transferred. Except as otherwise provided in the Resolution, the Trustee will hold such moneys in trust in accordance with the applicable provisions of the Resolution for the sole and exclusive benefit of the Holders of the Series 2008 Bonds or the Credit Facility Issuer, as the case may be, regardless of the actual due date or payment date of any payment to the Holders of the Series 2008 Bonds.

3. The obligations of the Institution to make payments or cause the same to be made under the Loan Agreement shall be complete and unconditional and the amount, manner and time of making such payments shall not be decreased, abated, postponed or delayed for any cause or by reason of the happening or non-happening of any event, irrespective of any defense or any right of set-off, recoupment or counterclaim which the Institution may otherwise have against the Authority, the Trustee, or any Bondholder for any cause whatsoever including, without limiting the generality of the foregoing, failure of the Institution to complete a Project or the completion thereof with defects, failure of the Institution to occupy or use a Project, any declaration or finding that the Bonds or any Series of Bonds are, or the Resolution is, invalid or unenforceable or any other failure or default by the Authority or the Trustee; provided, however, that nothing in the Loan Agreement shall be construed to release the Authority from the performance of any agreements on its part contained in the Loan Agreement or any of its other duties or obligations, and in the event the Authority fails to perform any such agreement, duty or obligation, the Institution may institute such action as it may deem necessary to compel performance or recover damages for non-performance. Notwithstanding the foregoing, the Authority has no obligation to perform its obligations under the Loan Agreement to cause advances to be made to reimburse the Institution for, or to pay, the Costs of the Project, beyond the extent of moneys available in the Construction Fund established for such Project.

4. The Authority has the right in its sole discretion to make, on behalf of the Institution, any payment required pursuant to the Loan Agreement which was not made by the Institution when due. No such payment by the Authority will limit, impair or otherwise affect the rights of the Authority under the Loan Agreement arising out of the Institution's failure to make such payment and no payment by the Authority shall be construed to be a waiver of any such right or of the obligation of the Institution to make such payment.

5. The Institution, if it is not then in default under the Loan Agreement, will have the right to make voluntary payments in any amount to the Trustee. In the event of a voluntary payment, the amount so paid will be deposited in accordance with the directions of an Authorized Officer of the Authority in the Debt Service Fund or held by the Trustee for the payment of Bonds in accordance with the Resolution. Upon any voluntary payment by the Institution or upon any deposit in a Debt Service Fund made pursuant to the Loan Agreement, the Authority agrees to direct the Trustee to purchase or redeem Bonds in accordance with the Resolution or to give the Trustee irrevocable instructions in accordance with the Resolution with respect to such Series of Bonds; provided, however, that in the event such voluntary payment is in the sole judgment of the Authority sufficient to pay all amounts then due under the Loan Agreement and under the Resolution, including the purchase or redemption of all Bonds Outstanding, or to pay or provide for the payment of all Bonds Outstanding in accordance with the provisions of the Resolution, the Authority agrees, in accordance with the instructions of the Institution, to direct the Trustee to purchase or redeem all Bonds Outstanding, or to cause all Bonds Outstanding to be paid or to be deemed paid in accordance with the Resolution.

(Section 9)

#### **Consent to Pledge and Assignment by the Authority; Covenants, Representations and Warranties**

The Institution consents to and authorizes the assignment, transfer or pledge, if any, by the Authority to the Trustee of the Authority's rights to receive the payments required to be made pursuant to the Loan Agreement and any or all security interests granted by the Institution under the Loan Agreement, the Government Obligations, Federal Agency Obligations, Exempt Obligations and other Securities pursuant to the Loan Agreement and all funds and accounts established by the Resolution and pledged thereby in each case to secure any payment or the performance of any obligation of the Institution under the Loan Agreement or arising out of the transactions contemplated hereby whether or not the right to enforce such payment or performance shall be specifically assigned by the Authority to the Trustee. The Institution further agrees that the Authority may pledge and assign to the Trustee any and all of the Authority's rights and remedies under the Loan Agreement. Upon any pledge and assignment by the Authority to the Trustee authorized by the Loan Agreement, the Trustee shall be fully vested with all of the rights of the Authority so assigned and pledged and may thereafter exercise or enforce, by any remedy provided therefor under the Loan Agreement or by law, any of such rights directly in its own name. Any such pledge and assignment shall be limited to securing the Institution's obligation to make all payments required by the Loan Agreement, and to performing all other obligations required to be performed by the Institution under the Loan Agreement.

The Institution covenants, warrants and represents that it is duly authorized by all applicable laws, its charter and by-laws or resolutions duly adopted pursuant thereto to enter into the Loan Agreement, to incur the indebtedness contemplated in the Loan Agreement and to pledge, grant a security interest in and assign to the Authority and the Trustee for the benefit of the Holders of the Bonds, the Government Obligations, Federal Agency Obligations, Exempt Obligations and other Securities delivered pursuant to the Loan Agreement in the manner and to the extent provided in the Loan Agreement and in the Resolution. The Institution further covenants, warrants and represents that except with respect to additional Bonds, any and all pledges, security interests in and assignments made or to be made pursuant to the Loan Agreement are and will be free and clear of any pledge, lien, charge, security interest or encumbrance thereon or with respect thereto, prior to, or of equal rank with, the pledge, security interest or assignment granted or made pursuant to the Loan Agreement, and that all corporate action on the part of the Institution to that end has been duly and validly taken. The Institution further covenants that the provisions of the Loan Agreement and thereof are and will be valid and legally enforceable obligations of the Institution in accordance with their terms, subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights. The Institution further covenants that it will at all times, to the extent permitted by law, defend, preserve and protect the pledge, security interest in and assignment of the Government Obligations, Federal Agency Obligations, Exempt Obligations and other Securities delivered pursuant to the Loan Agreement and all of the rights of the Authority under the Loan Agreement and the Holders of

Bonds under the Resolution against all claims and demands of all persons whomsoever. The Institution further covenants, warrants and represents that the execution and delivery of the Loan Agreement, and the consummation of the transaction contemplated therein and compliance with the provisions thereof, including, but not limited to, the assignment as security or the granting of a security interest in the Government Obligations, Federal Agency Obligations, Exempt Obligations and Securities delivered to the Trustee pursuant to the Loan Agreement, do not violate, conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, the charter or by-laws of the Institution or any indenture or mortgage, or any trusts, endowments or other commitments or agreements to which the Institution is party or by which it or any of its properties are bound, or any existing law, rule, regulation, judgment, order, writ, injunction or decree of any governmental authority, body, agency or other instrumentality or court having jurisdiction over the Institution or any of its properties.

(Section 12)

### **Tax-Exempt Status**

The Institution represents that (i) it is an organization described in Section 501(c)(3) of the Code, or corresponding provisions of prior law, and is not a “private foundation,” as such term is defined under Section 509(a) of the Code, (ii) it has received a letter or other notification from the Internal Revenue Service to that effect, (iii) such letter or other notification has not been modified, limited or revoked, (iv) it is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification, (v) the facts and circumstances which form the basis of such listing continue to exist, and (vi) it is exempt from federal income taxes under Section 501(a) of the Code. The Institution agrees that (a) it will not perform any act or enter into any agreement which will adversely affect such federal income tax status and will conduct its operations in the manner which will conform to the standards necessary to qualify the Institution as an organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law and (b) it will not perform any act or enter into any agreement which could adversely affect the exclusion of interest on any Tax-Exempt Bonds from federal gross income pursuant to Section 103 of the Code.

(Section 13)

### **Maintenance of Corporate Existence**

The Institution covenants that it will maintain its corporate existence, will continue to operate as a not-for-profit organization, will obtain, maintain and keep in full force and effect such governmental approvals, consents, licenses, permits and accreditations as may be necessary for the continued operation of the Project by the Institution, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it; provided, however, that if no Event of Default has occurred and is continuing and prior written approval has been obtained from the Authority and the Commissioner of Health, the Institution may (i) sell or otherwise transfer all or substantially all of its assets to, or consolidate with or merge into, another organization or corporation which qualifies under Section 501(c)(3) of the Code, or any successor provision of federal income tax law, or (ii) permit one or more corporations or any other organization to consolidate with or merge into it, or (iii) acquire all or substantially all of the assets of one or more corporations or any other organization; provided, however, (a) that any such sale, transfer, consolidation, merger or acquisition does not in the opinion of Bond Counsel adversely affect the exemption from federal income tax of the interest paid or payable on the Tax-Exempt Bonds, (b) that the surviving, resulting or transferee corporation, as the case may be, is incorporated under the laws of the State, and qualified under Section 501(c)(3) of the Code or any successor provision of federal income tax law, (c) that the surviving, resulting or transferee corporation, as the case may be, assumes in writing all of the obligations of and restrictions on the Institution set forth in the Loan Agreement and furnishes to the Authority a certificate to the effect that upon such sale, transfer, consolidation, merger or acquisition such corporation shall be in compliance with each of the provisions of the Loan Agreement and shall meet the requirements of the Act, and (d) the surviving, resulting or transferee entity, as the case may be, shall provide the Authority with such other certificates and opinions as may reasonably be required by the Authority.

(Section 15)

## **Use of Project**

Subject to the rights, duties and remedies of the Authority under the Loan Agreement and the statutory and regulatory powers of the Department of Health, the Institution will have sole and exclusive control of, possession of and responsibility for (i) any Project financed under the Loan Agreement; (ii) the operation of such Projects and supervision of the activities conducted therein or in connection with any part thereof; and (iii) the maintenance, repair and replacement of such Projects.

(Section 17)

## **Restrictions on Religious Use**

The Institution agrees that with respect to any Project or portion thereof, so long as such Project or portion thereof exists and unless and until such Project or portion thereof is sold for the fair market value thereof, such Project or portion thereof will not be used for sectarian religious instruction or as a place of religious worship or in connection with any part of a program of a school or department of divinity for any religious denomination; provided, however, that the foregoing restriction will not prohibit the free exercise of any religion; and provided, further, that if at any time hereafter, in the opinion of Bond Counsel, the then applicable law would permit a Project or portion thereof to be used without regard to the above stated restriction, said restriction shall not apply to such Project and each portion thereof. The Authority and its agents may conduct such inspections as an Authorized Officer of the Authority deems necessary to determine whether any Project or any portion thereof financed by Bonds is being used for any purpose proscribed hereby. The Institution hereby further agrees that prior to any disposition of any portion of a Project for less than fair market value, it will execute and record in the appropriate real property records an instrument subjecting, to the satisfaction of the Authority, the use of such portion of such Project to the restriction that (i) so long as such portion of such Project (and, if included in the Project, the real property on or in which such portion of such Project is situated) shall exist and (ii) until such portion of such Project is sold or otherwise transferred to a person who purchases the same for the fair market value thereof at the time of such sale or transfer, such portion of such Project shall not be used for sectarian religious instruction or as a place of religious worship or used in connection with any part of the program of a school or department of divinity of any religious denomination. The instrument containing such restriction shall further provide that such restriction may be enforced at the insistence of the Authority or the Attorney General of the State, by a proceeding in any court of competent jurisdiction, by injunction, mandamus or by other appropriate remedy. The instrument containing such restriction shall also provide that if at any time thereafter, in the opinion of Bond Counsel, the then applicable law would permit such portion of a Project, or the real property on or in which such portion is situated, to be used without regard to the above stated restriction, then said restriction shall be without any force or effect.

(Section 18)

## **Maintenance, Repair and Replacement**

The Institution agrees that, throughout the term of the Loan Agreement, it will, at its own expense, hold, operate and maintain each Project in a careful, prudent and economical manner, and keep the same, with the appurtenances and every part and parcel thereof, in good repair, working order and condition and will from time to time make all necessary and proper repairs, replacements and renewals so that at all times the operation of a Project may be properly and advantageously conducted. The Institution will have the right to remove or replace any type of fixtures, furnishings and equipment in the Project which may have been financed by the proceeds of the sale of any Series of Bonds provided the Institution substitutes for any removed or replaced fixtures, furnishings and equipment, additional fixtures, furnishings and equipment having equal or greater value and utility than the fixtures, furnishings and equipment so removed or replaced. With regard to equipment, furniture and fixtures that have not been financed by the proceeds of the Bonds, the Institution may convey any such equipment, furniture and fixtures outside of the Obligated Group as permitted by the Master Indenture. As permitted in the Master Indenture, subject to compliance with all applicable Governmental Requirements, the Institution may transfer any equipment, furniture and fixtures at any time to any other Member of the Obligated Group. Notwithstanding the foregoing, in all cases such transfers cannot be made unless they will not adversely affect the tax-exempt status of the Bonds.



The Institution further agrees that it will pay at its own expense all extraordinary costs of maintaining, repairing and replacing a Project except insofar as funds are made available therefor from proceeds of insurance, condemnation or eminent domain awards.

(Section 20)

### **Damage or Condemnation**

In the event of a taking of a Project or any portion thereof by eminent domain or of condemnation, damage or destruction affecting all or part of such Project, the Institution will use such insurance, condemnation or eminent domain proceeds in a manner as to not adversely affect the tax-exempt status on any Tax-Exempt Bonds. Any proceeds of a taking of a Project or any portion thereof by eminent domain or proceeds of insurance related to damage or destruction affecting all or part of such Project which are deposited with a Trustee shall be applied as provided in the Series 2008 Resolution or the Bond Series Certificate.

(Section 21)

### **Taxes and Assessments**

The Institution will pay when due at its own expense, and hold the Authority harmless from, all taxes, assessments, water and sewer charges and other impositions, if any, which may be levied or assessed upon the Institution or any of its property. The Institution shall file exemption certificates as required by law.

(Section 22)

### **Defaults and Remedies**

1. As used in the Loan Agreement the term “Event of Default” means:

(a) the Institution shall (i) default in the timely payment of any amount payable pursuant to the provisions of the Loan Agreement, or in the delivery of Securities or the payment of any other amounts required to be delivered or paid in accordance with the Loan Agreement or with the Resolution, and such default continues for a period in excess of seven (7) days or (ii) default in the payment of any amount payable pursuant to the Loan Agreement;

(b) the Institution defaults in the due and punctual performance of any other covenant contained in the Loan Agreement and such default continues for thirty (30) days after written notice requiring the same to be remedied has been given by the Authority or the Trustee, provided, that, if, in the determination of the Authority, such default cannot be corrected within such thirty (30) day period but can be corrected by appropriate action, it shall not constitute an Event of Default if corrective action is instituted by the Institution within such period and is diligently pursued until the default is corrected;

(c) as a result of any default in payment or performance required of the Institution or any Event of Default under the Loan Agreement, whether or not declared, the Authority shall be in default in the payment or performance of any of its obligations under the Resolution and an “Event of Default” (as defined in the Resolution) shall have been declared under the Resolution so long as such default or Event of Default shall remain uncured or the Trustee or Holders of the Bonds shall be seeking the enforcement of any remedy under the Resolution as a result thereof;

(d) the Obligated Group shall be in default under the Master Indenture or under any Obligation issued under the Master Indenture, and in either case such default continues beyond any applicable grace period;

(e) the Institution shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, (iii) make a general assignment for the benefit of its general creditors, (iv) consent to the appointment of a custodian, receiver, trustee or

other officer with similar powers of itself or of any substantial part of its property, (v) be adjudicated insolvent or be liquidated or (vi) take corporate action for the purpose of any of the foregoing;

(f) a court or governmental authority of competent jurisdiction will enter an order appointing, without consent by the Institution, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Institution, or any petition for any such relief shall be filed against the Institution and such petition shall not be dismissed within ninety (90) days;

(g) the charter of the Institution shall be suspended or revoked;

(h) a petition to dissolve the Institution shall be filed by the Institution with the Department of Health, the legislature of the State or any other governmental authority having jurisdiction over the Institution;

(i) an order of dissolution of the Institution shall be made by the Department of Health, the legislature of the State or any other governmental authority having jurisdiction over the Institution which order shall remain undismissed or unstayed for an aggregate of thirty (30) days;

(j) a petition shall be filed with a court having jurisdiction for an order directing the sale, disposition or distribution of all or substantially all of the property belonging to the Institution which petition shall remain undismissed or unstayed for an aggregate of ninety (90) days;

(k) an order of a court having jurisdiction shall be made directing the sale, disposition or distribution of all or substantially all of the property belonging to the Institution, which order shall remain undismissed or unstayed for the earlier of (x) three (3) Business Days prior to the date provided for in such order for such sale, disposition or distribution or (y) an aggregate of thirty (30) days from the date such order shall have been entered;

(l) a final judgment for the payment of money which in the reasonable judgment of the Authority will materially adversely affect the rights of the Holders of the Bonds shall be rendered against the Institution and at any time after forty-five (45) days from the entry thereof, (i) such judgment shall not have been discharged, or (ii) the Institution shall not have taken and be diligently prosecuting an appeal therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, and shall not have caused, within forty-five (45) days, the execution of or levy under such judgment, order, decree or process or the enforcement thereof to have been stayed pending determination of such appeal; or

(m) the receipt of written notification by the Trustee from the Credit Facility Issuer of the occurrence and continuance of an event of default under the Reimbursement Agreement pursuant to which the Credit Facility was issued and of the election of the Credit Facility Issuer to cause an acceleration of the debt and a mandatory tender of the Bonds in accordance with the terms of the Intercreditor Agreement.

2. Upon the occurrence of an Event of Default, the Authority shall provide written notice of such Event of Default to the Department of Health upon receiving knowledge thereof, provided, however, that failure to give such notice shall in no manner impair or diminish the Authority's ability to take any action under the Loan Agreement. The Authority may take any one or more of the following actions upon the occurrence of an Event of Default:

(a) declare all sums payable by the Institution under the Loan Agreement or under the Obligations relating to the Series 2008 Bonds immediately due and payable;

(b) direct the Trustee to withhold any and all payments, advances and reimbursements from the proceeds of Bonds or any Series 2008 Construction Fund or otherwise to which the Institution may

otherwise be entitled under the Loan Agreement and in the Authority's sole discretion apply any such proceeds or moneys for such purposes as are authorized by the Resolution;

(c) withhold any or all further performance under the Loan Agreement;

(d) maintain an action against the Institution under the Loan Agreement or under Obligation No. 7 or against any or all members of the Obligated Group under the Master Indenture or Obligation No. 7 to recover any sums payable by the Institution or to require its compliance with the terms of the Loan Agreement or of the Master Indenture or Obligation No. 7;

(e) [Reserved];

(f) to the extent permitted by law, (i) enter upon any Project and complete the construction of any Project in accordance with the plans and specifications with such changes therein as the Authority may deem appropriate and employ watchmen to protect the Projects, all at the risk, cost and expense of the Institution, consent to such entry being given by the Institution, (ii) at any time discontinue any work commenced in respect of the construction of any Project or change any course of action undertaken by the Institution and not be bound by any limitations or requirements of time whether set forth in the Loan Agreement or otherwise, (iii) assume any construction contract made by the Institution in any way relating to the construction of any Project and take over and use all or any part of the labor, materials, supplies and equipment contracted for by the Institution, whether or not previously incorporated into the construction of such Project, and (iv) in connection with the construction of any Project undertaken by the Authority pursuant to the provisions of this paragraph (f), (x) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment in connection with the construction of such Project, (y) pay, settle or compromise all bills or claims which may become liens against a Project or against any moneys of the Authority applicable to the construction of a Project, or which have been or may be incurred in any manner in connection with completing the construction of a Project or for the discharge of liens, encumbrances or defects in the title to a Project or against any moneys of the Authority applicable to the construction of a Project, and (z) take or refrain from taking such action under the Loan Agreement as the Authority may from time to time determine. The Institution shall be liable to the Authority for all sums paid or incurred for construction of any Project whether the same will be paid or incurred pursuant to the provisions of this paragraph (f) or otherwise, and all payments made or liabilities incurred by the Authority under the Loan Agreement of any kind whatsoever shall be paid by the Institution to the Authority upon demand. For the purpose of exercising the rights granted by this subparagraph during the term of the Loan Agreement, the Institution hereby irrevocably constitutes and appoints the Authority its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Institution; and

(g) take any action necessary to enable the Authority to realize on its liens under the Loan Agreement, or by law, including any other action or proceeding permitted by the terms of the Loan Agreement, or by law.

3. All rights and remedies given or granted to the Authority in the Loan Agreement are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or may be given by reason of any law, statute, ordinance or otherwise, and no failure to exercise or delay in exercising any remedy shall effect a waiver of the Authority's right to exercise such remedy thereafter.

4. At any time before the entry of a final judgment or decree in any suit, action or proceeding instituted on account of any Event of Default or before the completion of the enforcement of any other remedies under the Loan Agreement, the Authority may annul any declaration made or action taken pursuant to the Loan Agreement and its consequences if such Events of Default shall be cured. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereto.

5. The Institution will give the Authority and the Department of Health telephonic and written notice within one (1) Business Day of receiving information that the Master Trustee has appointed or intends to appoint a receiver in accordance with the terms of the Master Indenture.

(Section 26)

#### **Arbitrage**

The Institution covenants that it will not take any action or inaction, nor fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on any Series 2008 Bonds under Section 103 of the Code. Without limiting the generality of the foregoing, the Institution covenants that it will comply with the instructions and requirements of the Tax Certificate. The Institution (or any related person, as defined in Section 147(a)(2) of the Code) will not, pursuant to an arrangement, formal or informal, purchase Bonds (except in the case of a purchase in lieu of redemption) in an amount related to the amount of any obligation to be acquired from the Institution by the Authority. The Institution will, on a timely basis, provide the Authority with all necessary information regarding funds not in the Authority's possession, to enable the Authority to comply with the arbitrage and rebate requirements of the Code as identified in the Resolution under the section entitled "Tax Exemption: Rebates". The Institution shall be required to pay for any consultant or report necessary to satisfy any such arbitrage and rebate requirements.

(Section 31)

#### **Amendments to Loan Agreement**

The Loan Agreement may be amended only in accordance with the Resolution and each amendment shall be made by an instrument in writing signed by an Authorized Officer of the Institution and of the Authority, an executed counterpart of which shall be filed with the Trustee; provided, however, that no amendment or waiver of any provision of the Loan Agreement may be made without the prior written consent of the Commissioner of Health.

(Section 37)

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## **Appendix C**

### **Summary of Certain Provisions of the Resolution**

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## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION

The following is a brief summary of certain provisions of the Resolution. Such summary does not purport to be complete and reference is made to the Resolution for full and complete statements of such and all provisions. Unless otherwise indicated, references to section numbers in this summary refer to sections in the Resolution. Defined terms used herein will have the meanings ascribed to them in Appendix A.

#### **Resolution, the Series Resolutions and the Bonds Constitute Separate Contracts**

It is the intent of the Resolution to authorize the issuance by the Authority, from time to time, of its Bonds in one or more Series, each such Series to be authorized by a separate Applicable Series Resolution and, *inter alia*, to be separately secured from each other Series of Bonds. Each such Series of Bonds shall be separate and apart from any other Series of Bonds authorized by a different Series Resolution and the Holders of Bonds of such Series shall not be entitled to the rights and benefits conferred upon the Holders of Bonds of any other Series of Bonds by the Applicable Series Resolution authorizing such Series of Bonds. With respect to each Series of Bonds, in consideration of the purchase and acceptance of any and all of the Bonds of the Applicable Series authorized to be issued under the Resolution and under the Applicable Series Resolution by those who will hold or own the same from time to time, the Resolution and the Applicable Series Resolution shall be deemed to be and will constitute a contract among the Authority, the Trustee and the Holders from time to time of the Bonds of such Series, and the pledge and assignment made in the Resolution and the covenants and agreements set forth to be performed by or on behalf of the Authority will be for the equal and ratable benefit, protection and security of the Holders of any and all of the Bonds of such Series, all of which, regardless of the time or times of their issue or maturity, will be of equal rank without preference, priority or distinction of any Bonds of a Series over any other Bonds of such Series except as expressly provided in or permitted by the Resolution or by the Applicable Series Resolution.

(Section 1.03)

#### **Option of Authority to Assign Certain Rights and Remedies to the Trustee**

As security for the payment of the principal, Sinking Fund Installments, if any, and Redemption Price of, and interest on, Outstanding Bonds of a Series and for the performance of each other obligation of the Authority under the Resolution, the Authority may grant, pledge and assign to the Trustee all of the Authority's estate, right, title, interest and claim in, to and under the Applicable Loan Agreement, or Applicable Obligation, together with all rights, powers, security interests, privileges, options and other benefits of the Authority under such Loan Agreement or Obligation, including, without limitation, the immediate and continuing right to receive, enforce and collect (and to apply the same in accordance with the Resolution) all Revenues, and other payments and other security now or hereafter payable to or receivable by the Authority under such Loan Agreement or Obligation, and the right to make all waivers and agreements in the name and on behalf of the Authority, as Trustee for the benefit of the Applicable Bondholders, and to perform all other necessary and appropriate acts under the Applicable Loan Agreement, or Applicable Obligation, subject to the following conditions: (a) that, unless and until the Authority grants, pledges or assigns such rights under the Applicable Loan Agreement or the Applicable Obligation to the Trustee, the Authority may, with the consent of the Applicable Credit Facility Issuer, if any, if required, modify, amend or release any provisions of such Applicable Loan Agreement, or the Applicable Obligation only as provided in the Resolution; (b) that the Holders of the Applicable Bonds, if any, will not be responsible or liable in any manner or to any extent for the performance of any of the covenants or provisions thereof to be performed by the Authority; (c) that, unless and until the Trustee shall, in its discretion when an "Event of Default" (as defined in the Applicable Loan Agreement) under the Applicable Loan Agreement will have occurred and shall be continuing, so elect, by instrument in writing delivered to the Authority and the Applicable Institution (and then only to the extent that the Trustee shall so elect), the Trustee will not be responsible or liable in any manner or to any extent for the performance of any of the covenants or provisions contained in the Applicable Loan Agreement to be performed by the Authority (except to the extent of actions undertaken by the Trustee in the course of its performance of any such covenant or provision); the Authority, however, is to remain liable to observe and perform all the conditions and covenants, in the Applicable Loan Agreement to be observed and performed by it; *provided, however*, that any grant, pledge and assignment by the Authority of moneys, revenues, accounts, rights or other property of the Applicable Institution made with respect to the Applicable Loan Agreement pursuant to the Resolution shall secure, in the case of the

Applicable Loan Agreement or any applicable portion thereof, only the payment of the amounts payable under such Applicable Loan Agreement.

In the event the Authority grants, pledges and assigns to the Trustee any of its rights as provided in the preceding paragraph, the Trustee shall accept such grant, pledge and assignment which acceptance will be evidenced in writing and signed by an Authorized Officer of the Trustee.

If not previously assigned to the Trustee in accordance with the Resolution, then upon (1) the occurrence of an Event of Default under the Resolution (other than an Event of Default specified in the Resolution) and (2) the written request of the Trustee, the Authority shall assign the Applicable Obligation to the Trustee.

(Section 1.04)

### **Refunding Bonds**

All or any portion of one or more Series of Refunding Bonds may be authenticated and delivered to refund all Outstanding Bonds of one or more Series of Bonds, one or more series of bonds or other obligations, a portion of a Series of Outstanding Bonds or a portion of a series of bonds or other obligations, a portion of a maturity of a Series of Outstanding Bonds or a portion of a maturity of bonds or other obligations. The Authority by resolution of its members may issue Refunding Bonds of a Series in an aggregate principal amount sufficient, together with other moneys available therefor, to accomplish such refunding and to make such deposits required by the provisions of the Resolution and of the Series Resolution authorizing such Series of Refunding Bonds or by the provisions of the resolution or resolutions authorizing the bonds or other obligations issued by the Authority, as the case may be.

With respect to Refunding Bonds issued to refund all or any portion of any Series of Outstanding Bonds or to refund all or a portion of one or more series of Bonds, the proceeds, including accrued interest, of such Refunding Bonds will be applied simultaneously with the delivery of such Refunding Bonds in the manner provided in or determined in accordance with the Series Resolution authorizing such Refunding Bonds.

With respect to the Refunding Bonds issued to refund all or any portion of any bonds or other obligations issued by the Authority, the proceeds, including accrued interest, will be applied simultaneously with the delivery of such Refunding Bonds in the manner provided or as determined in accordance with the resolution or resolutions authorizing such bonds or other obligations.

(Section 2.04)

### **Additional Obligations**

The Authority reserves the right to issue bonds, notes or any other obligations or otherwise incur indebtedness pursuant to other and separate resolutions or agreements of the Authority, so long as such bonds, notes or other obligations are not, or such other indebtedness is not, entitled to a charge or lien or right prior or equal to the charge or lien created by the Resolution and pursuant to any Series Resolution, or prior or equal to the rights of the Authority and Holders of any Series of Bonds provided by the Resolution or with respect to the moneys pledged under the Resolution or pursuant to any Series Resolution.

(Section 2.05)

### **Pledge of Revenues**

The proceeds from the sale of a Series of Bonds, the Revenues and all funds authorized by the Resolution and established pursuant to an Applicable Series Resolution, other than an Applicable Arbitrage Rebate Fund and Applicable Credit Facility Repayment Fund, are by the Resolution, subject to the adoption of an Applicable Series Resolution, pledged and assigned to the Trustee as security for the payment of the principal, Sinking Fund Installments, if any, and Redemption Price of and interest on such Series of Bonds and as security for the performance of any other obligation of the Authority under the Resolution and under the Applicable Series Resolution, all in accordance with the provisions thereof and of the Resolution. The pledge made by the Resolution, subject to the adoption of the Applicable Series Resolution, shall relate only to the Bonds of a Series authorized by the Applicable Series Resolution and no other Series of Bonds and such pledge shall not secure any such other

Series of Bonds. The pledge made by the Resolution is valid, binding and perfected from the time when the pledge attaches and the proceeds from the sale of the Applicable Series of Bonds, the Revenues and all funds and accounts established by the Resolution and pursuant to the Applicable Series Resolution which are pledged by the Resolution and pursuant to the Applicable Series Resolution shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge will be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. No instrument by which such pledge is created nor any financing statement need be recorded or filed. The Bonds of each Series will be special obligations of the Authority payable solely from and secured by a pledge of the proceeds from the sale of such Series of Bonds, the Revenues and the funds established by the Resolution and pursuant to the Applicable Series Resolution, which pledge shall constitute a first lien thereon.

(Section 5.01)

### **Establishment of Funds**

Unless otherwise provided by the Applicable Series Resolution, the following funds are authorized to be established, held and maintained for each Series by the Trustee under the Applicable Series Resolution separate from any other funds established and maintained pursuant to any other Series Resolution:

Construction Fund;  
Debt Service Fund;  
Debt Service Reserve Fund;  
Arbitrage Rebate Fund; and  
Credit Facility Repayment Fund.

Accounts and sub-accounts within each of the foregoing funds may from time to time be established in accordance with an Applicable Series Resolution, an Applicable Bond Series Certificate or upon the direction of the Authority. All moneys at any time deposited in any fund created by the Resolution, other than the Applicable Arbitrage Rebate Fund and Applicable Credit Facility Repayment Fund, shall be held in trust for the benefit of the Holders of a Series of Bonds, but will nevertheless be disbursed, allocated and applied solely in connection with such Series of Bonds for the uses and purposes provided in the Resolution.

(Section 5.02)

### **Application of Bond Proceeds and Allocation Thereof**

Upon the receipt of proceeds from the sale of a Series of Bonds, the Authority shall apply such proceeds as specified in the Resolution and in the Applicable Series Resolution authorizing such Series or in the Applicable Bond Series Certificate.

Accrued interest, if any, received upon the delivery of a Series of Bonds will be deposited in the appropriate account in the Applicable Debt Service Fund unless all or any portion of such amount is to be otherwise applied as specified in the Applicable Series Resolution or in the Applicable Bond Series Certificate.

(Section 5.03)

### **Application of Moneys in the Construction Fund**

For purposes of internal accounting, an account in an Applicable Construction Fund for a Series of Bonds may contain one or more sub-accounts, as the Authority or the Trustee may deem necessary or desirable. As soon as practicable after the delivery of such Series of Bonds, the Trustee will deposit in the appropriate account in the Applicable Construction Fund the amount required to be deposited therein pursuant to the Applicable Series Resolution, the Applicable Loan Agreement or the Applicable Bond Series Certificate. In addition, the Authority will remit to the Trustee and the Trustee will deposit in the appropriate account in the Applicable Construction Fund any moneys paid or instruments payable to the Authority derived from insurance proceeds or condemnation awards from the Project in connection with which such Series of Bonds was issued.

Except as otherwise provided in the Resolution and in the Applicable Series Resolution or Applicable Bond Series Certificate, moneys deposited in the Applicable Construction Fund shall be used only to pay the Costs of Issuance of the Bonds issued in connection with such Series Resolution or Bond Series Certificate and the Costs of the Project in connection with which such Series of Bonds were issued.

Payments for Costs of a Project will be made by the Trustee upon receipt of, and in accordance with, a certificate or certificates of the Authority stating the names of the payees, the purpose of each payment in terms sufficient for identification and the respective amounts of each such payment. Such certificate or certificates will be substantiated by a certificate filed with the Authority signed by an Authorized Officer of the Applicable Institution, describing in reasonable detail the purpose for which moneys were used and the amount thereof, and further stating that such purpose constitutes a necessary part of the Costs of such Project except that payments to pay interest on the Applicable Series of Bonds will be made by the Trustee upon receipt of, and in accordance with, the direction of an Authorized Officer of the Authority directing the Trustee to transfer such amount from the Applicable Construction Fund to the Applicable Debt Service Fund.

Any proceeds of insurance, condemnation or eminent domain awards received by the Trustee, the Authority or the Applicable Institution with respect to a Project shall be deposited in the appropriate account in the Applicable Construction Fund and, if necessary, such fund may be reestablished for such purpose and if not used to repair, restore or replace such Project, transferred to the Applicable Debt Service Fund for the redemption of the Applicable Series of Bonds in accordance with the Applicable Loan Agreement.

A Project shall be deemed to be complete (a) upon delivery to the Authority and the Trustee of a certificate signed by an Authorized Officer of the Applicable Institution which certificate will be delivered as soon as practicable after the date of completion of such Project or (b) upon delivery to the Applicable Institution and the Trustee of a certificate of the Authority which certificate may be delivered at any time after completion of such Project. Each such certificate will state that such Project has been completed substantially in accordance with the plans and specifications, if any, applicable to such Project and that such Project is ready for occupancy, and, in the case of a certificate of an Authorized Officer of the Applicable Institution, will specify the date of completion, or, if any portion of the Project has been abandoned and will not be completed, will so state.

Upon receipt by the Trustee of the certificate required pursuant to the Resolution, the moneys, if any, then remaining in the Applicable Construction Fund, after making provision in accordance with the direction of the Authority for the payment of any Costs of Issuance of such Applicable Series of Bonds and Costs of the Project then unpaid, will be paid by the Trustee as follows and in the following order of priority:

- First: Upon the direction of the Authority, to the Applicable Arbitrage Rebate Fund, the amount set forth in such direction;
- Second: To the Applicable Debt Service Reserve Fund, such amount as will be necessary to make the amount on deposit in such fund equal to the Applicable Debt Service Reserve Fund Requirement; and
- Third: To the Applicable Debt Service Fund for the redemption or purchase of the Applicable Series of Bonds in accordance with the Resolution and the Applicable Series Resolution, any balance remaining.

(Section 5.04)

#### **Enforcement of Obligations, Deposit of Revenues and Allocation Thereof**

(a) To the extent an Institution fails to make any timely payment with respect to a Series of Bonds under the Applicable Loan Agreement, which payment would constitute a credit for payment of the Applicable Obligation in accordance with the terms thereof, the Trustee shall promptly make demand for payment under the Applicable Obligation in accordance with the terms thereof.

(b) Except as otherwise provided in the Applicable Series Resolution authorizing a Series of Bonds, the Revenues, including all payments received under the Applicable Loan Agreement, the Master Indenture and the Applicable Obligation, will be deposited upon receipt by the Trustee to the appropriate account of the Applicable



Debt Service Fund in the amounts, at the times and for the purposes specified in the Applicable Series Resolution or Applicable Loan Agreement. To the extent not required to pay the interest, principal, Sinking Fund Installments and moneys which are required or have been set aside for the redemption of Bonds of such Series, moneys in the Applicable Debt Service Fund will be paid by the Trustee on or before the Business Day preceding each interest payment date as follows and in the following order of priority:

- First: To reimburse, pro rata, the Facility Providers, if any, for Provider Payments which are then unpaid, in proportion to the respective Provider Payments then unpaid to such Facility Providers, if any, in connection with such Series of Bonds;
- Second: Upon the direction of an Authorized Officer of the Authority, to the Applicable Arbitrage Rebate Fund in the amount set forth in such direction;
- Third: To the Applicable Debt Service Reserve Fund, such amount, if any, necessary to make the amount on deposit in such fund equal to the Applicable Debt Service Reserve Fund Requirement; and
- Fourth: To the Authority, unless otherwise paid, such amounts as are payable to the Authority for: (i) any expenditures of the Authority for fees and expenses of auditing, and fees and expenses of the Trustee and Paying Agents, all as required by the Resolution, (ii) all other expenditures reasonably and necessarily incurred by the Authority in connection with the financing of the Applicable Project, including expenses incurred by the Authority to compel full and punctual performance of all the provisions of the Applicable Loan Agreement in accordance with the terms thereof, and (iii) any fees of the Authority; but only upon receipt by the Trustee of a certificate signed by an Authorized Officer of the Authority, stating in reasonable detail the amounts payable to the Authority pursuant to this paragraph Fourth.

(c) After making the payments required by paragraph (a) above, the balance, if any, of the Revenues will, upon the direction of an Authorized Officer of the Authority, be paid by the Trustee to the Applicable Construction Fund or the Applicable Debt Service Fund, or paid to the Applicable Institution, in the respective amounts set forth in such direction, free and clear of any pledge, lien, encumbrance or security interest created by the Resolution. The Trustee shall notify the Authority and the Institution promptly after making the payments required by paragraph (a) of above, of any balance of Revenues then remaining.

(d) In the event that any payments received by the Trustee under the Resolution are less than the total amount required to be paid to the Trustee and such payments relate to more than one Series of Bonds, the payments will be applied pro rata to each such Series of Bonds based upon the amounts then due and payable.

(Section 5.05)

### **Debt Service Fund**

1. The Trustee shall, on or before each interest payment date with respect to a Series of Bonds, as required by the Applicable Series Resolution or Applicable Bond Series Certificate, pay, from the Applicable Debt Service Fund, to itself and any other Paying Agent:

- (a) the interest due on all Outstanding Bonds of the Applicable Series of Bonds on such interest payment date;
- (b) the principal amount due on all Outstanding Bonds of the Applicable Series of Bonds on such interest payment date;
- (c) the Sinking Fund Installments, if any, due on all Outstanding Bonds of the Applicable Series of Bonds on such interest payment date; and
- (d) moneys required for the redemption of Bonds of the Applicable Series of Bonds in accordance with the Resolution.

The amounts paid out pursuant to the Resolution will be irrevocably pledged to and applied to such payments.

2. In the event that on the fourth (4<sup>th</sup>) Business Day preceding any interest payment date for a Series of Bonds the amount in the Applicable Debt Service Fund shall be less than the amounts, respectively, required for payment of interest on the Outstanding Bonds of such Series, for the payment of principal of such Outstanding Bonds, for the payment of Sinking Fund Installments of such Outstanding Bonds due and payable on such interest payment date or for the payment of the purchase price or Redemption Price of such Outstanding Bonds theretofore contracted to be purchased or called for redemption, plus accrued interest thereon to the date of purchase or redemption, the Trustee will withdraw from the Applicable Debt Service Reserve Fund and deposit to the Applicable Debt Service Fund such amounts as will increase the amount in the Debt Service Fund to an amount sufficient to make such payments. The Trustee shall notify the Authority, the Facility Provider, if any, the Applicable Credit Facility Issuer, if any, the Master Trustee, the Obligated Group Representative and each member of the Obligated Group of a withdrawal from the Applicable Debt Service Reserve Fund.

3. In accordance with the Resolution, the Authority may, at any time subsequent to the first principal payment date of any Bond Year but in no event less than forty-five (45) days prior to the succeeding date on which a Sinking Fund Installment is scheduled to be due, direct the Trustee to purchase, with moneys on deposit in the Applicable Debt Service Fund, at a price not in excess of par plus interest accrued and unpaid to the date of such purchase, Applicable Term Bonds to be redeemed from such Sinking Fund Installment. Any Term Bond so purchased and any Term Bond purchased by the Institution and delivered to the Trustee in accordance with the Loan Agreement will be canceled upon receipt thereof by the Trustee and evidence of such cancellation will be given to the Authority. The principal amount of each Term Bond so canceled shall be credited against the Sinking Fund Installment due on such date, provided that such Term Bond is canceled by the Trustee prior to the date on which notice of redemption is given.

4. Moneys in the Applicable Debt Service Fund in excess of the amount required to pay the principal and Sinking Fund Installments of Outstanding Bonds of a Series payable on or prior to the next succeeding principal payment date, the interest on such Outstanding Bonds payable on the earlier of the next succeeding interest payment date, assuming that a Variable Interest Rate Bond will bear interest, from and after the next date on which the rate at which such Variable Interest Rate Bond bears interest is to be adjusted, at a rate per annum equal to the rate per annum at which such Bonds then bear interest plus one percent (1%) per annum, and the purchase price or Redemption Price of such Outstanding Bonds theretofore contracted to be purchased or called for redemption, plus accrued interest thereon to the date of purchase or redemption, shall be applied by the Trustee in accordance with the direction of an Authorized Officer of the Authority to the purchase of such Outstanding Bonds of an Applicable Series at purchase prices not exceeding the Redemption Price applicable on the next interest payment date on which such Bonds are redeemable, plus accrued and unpaid interest to such date, at such times, at such purchase prices and in such manner as an Authorized Officer of the Authority shall direct. If sixty (60) days prior to the end of a Bond Year an excess, calculated as aforesaid, exists in the Applicable Debt Service Fund, such moneys may be applied by the Trustee: (i) in accordance with the direction of an Authorized Officer of the Authority given pursuant to the Resolution to the redemption of Bonds as provided in the Resolution, at the Redemption Prices specified in the Applicable Series Resolution or Applicable Bond Series Certificate or (ii) as may otherwise be directed by the Authority.

(Section 5.06)

#### **Debt Service Reserve Fund**

1. (a) The Trustee of a Series of Bonds shall deposit to the credit of the Applicable Debt Service Reserve Fund such proceeds of the sale of Bonds, if any, as shall be prescribed in the Applicable Series Resolution or the Applicable Bond Series Certificate, and any Revenues, moneys, Government Obligations and Exempt Obligations as, by the provisions of the Loan Agreement, are delivered to the Trustee by the Applicable Institution for the purposes of the Applicable Debt Service Reserve Fund.

(b) In lieu of or in substitution for moneys, Government Obligations, Federal Agency Obligations or Exempt Obligations, the Authority may deposit or cause to be deposited with the Trustee a Reserve Fund Facility for the benefit of the Holders of the Bonds for all or any part of the Applicable Debt Service Reserve Requirement; provided (i) that any such surety bond or insurance policy will be issued by an insurance company or association

duly authorized to do business in the State and either (A) the claims paying ability of such insurance company or association is rated in the highest rating category accorded by a nationally recognized insurance rating agency or (B) obligations insured by a surety bond or an insurance policy issued by such company or association are rated, without regard to qualification of such rating by symbols such as “+” or “-” or numerical notation, in the highest rating category at the time such surety bond or insurance policy is issued by Moody’s and S&P or, if Outstanding Bonds of a Series are not rated by both Moody’s and S&P, by whichever of said rating services that then rates such Outstanding Bonds and (ii) that any letter of credit will be issued by a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provision of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provision of law, or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, the unsecured or uncollateralized long term debt obligations of which, or long term obligations secured or supported by a letter of credit issued by such person, are rated at the time such letter of credit is delivered, without regard to qualification of such rating by symbols such as “+” or “-” or numerical notation, in at least the second highest rating category by Moody’s and S&P or, if such Outstanding Bonds are not rated by Moody’s and S&P, by whichever of said rating services that then rates such Outstanding Bonds.

In addition to the conditions and requirements set forth above, no Reserve Fund Facility shall be deposited in full or partial satisfaction of a Debt Service Reserve Fund Requirement unless the Trustee shall have received prior to such deposit (i) an opinion of counsel acceptable to an Applicable Credit Facility Issuer to the effect that such Reserve Fund Facility has been duly authorized, executed and delivered by the Facility Provider thereof and is valid, binding and enforceable in accordance with its terms, (ii) in the event such Facility Provider is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the Authority, (iii) in the event such Reserve Fund Facility is a letter of credit, an opinion of counsel acceptable to the Trustee substantially to the effect that payments under such letter of credit shall not constitute avoidable preferences under Section 547 of the United States Bankruptcy Code in a case commenced by or against the Authority or the Institution thereunder or under any applicable provisions of the Debtor and Creditor Law of the State, and (iv) the written consent of all Applicable Credit Facility Issuers, if any.

Notwithstanding the foregoing, if at any time after a Reserve Fund Facility has been deposited with the Trustee the unsecured or uncollateralized long term debt of the Facility Provider or the long term debt obligations secured or supported by a surety bond, insurance policy or letter of credit of a Facility Provider is reduced below the ratings required by the second preceding paragraph, the Authority shall, unless at the time such ratings are reduced such Facility Provider is the Credit Facility Issuer of all Outstanding Bonds of the Applicable Series, either (i) replace or cause to be replaced said Reserve Fund Facility with another Reserve Fund Facility which satisfies the requirements of the Resolution or (ii) deposit or cause to be deposited in the Applicable Debt Service Reserve Fund an amount of moneys, Government Obligations, Federal Agency Obligations or Exempt Obligations which meet the requirements of the Resolution, which is equal to the value of the Reserve Fund Facility of such Facility Provider, such deposits to be, as nearly as practicable, in ten (10) equal semi-annual installments commencing on the earlier of the January 1 or July 1 next succeeding the reduction in said ratings.

Each such surety bond, insurance policy or letter of credit will be payable (upon the giving of such notice as may be required thereby) on any date on which moneys are required to be withdrawn from the Applicable Debt Service Reserve Fund and such withdrawal cannot be made without obtaining payment under such Reserve Fund Facility.

For the purposes of the Resolution, in computing the amount on deposit in the Applicable Debt Service Reserve Fund, a Reserve Fund Facility will be valued at the amount available to be paid thereunder on the date of computation; *provided, that*, if the unsecured or uncollateralized long term debt of such Facility Provider, or the long term debt obligations secured or supported by a surety bond, insurance policy or letter of credit of said Facility Provider has been reduced below the ratings required by the Resolution, said Reserve Fund Facility will be valued at the lesser of (i) the amount available to be paid thereunder on the date of calculation and (ii) the difference between the amount available to be paid thereunder on the date of issue thereof and an amount equal to a fraction of such available amount the numerator of which is the aggregate number of interest payment dates which have elapsed since such ratings were reduced and the denominator of which is ten (10).

2. Moneys held for the credit of the Applicable Debt Service Reserve Fund shall be withdrawn by the Trustee and deposited to the credit of the Applicable Debt Service Fund at the times and in the amounts required to

comply with the provisions of the Resolution; *provided, that*, no payment under a Reserve Fund Facility will be sought unless and until moneys are not available in the Applicable Debt Service Reserve Fund and the amount required to be withdrawn from the Applicable Debt Service Reserve Fund pursuant to the Resolution cannot be withdrawn therefrom without obtaining payment under such Reserve Fund Facility; *provided further*, that, if more than one Reserve Fund Facility is held for the credit of the Applicable Debt Service Reserve Fund at the time moneys are to be withdrawn therefrom, the Trustee shall obtain payment under each such Reserve Fund Facility, pro rata, based upon the respective amounts then available to be paid thereunder. The Trustee shall provide notification as set forth in the Resolution of any withdrawal of moneys from the Debt Service Reserve Fund or payment of a Reserve Fund Facility immediately upon such withdrawal or payment.

With respect to any demand for payment under any Reserve Fund Facility, the Trustee will make such demand for payment in accordance with the terms of such Reserve Fund Facility at the earliest time provided therein to assure the availability of moneys on the interest payment date for which such moneys are required.

3. (a) Moneys and investments held for the credit of an Applicable Debt Service Reserve Fund in excess of the Applicable Debt Service Reserve Fund Requirement, upon direction of an Authorized Officer of the Authority, shall be withdrawn by the Trustee and (i) deposited in the Applicable Arbitrage Rebate Fund, Applicable Debt Service Fund or Applicable Construction Fund, (ii) paid to the Applicable Institution or (iii) applied by the Authority to pay the principal or Redemption Price of, and interest on bonds of the Authority issued in connection with the Applicable Institution pursuant to resolutions other than the Resolution, in accordance with such direction; *provided, however*, with respect to Bonds the interest on which is intended to be excludable from gross income for federal income tax purposes, no such amount shall be withdrawn and deposited, paid or applied unless, in the opinion of Bond Counsel, such deposit, payment or application will not adversely affect the exclusion of interest on any such Bonds from gross income for federal income tax purposes.

(b) Notwithstanding the provisions of the Resolution, if, upon a Bond having been deemed to have been paid in accordance with the the Resolution or redeemed prior to maturity from the proceeds of Bonds, bonds, notes or other obligations issued for such purpose, the moneys and investments held for the credit of the Applicable Debt Service Reserve Fund shall exceed the Applicable Debt Service Reserve Fund Requirement, then the Trustee shall, simultaneously with such redemption or a deposit made in accordance with the Resolution, withdraw all or any portion of such excess from the Applicable Debt Service Reserve Fund upon the direction of an Authorized Officer of the Authority and either (i) apply such amount to the payment of the principal or Redemption Price of, and interest on such Bond in accordance with the irrevocable instructions of the Authority or (ii) fund any reserve for the payment of the principal and sinking fund installments of, or interest on the bonds, notes or other obligations, if any, issued to provide for payment of such Bond if, in the opinion of Bond Counsel, application of such moneys to the use authorized in the Resolution (ii) shall not adversely affect the exclusion of interest on any Applicable Bonds from gross income for federal income tax purposes, or (iii) pay such amount to the Authority for deposit to the Applicable Construction Fund if, in the opinion of Bond Counsel, application of such moneys to the payment of Costs of the Project shall not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes; *provided, that*, after such withdrawal the amount remaining in the Applicable Debt Service Reserve Fund shall not be less than the Applicable Debt Service Reserve Fund Requirement.

4. If upon a valuation, the moneys, investments and Reserve Fund Facilities held for the credit of the Applicable Debt Service Reserve Fund for a Series of Bonds are less than the Applicable Debt Service Reserve Fund Requirement, the Trustee will immediately notify the Authority and the Applicable Institution of such deficiency and such Institution shall, as soon as practicable, but in no event later than five (5) days after receipt of such notice, deliver to the Trustee moneys, Government Obligations, Federal Agency Obligations, Exempt Obligations or Reserve Fund Facilities the value of which is sufficient to increase the amount in the Debt Service Reserve Fund to the Debt Service Reserve Fund Requirement. If the Applicable Institution has not made timely payment, the Trustee shall immediately notify the Authority, the Obligated Group Representative and the Master Trustee of such non-payment and will seek payment under the Applicable Obligation in accordance with the terms thereof.

(Section 5.07)

## **Arbitrage Rebate Fund**

The Trustee of a Series of Tax-Exempt Bonds shall deposit to the appropriate account in the Applicable Arbitrage Rebate Fund any moneys delivered to it by the Institution for deposit therein and in accordance with the Resolution, shall transfer to the Applicable Arbitrage Rebate Fund, in accordance with the directions of the Authority, moneys on deposit in any other funds held by such Trustee under the Resolution at such times and in such amounts as will be set forth in such directions.

Moneys on deposit in the Applicable Arbitrage Rebate Fund shall be applied by the Trustee in accordance with the direction of the Authority to make payments to the Department of the Treasury of the United States of America at such times and in such amounts as the Authority shall determine to be required by the Code to be rebated to the Department of the Treasury of the United States of America. Moneys which the Authority determines to be in excess of the amount required to be so rebated will be deposited to any Applicable fund in accordance with the directions of the Authority.

If and to the extent required by the Code, the Authority will periodically, at such times as may be required to comply with the Code, determine the amount of Excess Earnings with respect to each Applicable Series of Bonds and direct the Trustee to (i) transfer from any other of the Applicable funds held by the Trustee under the Resolution and deposit to the Applicable Arbitrage Rebate Fund, all or a portion of the Excess Earnings with respect to such Series of Bonds and (ii) pay out of the Applicable Arbitrage Rebate Fund to the Department of the Treasury of the United States of America the amount, if any, required by the Code to be rebated thereto.

(Section 5.08)

## **Application of Moneys in Certain Funds for Retirement of Bonds**

Notwithstanding any other provisions of the Resolution, if, upon the computation of assets of an Applicable Debt Service Fund and Applicable Debt Service Reserve Fund relating to a Series of Bonds pursuant to the Resolution the amounts held in the appropriate accounts in such Debt Service Fund and Debt Service Reserve Fund are sufficient to pay the principal or Redemption Price of all Outstanding Bonds of the Applicable Series of Bonds and the interest accrued and to accrue on such Bonds to the next date of redemption when all such Bonds are redeemable, the Trustee shall so notify the Authority and the Applicable Institution. Upon receipt of such notice, the Authority shall request the Trustee to redeem all such Outstanding Bonds unless the Applicable Institution objects in writing within five (5) Business Days of receiving notice of such request. The Trustee shall, upon receipt of such request in writing by the Authority, proceed to redeem or provide for the redemption of such Outstanding Bonds in the manner provided for redemption of such Bonds under the Resolution and the Applicable Series Resolution.

(Section 5.09)

## **Computation of Assets of Certain Funds**

The Trustee of a Series of Bonds, as promptly as practicable (i) after the end of each calendar month, (ii) upon the request of the Authority, (iii) upon the request of an Applicable Institution, but not more frequently than once a calendar month, and (iv) at such other times as may be necessary in connection with a withdrawal and deposit made pursuant to the Resolution, shall compute the value of the assets in the Applicable Debt Service Reserve Fund, in the case of the requirement under (i) above, on the last day of each such month, in the case of a request pursuant to (ii) or (iii) above, at the date of such request, or, in the case of a withdrawal and deposit, at the date of such withdrawal and deposit, and notify the Authority and the Applicable Institution as to the results of such computation and the amount by which the value of the assets in the Applicable Debt Service Reserve Fund exceeds or is less than the Applicable Debt Service Reserve Fund Requirement.

(Section 5.11)

## **Investment of Funds Held by the Trustee**

Money held under the Resolution by the Trustee of a Series of Bonds in an Applicable Debt Service Fund, Applicable Construction Fund, Applicable Debt Service Reserve Fund and Applicable Arbitrage Rebate Fund, if permitted by law, shall, as nearly as may be practicable, be invested by the Trustee, upon direction of the Authority



given or confirmed in writing, (which direction shall specify the amount thereof to be so invested), in Government Obligations, Federal Agency Obligations, Exempt Obligations, and, if not inconsistent with the investment guidelines of a Rating Service applicable to funds held under the Resolution, any other Permitted Investment; provided, however, that each such investment shall permit the moneys so deposited or invested to be available for use at the times at which the Authority reasonably believes such moneys will be required for the purposes of the Resolution; provided, further, that (x) any Permitted Collateral required to secure any Permitted Investment shall have a market value, determined by the trustee or its agent periodically, but no less frequently than weekly, at least equal to the amount deposited or invested including interest accrued thereon, (y) the Permitted Collateral shall be deposited with and held by the Trustee or an agent thereof approved by the Authority, and (z) the Permitted Collateral shall be free and clear of claims of any other person.

Permitted Investments purchased or other investments made as an investment of moneys in any fund held by the Trustee under the Resolution shall be deemed at all times to be a part of such fund and the income or interest earned, profits realized or losses suffered by a fund due to the investment thereof shall be retained in, credited or charged, as the case may be, to such fund unless otherwise provided in the Applicable Series Resolution.

In computing the amount in any fund held by the Trustee under the provisions of the Resolution, Permitted Investments purchased as an investment of moneys therein or held therein shall be valued at par or the market value thereof, plus accrued interest, whichever is lower, except that investments held in the Applicable Debt Service Reserve Fund shall be valued at the market value thereof, plus accrued interest and except that Investment Agreements shall be valued at original cost, plus accrued interest.

The Authority, in its discretion, may direct the Trustee to, and the Trustee will, sell, or present for redemption or exchange any investment held by the Trustee pursuant to the Resolution, and the proceeds thereof may be reinvested as provided in the Resolution. Except as otherwise provided in the Resolution, the Trustee will sell at the best price obtainable, or present for redemption or exchange, any investment held by it pursuant to the Resolution whenever it shall be necessary in order to provide moneys to meet any payment or transfer from the fund in which such investment is held. The Trustee shall advise the Authority and the Institution in writing, on or before the fifteenth (15th) day of each calendar month, of the amounts required to be on deposit in each fund and account under the Resolution and of the details of all investments held for the credit of each fund in its custody under the provisions of the Resolution as of the end of the preceding month and as to whether such investments comply with the provisions of the Resolution. The details of such investments will include the par value, if any, the cost and the current market value of such investments as of the end of the preceding month. The Trustee shall also describe all withdrawals, substitutions and other transactions occurring in each such fund in the previous month.

No part of the proceeds of any Series of Bonds or any other funds of the Authority shall be used directly or indirectly to acquire any securities or investments the acquisition of which would cause any Bond to be an “arbitrage bond” within the meaning of Section 148(a) of the Code.

(Section 6.02)

### **Enforcement of Duties and Obligations of the Institution**

The Authority will take all legally available action to cause the Applicable Institution to perform fully all duties and acts and comply fully with the covenants of such Institution required by the Applicable Loan Agreement relating to a Series of Bonds in the manner and at the times provided in such Loan Agreement; *provided, however*, that the Authority may delay, defer or waive enforcement of one or more provisions of said Loan Agreement (other than provisions requiring the payment of moneys or the delivery of Securities to the Trustee for deposit to any fund or account established under the Resolution) if the Authority determines such delay, deferment or waiver will not materially adversely affect the interests of the Holders of the Bonds of the Applicable Series.

(Section 7.06)

### **Deposit of Certain Moneys in the Construction Fund**

In addition to the proceeds of Bonds of a Series to be deposited in the Applicable Construction Fund, any moneys paid or letter of credit or other security payable to the Authority for the acquisition, construction,



reconstruction, renovation or equipping of an Applicable Project and any moneys received in respect of damage to or condemnation of such Project shall be deposited in the Applicable Construction Fund.

(Section 7.07)

#### **Amendment of Loan Agreements and Master Indenture**

The Authority may not amend, change, modify, alter or terminate any Loan Agreement or consent to the amendment, change, modification, alteration or termination of the Master Indenture, in either case so as to materially adversely affect the interest of the Holders of Outstanding Bonds without the prior written consent of the Holders of at least a majority in aggregate principal amount of the Bonds then Outstanding, or (b) in case less than all of the several Series of Bonds then Outstanding are affected by the modifications or amendments, the Holders of not less than a majority in aggregate principal amount of the then Outstanding Bonds of each Series so affected; *provided, however,* that if such modification or amendment shall, by its terms, not take effect so long as any Bonds of any specified Series remain Outstanding, the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under the Resolution; *provided, further,* that no such amendment, change, modification, alteration or termination shall reduce the percentage of the aggregate principal amount of Outstanding Bonds the consent of the Holders of which is a requirement for any such amendment, change, modification, alteration or termination, or decrease the amount of any payment required to be made by an Institution under its Applicable Loan Agreement that is to be deposited with the Trustee, or extend the time of payment thereof or reduce the amount of any payment required to be made under the Obligations held by the Authority. In accordance with the Resolution, the Authority may consent to the waiver, amendment or removal of any covenant which, pursuant to the Master Indenture, may be waived by the Authority without the consent of the Holders of the Bonds or the Trustee. A Loan Agreement may be amended, changed, modified or altered without the consent of the Trustee and the Holders of Outstanding Bonds to provide necessary changes in connection with the acquisition, construction, reconstruction, rehabilitation and improvement, or otherwise providing, furnishing and equipping, of any facilities constituting a part of the Applicable Project or which may be added to or adjacent to said Project or the issuance of Bonds, to cure any ambiguity, or to correct or supplement any provisions contained in the such Loan Agreement, which may be defective or inconsistent with any other provisions contained in the Resolution or in such Loan Agreement. In accordance with the Resolution, if the Applicable Loan Agreement or the Master Indenture expressly provides for the consent of any other person or entity to an amendment to such Loan Agreement or to the Master Indenture, such consent shall be required to be obtained as provided in such Loan Agreement or in the Master Indenture. Prior to execution by the Authority of any amendment, a copy thereof certified by an Authorized Officer of the Authority shall be filed with the Trustee.

For the purposes of this paragraph, a Series shall be deemed to be adversely affected by an amendment, change, modification or alteration of an Applicable Loan Agreement if the same adversely affects or diminishes the rights of the Holders of the Bonds of such Series in any material respect. The Trustee may in its discretion determine whether or not, in accordance with the foregoing provisions, Bonds of any particular Series would be adversely affected in any material respect by any amendment, change, modification or alteration, and any such determination shall be binding and conclusive on an Applicable Institution, the Authority and all Holders of Bonds.

For all purposes of this paragraph, the Trustee shall be entitled to rely upon an opinion of counsel, which counsel shall be satisfactory to the Trustee, with respect to whether any amendment, change, modification or alteration adversely affects the interests of any Holders of Bonds then Outstanding in any material respect.

(Section 7.09)

## **Notice as to Event of Default Under Loan Agreement**

The Authority shall notify the Trustee and any Applicable Credit Facility Issuer in writing that an “Event of Default” under a Loan Agreement, as such term is defined in such Loan Agreement, has occurred and is continuing, which notice shall be given within five (5) days after the Authority has obtained actual knowledge thereof.

(Section 7.10)

## **Tax Exemption: Rebates**

Except as otherwise provided in the Applicable Series Resolution, in order to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Series of Tax-Exempt Bonds, the Authority will comply with the provisions of the Code applicable to the Bonds of such Series, including without limitation the provisions of the Code relating to the computation of the yield on investments of the Gross Proceeds of such Series of Tax-Exempt Bonds, reporting of earnings on the Gross Proceeds of such Series of Tax-Exempt Bonds and rebates of Excess Earnings to the Department of the Treasury of the United States of America. Except as otherwise provided in the Resolution, the Authority will comply with the letter of instructions as to compliance with the Code with respect to each such Series of Tax-Exempt Bonds, to be delivered by Bond Counsel at the time the Bonds of the Applicable Series are issued, as such letter may be amended from time to time, as a source of guidance for achieving compliance with the Code.

The Authority will not take any action or fail to take any action, which would cause the Bonds of an Applicable Series to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

Notwithstanding any other provision of the Resolution to the contrary, the Authority’s failure to comply with the provisions of the Code applicable to the Bonds of any Series shall not entitle the Holder of Bonds of any other Series, or the Trustee acting on their behalf, to exercise any right or remedy provided to Bondholders under the Resolution based upon the Authority’s failure to comply with the provisions of the Resolution or of the Code.

(Section 7.11)

## **Modification and Amendment Without Consent**

Notwithstanding any other provisions of the Resolution, the Authority may adopt at any time or from time to time Supplemental Resolutions relating to a Series of Bonds for any one or more of the following purposes, and any such Supplemental Resolution shall become effective in accordance with its terms upon the filing with the Trustee of a copy thereof certified by the Authority:

- (a) To add additional covenants and agreements of the Authority for the purpose of further securing the payment of the Bonds of an Applicable Series, provided such additional covenants and agreements are not contrary to or inconsistent with the covenants and agreements of the Authority contained in the Resolution;
- (b) To prescribe further limitations and restrictions upon the issuance of Bonds of an Applicable Series and the incurring of indebtedness by the Authority which are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect;
- (c) To surrender any right, power or privilege reserved to or conferred upon the Authority by the terms of the Resolution, *provided, that*, the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Authority contained in the Resolution;
- (d) To confirm, as further assurance, any pledge under, and the subjection to any lien, claim or pledge created or to be created by the provisions of, the Resolution, the Master Indenture, or any Applicable Series Resolution, the Revenues, or any pledge of any other moneys, Securities or funds;
- (e) To modify any of the provisions of the Resolution or of any previously adopted Applicable Series Resolution in any other respects, *provided, that*, such modifications shall not be effective until after all Bonds of an Applicable Series of Bonds Outstanding as of the date of adoption of such Supplemental

Resolution will cease to be Outstanding, and all Bonds of the Series issued under an Applicable Series Resolution shall contain a specific reference to the modifications contained in such subsequent resolutions; or

(f) With the consent of the Trustee, to cure any ambiguity or defect or inconsistent provision in the Resolution or to insert such provisions clarifying matters or questions arising under the Resolution as are necessary or desirable, *provided, that*, any such modifications are not contrary to or inconsistent with the Resolution as theretofore in effect, or to modify any of the provisions of the Resolution or of any previously adopted Applicable Series Resolution or Applicable Supplemental Resolution in any other respect, *provided, that*, such modification shall not adversely affect the interests of the Holders of Bonds of an Applicable Series in any material respect.

(Section 9.02)

### **Applicable Supplemental Resolutions Effective With Consent of Bondholders**

The provisions of the Resolution and an Applicable Series Resolution may also be modified or amended at any time or from time to time by an Applicable Supplemental Resolution, subject to the consent of the Applicable Bondholders in accordance with and subject to the provisions of the Resolution, such Supplemental Resolution to become effective upon the filing with the Trustee of a copy thereof certified by the Authority.

(Section 9.03)

### **Powers of Amendment**

Any modification or amendment of the Resolution and of the rights and obligations of the Authority which shall be deemed to affect an Applicable Series of Bonds and of the Holders of the Bonds of such Series under the Resolution, in any particular, may be made by an Applicable Supplemental Resolution, with the written consent given in accordance with the Resolution, (i) of the Holders of at least fifty-one per centum (51%) in principal amount of the Bonds Outstanding of the Applicable Series at the time such consent is given, or (ii) in case the modification or amendment changes the amount or date of any Sinking Fund Installment, of the Holders of at least fifty-one per centum (51%) in principal amount of the Bonds of the Applicable Series, maturity and interest rate entitled to such Sinking Fund Installment Outstanding at the time such consent is given; *provided, however*, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of the Applicable Series and maturity remain Outstanding, the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under the Resolution. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond of an Applicable Series or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof, or in the rate of interest thereon without the consent of the Holder of such Bond, or shall reduce the percentages or otherwise affect the classes of Bonds of an Applicable Series the consent of the Holders of which is required to effect any such modification or amendment. For the purposes of this paragraph, an Applicable Series shall be deemed to be affected by a modification or amendment of the Resolution if the same adversely affects or diminishes the rights of the Holders of Bonds of such Series. The Trustee may, in its discretion, determine whether or not, in accordance with the foregoing provisions, the Bonds of the Applicable Series or maturity would be affected by any modification or amendment of the Resolution and any such determination shall be binding and conclusive on the Authority and all Holders of Bonds of such Series. The Trustee may receive an opinion of counsel, including an opinion of Bond Counsel, as conclusive evidence as to whether the Bonds of an Applicable Series or maturity would be so affected by any such modification or amendment of the Resolution.

(Section 10.01)

### **Modifications by Unanimous Consent**

The terms and provisions of the Resolution and the rights and obligations of the Authority and of the Holders of the Bonds of an Applicable Series under the Resolution may be modified or amended in any respect upon the adoption and filing with the Trustee by the Authority of a copy of such Supplemental Resolution certified by the Authority and the consent of the Holders of all of the Bonds of such Applicable Series then Outstanding, such

consent to be given as provided in the Resolution, except that no notice to such Bondholders either by mailing or publication will be required.

(Section 10.03)

### **Events of Default**

An event of default will exist under the Resolution and under a Series Resolution if:

(a) With respect to the Applicable Series of Bonds, payment of the principal, Sinking Fund Installments or Redemption Price of any such Bond shall not be made by the Authority when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(b) With respect to the Applicable Series of Bonds, payment of an installment of interest on any such Bond shall not be made by the Authority when the same shall become due and payable; or

(c) With respect to the Applicable Series of Tax-Exempt Bonds, the Authority shall default in the due and punctual performance of the covenants contained in the Resolution and, as a result thereof, the interest on the Bonds of such Series will no longer be excludable from gross income under Section 103 of the Code; or

(d) With respect to the Applicable Series of Bonds, the Authority shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions for the benefit of the Holders of such Bonds contained in the Resolution or in the Bonds of such Series or in the Applicable Series Resolution on the part of the Authority to be performed and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Authority by the Trustee (unless such default is not capable of being cured within thirty (30) days, the Authority has commenced to cure such default within thirty (30) days and diligently prosecutes the cure thereof), which may give such notice in its discretion and shall give such notice at the written request of the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds of the Applicable Series; or

(e) The Authority shall have notified the Trustee that an “Event of Default”, as defined in the Applicable Loan Agreement, arising out of or resulting from the failure of the Applicable Institution to comply with the requirements of the Applicable Loan Agreement shall have occurred and be continuing and all sums payable by the Institution under the Applicable Loan Agreement shall have been declared to be immediately due and payable, which declaration shall not have been annulled.

An event of default under the Resolution in respect of an Applicable Series of Bonds shall not in and of itself be or constitute an event of default in respect of any other Series of Bonds.

(Section 11.02)

### **Acceleration of Maturity**

In accordance with and upon the happening and continuance of any event of default specified in the Resolution, then and in every such case the Trustee may, and, upon the written request of (i) the Applicable Credit Facility Issuers, if any, or the Holders of not less than twenty-five per centum (25%) in principal amount of a Series of Outstanding Bonds, with the prior written consent of the Applicable Credit Facility Issuers, if any, or (ii) if one or more Applicable Credit Facility Issuers, if any, have deposited with the Trustee a sum sufficient to pay the principal of and interest on the Outstanding Bonds due upon the acceleration thereof, upon the request of a Credit Facility Issuer, if any, or Applicable Credit Facility Issuers, if any, making such deposit, shall: (A) by a notice in writing to the Authority, declare the principal of and interest on all of the Outstanding Bonds of the Applicable Series to be due and payable immediately and (B) request that the Master Trustee declare all applicable Outstanding Obligations (as defined in the Master Indenture) to be immediately due and payable. At the expiration of thirty (30) days after the giving of notice of such declaration, such principal and interest will become and be immediately due and payable, anything in the Resolution or in the Applicable Series Resolution or in the Bonds to the contrary notwithstanding. In the event that an Applicable Credit Facility Issuer shall make any payments of principal of or interest on any

Bonds pursuant to an Applicable Credit Facility and the Bonds are accelerated, such Credit Facility Issuer may at any time and at its sole option, pay to the Bondholders all or such portion of amounts due under such Bonds prior to the stated maturity dates thereof. At any time after the principal of the Bonds will have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under the Resolution, the Trustee shall, with the written consent of the Applicable Credit Facility Issuers, if any, which have issued Credit Facilities for not less than twenty-five per centum (25%) in principal amount of the Bonds not then due by their terms and then Outstanding, or the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds of the Applicable Series of Bonds, with the written consent of the Applicable Credit Facility Issuers, if any, and by written notice to the Authority, annul such declaration and its consequences if: (i) moneys shall have accumulated in the Applicable Debt Service Fund sufficient to pay all arrears of interest, if any, upon all of the Applicable Outstanding Bonds (except the interest accrued on such Bonds since the last interest payment date); (ii) moneys shall have accumulated and be available sufficient to pay the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee and any Paying Agent; (iii) all other amounts then payable by the Authority under the Resolution and under the Applicable Series Resolution (other than principal amounts payable only because of a declaration and acceleration under the Resolution) shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee; and (iv) every other default known to the Trustee in the observance or performance of any covenant, condition or agreement contained in the Resolution or in the Applicable Series Resolution or in the Bonds (other than a default in the payment of the principal of such Bonds then due only because of a declaration under the Resolution) will have been remedied to the satisfaction of the Trustee. No such annulment will extend to or affect any subsequent default or impair any right consequent thereon.

(Section 11.03)

#### **Enforcement of Remedies**

Upon the happening and continuance of any event of default specified in the Resolution, then and in every such case, the Trustee of a Series of Bonds may proceed, and upon the written request of the Applicable Credit Facility Issuers, if any, which have issued Credit Facilities for not less than twenty-five per centum (25%) in principal amount of the Applicable Outstanding Bonds, or of the Holders of not less than twenty-five per centum (25%) in principal amount of the Applicable Outstanding Bonds with the consent of the Applicable Credit Facility Issuers, if any, or, in the case of a happening and continuance of an event of default specified in paragraph (c) of the section above captioned "Events of Default," upon the written request of the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds of the Applicable Series of Bonds affected thereby with the consent of the Applicable Credit Facility Issuer, if any, of such Series of Bonds, will proceed (subject to the provisions of the Resolution), to protect and enforce its rights and the rights of the Bondholders or of such Credit Facility Issuer, if any, under the Resolution or under the Applicable Series Resolution or under the laws of the State by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant contained in the Resolution or in the Applicable Series Resolution or in aid or execution of any power granted by the Resolution or by the Applicable Series Resolution, or for an accounting against the Authority as if the Authority were the trustee of an express trust, or for the enforcement of any proper legal or equitable remedy as the Trustee will deem most effectual to protect and enforce such rights.

In the enforcement of any remedy under the Resolution and under the Applicable Series Resolution, the Trustee will be entitled to sue for, enforce payment of, and receive any and all amounts then, or during any default becoming, and at any time remaining, due from the Authority for principal or interest or otherwise under any of the provisions of the Resolution or of the Applicable Series Resolution or of the Bonds of the Applicable Series of Bonds, with interest on overdue payments of the principal of or interest on the Bonds at the rate or rates of interest specified in such Bonds, together with any and all costs and expenses of collection and of all proceedings under the Resolution and under any Applicable Series Resolution and under such Bonds, without prejudice to any other right or remedy of the Trustee or of the Holders of such Bonds, and to recover and enforce judgment or decree against the Authority but solely as provided in the Resolution, in the Applicable Series Resolution and in such Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect in any manner provided by law, the moneys adjudged or decreed to be payable.

(Section 11.04)



## **Priority of Payments After Default**

If at any time the moneys held by the Trustee in the Applicable funds and accounts and under the Applicable Series Resolution shall not be sufficient to pay the principal of and interest on the Bonds of a Series as the same become due and payable (either by their terms or by acceleration of maturity under the provisions of the Resolution), such moneys together with any moneys then available or thereafter becoming available for such purpose, whether through exercise of the remedies provided for in the Resolution or otherwise, will be applied (after payment of all amounts owing to the Trustee under the Resolution) as follows:

(a) Unless the principal of all the Bonds of the Applicable Series shall have become or been declared due and payable, all such moneys shall be applied:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of such maturity of the installments of such interest, and, if the amount available will not be sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to the difference in the respective rates of interest specified in such Bonds; or

Second: To the payment to the persons entitled thereto of the unpaid principal, Sinking Fund Installments or Redemption Price of any Bonds of such Series which shall have become due whether at maturity or by call for redemption in the order of their due dates and, if the amount available will not be sufficient to pay in full all of such Bonds due on any date, then to the payment thereof ratably, according to the amount of principal, Sinking Fund Installments or Redemption Price due on such date, to the persons entitled thereto, without any discrimination or preference.

(b) If the principal of all of the Bonds of the Applicable Series shall have become or been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon such Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond of such Series over any other such Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto, without any discrimination or preference except as to the difference in the respective rates of interest specified in said Bonds.

Whenever moneys are to be applied by the Trustee of a Series of Bonds pursuant to the provisions of the Resolution, such moneys will be applied by the Trustee at such times, and from time to time, as the Trustee in its sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. The setting aside of such moneys in trust for the proper purpose will constitute proper application by the Trustee, and the Trustee shall incur no liability whatsoever to the Authority, to any Holder of Bonds of such Series or to any other person for any delay in applying any such moneys so long as the Trustee acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of the Resolution as may be applicable at the time of application by the Trustee. Whenever the Trustee shall exercise such discretion in applying such moneys, it will fix the date (which will be on an interest payment date unless the Trustee shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal to be paid on such date will cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date.

(Section 11.05)

## **Bondholders' Direction of Proceedings**

Anything in the Resolution to the contrary notwithstanding, the Applicable Credit Facility Issuers, if any, or the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds of a Series with the consent of the Applicable Credit Facility Issuers, if any, or, in the case of an event of default specified in paragraph (c) of the section above captioned "Events of Default," the Holders of a majority in principal amount of the Outstanding Bonds of the Applicable Series with the consent of the Applicable Credit Facility Issuers,



if any, shall have the right by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee under the Resolution and under the Applicable Series Resolution, *provided*, such direction shall not be otherwise than in accordance with law or the provisions of the Resolution and of the Applicable Series Resolution, and that the Trustee will have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Bondholders not parties to such direction.

(Section 11.07)

### **Limitation of Rights of Individual Bondholders**

Neither any Holder nor Applicable Credit Facility Issuer of a Credit Facility of any of the Bonds of a Series will have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust under the Resolution or under any Applicable Series Resolution, or for any other remedy under the Resolution unless such Holder or Applicable Credit Facility Issuer shall have previously given to the Trustee written notice of the event of default on account of which such suit, action or proceeding is to be instituted, and unless also the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds of the Applicable Series with the Consent of the Applicable Credit Facility Issuer or, in the case of an event of default specified in paragraph (c) of the section above captioned "Events of Default," the Holders of not less than a majority in principal amount of the Outstanding Bonds of such Series with the consent of the Applicable Credit Facility Issuer, shall have made written request to the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers granted by the Resolution or to institute such action, suit or proceeding in its or their name, and unless, also there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time. Such notification, request and offer of indemnity are by the Resolution declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts granted by the Resolution or for any other remedy under the Resolution. It is understood and intended that no one (1) or more of the Applicable Credit Facility Issuers of the Applicable Series secured by the Resolution and by the Applicable Series Resolution shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Resolution or to enforce any right under the Resolution except in the manner provided in the Resolution, and that all proceedings at law or in equity shall be instituted and maintained for the benefit of all Holders of the Outstanding Bonds of such Series. Notwithstanding any other provision of the Resolution, the Holder of any Bond of the Applicable Series will have the right which is absolute and unconditional to receive payment of the principal of (or Redemption Price, if any) and interest on such Bond on the stated maturity expressed in such Bond (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

(Section 11.08)

### **Defeasance**

If the Authority shall pay or cause to be paid to the Holders of the Bonds of a Series the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, thereof and interest thereon, at the times and in the manner stipulated therein, in the Resolution, and in the Applicable Series Resolution and Applicable Bonds Series Certificate, then the pledge of the Revenues or other moneys and securities pledged to such Series of Bonds and all other rights granted by the Resolution to such Series of Bonds will be discharged and satisfied, and the right, title and interest of the Trustee in the Applicable Loan Agreement, and the Revenues shall thereupon cease with respect to such Series of Bonds. Upon such payment or provision for payment, the Trustee, on demand of the Authority, will release the lien of the Resolution and Applicable Series Resolution but only with respect to such Series, except as it covers moneys and securities provided for the payment of such Bonds, and will execute such documents to evidence such release as may be reasonably required by the Authority and the Applicable Institution and will turn over to the Applicable Institution or such person, body or authority as may be entitled to receive the same, upon such indemnification, if any, as the Authority or the Trustee may reasonably require, all balances remaining in any funds held under the Applicable Series Resolution after paying or making proper provision for the payment of the principal or Redemption Price (as the case may be) of, and interest on, all Bonds of the Applicable Series and payment of expenses in connection therewith; *provided, that*, if any of such Bonds are to be redeemed prior to the maturity thereof, the Authority shall have taken all action necessary to redeem such Bonds and notice of such

redemption shall have been duly mailed in accordance with the Resolution and the Applicable Series Resolution or irrevocable instructions to mail such notice shall have been given to the Trustee.

Bonds of a Series for which moneys shall have been set aside, will be held in trust by the Trustee for the payment or redemption thereof (through deposit of moneys for such payment or redemption or otherwise), at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in the preceding paragraph. All Outstanding Bonds of the Applicable Series or any maturity within such Series or a portion of a maturity within such Series shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in the preceding paragraph if: (a) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Authority shall have given to the Trustee, in form satisfactory to it, irrevocable instructions to mail, as provided in the Resolution, notice of redemption on said date of such Bonds, (b) there shall have been deposited with the Trustee either moneys in an amount which will be sufficient, or Defeasance Securities, which obligations are not subject to redemption prior to maturity other than at the option of the holder or which have been irrevocably called for redemption on a stated future date, the principal of and interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, will be sufficient to pay when due the principal, Sinking Fund Installment, if any, or Redemption Price, if applicable, of and interest due and to become due on said Bonds of the Applicable Series on and prior to the redemption date or maturity date thereof, as the case may be, (c) in the event such Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, the Authority shall have given the Trustee, in form satisfactory to it, irrevocable instructions to give, as soon as practicable, by first class mail, postage prepaid, to the Holders of said Bonds at their respective last known addresses, if any, appearing on the registration books, and, if directed by an Authorized Officer of the Authority, by publication, at least twice, at an interval of not less than seven (7) days between publications, in an Authorized Newspaper a notice to the Holders of such Bonds that the deposit required by (b) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with the Resolution and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on such Bonds. The Authority shall give written notice to the Trustee of its selection of the maturity for which payment will be made in accordance with the Resolution. The Trustee will select which Bonds of such Series and which maturity thereof shall be paid in accordance with and in the manner provided in the Resolution. Neither the Defeasance Securities nor moneys deposited with the Trustee pursuant to the Resolution nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on such Bonds; *provided, that*, any moneys received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, will, to the extent practicable, be reinvested in the Defeasance Securities maturing at times and in amounts sufficient to pay when due, the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest to become due on such Bonds on and prior to such redemption date or maturity date thereof, as the case may be. Any income or interest earned by, or increment to, the investment of any such moneys so deposited, will, to the extent certified by the Trustee to be in excess of the amount required hereinabove to pay the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on such Bonds, as realized, be paid by the Trustee as follows: first, to the Applicable Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of the Authority; second, to the Authority the amount certified by the Authority to be then due or past due pursuant to the Applicable Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, then, as directed by the Authority; and any such moneys so paid by the Trustee shall be released of any trust, pledge, lien, encumbrance or security interest created by the Resolution or by such Loan Agreement.

For purposes of determining whether Variable Interest Rate Bonds shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, by the deposit of moneys, or Defeasance Securities and moneys, if any, in accordance with clause (b) of the preceding paragraph, the interest to come due on such Variable Interest Rate Bonds on or prior to the maturity date or redemption date thereof, as the case may be, shall be calculated at the Maximum Interest Rate permitted by the terms thereof; *provided, however*, that, if on any date, as a result of such Variable Interest Rate Bonds having borne interest at less than such Maximum Interest Rate for any period, the total amount of moneys and Defeasance Securities on deposit with the Trustee for the payment of interest on such Variable Interest Rate Bonds is in excess of the total amount which would have been required to be deposited with the Trustee on such date in respect of such Variable Interest Rate Bonds in order to satisfy clause (b) of the preceding paragraph, the Trustee shall, if requested by the Authority, pay the amount of such excess to the Authority free and clear of any trust, pledge, lien, encumbrance or security interest created by the Resolution or by the Loan Agreement.

Anything in the Resolution to the contrary notwithstanding, any moneys held by the Trustee or Applicable Paying Agent in trust for the payment and discharge of any of the Bonds of the Applicable Series which remain unclaimed for three (3) years after the date when such moneys become due and payable, upon such Bonds either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee or Applicable Paying Agent at such date, will at the written request of the Authority, be repaid by the Trustee or Paying Agent to the Authority as its absolute property and free from trust, and the Trustee or Applicable Paying Agent will thereupon be released and discharged with respect thereto, and the Holders of Bonds of such Series shall look only to the Authority for the payment of such Bonds; *provided, however*, that, before being required to make any such payment to the Authority, the Trustee or Applicable Paying Agent may, at the expense of the Authority, cause to be published in an Authorized Newspaper a notice that such moneys remain unclaimed and that, after a date named in such notice, which date shall be not less than forty (40) nor more than ninety (90) days after the date of publication of such notice, the balance of such moneys then unclaimed will be returned to the Authority.

No principal or Sinking Fund Installment of or installment of interest on a Bond shall be considered to have been paid, and the obligation of the Authority for the payment thereof will continue, notwithstanding that an Applicable Credit Facility Issuer, if any, pursuant to the Applicable Credit Facility issued with respect to such Bond has paid the principal or Sinking Fund Installment thereof or the installment of interest thereon.

Prior to any defeasance of a Series of Bonds becoming effective under the Resolution, each Applicable Credit Facility Issuer, if any, shall have received (a) the final official statement delivered in connection with the refunding of such Bonds, if any, (b) a copy of the accountants' verification report, (c) a copy of the escrow deposit agreement or letter of instructions in form and substance acceptable to such Credit Facility Issuer, and (d) a copy of an opinion of Bond Counsel, dated the date of defeasance and addressed to such Credit Facility Issuer, to the effect that such Bonds have been paid within the meaning of and with the effect expressed in the Resolution and the Applicable Series Resolution, and that the covenants, agreements and other obligations of the Authority to the Holders of such Bonds have been discharged and satisfied.

(Section 12.01)

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## **Appendix D**

### **Summary of Certain Provisions of the Master Trust Indenture and the 2008 Supplemental Indenture**

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## Appendix D

### CERTAIN PROVISIONS OF THE MASTER TRUST INDENTURE

The following are definitions of certain words and terms used in the Master Indenture and used in this Official Statement, and excerpts of certain provisions of the Master Indenture. The following should not be regarded as a full statement of the Master Indenture. Reference is made to the Master Indenture in its entirety for a full and complete statement of the provisions thereof, a copy of which is on file with the Trustee.

#### DEFINITIONS USED IN THE MASTER INDENTURE

“Additional Indebtedness” means any Indebtedness incurred by any Member of the Obligated Group subsequent to the issuance of the Initial Obligations under this Master Indenture or incurred by any other Member of the Obligated Group subsequent to or contemporaneously with its becoming a Member of the Obligated Group.

“Affiliate” means a corporation, partnership, joint venture, association, business trust or similar entity organized under the laws of the United States of America or any state thereof which is directly or indirectly controlled by a Member or the Obligated Group Representative or their respective successors or assigns or by any Person which directly or indirectly controls a Member or the Obligated Group Representative. For purposes of this definition, control means the power to direct the management and policies of a Person through the ownership of not less than a majority of its voting securities or the right to designate or elect not less than a majority of the members of its board of directors or other governing board or body by contract or otherwise.

“Audited Financial Statements” means, as to any Member of the Obligated Group, financial statements for a twelve-month period, or for such other period for which an audit has been performed, prepared in accordance with generally accepted accounting principles, which have been audited and reported upon by independent certified public accountants. Audited Financial Statements of the Obligated Group shall also consist of, in an additional information section, unaudited combining financial statements for the same twelve-month period from which the accounts of any Affiliate which is not a Member of the Obligated Group have been eliminated and to which the accounts of any Member of the Obligated Group which is not already included have been added.

“Authority” means the Dormitory Authority of the State of New York and any successor thereto. “Authorized Representative” shall mean, with respect to the Obligated Group Representative, the Chairperson of its Governing Body or its chief executive officer or its chief financial officer, and, with respect to each Member of the Obligated Group, the Chairperson of its Governing Body or its chief executive officer or its chief financial officer or any other person or persons designated an Authorized Representative of such Member by an Officer’s Certificate of the Obligated Group Representative or such Member of the Obligated Group, respectively, signed by the Chairperson of its Governing Body or its president or its chief executive officer or chief financial officer and filed with the Master Trustee and the Credit Facility Issuer, if any.

“Balloon Long-Term Indebtedness” means Long-Term Indebtedness other than a Demand Obligation 25% or more of the principal amount of which is due in a single year, which portion of the principal is not required by the documents pursuant to which such Indebtedness is issued to be amortized by redemption prior to such date.

“Book Value” when used in connection with Property, Plant and Equipment or other Property of any Person, means the value of such property, net of accumulated depreciation, as it is carried on the books of such Person in conformity with generally accepted accounting principles, and when used in connection with Property, Plant and Equipment or other Property of the Obligated Group, means the aggregate of the values so determined with respect to such Property, Plant and Equipment or other Property of the Obligated Group determined in such a manner that no portion of such value of Property, Plant and Equipment or other Property is included more than once.

“Capital Addition” means any addition, improvement or extraordinary repair to or replacement of any Property of a Member of the Obligated Group, whether real, personal or mixed, the cost of which is properly capitalized under generally accepted accounting principles.

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

“Consultant” means a firm or firms, selected by the Obligated Group Representative, which is not, and no member, stockholder, director, officer, trustee or employee of which is, an officer, director, trustee or employee of any Member of the Obligated Group or any Affiliate, and which is a professional management consultant or other financial institution of national or regional repute for having the skill and experience necessary to render the particular report required by the provision hereof in which such requirement appears and which is not unacceptable to the Master Trustee.

“Credit Facility” means a financial guaranty insurance policy, line of credit, letter of credit, standby bond purchase agreement or similar credit enhancement or liquidity facility established in connection with the issuance of Indebtedness to provide credit or liquidity support for such Indebtedness.

“Credit Facility Default” means, with respect to a Credit Facility Issuer, any of the following: (a) there shall occur a default in the payment of principal of or any interest on any bond supported by such Credit Facility or purchase price thereof by the Credit Facility Issuer when required to be made under the terms of the applicable Credit Facility, (b) a Credit Facility shall have been declared null and void or unenforceable in a final determination by a court of law of competent jurisdiction, or (c) such Credit Facility Issuer shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of such Credit Facility Issuer or for any substantial part of its property, or shall make a general assignment for the benefit of creditors.

“Credit Facility Issuer” means the firm, association, corporation or other Person, if any, which has issued a Credit Facility that provides credit or liquidity support with respect to Indebtedness or Related Bonds.

“Defeased Obligations” means Obligations issued under a Supplement that has been discharged, or provision for the discharge of which has been made, pursuant to the terms of this Master Indenture and such Supplement.

“Demand Obligation” means any Indebtedness the payment of all or a portion of which is subject to the demand of the holder thereof.

“Derivative Agreement” means, without limitation,

(a) any contract known as or referred to or which performs the function of an interest rate swap agreement, currency swap agreement, forward payment conversion agreement or futures contract;

(b) any contract providing for payments based on levels of, or changes or differences in, interest rates, currency exchange rates, or stock or other indices;

(c) any contract to exchange cash flows or payments or series of payments;

(d) any type of contract called, or designed to perform the function of, interest rate floors or caps, options, puts or calls, to hedge or minimize any type of financial risk, including, without limitation, payment, currency, rate or other financial risk; and

(e) any other type of contract or arrangement that the Member of the Obligated Group entering into such contract or arrangement determines is to be used, or is intended to be used, to manage or reduce the cost of Indebtedness, to convert any element of Indebtedness from one form to another, to maximize or increase investment return, or minimize investment risk or to protect against any type of financial risk or uncertainty.

“Derivative Period” means the period during which a Derivative Agreement is in effect.

“Escrowed Interest” means amounts of interest on Long-Term Indebtedness for which moneys or Defeasance Obligations have been deposited in escrow (the “Escrowed Interest Deposit”) which Escrowed Interest Deposit has been determined by an independent accounting firm to be sufficient to pay such Escrowed Interest.

“Escrowed Principal” means amounts of principal on Long-Term Indebtedness for which moneys or Defeasance Obligations have been deposited in escrow (the “Escrowed Principal Deposit”) which Escrowed Principal Deposit has been determined by an independent accounting firm to be sufficient to pay such Escrowed Principal.

“Event of Default” means any one or more of those events set forth in Section 4.01 of this Master Indenture.

“Excluded Property” means any real Property that is not Health Care Facilities of the Obligated Group.

“Fiscal Year” means the fiscal year of each Member of the Obligated Group, which shall be the period commencing on January 1 of any year and ending on December 31 of such year unless the Master Trustee is notified in writing by the Obligated Group Representative of a change in such period, in which case the Fiscal Year shall be the period set forth in such notice.

“Fitch” means Fitch Inc., its successors and their assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Obligated Group Representative by notice to the Master Trustee.

“Governing Body” means, when used with respect to any Member of the Obligated Group, including the Obligated Group Representative, its board of directors, board of trustees, or other board or group of individuals by, or under the authority of which, corporate powers of such Member of the Obligated Group or the Obligated Group Representative are exercised.

“Government Obligation” means a direct obligation of the United States of America, an obligation the timely payment of principal of, and interest on, which are fully and unconditionally guaranteed by the United States of America, an obligation (other than an obligation subject to variation in principal repayment) to which the full faith and credit of the United States of America is pledged, an obligation of any of the following instrumentalities or agencies of the United States of America: (a) Federal Home Loan Bank System; (b) Export-Import Bank of the United States; (c) Federal Financing Bank; (d) Government National Mortgage Association; (e) Farmers Home Administration; (f) Federal Home Loan Mortgage Company; (g) Federal Housing Administration; (h) Private Export Funding Corp.; (i) Federal National Mortgage Association, and (j) upon the approval of the all Applicable Credit Facility Issuers, (A) an obligation of any federal agency and a certificate or other instrument which evidences the ownership of, or the right to receive all or a portion of the payment of the principal of or interest on, direct obligations of the United States of America or (B) an obligation of any other agency or instrumentality of the United States of America created by Act of Congress, provided such obligation is rated at least “A” by S&P and Moody’s at all times.

“Governmental Restrictions” means federal, state or other applicable governmental laws or regulations, affecting any Member of the Obligated Group and its health care facilities including but not limited to (a) Articles 28 and 28-B of the Public Health Law, and (b) those placing restrictions and limitations on the (i) fees and charges to be fixed, charged and collected by any Member of the Obligated Group or (ii) the amount or timing of the receipt of such fees or charges.

“Gross Receipts” means all receipts, revenues, income and other moneys received or receivable by or on behalf of a Member of the Obligated Group, including without limitation contributions, donations, and pledges whether in the form of cash, securities or other personal property and the rights to receive the same whether in the form of accounts, payment intangibles, contract rights, general intangibles, health-care-insurance receivables, chattel paper, deposit accounts, instruments, promissory notes and the proceeds thereof, as such terms are presently or hereinafter defined in the New York Uniform Commercial Code, and any insurance or condemnation proceeds thereon, whether now existing or hereafter coming into existence and whether now owned or hereafter acquired; *provided however*, Gross Receipts shall not include (i) gifts, grants, bequests, donations, and contributions heretofore or hereafter made, designated at the time of the making thereof by the donor or maker as being for a specific purpose contrary to (A) paying debt service on an Obligation or (B) meeting any commitment of a Member of the Obligated Group under any Indebtedness evidenced by an Obligation issued hereunder; (ii) all receipts, revenues, income and other moneys received or receivable by or on behalf of a Member of the Obligated Group, and all rights to receive the same whether in the form of accounts, payment intangibles, contract rights, general intangibles, chattel paper, deposit accounts, instruments, promissory notes, and the proceeds thereof as such terms are presently or hereinafter defined in the New York Uniform Commercial Code, and any insurance or condemnation proceeds thereon, whether now owned or hereafter acquired, any of which is derived from the Excluded Property which constitutes real property; and (iii) insurance proceeds relating to assets financed by a third party through a capital lease permitted under the Master Indenture or subject to an operating lease as to which any Member of the Obligated Group is the lessee.

“Guaranty” means any Obligation of any Member of the Obligated Group guaranteeing in any manner, directly or indirectly, any obligation of any Person that is not a Member of the Obligated Group which obligation of such other Person would, if such obligation were the obligation of a Member of the Obligated Group, constitute Indebtedness hereunder. For the purposes of this Master Indenture, the aggregate annual principal and interest payments on any indebtedness in respect of which any Member of the Obligated Group shall have executed and delivered its Guaranty shall, so long as no payments are required to be made thereunder and so long as such Guaranty constitutes a contingent liability under generally accepted accounting principles, be deemed to be equal to 20% of the amount which would be

payable as principal of and interest on the indebtedness for which a Guaranty shall have been issued during the Fiscal Year for which any computation is being made (calculated in the same manner as the Long-Term Debt Service Coverage Ratio), provided that if there shall have occurred a payment by a Member of the Obligated Group on such Guaranty, then, during the period commencing on the date of such payment and ending on the day which is one year after such other Person resumes making all payments on such guaranteed obligation, 100% of the amount payable for principal and interest on such guaranteed indebtedness during the period for which the computation is being made shall be taken into account. Any Guaranty that is an obligation of more than one Member of the Obligated Group shall be counted only once for purposes of any test herein.

“Health Care Facilities” means the Property now or hereafter used by any Member of the Obligated Group to provide for the care, maintenance and treatment of patients or to otherwise provide health care and health-related services. Any facility whose primary function or functions is other than providing health care services and which has incidental health care services provided on its premises, shall not be deemed to be Health Care Facilities.

“Holder” means an owner of any Obligation issued in other than bearer form.

“Income Available for Debt Service” means, with respect to the Obligated Group, as to any period of 12 consecutive calendar months, its excess of revenues over expenses before depreciation, amortization and interest expense on Long-Term Indebtedness, as determined in accordance with generally accepted accounting principles consistently applied; *provided, however*, that (1) notwithstanding generally accepted accounting principles, no determination thereof shall take into account (a) any gain or loss resulting from either the extinguishment of Indebtedness or the sale, exchange or other disposition of capital assets not made in the ordinary course of business, (b) unrealized gains and losses on investments of a Member of the Obligated Group, (c) losses resulting from any reappraisal, revaluation or write-down of assets for such period, other than temporary impairment of assets, and (d) change in the value of the Derivative Agreement and (2) revenues shall not include earnings from the investment of Escrowed Interest or earnings constituting Escrowed Interest to the extent that such earnings are applied to the payment of principal or interest on Long-Term Indebtedness which is excluded from the determination of Long-Term Debt Service Requirement or Related Bonds secured by such Long-Term Indebtedness.

“Indebtedness” means (i) all indebtedness of Members of the Obligated Group for borrowed money, (ii) all installment sales, conditional sales and capital lease obligations incurred or assumed by any Member of the Obligated Group, (iii) all Guaranties, whether constituting Long-Term Indebtedness or Short-Term Indebtedness, and (iv) all reimbursement and indemnity obligations of Members of the Obligated Group in favor of any Credit Facility Issuer relating to a Credit Facility. Indebtedness shall not include obligations of any Member of the Obligated Group to another Member of the Obligated Group.

“Insurance Consultant” means a firm or Person which is not, and no member, stockholder, director, trustee, officer or employee of which is, an officer, director, trustee or employee of any Member of the Obligated Group or an Affiliate, which is qualified to survey risks and to recommend insurance coverage for hospitals, health-related facilities and services and organizations engaged in such operations and which is selected by the Obligated Group Representative and is not unacceptable to the Master Trustee; provided that, except with respect to the review of self-insurance programs or any captive insurance company, the term “Insurance Consultant” shall include qualified in house risk management officers employed by any Member of the Obligated Group or an Affiliate.

“Lien” means any mortgage, deed of trust or pledge of, security interest in or encumbrance on any Property of any Member of the Obligated Group which secures any Indebtedness or any other



obligation of any Member of the Obligated Group or which secures any obligation of any Person, other than an obligation to any Member of the Obligated Group.

“Long-Term Debt Service Coverage Ratio” means, for the Obligated Group, on a consolidated basis, the ratio determined by dividing Income Available for Debt Service by Maximum Annual Debt Service.

“Long-Term Debt Service Requirement” means, for any period of twelve (12) consecutive calendar months for which such determination is made, the aggregate of the payments to be made in respect of principal and interest (whether or not separately stated) on Outstanding Long-Term Indebtedness of the Obligated Group during such period, also taking into account:

(i) with respect to Balloon Long-Term Indebtedness which is not amortized by the terms thereof (a) the amount of principal which would be payable in such period if such principal were amortized from the date of incurrence thereof over a period of thirty (30) years on a level debt service basis at an interest rate equal to the rate borne by such Indebtedness on the date calculated, except that if the date of calculation is within twelve (12) months of the actual maturity of such Indebtedness, the full amount of principal payable at maturity shall be included in such calculation, or (b) principal payments or deposits with respect to Indebtedness secured by an irrevocable letter of credit, surety or standby bond purchase agreement issued by, or an irrevocable line of credit with, a bank or a commercial bond insurance company rated at least “A” by Moody’s, Fitch or S&P, or insured by an insurance policy issued by any insurance company rated at least “A” by Alfred M. Best Company or its successors in Best’s Insurance Reports or its successor publication, nominally due in the last Fiscal Year in which such Indebtedness matures may, at the option of the Member of the Obligated Group which issued such Indebtedness, be treated as if such principal payments or deposits were due as specified in any loan or reimbursement agreement issued in connection with such letter of credit, line of credit, surety, standby bond purchase agreement or insurance policy or pursuant to the repayment provisions of such letter of credit, line of credit, surety, standby bond purchase agreement or insurance policy, and interest on such Indebtedness after such Fiscal Year shall be assumed to be payable pursuant to the terms of such loan or reimbursement agreement or repayment provisions;

(ii) with respect to Long-Term Indebtedness which is Variable Rate Indebtedness, the interest on such Indebtedness shall be calculated at the rate which is equal to the average of the actual interest rates which were in effect (weighted according to the length of the period during which each such interest rate was in effect) for the most recent twelve-month period immediately preceding the date of calculation for which such information is available (or shorter period if such information is not available for a twelve-month period), except that with respect to new Variable Rate Indebtedness (and the incurrence thereof) the interest rate for such Indebtedness for the initial interest rate period shall be the initial rate at which such Indebtedness is issued and thereafter shall be calculated as set forth above;

(iii) with respect to any Credit Facility, to the extent that such Credit Facility has not been used or drawn upon, the principal and interest relating to such Credit Facility shall not be included in the Long-Term Debt Service Requirement;

(iv) with respect to any guaranties, the principal and interest relating to the Indebtedness which is guaranteed shall be included in accordance with the Definition of “Guaranty” in Section 1.01 hereof;



(v) with respect to Indebtedness for which a Member of the Obligated Group shall have entered into a Derivative Agreement in respect of all or a portion of such Indebtedness (as evidenced by a certificate filed with the Master Trustee so specifying that the Derivative Agreement relates to all or a portion of such Indebtedness, which certification may be provided at the time of or after the issuance of such Indebtedness), the principal or notional amount of such Derivative Agreement shall be disregarded, and interest on such Indebtedness during any Derivative Period and for so long as the counterparty of the Derivative Agreement has not defaulted on its payment obligations thereunder shall be calculated by adding (x) the amount of interest payable by a Member of the Obligated Group on such underlying Indebtedness pursuant to its terms (provided that, with respect to new Variable Rate Indebtedness, and the incurrence thereof, the interest rate for such Indebtedness for the initial interest rate period shall be the initial rate at which such Indebtedness is issued), and (y) the amount of interest payable by such Member of the Obligated Group under the Derivative Agreement (provided that, with respect to new Variable Rate Indebtedness, and the incurrence thereof, the interest rate for such Derivative Agreement for the initial interest rate period shall be the initial rate at which interest is payable under such Derivative Agreement), and subtracting (z) the amount of interest payable to the Member of the Obligated Group by the counterparty of the Derivative Agreement at the rate specified in the Derivative Agreement (provided that, with respect to new Variable Rate Indebtedness, and the incurrence thereof, the interest rate for such Derivative Agreement for the initial interest rate period shall be the initial rate at which interest is payable under such Derivative Agreement); *provided, however*, that to the extent that the counterparty of any Derivative Agreement is in default thereunder, the amount of interest payable by the Member of the Obligated Group shall be the interest calculated as if such Derivative Agreement had not been executed;

(vi) with respect to a Derivative Agreement that has not been certified as relating to underlying Indebtedness which has been entered into by any Member of the Obligated Group and which is secured by an Obligation, the principal or notional amount of such Derivative Agreement shall be disregarded (for so long as the Member of the Obligated Group is not required to make any payment other than interest payments thereon) and interest on such Derivative Agreement during any Derivative Period, for so long as the counterparty of the Derivative Agreement has not defaulted on its payment obligations thereunder, shall be calculated by taking (y) the amount of interest payable by such Member of the Obligated Group at the rate specified in the Derivative Agreement and subtracting (z) the amount of interest payable by the counterparty of the Derivative Agreement at the rate specified in the Derivative Agreement; and

(vii) notwithstanding anything herein to the contrary, any so-called mark to market charge or credit attributable to any Derivative Agreement under Statement of Financial Accounting Standards 133 or otherwise shall be excluded from calculation of the revenues and expenses, in each case, of each Member of the Obligated Group and all related definitions and financial covenants herein for all purposes of this Indenture. Furthermore, notwithstanding anything else herein to the contrary, any portion of any Indebtedness of any Member for which a Derivative Agreement has been obtained by such Member shall be deemed to bear interest for the period of time that such Derivative Agreement is in effect at a net rate which takes into account the interest payments made by such Member on such Indebtedness and the payments made or received by such Member on such Derivative Agreement; provided that the long-term credit rating of the provider of such Derivative Agreement (or any guarantor thereof) is in one of the three highest rating categories of any rating agency (without regard to any refinements or gradation of rating category by numerical modifier or otherwise).

*provided, however*, that Escrowed Interest and Escrowed Principal shall be excluded from the determination of Long-Term Debt Service Requirement; provided, further, however, that in connection with the calculation of “Long-Term Debt Service Requirement”, in no event shall any payments to be made in respect of principal and/or interest on any Outstanding Long-Term Indebtedness of the Obligated Group during such period be counted more than once.

“Long-Term Indebtedness” means all Indebtedness (other than Indebtedness for which the timely payment of the principal of and interest on which has been provided for from the deposit of Defeasance Obligations) having a maturity longer than one year incurred or assumed by any Member of the Obligated Group, including without duplication:

- (i) money borrowed for an original term, or renewable at the option of the borrower for a period from the date originally incurred, longer than one year;
- (ii) leases which are required to be capitalized in accordance with generally accepted accounting principles having an original term, or renewable at the option of the lessee for a period from the date originally incurred, longer than one year;
- (iii) installment sale or conditional sale contracts having an original term in excess of one year;
- (iv) Short-Term Indebtedness if a commitment by a financial lender exists to provide financing to retire such Short-Term Indebtedness and such commitment provides for the repayment of principal on terms which would, if such commitment were implemented, constitute Long-Term Indebtedness; and
- (v) the current portion of Long-Term Indebtedness.

“Master Indenture” means this Master Trust Indenture, dated as of November 29, 2006, including any amendments or supplements hereto.

“Master Trustee” means The Bank of New York and its successors in the trusts created under this Master Indenture.

“Maximum Annual Debt Service” means the highest Long-Term Debt Service Requirement for the current or any succeeding Fiscal Year.

“Member of the Obligated Group” or “Member” means Catholic Health System, Inc., Mercy Hospital of Buffalo, Sisters of Charity Hospital of Buffalo, New York, Kenmore Mercy Hospital, St. Joseph Hospital of Cheektowaga, New York and any other Person becoming a Member of the Obligated Group pursuant to Section 3.10 hereof.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Obligated Group Representative by notice to the Master Trustee.

“Mortgage” means a Mortgage delivered by and between a Member of the Obligated Group to the Master Trustee to secure the Obligations of the Obligated Group to the Master Trustee with respect to the Initial Obligations and all such other Obligations as may be issued from time to time.

“Mortgaged Property” means any and all Property, whether real, personal or mixed, and all rights and interests in and to the Property, which is subject to the liens and security interests created under a Mortgage.

“Non-Recourse Indebtedness” means any Indebtedness incurred to finance the purchase of Property secured exclusively by a Lien on such Property or the revenues or net revenues produced by such Property or both, the liability for which is effectively limited to the Property subject to such Lien with no recourse, directly or indirectly, to any other Property of any Member of the Obligated Group.

“Obligated Group” means, collectively, the Members of the Obligated Group as comprised at the time of reference.

“Obligated Group Representative” shall mean Catholic Health System, Inc. or its successor, acting on behalf of the Obligated Group under this Master Indenture.

“Obligation” means the evidence of particular Indebtedness issued under this Master Indenture as a joint and several obligation of each Member of the Obligated Group. “Obligation” may also include the evidence of a particular obligation of each Member of the Obligated Group under a Derivative Agreement.

“Officer’s Certificate” means a certificate signed by the Authorized Representative of such Member of the Obligated Group or the Obligated Group Representative as the context requires. Each Officer’s Certificate presented pursuant to this Master Indenture shall state that it is being delivered pursuant to (and shall identify the section or subsection of), and shall incorporate by reference and use in all appropriate instances all terms defined in, this Master Indenture. Each Officer’s Certificate shall state (i) that the terms thereof are in compliance with the requirements of the section or subsection pursuant to which such Officer’s Certificate is delivered or shall state in reasonable detail the nature of any non-compliance and the steps being taken to remedy such non-compliance and (ii) that it is being delivered together with any opinions, schedules, statements or other documents required in connection therewith.

“Operating Assets” means any or all land, leasehold interests, buildings, machinery, equipment, hardware, inventory and other tangible and intangible Property owned or operated by a Member of the Obligated Group and used in its respective trade or business, whether separately or together with other such assets, but not including cash, investment securities and other Property held for investment purposes.

“Opinion of Bond Counsel” means an opinion in writing signed by an attorney or firm of attorneys experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds and who is acceptable to the Master Trustee and any applicable Related Bond Issuer.

“Opinion of Counsel” means an opinion in writing signed by an attorney or firm of attorneys, acceptable to the Master Trustee, who may be counsel for the Obligated Group Representative or any Member of the Obligated Group or other counsel acceptable to the Master Trustee.

“Outstanding” means, as of any date of determination, (i) when used with reference to Obligations, all Obligations theretofore issued or incurred and not paid and discharged, other than (A) Obligations theretofore cancelled by the Master Trustee or delivered to the Master Trustee for cancellation, (B) Defeased Obligations and (C) Obligations in lieu of which other Obligations have been authenticated and delivered or have been paid pursuant to the provisions of the Supplement regarding mutilated, destroyed, lost or stolen Obligations unless proof satisfactory to the Master Trustee has been

received that any such Obligation is held by a bona fide purchaser, and (ii) when used with reference to Indebtedness other than Indebtedness evidenced by an Obligation, all Indebtedness theretofore issued or incurred and not paid and discharged, other than Indebtedness deemed paid and no longer outstanding under the documents pursuant to which such Indebtedness was incurred; *provided, however*, that for purposes of determining whether the Holders of the requisite principal amount of Obligations have concurred in any demands, direction, request, notice, consent, waiver or other action under this Master Indenture, Obligations or Related Bonds that are owned by the Obligated Group Representative or any Member of the Obligated Group or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with such Member or the Obligated Group Representative shall be deemed not to be Outstanding, *provided further, however*, that for the purposes of determining whether the Master Trustee shall be protected in relying on any such direction, consent, or waiver, only such Obligations or Related Bonds which the Master Trustee has actual notice or knowledge are so owned shall be deemed to be not Outstanding.

“Permitted Liens” shall have the meaning given in Section 3.05 hereof.

“Person” means an individual, association, unincorporated organization, limited liability company, corporation, partnership, joint venture, business trust or a government or an agency or a political subdivision thereof, or any other entity.

“Property” means any and all rights, titles and interests in and to any and all property whether real or personal, tangible or intangible and wherever situated.

“Property, Plant and Equipment” means all Property of the Members of the Obligated Group which is property, plant and equipment under generally accepted accounting principles.

“Related Bond Indenture” means any indenture, bond resolution or other comparable instrument pursuant to which a series of Related Bonds is issued.

“Related Bond Issuer” means the issuer of any issue of Related Bonds.

“Related Bond Trustee” means the trustee and its successors in the trusts created under any Related Bond Indenture.

“Related Bonds” means the revenue bonds or other obligations issued by any state, territory or possession of the United States or any municipal corporation or political subdivision formed under the laws thereof or any constituted authority or agency or instrumentality of any of the foregoing empowered to issue obligations on behalf thereof (i.e. a “Related Bond Issuer”) (“governmental issuer”), pursuant to a Related Bond Indenture, the proceeds of which are loaned or otherwise made available to the Obligated Group Representative or a Member of the Obligated Group in consideration of the execution, authentication and delivery of an Obligation to or for the order of such governmental issuer.

“Related Credit Facility Issuer” means the Credit Facility Issuer with respect to any issue of Related Bonds.

“Related Loan Agreement” means, for any Obligation, any loan agreement, lease agreement or any similar instrument relating to the proceeds of Indebtedness of a Member of the Obligated Group which the Obligation was issued to evidence.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies Inc., its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no

longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Obligated Group Representative by notice to the Master Trustee.

“Short-Term Indebtedness” means all Indebtedness having a maturity of one year or less, other than the current portion of Long-Term Indebtedness, incurred or assumed by any Member of the Obligated Group, excluding trade debt incurred in the ordinary course of business, but, including:

- (i) money borrowed for an original term, or renewable at the option of the borrower for a period from the date originally incurred, of one year or less;
- (ii) leases which are capitalized in accordance with generally accepted accounting principles having an original term, or renewable at the option of the lessee for a period from the date originally incurred, of one year or less; and
- (iii) installment purchase or conditional sale contracts having an original term of one year or less.

“Subordinated Debt” means Indebtedness the payment of which is evidenced by instruments, or issued under an indenture or other document, containing specific provisions subordinating such Indebtedness to the Obligations, including following any event of insolvency by the debtor or following acceleration of such Indebtedness.

“Supplement” means an indenture supplemental to, and authorized and executed pursuant to the terms of, this Master Indenture.

“Tax-Exempt Organization” means a Person organized under the laws of the United States of America or any state or territory thereof which is (i) an organization described in Section 501(c)(3) of the Code or is treated as an organization described in Section 501(c)(3) of the Code, and (ii) exempt from federal income taxes under Section 501(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect.

“Tax Exempt Related Bonds” means Related Bonds on which the interest is not includable in gross income for purposes of federal income taxation pursuant to Section 103 of the Code.

“Total Operating Revenues” means, with respect to the Obligated Group, as to any period of time, total operating revenues less all deductions from revenues, as determined in accordance with generally accepted accounting principles consistently applied.

“Transfer” means any act or occurrence the result of which is to dispossess any Person of any asset or interest therein or to relieve such Person from any liability other than by payment thereof by such Person, including specifically, but without limitation, the forgiveness of any debt.

“Variable Rate Indebtedness” means any portion of Indebtedness the interest rate on which has not been established at a fixed or constant rate to maturity.

## **INDEBTEDNESS, ISSUANCE AND TERMS OF OBLIGATIONS**

Section 2.01 Amount of Indebtedness. Subject to the terms, limitations and conditions established in this Master Indenture, each Member of the Obligated Group may incur Indebtedness by issuing Obligations hereunder or by creating Indebtedness under any other document. The principal



amount of Indebtedness created under other documents and the number and principal amount of Obligations evidencing Indebtedness that may be created hereunder are not limited, except by the provisions hereof, including Section 3.06, or of any Supplement.

Section 2.07 Issuance of Obligations in Forms Other than Notes. Obligations may be issued hereunder in a form other than a promissory note to evidence any type of Indebtedness or Derivative Agreement that itself is in a form other than a promissory note, including without limitation, deeming such Indebtedness or Derivative Agreement or certain payments due thereunder to be an Obligation. Consequently, the Related Supplement pursuant to which any Obligation is issued may provide for such supplements or amendments to the provisions hereof as are necessary or appropriate to permit the issuance of such Obligation hereunder and as are not inconsistent with the intent hereof that all Obligations issued hereunder be equally and ratably secured by the lien on the trust estate created hereunder except to the extent that an Obligation provides for subordination of some or all of the payment obligations thereunder and/or subordination of security therefor. Any Derivative Agreement (or any particular payments thereunder) which is or are authenticated as an Obligation under this Master Indenture shall be equally and ratably secured by any lien created under this Master Indenture with all other Obligations except as otherwise provided in this Master Indenture; *provided, however*, that any such Obligation shall be deemed outstanding under this Master Indenture solely for the purpose of receiving payment under this Master Indenture and shall not be entitled to exercise any rights under this Master Indenture, including without limitation the right to vote or control remedies, and any Obligation issued to secure any Derivative Agreement shall not be deemed to be Outstanding for any purpose under Article VI, other than the right to receive payment of amounts due thereunder equally and ratably with all other Obligations.

Section 2.09 Mortgages. To secure, among other things, the prompt payment of the principal of, redemption premium, if any, and the interest on all Obligations issued from time to time under the Master Indenture, and the performance by the Members of the Obligated Group of their other Obligations hereunder, each Member of the Obligated Group shall grant to the Master Trustee a Mortgage on all core Health Care Facilities owned by such Member and any new Member of the Obligated Group at the time of such admission shall grant to the Master Trustee a Mortgage on all core Health Care Facilities owned by such new Member of the Obligated Group, subject to any liens or security interests permitted to remain outstanding under Section 3.05 of the Master Indenture.

## **PARTICULAR COVENANTS OF THE OBLIGATED GROUP**

Section 3.01 Security; Restrictions on Encumbering Property; Payment of Principal and Interest.

(a) Any Obligation issued pursuant to this Master Indenture shall be a general obligation of each Member of the Obligated Group and the Members shall be jointly and severally liable therefor. Upon receipt, all such security shall be held in trust for the holders from time to time of all Obligations issued and Outstanding hereunder, without preference or priority of any one Obligation over any other Obligation.

(b) Commencing on the date on which any Obligations are first issued and delivered and continuing until no Obligations are Outstanding, each of the Members of the Obligated Group agrees to establish and maintain at a bank satisfactory to the Master Trustee, the Authority (if any Related Bonds are Outstanding) and the Credit Facility Issuer (if any Credit Facility is applicable) an account designated as the “[Member] Gross Receipts Pledge Fund Account” (individually, and collectively, the “Pledge Fund”), and each of the Members of the Obligated Group agrees to execute and deliver in form and content satisfactory to the Authority (if any Related Bonds are Outstanding) and the Credit Facility Issuer



(if any Credit Facility is applicable), an account control agreement for the Pledge Fund of such Member of the Obligated Group (each an “Account Control Agreement”) to perfect the security interest for the benefit of the Master Trustee. Each Member of the Obligated Group agrees to deposit into its respective Pledge Fund as and when received, its Gross Receipts. Each Member of the Obligated Group shall apply the monies in its respective Pledge Fund to the making of the payments required by the Obligations as they become due and payable, and may withdraw monies from its respective Pledge Fund for any lawful purpose of such Member of the Obligated Group. The Members of the Obligated Group shall provide to the Master Trustee, the Authority, and the Credit Facility Issuer a statement identifying the name and number of any fund or account established by Members of the Obligated Group with any banking, trust or other financial institution pursuant to this Section and shall promptly notify the Master Trustee, the Authority, if applicable and the Credit Facility Issuer, if applicable, upon any change thereto.

(c) The Obligated Group represents and warrants that no part of the Gross Receipts or any right to receive or collect the same or the proceeds thereof is subject to any lien, pledge, security interest or assignment, other than the Permitted Liens, and that the Gross Receipts are legally available to provide security for the performance of the Members of the Obligated Group hereunder. Except as expressly provided herein, the Obligated Group agrees that no Member of the Obligated Group shall hereafter create or permit the creation of any loan, assignment, encumbrance, restriction, security interest in or other commitment of or with respect to the Gross Receipts which is prior to the pledge granted to the Master Trustee.

Each Member of the Obligated Group shall also execute and deliver to the Master Trustee from time to time such amendments or supplements to this Master Indenture as may be necessary or appropriate to include as security hereunder the Gross Receipts. In addition, each Member of the Obligated Group covenants that it will take such other action and execute such documents, including control agreements or amendments thereto which shall, in the Opinion of Counsel, be necessary to comply with applicable law or as required due to changes in the Obligated Group, including, without limitation, (i) any Person becoming a Member of the Obligated Group pursuant to Section 3.10 of this Master Indenture, or (ii) any Member of the Obligated Group ceasing to be a Member of the Obligated Group pursuant to Section 3.11 of this Master Indenture.

(d) Each Member of the Obligated Group covenants that it will not pledge or grant a security interest in (except for Permitted Liens as set forth in Section 3.05 hereof) any of its Property.

(e) Each Obligation shall be a joint and several general obligation of each Member of the Obligated Group. Each Member of the Obligated Group covenants to promptly pay or cause to be paid the principal of, premium, if any, and interest on each Obligation issued pursuant to this Master Indenture at the place, on the dates and in the manner provided in this Master Indenture and in said Obligation according to the terms thereof whether at maturity, upon proceedings for redemption, by acceleration or otherwise.

Section 3.02 Covenants as to Corporate Existence, Maintenance of Properties, Etc. Each Member of the Obligated Group hereby covenants:

(a) Except as otherwise expressly provided herein, to preserve its corporate or other legal existence and all its material rights and licenses to the extent necessary or desirable in the operation of its business and affairs and be qualified to do business in each jurisdiction where its ownership of Property or the conduct of its business requires such qualifications; *provided, however*, that nothing herein contained shall be construed to obligate it to retain or preserve any of its rights or licenses, no longer used or, in the judgment of its Governing Body, useful in the conduct of its business.

(b) At all times to cause its Property in all material respects to be maintained, preserved and kept in good repair, working order and condition and all needed and proper repairs, renewals and replacements thereof to be made; *provided, however*, that nothing contained in this subsection shall be construed to (i) prevent it from ceasing to operate any portion of its Property, if in its judgment (evidenced, in the case of such a cessation other than in the ordinary course of business by an opinion or certificate of a Consultant) it is advisable not to operate the same, or if it intends to sell or otherwise dispose of the same and within a reasonable time endeavors to effect such sale or other disposition, or (ii) to obligate it to retain, preserve, repair, renew or replace any Property, leases, rights, privileges or licenses no longer used or, in the judgment of its Governing Body, useful in the conduct of its business.

(c) To do all things reasonably necessary to conduct its affairs and carry on its business and operations in such manner as to comply in all material respects with any and all applicable laws of the United States and the several states thereof (including, but not limited to, the Public Health Law of the State of New York) and duly observe and conform to all valid orders, regulations or requirements of any governmental authority relative to the conduct of its business and the ownership of its Properties; *provided*, nevertheless, that nothing herein contained shall require it to comply with, observe and conform to any such law, order, regulation or requirement of any governmental authority so long as the validity thereof or the applicability thereof to it shall be contested in good faith.

(d) To pay promptly when due all lawful taxes, governmental charges and assessments at any time levied or assessed upon or against it or its Property; *provided, however*, that it shall have the right to contest in good faith any such taxes, charges or assessments or the collection of any such sums and pending such contest may delay or defer payment thereof.

(e) To pay promptly or otherwise satisfy and discharge all of its Indebtedness and all demands and claims against it as and when the same become due and payable, other than any thereof (exclusive of the Obligations created and Outstanding hereunder) whose validity, amount or collectibility is being contested in good faith.

(f) At all times to comply in all material respects with all terms, covenants and provisions of any Liens at such time existing upon its Property or any part thereof or securing any of its Indebtedness, other than any Liens (exclusive of the Obligations created and outstanding hereunder) whose validity, amount or collectibility is being contested in good faith.

(g) To procure and maintain all necessary licenses and permits and maintain accreditation of its health care facilities (if any, and other than those of a type for which accreditation is not available) by the Joint Commission on Accreditation of Healthcare Organizations or other applicable recognized accrediting body; *provided, however*, that it need not comply with this Section 3.02(g) if and to the extent that its Governing Body shall have determined in good faith, evidenced by a resolution of the Governing Body, that such compliance is not in its best interests and that lack of such compliance would not materially impair its ability to pay its Indebtedness when due.

(h) So long as this Master Indenture shall remain in force and effect, each Member of the Obligated Group which is a Tax-Exempt Organization at the time it becomes a Member of the Obligated Group agrees that, so long as all amounts due or to become due on any Related Bond have not been fully paid to the holder thereof, it shall not take any action or suffer any action to be taken by others, including any action which would result in the alteration or loss of its status as a Tax-Exempt Organization, or fail to take any action which failure, in the Opinion of Bond Counsel, would result in the interest on any Tax Exempt Related Bonds becoming included in the gross income of the holder thereof for federal income tax purposes.

Section 3.03 Insurance. Each Member of the Obligated Group agrees that it will maintain, or cause to be maintained, insurance (including one or more self-insurance programs considered to be adequate) covering such risks in such amounts and with such deductibles and co-insurance provisions as, in the judgment of its Governing Body, are adequate to protect it and its Property and operations.

The Obligated Group Representative shall engage an Insurance Consultant to review the insurance requirements of the Members of the Obligated Group from time to time (but not less frequently than biennially). If the Insurance Consultant makes recommendations for the increase of any coverage, the applicable Member of the Obligated Group shall increase or cause to be increased such coverage in accordance with such recommendations, subject to a good faith determination of the Governing Body of such Member that such recommendations, in whole or in part, are in the best interests of the Obligated Group. If the Insurance Consultant makes recommendations for the decrease or elimination of any coverage, the Member of the Obligated Group may decrease or eliminate such coverage in accordance with such recommendations, subject to a good faith determination of the Governing Body of the Obligated Group Representative that such recommendations, in whole or in part, are in the best interests of the Obligated Group. Notwithstanding anything in this Section to the contrary, each Member of the Obligated Group shall have the right, without giving rise to an Event of Default solely on such account, (i) to maintain insurance coverage below that most recently recommended by the Insurance Consultant, if the Obligated Group Representative furnishes to the Master Trustee a report of the Insurance Consultant to the effect that the insurance so provided affords either the greatest amount of coverage available for the risk being insured against at rates which in the judgment of the Insurance Consultant are reasonable in connection with reasonable and appropriate risk management, or the greatest amount of coverage necessary by reason of state or federal laws now or hereafter in existence limiting medical and malpractice liability, or (ii) to adopt alternative risk management programs which the Insurance Consultant determines to be reasonable, including, without limitation, to participate in programs of captive insurance companies, to participate with other health care institutions in mutual or other cooperative insurance or other risk management programs, to participate in state or federal insurance programs, to take advantage of state or federal laws now or hereafter in existence limiting medical and malpractice liability, or to establish or participate in other alternative risk management programs; all as may be approved by the Insurance Consultant as reasonable and appropriate risk management by the Obligated Group. If any Member of the Obligated Group shall be self-insured for any coverage, the report of the Insurance Consultant mentioned above shall state whether the anticipated funding of any self-insurance fund is actuarially sound, and if not, the required funding to produce such result and such coverage shall be reviewed by the Insurance Consultant not less frequently than annually.

Section 3.04 Insurance and Condemnation Proceeds.

(a) Unless otherwise provided in the Mortgages or in a Supplement, amounts that do not exceed 20% of the Book Value of the Property, Plant and Equipment of the Obligated Group received by any Member of the Obligated Group as insurance proceeds with respect to any casualty loss relating to the Mortgaged Property or as condemnation awards relating to the Mortgaged Property may be used in such manner as the recipient may determine, including, without limitation, applying such moneys to the payment or prepayment of any Indebtedness in accordance with the terms thereof and of any pertinent Supplement.

(b) Unless otherwise provided in the Mortgages or in a Supplement, amounts that exceed 20% of the Book Value of the Property, Plant and Equipment of the Obligated Group received by any Member of the Obligated Group as insurance proceeds with respect to any casualty loss relating to the Mortgaged Property or as condemnation awards relating to the Mortgaged Property shall be applied to repair or replace the Property (either Property serving the same function or other Property that, in the

judgment of the Governing Body, is of equal usefulness) to which such proceeds relate or to the payment or prepayment of Indebtedness in accordance with the terms thereof and of any pertinent Supplement; *provided, however*, such amounts may be used in such manner as the recipient may determine, if the recipient notifies the Master Trustee and within 12 months after the casualty loss or taking, delivers to the Master Trustee:

(i) (A) An Officer's Certificate of the Obligated Group Representative certifying the forecasted compliance by the Obligated Group with all financial covenants and ratios set forth in this Master Indenture or an applicable Supplement, for each of the two Fiscal Years following the date on which such proceeds or awards are forecasted to have been fully applied, as shown by pro forma financial statements, accompanied by a statement of the relevant assumptions including assumptions as to the use of such proceeds or awards, upon which such pro forma statements are based; and (B) if the amount of such proceeds or awards received with respect to any casualty loss or condemnation exceeds 30% of the Book Value of the Property, Plant and Equipment of the Obligated Group, a written report of a Consultant confirming such certification; or

(ii) A written report of a Consultant stating the Consultant's recommendations, including recommendations as to the use of such proceeds or awards, to cause compliance by the Obligated Group with any financial covenants and ratios set forth in this Master Indenture or the Supplement, for each of the periods described in paragraph (i) of this section, or, if in the opinion of the Consultant the attainment of such level is impracticable, to the highest practicable level; and an Officer's Certificate of the Obligated Group Representative certifying that the recipient will use such proceeds in accordance with the recommendations contained in the Consultant's report.

Each Member of the Obligated Group agrees that it will use such proceeds or awards, to the extent permitted by law, only in accordance with the assumptions described in subsection (i), or the recommendations described in subsection (ii), of this Section.

#### Section 3.05 Limitations on Creation of Liens.

(a) Each Member of the Obligated Group agrees that it will not create or suffer to be created or permit the existence of any Lien on Property now owned or hereafter acquired by it other than Permitted Liens.

(b) Permitted Liens shall consist of the following:

(i) Liens arising by reason of good faith deposits by any Member of the Obligated Group in connection with leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by any Member of the Obligated Group to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

(ii) Any Lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable any Member of the Obligated Group to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workers' compensation, unemployment insurance, pension or profit sharing plans or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(iii) Any judgment lien against any Member of the Obligated Group so long as such judgment is being contested in good faith and execution thereon is stayed;

(iv) (A) Rights reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license, permit or provision of law, affecting any Property; (B) any liens on any Property for taxes, assessments, levies, fees, water and sewer rents, and other governmental and similar charges and any liens of mechanics, materialmen, laborers, suppliers or vendors for work or services performed or materials furnished in connection with such Property, which are not due and payable or which are not delinquent or which, or the amount or validity of which, are being contested and execution thereon is stayed or, with respect to liens of mechanics, materialmen, laborers, suppliers or vendors, have been due for less than 180 days; and (C) easements, rights-of-way, servitudes, restrictions, oil, gas or other mineral reservations and other minor defects, encumbrances, and irregularities in the title to any Property which do not materially impair the use of such Property or materially and adversely affect the value thereof.

(v) Any Lien which is existing on the date of authentication and delivery of the Initial Obligations issued under this Master Indenture, which is set forth on Schedule A attached hereto, provided that no such Lien may be increased, extended, renewed or modified to apply to any Property of any Member of the Obligated Group not subject to such Lien on such date or to secure Indebtedness not Outstanding as of the date hereof, unless such Lien as so extended, renewed or modified otherwise qualifies as a Permitted Lien hereunder;

(vi) Any Liens of a new Member or a successor to an existing Member that is permitted to remain outstanding after such new Member or successor becomes a Member of the Obligated Group pursuant to Section 3.10(e) hereof;

(vii) Any Lien securing Non-Recourse Indebtedness permitted by Section 3.06(d) hereof;

(viii) Any Lien on Property acquired by a Member of the Obligated Group if the Indebtedness secured by the Lien is Additional Indebtedness permitted under the provisions of Section 3.06 hereof, and if an Officer's Certificate is delivered to the Master Trustee certifying that (A) the Lien and the indebtedness secured thereby were created and incurred by a Person other than the Member of the Obligated Group, and (B) the Lien was not created for the purpose of enabling the Member of the Obligated Group to avoid the limitations hereof on creation of Liens on Property of the Obligated Group;

(x) Any Lien on Equipment used at a Health Care Facility provided the Indebtedness secured by such Lien was incurred in accordance with Section 3.06 hereof;

(xi) Any Lien in favor of a creditor or a trustee on the proceeds of Indebtedness and any earnings thereon prior to the application of such proceeds and such earnings; banker's liens or rights of setoff; or liens securing letters of credit or other liquidity or credit enhancement that provides liquidity or credit enhancement for Indebtedness otherwise permitted hereunder;

(xii) Any Liens on the proceeds of insurance insuring assets that are subject to a lease from a third party owner or lessor of such assets;



(xiii) Any Lien in favor of a trustee or other agent on the proceeds of Indebtedness and any earnings thereon created by the irrevocable deposit of such monies for the purpose of refunding or defeasing Indebtedness;

(xiv) Any Lien securing all Obligations on a parity basis, including the Lien created by this Master Indenture on Gross Receipts and by the Mortgages;

(xv) Liens on moneys deposited by patients or others with any Member of the Obligated Group as security for or as prepayment for the cost of patient care;

(xvi) Liens on Property received by any Member of the Obligated Group through gifts, grants or bequests, such Liens being due to restrictions on such gifts, grants or bequests of Property or the income thereon;

(xvii) Liens on Property due to rights of third party payors for recoupment of amounts paid to any Member of the Obligated Group;

(xviii) The Mortgages;

(xix) Statutory rights of the United States of America by reason of federal funds made available under 42 U.S.C. Section 291 et seq and similar rights under other federal and state statutes or by reason of any loan or grant made available to a Member of the Obligated Group, and similar rights of the State of New York or local municipalities under similar state or local statutes;

(xx) Any Lien on funds established pursuant to the terms of any Related Bond Indenture or related document in favor of the Master Trustee, a Related Bond Trustee or the registered owner of any Indebtedness issued pursuant to such Related Loan Agreement, Related Bond Indenture or related document;

(xxii) any Lien or encumbrance created or incurred in the ordinary course of business which does not secure, directly or indirectly, the repayment of borrowed money or the payment of installment sales contracts of capital leases individually or in the aggregate, and which does not materially impair the value or the utility of the Property subject to such Lien or encumbrance;

(xxiii) any Lien arising by reason of deposits to enable any Member of the Obligated Group to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with worker's compensation, unemployment insurance, pension or profit-sharing plans, or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(xxiv) any Liens on pledges of grants or gifts which secure payment of Short-Term Indebtedness permitted by Sections 3.06(c) and 3.06(f) hereto;

(xxv) Liens to which the Property is subject at the time (the "Effective Date") either (i) its owner becomes (or is merged into or consolidated with) a Member of the Obligated Group or (ii) all or substantially all of the assets of the owner of the property are sold or otherwise conveyed to a Member of the Obligated Group, provided that:



(A) no Lien so described may be extended or renewed, nor may it be modified, to apply to any Property or any Member of the Obligated Group not subject to such Lien on the Effective Date, unless the Lien as so extended, renewed or modified, or the replacement Lien, otherwise qualifies as a Permitted Lien;

(B) no additional indebtedness may be thereafter incurred that is secured by such Lien; and

(C) no Lien so described was created in order to avoid the limitations contained herein on the impositions of Liens on the Property of such Members.

(xxvi) any Lien with respect to assets acquired after the date of the issuance of the Initial Obligations, which Lien either secures the purchase price of such property or is a Lien to which such property is subject at the time of its acquisition;

(xxvii) operating leases or ground leases of five years or less whereunder any Member of the Obligated Group is the lessor; or any license or other use agreement made with respect to Property where revenues generated inure to the benefit of any Member of the Obligated Group;

(xxviii) any lien on money (or the investment made with such money) held in any depreciation reserve, debt service reserve, construction, debt service or similar fund and granted by a Member of the Obligated Group to secure payment of Indebtedness (including any commitment indebtedness, whether or not then drawn upon);

(xxix) such minor defects and irregularities of title as normally exist with respect to Property similar in character to the Property involved, and which do not materially adversely affect the value of or materially impair the Property affected thereby;

(xxx) any Lien on pledges, gifts or grants to be received in the future, including any income derived from the investment thereof and Liens on or in Property given, bequeathed or devised to the owner thereof existing at the time of such gift, bequest or devise, provided that (i) such Liens attach solely to the Property which is the subject of such gift, bequest or devise, and (ii) the indebtedness secured by such Liens is not assumed;

(xxxi) any Lien securing Indebtedness on a parity basis, to the extent permitted by Section 3.06 hereof; and

(xxxii) Any Lien on Excluded Property.

Section 3.06 Limitations on Indebtedness. Each Member of the Obligated Group covenants and agrees that it will not incur any Additional Indebtedness if, such Indebtedness could not be incurred pursuant to any one of subsections (a) to (f) inclusive, of this Section 3.06.

(a) Long-Term Indebtedness (including Obligations secured on a parity with the existing Obligations) may be incurred if prior to incurrence of the Long-Term Indebtedness there is delivered to the Master Trustee an Officer's Certificate of the Obligated Group Representative certifying that:

(i) The Long-Term Debt Service Coverage Ratio for the most recent period of twenty-four (24) full consecutive calendar months preceding the date of delivery of the

certificate of the Obligated Group Representative for which there are Audited Financial Statements available, taking all Long-Term Indebtedness incurred after such period and the proposed Long-Term Indebtedness into account as if such Long-Term Indebtedness had been incurred at the beginning of such period, is not less than 1.5; and

(ii) The Long-Term Debt Service Coverage Ratio for each of the two Fiscal Years immediately following the date of the Audited Financial Statements referenced in (ii) above, as shown by pro forma financial statements, accompanied by a statement of the relevant assumptions upon which such pro forma statements are based, taking all Long-Term Indebtedness incurred after the date of such Audited Financial Statements and the proposed Long-Term Indebtedness into account as if such Long-Term Indebtedness had been incurred at the beginning of such period, is not projected to be less than 1.5; or

(b) Long-Term Indebtedness incurred for the purpose of refunding any Outstanding Long-Term Indebtedness may be incurred if, prior to the incurrence of such Long-Term Indebtedness, if there is delivered to the Master Trustee (i) an Officer's Certificate of the Obligated Group Representative demonstrating that Maximum Annual Debt Service will not increase by more than 10% after the incurrence of such proposed refunding Long-Term Indebtedness and after giving effect to the disposition of the proceeds thereof and (ii) an Opinion of Counsel stating that upon the incurrence of such Proposed Long-Term Indebtedness and application of the proceeds thereof, the Outstanding Long-Term Indebtedness to be refunded thereby will no longer be Outstanding.

(c) Short-Term Indebtedness may be incurred subject to the limitation that the aggregate of all Short-Term Indebtedness shall not at any time exceed 10% of Total Operating Revenues as reflected in the Audited Financial Statements of the Obligated Group for the most recent period of twelve consecutive months for which Audited Financial Statements are available; *provided, however*, that there shall be a period of at least 30 consecutive calendar days during each such period of twelve (12) consecutive calendar months which Audited Financial Statements are available during which Short Term Indebtedness shall not at any time exceed 5% of Total Operating Revenues. For the purpose of calculating compliance with the tests set forth in this subsection 3.06(c), Short-Term Indebtedness secured by accounts receivable shall not be taken into account except to the extent provided in subsection 3.06(f) hereof.

(d) Non-Recourse Indebtedness may be incurred without limit.

(e) Subordinated Debt may be incurred without limit.

(f) Indebtedness may be incurred in an amount limited to the cost of completion for the purpose of financing the completion of the acquisition or construction of a Capital Addition with respect to which Indebtedness has theretofore been incurred, provided there shall be delivered to the Master Trustee (i) a certificate of the Obligated Group Representative to the effect that the Obligated Group Representative did reasonably expect at the time the initial Indebtedness was incurred that the proceeds of such Indebtedness, together with other available funds, would be sufficient to complete the Capital Addition, (ii) a licensed architect's or licensed engineer's certificate to the effect that the proceeds of such additional Indebtedness will be sufficient to complete the Capital Addition and (iii) the amount of such Indebtedness is limited to the costs identified in (i) above plus necessary reserves and costs related to issuance of such Indebtedness.

Indebtedness containing a "put" or "tender" provision pursuant to which the holder of such Indebtedness may require that such Indebtedness be purchased prior to its maturity shall not be considered Balloon Long-Term Indebtedness, solely by reason of such "put" or "tender" provision, and

the put or tender provision shall not be taken into account in testing compliance with any debt incurrence test pursuant to this Section 3.06.

Section 3.08 Merger, Consolidation, Sale or Conveyance.

(a) Each Member of the Obligated Group covenants that it will not merge or consolidate with any other Person that is not a Member of the Obligated Group or sell or convey all or substantially all of its assets to any Person that is not a Member of the Obligated Group unless:

(i) After giving effect to the merger, consolidation, sale or conveyance,

(A) the successor or surviving corporation (hereinafter, the “Surviving Corporation”) is a Member of the Obligated Group,

or

(B) the Surviving Corporation shall

(1) be a corporation organized and existing under the laws of the United States of America or any State thereof

and

(2) become a Member of the Obligated Group pursuant to Section 3.11, and pursuant to a Related Supplement shall expressly assume in writing the due and punctual payment of all Outstanding Obligations of the disappearing Member of the Obligated Group hereunder;

(ii) The Master Trustee receives an Officer’s Certificate to the effect that no Member of the Obligated Group, immediately after the date of the proposed merger, consolidation, sale or conveyance, would be in default in the performance or observance of any covenant or condition of this Master Indenture, or Supplement or any Obligation issued hereunder;

(iii) The Master Trustee receives an Officer’s Certificate to the effect that, for the last full Fiscal Year immediately preceding the proposed merger, consolidation, sale or conveyance, the Long-Term Debt Service Coverage Ratio, calculated as if the merger, consolidation, sale or conveyance had occurred as of the first day of such Fiscal Year, would have been at least equal to the amount required pursuant to this Master Indenture or any Supplement;

(iv) So long as any Tax Exempt Related Bonds are Outstanding, the Master Trustee receives an Opinion of Bond Counsel, in form and substance satisfactory to the Master Trustee, to the effect that, under then existing law, the consummation of such merger, consolidation, sale or conveyance, in and of itself, would not result in the inclusion of interest on such Tax Exempt Related Bonds in gross income for purposes of federal income taxation; and

(v) The Master Trustee receives an Opinion of Counsel, in form and substance satisfactory to the Master Trustee, to the effect that (A) all conditions in this Section 3.08 relating to such merger, consolidation, sale or conveyance have been complied with and it is proper for the Master Trustee to join in the execution of any instrument required to be executed and delivered; (B) the Surviving Corporation meets the conditions set forth in this Section 3.08 and is liable on all Outstanding Obligations; and (C) such merger, consolidation, sale or conveyance

will not cause the Master Indenture or any Outstanding Obligations to be subject to registration under federal or state securities laws or the Trust Indenture Act of 1939, as amended (or, that any such registration, if required, has occurred); and

(vi) The Surviving Corporation shall be substituted for its predecessor in trust in all Master Indenture Obligations and agreements then in effect which affect or relate to any Master Indenture Obligation, and the Surviving Corporation shall execute and deliver to the Master Trustee appropriate documents in order to effect the substitution.

From and after the effective date of such substitution (as set forth in the above-mentioned documents), the Surviving Corporation shall be treated as though it were a Member of the Obligated Group as of the date of the execution of this Master Indenture and shall thereafter have the right to participate in transactions hereunder relating to Outstanding Obligations to the same extent as the other Members of the Obligated Group. All Outstanding Obligations issued hereunder on behalf of a Surviving Corporation shall have the same legal rank and benefit under this Master Indenture as Master Indenture Obligations issued on behalf of any other Obligated Group Member.

Except as may be expressly provided in any Supplement, the ability of any Member of the Obligated Group to merge or consolidate with any Person that is a Member of the Obligated Group after such merger or consolidation or to sell or convey all or substantially all of its assets to any Person that is a Member of the Obligated Group after such sale or conveyance is not limited by the provisions of this Master Indenture.

(b) The Members of the Obligated Group may, from time to time, enter into one or more real estate transactions (each, a “Permitted Partial Release Sale”) pursuant to which there is a sale of fee interests in real estate (the “Partial Release Parcel”), which may include a portion(s) of the Mortgaged Property, to a third party (a “Partial Release Sale Counterparty”); (i) the sale of the Partial Release Parcel does not materially detract from the utility of the Health Care Facilities subject to the applicable Mortgage; (ii) the Partial Release Parcel is sold for fair market value as evidenced by a written appraisal prepared by an independent appraiser with experience in valuing similar assets; and (iii) the net proceeds received by the Members of the Obligated Group from the Permitted Partial Release Sale will be applied to the prepayment of the Obligations then outstanding, pro rata based on the Outstanding principal amount thereof or as otherwise required pursuant to the Opinion of counsel referred to in subsection (c) below.

Prior to entering into a Permitted Partial Release Sale, the Obligated Group Representative will deliver to the Master Trustee an Officer’s Certificate (the “Partial Release Sale Certificate”) that describes the Permitted Partial Release Sale in reasonable detail and certifies that the conditions set forth in clauses (i) through (iii) above will be satisfied.

The Master Trustee will executed and deliver all instruments (such as releases, partial releases, subordinations, access agreements, and consents) that are reasonably required to effectuate a Permitted Partial Release Sale (the “Partial Release Sale Master Trustee Documents”), provided that the Master Trustee has previously received a Partial Release Sale Certificate and a written, reasonably detailed request for execution and delivery of the Partial Release Sale Master Trustee Documents from the Obligated Group Representative.

(c) No Member of the Obligated Group shall enter into a Permitted Sale Leaseback or a Permitted Partial Release Sale pursuant to this Section 3.08(b) without first delivering to the Master Trustee an Opinion of Counsel, in form and substance satisfactory to the Master Trustee and the Related Bond Issuer, to the effect that the proposed transaction would not adversely affect the validity of any

Related Bond or any exclusion from gross income for federal income taxation purposes of interest payable thereon to which such Related Bond would otherwise be entitled.

Section 3.09 Filing of Audited Financial Statements; Certificate of No Default; Other Information. The Obligated Group covenants that it will:

(a) provide to the Master Trustee: (i) the audited financial statement for the Obligated Group Representative, on a consolidated and consolidating basis, and for the Obligated Group within 150 days following the end of each fiscal year, prepared by an independent certified public accountant reasonably acceptable to the Master Trustee which statements shall be prepared according to generally accepted accounting principles and shall include a statement of financial position (balance sheet), statement of activities (revenue and expenses), expenses and charges to the fund balance, cash flow statement and supporting schedule of functional expenses with such notes as are deemed necessary to present fairly the financial condition of the Obligated Group;

(b) deliver to the Master Trustee on a quarterly basis, within forty-five (45) days of the end of each fiscal quarter of the Obligated Group, internally prepared financial statements, together with budget variance reports of the Obligated Group certified to by management of the Obligated Group as being true, complete and correct;

(c) If an Event of Default shall have occurred and be continuing, (i) file with the Master Trustee such other financial statements and information concerning its operations and financial affairs (or of any consolidated or Obligated Group of companies, including its consolidated or combined Affiliates, including any Member of the Obligated Group) as the Master Trustee may from time to time reasonably request, excluding specifically donor records, patient records and personnel records and (ii) provide access to its facilities for the purpose of inspection by the Master Trustee during regular business hours.

(d) Within thirty (30) days after its receipt thereof, file with the Master Trustee a copy of each report which any provision of this Master Indenture requires to be prepared by a Consultant or an Insurance Consultant.

Section 3.10 Parties Becoming Members of the Obligated Group. Persons which are not Members of the Obligated Group and entities which are successor corporations to any Member of the Obligated Group through a merger or consolidation permitted by Section 3.08 hereof, may, with the prior written consent of the Obligated Group Representative, become Members of the Obligated Group, if:

(a) The Person or successor corporation which is becoming a Member of the Obligated Group shall execute and deliver to the Master Trustee an appropriate instrument, satisfactory to the Master Trustee containing the agreement of such Person or successor corporation (i) to become a Member of the Obligated Group under this Master Indenture and any Supplements and thereby become subject to compliance with all provisions of this Master Indenture and any Supplements, and the performance and observance of all covenants and obligations of a Member of the Obligated Group hereunder, and (ii) unconditionally and irrevocably guarantee to the Master Trustee and each other Member of the Obligated Group that all Obligations issued and then Outstanding or to be issued and Outstanding hereunder will be paid in accordance with the terms thereof and of this Master Indenture when due.

(b) Each instrument executed and delivered to the Master Trustee in accordance with subsection (a) of this Section, shall be accompanied by an Opinion of Counsel, addressed to and satisfactory to the Master Trustee, each Related Bond Issuer and each Related Credit Facility Issuer, to



the effect that such instrument has been duly authorized, executed and delivered by such Person or successor corporation and constitutes a valid and binding obligation enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, insolvency laws, other laws affecting creditors' rights generally, equity principles, laws dealing with fraudulent conveyances, limitations on the ability of one charity to make guarantees in favor of other entities, and subject to other customary exceptions acceptable to the Master Trustee and that the obligations of such Person or successor corporation created thereunder include the requirements described in subsection (a).

(c) If all amounts due or to become due on any Related Bond which bears interest which is not includable in the gross income of the recipient thereof under the Code have not been paid to the Holders thereof, there shall be filed with the Master Trustee, (i) an Opinion of Bond Counsel, in form and substance satisfactory to the Master Trustee, to the effect that the consummation of such transaction would not adversely affect the exclusion of the interest on any such Related Bond from the gross income of the holder thereof for purposes of federal income taxation and (ii) an Opinion of Counsel, in form and substance satisfactory to the Master Trustee, to the effect that the consummation of such transaction would not require the registration of any Obligations under the Securities Act of 1933, as amended or the Supplements under the Trust Indenture Act of 1939, as amended, or if such registration is required, that all applicable registration and qualification provisions of said acts have been complied with.

(d) An Officer's Certificate of the Obligated Group Representative shall be provided to the Master Trustee demonstrating that (i) after giving effect to the admission of such Person as a Member of the Obligated Group for the last full Fiscal Year immediately preceding the addition of the proposed New Member of the Obligated Group, the Long Term Debt Service Coverage Ratio, calculated as if the proposed New Member of the Obligated Group as of the first day of such Fiscal Year, would have been at least the amount required pursuant to this Master Indenture or any applicable Supplement and (ii) after giving effect to the admission of such Person as a Member of the Obligated Group, no Member of the Obligated Group will be in default in the performance of any covenant contained in this Master Indenture or any Supplement.

(e) Any Indebtedness previously incurred by a new Member of the Obligated Group shall be permitted to remain outstanding, and any lien or security interest securing such Indebtedness shall be permitted to remain in effect, if such Indebtedness could have been incurred pursuant to the provisions of Sections 3.06 hereof immediately after such Person became a Member of the Obligated Group.

#### Section 3.11 Withdrawal from the Obligated Group.

(a) Subject to the terms of any applicable Supplement, no Member of the Obligated Group may withdraw from the Obligated Group without the prior written consent of the Obligated Group Representative; and provided further, that prior to the taking of such action, there is delivered to the Master Trustee:

(i) If all amounts due on any Tax Exempt Related Bonds have not been paid to the holders thereof, there shall be delivered to the Master Trustee an Opinion of Bond Counsel, in form and substance satisfactory to the Master Trustee, to the effect that under then existing law such Member's withdrawal from the Obligated Group, whether or not contemplated on any date of delivery of any Related Bond, would not cause the interest payable on such Related Bond to become includable in the gross income of the recipient thereof under the Code;

(ii) The Obligated Group shall have provided one of the following:



(A) An Officer's Certificate of the Obligated Group Representative demonstrating that assuming such withdrawal and any payments or extinguishment of Obligations to be made in connection therewith had occurred at the beginning of the calculation periods described below:

(1) the Long-Term Debt Service Coverage Ratio of the remaining Members for each of the most recent two periods of twelve (12) full consecutive calendar months preceding the date of delivery of the certificate of the Obligated Group Representative for which there are Audited Financial Statements available taking all Long-Term Indebtedness incurred after such period into account is not less than the amount required pursuant to this Master Indenture or any Supplement; and

(2) either:

(x) the Long-Term Debt Service Coverage Ratio for the remaining Members of the Obligated Group for the most recent period of twelve (12) full consecutive calendar months for which Audited Financial Statements are available would not, if such withdrawal had occurred at the beginning of such period, be less than 1.25 to 1.0; or

(y) after giving effect to the withdrawal of such Member of the Obligated Group, the unrestricted net assets plus temporarily restricted net assets of the Obligated Group would not be less than 60% of the unrestricted net assets plus temporarily restricted net assets of the Obligated Group at the end of the Fiscal Year immediately preceding the year in which such Member of the Obligated Group withdraws from the Obligated Group; or

(z) a written report of a Consultant or an officer's certificate demonstrating that the forecasted average Long-Term Debt Service Coverage Ratio for the two periods of twelve full consecutive calendar months succeeding the proposed date of such withdrawal is greater than 1.5 to 1.0; or

(B) receipt by the Trustee of a Credit Enhancement, including evidence satisfactory to the Master Trustee from each rating agency then rating each such Related Bond and Obligation that, on the date the proposed withdrawal is to take effect, each such Related Bond and Obligation rated by such rating agency will be rated based on such credit enhancement not lower than "AA" (or the corresponding rating) by any rating agency;

(iii) an Opinion of Counsel, addressed and satisfactory to the Master Trustee and each Credit Facility Issuer and, to the extent any Related Bonds of the Authority are outstanding, to the Authority, to the effect that such withdrawal is authorized by and complies with all Governmental Restrictions and the provisions of this Master Indenture and any agreements or other documents relating to this Master Indenture, the applicable Obligations or the applicable Related Bonds; and

(iv) an Officer's Certificate of the Obligated Group Representative certifying that upon such withdrawal the remaining Members of the Obligated Group will not be in default in the performance of any covenant contained in this Master Indenture or any Supplement.

(b) Upon the withdrawal of any Member from the Obligated Group pursuant to subsection (a) of this Section, the Master Trustee shall release or consent to the release of all collateral of such withdrawing Member held by or for the benefit of the Obligation Holders, and all liability of such Member of the Obligated Group with respect to all Obligations Outstanding under this Master Indenture shall cease.

For purposes of this Section, “Credit Enhancement” means credit enhancement consisting of a surety bond, insurance policy, letter of credit or other form of credit enhancement from a financial institution generally regarded as responsible (in each case which is irrevocable and will remain in full force and effect for the entire period of time each such Related Bond or Obligation, as the case may be, remains outstanding, or which allows for the tender of the Related Bonds or Obligation, prior to the stated expiration of the Credit Enhancement and provides for payment in full of principal and interest on such Related Bond or Obligation when due) or the Obligated Group has delivered, respectively, to each Related Bond Trustee for each outstanding Related Bond, each trustee for any outstanding Obligation which is not pledged to secure Related Bonds and each holder of an outstanding Obligation which is not pledged to secure Related Bonds and with respect to which there is no trustee, credit enhancement of the types described above in this subpart.

## **DEFAULT AND REMEDIES**

Section 4.01 Events of Default. Event of Default, as used herein, shall mean any of the following events:

(a) The Members of the Obligated Group shall fail to make any payment of the principal of, the premium, if any, or interest on any Obligations issued and Outstanding hereunder within three (3) days of when and as the same shall become due and payable, whether at maturity, by proceedings for redemption, by acceleration or otherwise, in accordance with the terms thereof, of this Master Indenture.

(b) Any Member of the Obligated Group shall fail duly to perform, observe or comply with any covenant or agreement on its part under this Master Indenture for a period of thirty (30) days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Members of the Obligated Group and the Obligated Group Representative by the Master Trustee, or to the Members of the Obligated Group and the Obligated Group Representative and the Master Trustee by the Holders of at least 25% in aggregate principal amount of Obligations then Outstanding or by the Credit Facility Issuer, if any, with respect to an Obligation or Related Bonds; *provided, however*, that if said failure be such that it cannot be corrected within thirty (30) days after the receipt of such notice, it shall not constitute an Event of Default if corrective action is instituted within such 30-day period and diligently pursued until the Event of Default is corrected;

(c) An event of default shall occur under a Related Bond Indenture, under a Related Loan Agreement, upon a Related Bond or under a Mortgage that secures any Obligation issued hereunder;

(d) (1) Any Member of the Obligated Group shall fail to make any required payment with respect to any Indebtedness (other than Obligations issued and Outstanding hereunder), which Indebtedness is in an aggregate principal amount greater than two percent (2%) of Total Operating Revenues for the most recent Fiscal Year whether such Indebtedness now exists or shall hereafter be created, and any period of grace with respect thereto shall have expired, or (ii) there shall occur an event of default as defined in any mortgage, indenture or instrument under which there may be issued, or by which there may be secured or evidenced, any Indebtedness, which Indebtedness is in an aggregate principal amount greater than two percent (2%) of Total Operating Revenues for the most recent Fiscal

Year whether such Indebtedness now exists or shall hereafter be created, which event of default shall not have been waived by the holder of such mortgage, indenture or instrument, and as a result of such failure to pay or other event of default such Indebtedness shall have been accelerated; *provided, however*, that such default shall not constitute an Event of Default within the meaning of this Section if within 30 days (i) written notice is delivered to the Master Trustee, signed by the Obligated Group Representative, that such Member of the Obligated Group is contesting the payment of such Indebtedness and within the time allowed for service of a responsive pleading if any proceeding to enforce payment of the Indebtedness is commenced, any Member of the Obligated Group in good faith shall commence proceedings to contest the obligation to pay such Indebtedness and if a judgment relating to such Indebtedness has been entered against such Member of the Obligated Group (A) the execution of such judgment has been stayed or (B) sufficient moneys are escrowed with a bank or trust company for the payment of such Indebtedness;

(e) The entry of a decree or order by a court having jurisdiction in the premises for an order for relief against any Member of the Obligated Group, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of such Member under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of such Member or of any substantial part of its Property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; and

(f) The institution by any Member of the Obligated Group of proceedings for an order for relief, or the consent by it to an order for relief against it, or the filing by it of a petition or answer or consent seeking reorganization, arrangement, adjustment, composition or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of such Member of the Obligated Group or of any substantial part of its Property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

#### Section 4.02 Acceleration; Annulment of Acceleration.

(a) Upon the occurrence and during the continuation of an Event of Default hereunder, the Master Trustee may and, upon the written request of the Holders of not less than 25% in aggregate principal amount of Obligations Outstanding, shall, by notice to the Members of the Obligated Group declare all Obligations Outstanding immediately due and payable, whereupon such Obligations shall become and be immediately due and payable, anything in the Obligations or in any other section of this Master Indenture to the contrary notwithstanding. In the event Obligations are accelerated there shall be due and payable on such Obligations an amount equal to the total principal amount of all such Obligations, plus all interest accrued thereon to the date of acceleration and, to the extent permitted by applicable law, which accrues to the date of payment.

(b) At any time after the principal of the Obligations shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, if (i) the Obligated Group has paid or caused to be paid or deposited with the Master Trustee money sufficient to pay all matured installments of interest and interest on installments of principal and interest and principal or redemption prices then due (other than the principal then due only because of such declaration) of all Obligations Outstanding; (ii) the Obligated Group has paid or caused to be paid or deposited with the Master Trustee money sufficient to pay the charges, compensation, expenses, disbursements, advances, fees and liabilities of the Master Trustee; (iii) all other amounts then payable by the Obligated Group hereunder shall have been paid or a sum sufficient to pay the same shall have been deposited with the Master Trustee; and (iv) every Event of Default (other than a

default in the payment of the principal of such Obligations then due only because of such declaration) shall have been remedied or waived pursuant to Section 4.09 hereof, then the Master Trustee may, and upon the written request of Holders of not less than 25% in aggregate principal amount of the Obligations Outstanding shall, annul such declaration and its consequences with respect to any Obligations or portions thereof not then due by their terms. No such annulment shall extend to or affect any subsequent Event of Default or impair any right consequent thereon.

Section 4.03 Additional Remedies and Enforcement of Remedies.

(a) Upon the occurrence and continuance of any Event of Default, the Master Trustee may, and upon the written request of the Holders of not less than 25% in aggregate principal amount of the Obligations Outstanding or upon the request of the Credit Facility Issuer, if any, with respect to any Obligations or Related Bonds, together with indemnification of the Master Trustee to its satisfaction therefor, shall, proceed forthwith to protect and enforce its rights and the rights of the Holders hereunder by such suits, actions or proceedings as the Master Trustee, being advised by counsel, shall deem expedient, including but not limited to:

(i) Enforcement of the right of the Holders to collect and enforce the payment of amounts due or becoming due under the Obligations;

(ii) Bring suit upon all or any part of the Obligations;

(iii) Civil action to require any Person holding moneys, documents or other property pledged to secure payment of amounts due or to become due on the Obligations to account as if it were the trustee of an express trust for the Holders;

(iv) Civil action to enjoin any acts or things, which may be unlawful or in violation of the rights of the Holders;

(v) Enforcement of rights as a secured party under the Uniform Commercial Code of the State of New York;

(vi) Enforcement of any Mortgage granted by any Member of the Obligated Group; and

(vii) Enforcement of any other right of the Holders conferred by law or hereby.

(b) Regardless of the happening of an Event of Default, the Master Trustee, if requested in writing by the Holders of not less than 25% in aggregate principal amount of the Obligations then Outstanding or the Credit Facility Issuer, if any, with respect to a series of Related Bonds, shall, upon being indemnified to its satisfaction therefor, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient (i) to prevent any impairment of the security hereunder by any acts which may be unlawful or in violation hereof, or (ii) to preserve or protect the interests of the Holders, provided that such request and the action to be taken by the Master Trustee are not in conflict with any applicable law or the provisions hereof and, in the sole judgment of the Master Trustee, are not unduly prejudicial to the interest of the Holders not making such request.

(c) Upon the occurrence of an Event of Default, then so long as the Event of Default continues, any use of monies in the Pledge Fund will thereafter be subject to the consent of the Master Trustee, the Credit Facility Issuer (if any Credit Facility is applicable) and so long as any Related Bonds

of the Authority are Outstanding the Authority and the New York State Commissioner of Health, except that the Members of the Obligated Group shall be required to make withdrawals for the payment of debt service on the Obligations; *provided, however*, that the New York State Commissioner of Health may, in his or her sole discretion, waive any requirement for obtaining the Commissioner's consent to making withdrawals from the Pledge Fund. Following any such Event of Default, so long as any Related Bonds of the Authority are Outstanding, the Members of the Obligated Group shall provide the Master Trustee, the Credit Facility Issuer (if any Credit Facility is applicable) and if any Related Bonds of the Authority are Outstanding, the Authority and the New York State Department of Health, with a plan for the continued operation of the Members of the Obligated Group's facilities, improvements of financial condition and the resumption of full and timely payment of the debts of the Members of the Obligated Group. Nothing in this Section is intended to cause the Master Trustee, the Authority, if applicable, or the Credit Facility Issuer, if applicable, to be, or be deemed to be, an "operator" of any Health Care Facility under the regulations of the Department of Health. In taking or not taking such action the Authority and the Commissioner, with the written consent of the Credit Facility Issuer may engage, at the Members of the Obligated Group's expense, the expertise of professionals knowledgeable in the health care field. The Master Trustee, the Authority, if applicable, and the Credit Facility Issuer, if applicable, may, with the consent of the Commissioner of Health and the Credit Facility Issuer, waive any of the requirements of this Section. The Master Trustee, the Authority, and the Credit Facility Issuer acknowledge that nothing in this Supplement shall limit the power of the Department of Health to protect the health, welfare or safety of the patients of the Health Care Facilities in accordance with the New York Public Health Law and regulations promulgated thereunder. Nothing contained in this Supplement is intended to limit the authority and responsibility of any of the Members of the Obligated Group from exercising its own judgment and discretion concerning the operation and management of its respective hospital in accordance with the requirements of Article 28 of the Public Health Law and the regulations adopted thereunder.

Section 4.04 Application of Moneys after Default. Except as otherwise provided in any applicable Supplement during the continuance of an Event of Default, subject to the expenditure of moneys to make any payments required to permit any Member of the Obligated Group to comply with any requirement or covenant in any Related Indenture to cause Related Bonds the interest on which, immediately prior to such Event of Default, is excludable from the gross income of the recipients thereof for federal income tax purposes under the Code to retain such status under the Code, all Gross Receipts and other moneys received by the Master Trustee pursuant to any right given or action taken under the provisions of this Article shall be applied, after the payment of any compensation, expenses, disbursements and advances then owing to the Master Trustee pursuant to Section 5.05 hereof, in accordance with the provisions hereof of any applicable Supplement and, with respect to the payment of Obligations thereunder, as follows:

(a) Unless all amounts due with respect to all Outstanding Obligations shall have become or have been declared due and payable:

First: To the payment to the Persons entitled thereto of all installments of interest then due on Obligations, including scheduled payments on an Obligation issued in connection with a Derivative Agreement ("Regularly Scheduled Swap Payments") in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full all installments or payments due on any date, then to the payment thereof ratably, according to the amounts due thereon to the Persons entitled thereto, without any discrimination or preference;

Second: To the payment to the Persons entitled thereto of the unpaid principal installments of any Obligations or payments on an Obligation issued in connection with a Derivative Agreement other than Regularly Scheduled Swap Payments ("Other Swap Payments") which shall have



become due, whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all Obligations due on any date, then to the payment thereof ratably, according to the amounts of principal installments due on such date, to the Persons entitled thereto, without any discrimination or preference;

Third: To the extent there exists a Credit Facility Issuer with respect to any series of Related Bonds, amounts owed to such Credit Facility Issuer by the Obligated Group and not otherwise paid under clauses First and Second above; and

Fourth: To the payment of all other Outstanding Obligations (including, without limitation, obligations securing Derivative Agreements) ratably according to the amounts due thereunder, without any discrimination or preference.

(b) If all amounts due with respect to all Outstanding Obligations shall have become or have been declared due and payable, to the payment of all amounts then due and unpaid upon Obligations without preference or priority of principal or Other Swap Payments over interest or Regularly Scheduled Swap Payments or of interest or Regularly Scheduled Swap Payments over principal or Other Swap Payments, or of any installment of interest or Regularly Scheduled Swap Payments over any other installment of interest or Regularly Scheduled Swap Payments, or of any Obligation over any other Obligation, ratably, according to the amounts due respectively for principal, interest and all amounts due under any Derivative Agreement, to the Persons entitled thereto without any discrimination or preference.

(c) If all amounts due with respect to all Outstanding Obligations shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of Subsection (b) of this Section in the event that all amounts due with respect to all Outstanding Obligations shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (a) of this Section.

Whenever moneys are to be applied by the Master Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Master Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Master Trustee shall apply such moneys, it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Master Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any unpaid Obligation until such Obligation shall be presented to the Master Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

Whenever all Obligations and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Master Trustee have been paid, any balance remaining shall be paid to the Person entitled to receive the same; if no other Person shall be entitled thereto, then the balance shall be paid to the Members of the Obligated Group, their respective successors, or as a court of competent jurisdiction may direct.

Section 4.05 Remedies Not Exclusive. No remedy by the terms hereof conferred upon or reserved to the Master Trustee or the Holders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute on or after the date hereof.



Section 4.06 Remedies Vested in the Master Trustee. All rights of action (including the right to file proof of claims) hereunder or under any of the Obligations may be enforced by the Master Trustee without the possession of any of the Obligations or the production thereof in any trial or other proceedings relating thereto. Any such suit or proceeding instituted by the Master Trustee may be brought in its name as the Master Trustee without the necessity of joining as plaintiffs or defendants any Holders. Subject to the provisions of Section 4.04 hereof, any recovery or judgment shall be for the equal benefit of the Holders.

Section 4.07  Holders' Control of Proceedings. If an Event of Default shall have occurred and be continuing, the Holders of not less than a majority in aggregate principal amount of Obligations then Outstanding shall have the right, at any time, by an instrument in writing executed and delivered to the Master Trustee and accompanied by indemnity satisfactory to the Master Trustee, to direct the method and place of conducting any proceeding to be taken in connection with the enforcement of the terms and conditions hereof or for the appointment of a receiver or any other proceedings hereunder, provided that such direction is not in conflict with any applicable law or the provisions hereof, and is not unduly prejudicial to the interest of any Holders not joining in such direction, and provided further, that the Master Trustee shall have the right to decline to follow any such direction if the Master Trustee in good faith shall determine that the proceeding so directed would involve it in personal liability, in the sole judgment of the Master Trustee, and provided further that nothing in this Section shall impair the right of the Master Trustee in its discretion to take any other action hereunder which it may deem proper and which is not inconsistent with such direction by the Holders; and provided, further, that the Credit Facility Issuer, if any, with regard to any series of Related Bonds, and not the Holders, shall have the right to control proceedings with respect thereto in the manner described in this Section.

Section 4.08  Termination of Proceedings. In case any proceeding taken by the Master Trustee on account of an Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Master Trustee or to the Holders, then the Members of the Obligated Group, the Master Trustee and the Holders shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Master Trustee and the Holders shall continue as if no such proceeding had been taken.

Section 4.09  Waiver of Event of Default.

(a) No delay or omission of the Master Trustee or of any Holder to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given by this Article to the Master Trustee and the Holders, respectively, may be exercised from time to time and as often as may be deemed expedient by them.

(b) The Master Trustee, with the consent of the Credit Facility Issuer, if any, of any affected Obligations or Related Bonds may waive any Event of Default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions hereof, or before the completion of the enforcement of any other remedy hereunder.

(c) Notwithstanding anything contained herein to the contrary, the Master Trustee, upon the written request of the Holders of not less than a majority of the aggregate principal amount of Obligations then Outstanding, with the consent of the Credit Facility Issuer, if any, of any affected Obligations or Related Bonds, shall waive any Event of Default hereunder and its consequences; *provided, however,* that, except under the circumstances set forth in subsection (b) of Section 4.02 hereof, a default in the payment of the principal of, premium, if any, or interest on any Obligation, when the same

shall become due and payable by the terms thereof or upon call for redemption, may not be waived without the written consent of the Holders of all the Obligations (with respect to which such payment default exists) at the time Outstanding.

(d) In case of any waiver by the Master Trustee of an Event of Default hereunder, the Members of the Obligated Group, the Master Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Section 4.10 Appointment of Receiver. Upon the occurrence of any Event of Default described in Subsection (a), (d), (e) and (f) of Section 4.01 hereof, unless the same shall have been waived as herein provided, the Master Trustee shall be entitled as a matter of right if it shall so elect, (i) forthwith and without declaring the Obligations to be due and payable, (ii) after declaring the same to be due and payable, or (iii) upon the commencement of an action to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of the Master Trustee or the Holders, to the appointment of a receiver or receivers of any or all of the Property of the Obligated Group with such powers as the court making such appointment shall confer. Each Member of the Obligated Group, respectively, hereby consents and agrees, and will if requested by the Master Trustee consent and agree at the time of application by the Trustee for appointment of a receiver of its Property, to the appointment of such receiver of its Property and that such receiver may be given the right, power and authority, to the extent the same may lawfully be given, to take possession of and operate and deal with such Property and the revenues, profits and proceeds therefrom, with like effect as the Member of the Obligated Group could do so, and to borrow money and issue evidences of indebtedness as such receiver.

Section 4.11 Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this instrument or the provisions hereof invalid or unenforceable under the provisions of any applicable law.

Section 4.12 Notice of Default. The Master Trustee shall, within ten (10) days after it has actual knowledge of the occurrence of an Event of Default, mail, by first class mail, to all Holders as the names and addresses of such Holders appear upon the books of the Master Trustee, notice of such Event of Default known to the Master Trustee, unless such Event of Default shall have been cured before the giving of such notice; provided that, except in the case of default in the payment of the principal of or premium, if any, or interest on any of the Obligations and the Events of Default specified in subsections (e) and (f) of Section 4.01, the Master Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors or any responsible officer of the Master Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

## **THE MASTER TRUSTEE**

Section 5.04 Removal and Resignation of the Master Trustee. The Master Trustee may resign on its motion or may be removed at any time by an instrument or instruments in writing signed by the Holders of not less than a majority of the principal amount of Obligations then Outstanding or, if no Event of Default shall have occurred and be continuing, by an instrument in writing signed by the Obligated Group Representative. No such resignation or removal shall become effective unless and until a successor Master Trustee (or temporary successor trustee as provided below) has been appointed and

has assumed the trusts created hereby. Written notice of such resignation or removal shall be given to the Members of the Obligated Group and to each Holder by first class mail at the address then reflected on the books of the Master Trustee and such resignation or removal shall take effect upon the appointment and qualification of a successor Master Trustee. A successor Master Trustee may be appointed by the Obligated Group Representative or, if no such appointment is made by the Obligated Group Representative within thirty (30) days of the date notice of resignation or removal is given, the Holders of not less than a majority in aggregate principal amount of Obligations Outstanding. In the event a successor Master Trustee has not been appointed and qualified within sixty (60) days of the date notice of resignation is given, the Master Trustee, any Member of the Obligated Group or any Holder may apply to any court of competent jurisdiction for the appointment of a temporary successor Master Trustee to act until such time as a successor is appointed as above provided.

Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Master Trustee shall be a trust company or bank having the powers of a trust company as to trusts, qualified to do and doing trust business in one or more states of the United States of America and having an officially reported combined capital, surplus, undivided profits and reserves aggregating at least \$50,000,000, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Every successor Master Trustee howsoever appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to each Member of the Obligated Group an instrument in writing, accepting such appointment hereunder, and thereupon such successor Master Trustee, without further action, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor, and such predecessor shall execute and deliver an instrument transferring to such successor Master Trustee all the rights, powers and trusts of such predecessor. The predecessor Master Trustee shall execute any and all documents necessary or appropriate to convey all interest it may have to the successor Master Trustee. The predecessor Master Trustee shall promptly deliver all material records relating to the trust or copies thereof and, on request, communicate all material information it may have obtained concerning the trust to the successor Master Trustee.

Each successor Master Trustee, not later than ten (10) days after its assumption of the duties hereunder, shall mail a notice of such assumption to each registered Holder.

## **SUPPLEMENTS AND AMENDMENTS**

Section 6.01 Supplements Not Requiring Consent of Holders. The Obligated Group Representative, on behalf of the Members, when authorized by resolution or other action of equal formality by the Governing Body of the Members for whose benefit an Obligation is being authorized, and the Master Trustee may, without the consent of or notice to any of the Holders enter into one or more Supplements for one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission herein.
- (b) To correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising hereunder and which shall not materially and adversely affect the interests of the Holders.
- (c) To grant or confer ratably upon all of the Holders any additional rights, remedies, powers or authority that may lawfully be granted or conferred upon them subject to the provisions of Section 6.02(a).

(d) To qualify this Master Indenture under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect.

(e) To create and provide for the issuance of Indebtedness as permitted hereunder, so long as no Event of Default has occurred and is continuing under the Master Trust Indenture.

(f) To obligate a successor to any Member of the Obligated Group as provided in Section 3.11.

(g) To comply with the provisions of any federal or state securities law.

(h) So long as no Event of Default has occurred and is continuing under this Master Indenture and so long as no event which with notice or the passage of time or both would become an Event of Default under this Master Indenture has occurred and is continuing, to make any change to the provisions of this Master Indenture if the following conditions are met:

(i) the Obligated Group Representative delivers to the Master Trustee prior to the date such amendment is to take effect either (A) evidence satisfactory to the Master Trustee to the effect that there exists for each Related Bond or Obligation, Credit Enhancement (as defined in Section 3.11) or (B) evidence satisfactory to the Master Trustee from each rating agency then rating each such Related Bond and Obligation that, on the date the proposed change is to take effect, each such Related Bond and Obligation rated by such rating agency will be rated based on such credit enhancement not lower than the rating applicable to such Related Bond or Obligation on the day prior to the effective date of such change;

(ii) with respect to each outstanding Related Bond, an Opinion of Bond Counsel (which counsel and opinion, including without limitation the scope, form, substance and other aspects thereof, are not unacceptable to the Master Trustee) to the effect that the proposed change will not adversely affect the validity of any Related Bond or any exclusion from gross income for federal income taxation purposes of interest payable thereon to which such Bond would otherwise be entitled.

#### Section 6.02 Supplements Requiring Consent of Holders.

(a) Other than Supplements referred to in Section 6.01 hereof and subject to the terms and provisions and limitations contained in this Article and not otherwise, the Holders of not less than 51% in aggregate principal amount of Obligations then Outstanding shall have the right, with the consent of each Credit Facility Issuer, from time to time, anything contained herein to the contrary notwithstanding, to consent to and approve the execution by the Obligated Group Representative, on behalf of the Members, when authorized by resolution or other action of equal formality by the Governing Body of the Members for whose benefit the Obligation is being authorized, and the Trustee of such Supplements as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein; *provided, however*, nothing in this Section shall permit or be construed as permitting a Supplement which would:

(i) Effect a change in the times, amounts or currency of payment of the principal of, premium, if any, and interest on any Obligation or a reduction in the principal amount or redemption price of any Obligation or the rate of interest thereon, without the consent of the Holder of such Obligation;

(ii) Except as otherwise permitted in this Master Indenture or an existing Supplement, permit the preference or priority of any Obligation over any other Obligation, without the consent of the Holders of all Obligations then Outstanding; or

(iii) Reduce the aggregate principal amount of Obligations then Outstanding the consent of the Holders of which is required to authorize such Supplement without the consent of the Holders of all Obligations then Outstanding.

(b) If at any time each Member of the Obligated Group shall request the Master Trustee to enter into a Supplement pursuant to this Section, which request is accompanied by a copy of the resolution or other action of its Governing Body certified by its secretary or assistant secretary or if it has no secretary or assistant secretary, its comparable officer, and the proposed Supplement and if within such period, not exceeding three years, as shall be prescribed by each Member of the Obligated Group following the request, the Master Trustee shall receive an instrument or instruments purporting to be executed by the Holders of not less than the aggregate principal amount or number of Obligations specified in subsection (a) of this Section 6.02 for the Supplement in question which instrument or instruments shall refer to the proposed Supplement and shall specifically consent to and approve the execution thereof in substantially the form of the copy thereof as on file with the Master Trustee, thereupon, but not otherwise, the Master Trustee may execute such Supplement in substantially such form, without liability or responsibility to any Holder, whether or not such Holder shall have consented thereto.

(c) Any such consent shall be binding upon the Holder giving such consent and upon any subsequent Holder of such Obligation and of any Obligation issued in exchange therefor (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by the Holder of such Obligation giving such consent or by a subsequent Holder thereof by filing with the Master Trustee, prior to the execution by the Master Trustee of such Supplement, such revocation and, if such Obligation is transferable by delivery, proof that such Obligation is held by the signer of such revocation in the manner permitted by Section 8.01 of this Master Indenture. At any time after the Holders of the required principal amount or number of Obligations shall have filed their consents to the Supplement, the Master Trustee shall make and file with each Member of the Obligated Group a written statement to that effect. Such written statement shall be conclusive that such consents have been so filed.

(d) If the Holders of the required principal amount of the Obligations Outstanding shall have consented to and approved the execution of such Supplement as herein provided, no Holder shall have any right to object to the execution thereof, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Master Trustee or any Member of the Obligated Group from executing the same or from taking any action pursuant to the provisions thereof

## **SATISFACTION AND DISCHARGE OF INDENTURE**

Section 7.01 Satisfaction and Discharge of Indenture. If (i) the Obligated Group Representative shall deliver to the Master Trustee for cancellation all Obligations theretofore authenticated (other than any Obligations which shall have been mutilated, destroyed, lost or stolen and which shall have been replaced or paid as provided in the Supplement) and not theretofore cancelled, or (ii) all Obligations not theretofore cancelled or delivered to the Master Trustee for cancellation shall have become due and payable and money sufficient to pay the same shall have been deposited with the Master Trustee, or (iii) all Obligations that have not become due and payable and have not been cancelled or delivered to the Master Trustee for cancellation shall be Defeased Obligations, and if in all cases the Members of the Obligated Group shall also pay or cause to be paid all other sums payable hereunder by



the Members of the Obligated Group or any thereof, then this Master Indenture shall cease to be of further effect, and the Master Trustee, on demand of the Members of the Obligated Group and at the cost and expense of the Members of the Obligated Group, shall execute proper instruments acknowledging satisfaction of and discharging this Master Indenture. Each Member of the Obligated Group, respectively, hereby agrees to reimburse the Master Trustee for any costs or expenses theretofore and thereafter reasonably and properly incurred by the Master Trustee in connection with this Master Indenture or such Obligations.

## CONCERNING THE HOLDERS

### Section 8.01 Evidence of Acts of Holders.

(a) In the event that any request, direction or consent is requested or permitted hereunder of the Holders of any Obligation securing an issue of Related Bonds, the registered owners of such Related Bonds then outstanding shall be deemed to be such Holders for the purpose of any such request, direction or consent in the proportion that the aggregate principal amount of such series of Related Bonds then outstanding held by each such owner of Related Bonds bears to the aggregate principal amount of all Related Bonds of such series then outstanding; provided however that if any portion of such Related Bonds is secured by a Credit Facility, the applicable Credit Facility Issuer shall be deemed to be the Holder for the purpose of any such request, direction or consent with respect to the portion of such Related Bonds secured by the Credit Facility. Notwithstanding the foregoing, the request, consent or direction of the applicable Credit Facility Issuer shall not be required if a Credit Facility Default then exists with respect to such Credit Facility Issuer.

(b) As to any request, direction, consent or other instrument provided hereby to be signed and executed by the Holders, such action may be in any number of concurrent writings, shall be of similar tenor, and may be signed or executed by such Holders in person or by agent appointed in writing.

(c) Proof of the execution of any such request, direction, consent or other instrument or of the writing appointing any such agent and of the ownership of Obligations, if made in the following manner, shall be sufficient for any of the purposes hereof and shall be conclusive in favor of the Master Trustee and the Members of the Obligated Group, with regard to any action taken by them, or either of them, under such request, direction or consent or other instrument, namely:

(i) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments in such jurisdiction, that the person signing such writing acknowledged before him the execution thereof, or by the affidavit of a witness of such execution; and

(ii) The ownership of Related Bonds may be proved by the registration books for such Related Bonds maintained pursuant to the Related Bond Indenture.

(d) Nothing in this Section shall be construed as limiting the Master Trustee to the proof herein specified, it being intended that the Master Trustee may accept any other evidence of the matters herein stated which it may deem sufficient.

(e) Any action taken or suffered by the Master Trustee pursuant to any provision hereof upon the request or with the assent of any person who at the time is the Holder of any Obligation, shall be conclusive and binding upon all future Holders of the same Obligation.



(f) In the event that any request, direction or consent is requested or permitted hereunder of the Holders of an Obligation that constitutes a Guaranty, for purposes of any such request, direction or consent, the principal amount of such Obligation shall be deemed to be the stated principal amount of such Obligation.

## **CERTAIN PROVISIONS OF THE SUPPLEMENTAL INDENTURE FOR OBLIGATION NO. 7**

The following are definitions of certain words and terms used in the Supplemental Indenture for Obligation No. 7 and used in this Official Statement, and excerpts of certain provisions of the Supplemental Indenture for Obligation No. 7. The following should not be regarded as a full statement of the Supplemental Indenture for Obligation No. 7. Reference is made to the Supplemental Indenture for Obligation No. 7 in its entirety for a full and complete statement of the provisions thereof, a copy of which is on file with the Trustee.

### **DEFINITIONS USED IN THE SUPPLEMENTAL INDENTURES**

“Authority” means the Dormitory Authority of the State of New York, and any legal successor or successors thereto.

“Authorized Officer” means in the case of the Authority, the Chair, the Vice-Chair, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Executive Director, the Deputy Executive Director, the Chief Financial Officer, the Managing Director, the Managing Director of Construction, Managing Director of Portfolio Management, the Chief Information Officer, General Counsel and any other person authorized by a resolution or the by-laws of the Authority, from time to time, to perform any specific act or execute any specific document;

“Bond Trustee” means The Bank of New York, a banking organization duly organized under the laws of the State of New York and any successor to its duties under the Series 2008 Indenture.

“Bondholder” means the registered owner of any Bonds.

“Bonds” means the Series 2008 Bonds and any other bonds issued under the Series 2008 Indenture and a Series Resolution.

“Consultant” means a firm or firms which is not, and no member, stockholder, director, officer, trustee or employee of which is, an officer, director, trustee or employee of any Member of the Obligated Group or any Affiliate, and which is a professional management consultant of national or regional repute for having the skill and experience necessary to render the particular report required by the provision hereof in which such requirement appears and which is acceptable to the Master Trustee and the Authority.

“Control Agreement” means any agreement whereby any Member of the Obligated Group, a secured party and a banking institution have agreed in an authenticated record (such as a signed writing) that the banking institution will comply with instructions originated by the secured party directing disposition of the funds in a deposit account held by such banking institution as security for the benefit of the secured party, without further consent by the Obligated Group.

“Days-Cash-On-Hand” means, for the Obligated Group, as of any date (i) the Member’s unencumbered cash and marketable securities (valued at current market value) on such date, together with any moneys or securities deposited or escrowed for the payment of debt service on Indebtedness and minus the aggregate principal amount of Short-Term Indebtedness Outstanding on such date, divided by (ii) for the 12-month period ending on such date, Operating Expenses, minus depreciation and amortization and other non-cash charges divided by (B) 365.

“Defeasance Security” means any of the following: (a) a Government Obligation of the type described in clauses (i), (ii), (iii) or (iv) of the definition of Government Obligations (other than an obligation subject to variation in principal repayment); Federal Agency Obligations described in clauses (i) or (ii) of the definition of Federal Agency Obligations; and an Exempt Obligation, provided such Exempt Obligation (i) is not subject to redemption prior to maturity other than at the option of the holder thereof or as to which irrevocable instructions have been given to the trustee of such Exempt Obligation by the obligor thereof to give due notice of redemption and to call such Exempt Obligation for redemption on the date or dates specified in such instructions and such Exempt Obligation is not otherwise subject to redemption prior to such specified date other than at the option of the holder thereof, (ii) is secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or Government Obligations, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such Exempt Obligation on the maturity date thereof or the redemption date specified in the irrevocable instructions referred to in clause (i) above, (iii) as to which the principal of and interest on the direct obligations of the United States of America which have been deposited in such fund, along with any cash on deposit in such fund, are sufficient to pay the principal of and interest and redemption premium, if any, on such Exempt Obligation on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in clause (i) above, and (iv) is rated by at least two nationally recognized statistical rating services in the highest rating category for such Exempt Obligation; provided, however, that (1) such term shall not include any interest in a unit investment trust or mutual fund or (2) any obligation that is subject to redemption prior to maturity other than at the option of the holder thereof.

“EBITDA” means, for the Obligated Group on a consolidated basis, the sum, without duplication, of the following: (a) Excess (Deficiency) of Revenues Over Expenses (as defined by and in conformity with GAAP in accordance with Not-for-Profit accounting); plus (b) interest expense; plus (c) taxes on Excess (Deficiency) of Revenues Over Expenses; plus (d) depreciation expenses; plus (e) amortization expense; plus (f) all other non-cash, non-recurring charges and expenses; plus (g) loss from any sale of assets other than the sales in the ordinary course of business; plus (h) management fees; minus (i) gains from any sale of assets, other than sales in the ordinary course of business; minus (j) other extraordinary or non-recurring gains, all determined in accordance with GAAP on a consistent basis with the latest audited financial statements of the Obligated Group.

“Exempt Obligation” means any of the following: (i) an obligation of any state or territory of the United States of America, any political subdivision of any state or territory of the United States of America, or any agency, authority, public benefit corporation or instrumentality of such state, territory or political subdivision, the interest on which is excludable from gross income under Section 103 of the Code, which is not a “specified private activity bond” within the meaning of Section 57(a)(5) of the Code and which, at the time an investment therein is made or such obligation is deposited in any fund or account hereunder, is rated, without regard to qualification of such rating by symbols such as “+” or “-” and numerical notation, no lower than the second highest rating category for such obligation by at least two nationally recognized statistical rating services; (ii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing; and (iii) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

“Federal Agency Obligation” means any of the following: (i) an obligation issued by any federal agency or instrumentality approved by the Authority; (ii) an obligation the principal of and interest on which are fully insured or guaranteed as to payment by a federal agency approved by the Authority; (iii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing; and (iv) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

“Funded Debt” means, for the Obligated Group, on a consolidated basis, the sum of all interest bearing indebtedness and capitalized leases.

“Government Obligation” means any of the following: (i) a direct obligation of the United States of America; (ii) an obligation the principal of and interest on which are fully insured or guaranteed as to payment of principal and interest by the United States of America; (iii) an obligation to which the full faith and credit of the United States of America are pledged; (iv) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing; and (v) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

“Leverage Ratio” means, for the Obligated Group, on a consolidated basis, a ratio of the Funded Debt of the Obligated Group to the EBITDA of the Obligated Group.

“Obligated Group” means, collectively, the Members of the Obligated Group.

“Person” means an individual, association, unincorporated organization, limited liability company, corporation, partnership, joint venture, business trust or a government or an agency or a political subdivision thereof, or any other entity.

“Related Credit Facility” means the Irrevocable Letter of Credit issued by HSBC Bank USA, National Association in favor of the Bond Trustee and any extension, renewal, replacement or substitution thereof to the extent it provides for payment of the Series 2008 Bonds or under the Series 2008 Loan Agreement.

“Related Reimbursement Agreement” means the Letter of Credit Reimbursement Agreement among the Credit Facility Issuer and the Members of the Obligated Group dated November 1, 2008, as the same may be amended or supplemented from time to time.

“Repository” means, at any time, a then-existing nationally recognized municipal securities information repository, as recognized from time to time by the United States Securities and Exchange Commission for the purposes referred to in its Rule 15-c 2-12 under the Securities Exchange Act of 1934.

“Required Ratios” shall mean a Long-Term Debt Service Coverage Ratio of at least 1.25, a Leverage Ratio of not more than 5.0 to 1.0, and Days-Cash-on-Hand of at least 30.

“Series 2008 Bond Indenture” means the Catholic Health System Obligated Group Revenue Bond Resolution adopted by the Authority on October 25, 2006, as supplemented by the Series Resolution Authorizing Catholic Health System Obligated Group Revenue Bonds, Series 2008.

“Series 2008 Loan Agreement” means the Loan Agreement between the Authority and Mercy Hospital of Buffalo dated as of October 29, 2008.

“Testing Date” means each June 30 and December 31 for Days-Cash-on-Hand and March 31, June 30, September 30 and December 31 for all other purposes.

“Transfer” means any act or occurrence the result of which is to dispossess any Person of any asset or interest therein, including specifically, but without limitation, the forgiveness of any debt.

## **ISSUANCE OF THE SERIES 2008 OBLIGATION**

Section 2. There is hereby created and authorized to be issued the Series 2008 Obligation in the aggregate principal amount of Twenty-Four Million Seven Hundred Thousand Dollars (\$24,700,000), designated “Catholic Health System Obligated Group Obligation No. 7”. The Series 2008 Obligation shall be dated as of November 19, 2008, and shall be payable in such amounts, at such times and in such manner and shall have such other terms and provisions as are set forth in the form of Obligation No. 7.

The aggregate principal amount of the Series 2008 Obligation is limited to the amount stated in this Section except for any Obligation authenticated and delivered in lieu of another Obligation as provided in Section 8 hereof with respect to any Obligation destroyed, lost, or, subject to the provisions of Section 7 of this Supplement, upon transfer of registration of the Series 2008 Obligation.

## **PAYMENTS OF THE SERIES 2008 OBLIGATIONS; CREDITS**

Section 4. (a) Payments on the Series 2008 Obligation are payable in any coin or currency of the United States of America which on the payment date is legal tender for the payment of public and private debts. Except as provided in subsections (b) and (c) of this Section with respect to credits, payments on the Series 2008 Obligation shall be made at the times and in the amounts specified in the Series 2008 Obligation in immediately available funds by the Members depositing the same with or to the account of the Bond Trustee at or prior to the day such payments shall become due or payable (or the next preceding Business Day as defined in the Series 2008 Indenture if such date is not a Business Day) and giving written notice to the Master Trustee of each payment on the Series 2008 Obligation, specifying the amount paid and identifying such payment as a payment on the Series 2008 Obligation.

(b) The Obligated Group shall receive credit for payment on the Series 2008 Obligation, in addition to any credits resulting from payment or prepayment from other sources, including payments made under the Master Indenture, for payments made directly to the Bond Trustee by any Member of the Obligated Group pursuant to the Series 2008 Obligation.

(c) The Obligated Group shall receive credit for payment on the Series 2008 Obligation, in addition to any credits resulting from payment or prepayment from other sources, including payments made under the Master Indenture, as follows:

(i) On installments of interest on the Series 2008 Obligation in an amount equal to moneys deposited in the Debt Service Fund created under the Series 2008 Indenture which amounts are available to pay interest on the Series 2008 Bonds and to the extent such amounts have not previously been credited against payments on the Series 2008 Obligation; provided, however, that no credit will be recognized for moneys from draws under the Related Credit Facility until such amount is also on deposit in the Credit Facility Repayment Fund.

(ii) On installments of principal on the Series 2008 Obligation in an amount equal to moneys deposited in the Debt Service Fund created under the Series 2008 Indenture which amounts are available to pay principal of the Series 2008 Bonds and to the extent such amounts have not previously been credited against payments on the Series 2008 Obligation; provided, however, that no credit will be recognized for moneys from draws under the Related Credit Facility until such amount is also on deposit in the Credit Facility Repayment Fund..

(iii) On installments of principal of and interest on the Series 2008 Obligation in an amount equal to the principal amount of Series 2008 Bonds which have been called by the Bond Trustee for redemption prior to maturity and for the redemption of which sufficient

amounts in cash are on deposit in the Debt Service Fund created under the Series 2008 Indenture to the extent such amounts have not been previously credited against payments on the Series 2008 Obligation, and interest on such Series 2008 Bonds from and after the date fixed for redemption thereof. Such credits shall be made against the installments of principal of and interest on the Series 2008 Obligation which would be due, but for such call for redemption, to pay principal of and interest on such Series 2008 Bonds when due at maturity; provided, however, that no credit will be recognized for moneys from draws under the Related Credit Facility until such amount is also on deposit in the Credit Facility Repayment Fund.

(iv) On installments of principal of and interest, respectively, on Obligation No. 1 in an amount equal to the principal amount of Series 2008 Bonds acquired by any Member of the Obligated Group and delivered to the Bond Trustee and cancelled. Such credits shall be made against the installments of principal of and interest on the Series 2008 Obligation which would be due, but for such cancellation, to pay principal of and interest on such cancelled Series 2008 Bonds through maturity thereof.

## **PREPAYMENTS OF THE SERIES 2008 OBLIGATIONS**

Section 5. (a) So long as all amounts which have become due under the Series 2008 Obligation have been paid, the Members may from time to time pay in advance all or part of the amounts to become due under the Series 2008 Obligation. Prepayment may be made by payments of cash and/or surrender of Series 2008 Bonds, as contemplated by Section 4(c)(iii) hereof. All such prepayments (and the additional payment of any amount necessary to pay the applicable premium, if any, payable upon the redemption of Series 2008 Bonds) shall, upon receipt, be deposited with the Bond Trustee in the Debt Service Fund under the Related Bond Indenture and, at the request of and as determined by the Authorized Representative of the Authority, used for the redemption or purchase of Outstanding Series 2008 Bonds in the manner and subject to the terms and conditions set forth in the Series 2008 Indenture. Notwithstanding any such prepayment or surrender of Series 2008 Bonds, as long as any Series 2008 Bond remains Outstanding or any additional payments required to be made hereunder remain unpaid, the Members shall not be relieved of their obligations hereunder.

(b) Prepayments made under subsection (a) of this Section shall be credited against amounts to become due on the Series 2008 Obligation as provided in Section 4(c)(iii) hereof.

(c) The Obligated Group may also prepay all of its Indebtedness under the Series 2008 Obligation by providing for the payment of Series 2008 Bonds in accordance with Article 12 of the Series 2008 Indenture and prepaying all amounts due to the Credit Facility Issuer, if any, under the Related Reimbursement Agreement.

## **RIGHT TO REDEEM**

Section 9. The Series 2008 Obligation shall be subject to redemption, in whole or in part, prior to the maturity, in an amount equal to the principal amount of any Series 2008 Bond (i) called for redemption pursuant to the Series 2008 Indenture or (ii) purchased for cancellation by the Bond Trustee. The Series 2008 Obligation shall be subject to redemption on the date any Series 2008 Bond shall be so redeemed or purchased, and in the manner provided herein.



## **PARTIAL REDEMPTION OF THE SERIES 2008 OBLIGATION**

Section 10. Upon the call for redemption, and the surrender of the Series 2008 Obligation for redemption in part only, and payment of all unreimbursed amounts due under the Related Reimbursement Agreement, the Obligated Group Representative shall execute and the Master Trustee shall authenticate and deliver to or upon the written order of the Holder thereof, at the expense of the Members, a new Obligation in principal amount equal to the unredeemed portion of the Series 2008 Obligation, which old Series 2008 Obligation so surrendered to the Master Trustee pursuant to this Section shall be cancelled by it and delivered to, or upon the order of, the Obligated Group Representative.

The Obligated Group Representative may agree with the Holder of the Series 2008 Obligation that such Holder may, in lieu of surrendering the Series 2008 Obligation for a new fully registered Series 2008 Obligation, endorse on the Series 2008 Obligation a notice of such partial redemption, which notice shall set forth, over the signature of such Holder, the payment date, the principal amount redeemed and the principal amount remaining unpaid. Such partial redemption shall be valid upon payment of the amount thereof to the registered owner of the Series 2008 Obligation and the Obligated Group and the Master Trustee shall be fully released and discharged from all liability to the extent of such payment irrespective of whether such endorsement shall or shall not have been made upon the reverse of the Series 2008 Obligation by the owner thereof and irrespective of any error or omission in such endorsement.

## **DISCHARGE OF SUPPLEMENT**

Section 13. Upon payment by the Obligated Group of a sum, in cash or Defeasance Securities (as defined in the Series 2008 Indenture) or both, and payment of all amounts due and arising under the Series 2008 Loan Agreement and unreimbursed amounts owing under the Related Reimbursement Agreement, sufficient, together with any other cash and Defeasance Securities held by the Bond Trustee and available for such purpose, to cause all Outstanding Series 2008 Bonds to be deemed to have been paid within the meaning of Article 12 of the Series 2008 Indenture and to pay all other amounts referred to in Article 12 of the Series 2008 Indenture and all amounts due under the Series 2008 Loan Agreement and to the Credit Facility Issuer, if any, pursuant to the provisions of the Related Reimbursement Agreement, the Series 2008 Obligation shall be deemed to have been paid and to be no longer Outstanding under the Master Indenture and this Supplement shall be discharged.

## **COVENANTS WITH THE AUTHORITY AND THE CREDIT FACILITY ISSUER**

Section 14. In consideration for the issuance by the Authority of the Series 2008 Bonds and the issuance by the Credit Facility Issuer of the Credit Facility, if any, each of the Members of the Obligated Group covenant for the benefit of the Authority and the Credit Facility Issuer that they shall (unless otherwise agreed to or consented to in writing by the Authority and the Credit Facility Issuer, if any), in addition to the covenants set forth in the Master Indenture, comply with the covenants set forth below in this Section 14 for so long as any Series 2008 Bonds remain Outstanding or there is Outstanding any unreimbursed amount owing to any Credit Facility Issuer in connection with any Credit Facility. These covenants may be waived by the Authority, in its sole discretion, and by the Credit Facility Issuer, if applicable, without the consent of the Holders of the Series 2008 Bonds secured by the Obligations issued hereunder or the Related Bond Trustee

(a) Disposition of Cash and Investments; Unsecured Loans to Non-Members. No Member of the Obligated Group will loan, donate, transfer, exchange or otherwise dispose of cash, marketable securities or other liquid investments to any Person that is not a Member of the Obligated Group, unless immediately thereafter, the aggregate amount of such loans, donations, transfers, exchanges

or other disposition to Persons that are not Members of the Obligated Group from December 31, 2005 to the date of such loan, donation, transfer, exchange or disposition, does not exceed \$7,000,000.

(b) Required Ratios.

(i) The Obligated Group shall maintain the Required Ratios. The Required Ratios will be tested on each Testing Date based on the Obligated Group's unaudited financial statements as of each Testing Date. The Obligated Group Representative shall deliver a Certificate of an Authorized Officer not later than 45 days following each Testing Date to the Master Trustee and so long as any Series 2008 Bonds are Outstanding, the Authority and the Credit Facility Issuer, if any, certifying as to the compliance with Required Ratios.

(ii) If on any Testing Date the Long-Term Debt Service Coverage Ratio is less than 1.50, the Leverage Ratio is greater than 5.0 to 1.0 or Days-Cash-on-Hand is less than 30, then the Obligated Group shall within seventy-five (75) days following such Testing Date, but in no event less than twenty (20) days following notice from the Authority or the Credit Facility Issuer, if any, so to do, (A) prepare a scope of work for a Consultant in form and content acceptable to the Authority and the Credit Facility Issuer, if any, (B) retain a Consultant, (C) require such Consultant, within fifteen (15) days of its appointment, to commence work on a report to be delivered to the Obligated Group, the Master Trustee, the Authority and the Credit Facility Issuer, if any, recommending changes with respect to the operation and management of the Health Care Facilities and (D) to the extent permitted by law, implement such Consultant's recommendation in a timely manner. Any report of a Consultant prepared within the previous 12-month period pursuant to this subsection (b) shall, if addressed to the Authority and the Credit Facility Issuer, if any, and meeting the requirements of this clause (ii), be deemed to satisfy the foregoing requirement to procure a Consultant's report.

(iii) For so long as the Obligated Group is not in compliance with subsection b(ii) above, the Obligated Group Representative shall deliver to the Authority and the Credit Facility Issuer, if any: (A) within thirty (30) days of delivery of a Consultant's report pursuant to paragraph (ii) above, a certified copy of a resolution adopted by the Obligated Group Representative's Governing Body accepting such report on behalf of itself and the other Members of the Obligated Group and a report setting forth in reasonable details the steps the Obligated Group proposes to take to implement the recommendations of such Consultant; and (B) quarterly reports showing the progress made by the Obligated Group in achieving a Long-Term Debt Service Coverage Ratio of not less than 1.50 to 1.0, a Leverage Ratio of not greater than 5.0 to 1.0 and Days-Cash-On-Hand of not less than 30, and, if applicable, implementing the recommendations of the Consultant.

(c) Limitations on Indebtedness. No Member of the Obligated Group may incur additional Long-Term Indebtedness except (i) Indebtedness permitted pursuant to Section 3.06(a) of the Master Indenture, and (ii) additional Long-Term Indebtedness consented to in writing by the Authority and the Credit Facility Issuer, if any. Notwithstanding the foregoing, the Obligated Group shall obtain the written consent of the Credit Facility Issuer prior to incurring Long-Term Indebtedness to the extent that the aggregate amount of Long-Term Indebtedness incurred by the Obligated Group since the date of the applicable Credit Facility exceeds \$50,000,000. The Master Trustee shall execute such amendments to, spreaders of, or other documents relating to the Mortgages to secure such permitted additional Long-Term Indebtedness on a parity with all other Indebtedness secured from time to time by the Mortgages. If the Authority and Credit Facility Issuer consent is not required, any Member of the Obligated Group proposing to incur Long-Term Indebtedness, whether evidenced by Obligations issued or by evidences of Indebtedness entered into pursuant to documents other than the Master Indenture, shall, at least seven (7)

days prior to the date of the incurrence of such Indebtedness, give written notice of its intention to incur such Indebtedness, including in such notice the amount of Indebtedness to be incurred and the subsection of Section 3.06 of the Master Indenture under which it will be incurred, to the Authority for so long as Series 2008 Bonds of the Authority are Outstanding and the Credit Facility Issuer, if any Credit Facility is applicable.

(e) Authority Consent to Certain Amendments and Transactions. Notwithstanding any provision of the Master Indenture, so long as any Series 2008 Bonds issued by the Authority remain Outstanding, the prior consent of the Authority and the Credit Facility Issuer, if any, shall be required prior to (i) any amendment of Section 3.01 [Security; Restrictions on Encumbering Property; Payment of Principal and Interest], 3.03 [Insurance], 3.05 [Limitations on Creations of Liens], or 3.06 [Limitations on Indebtedness], 3.07 [Sale, Lease or Other Disposition of Operating Assets; Disposition of Cash and Investments; Unsecured Loans to Non-Members; Sale of Accounts], or (ii) any amendment to the Master Indenture that is inconsistent with any provision of this Supplement.

(f) Filing of Audited Financial Statements, Quarterly Reports, Certificate of Compliance, Other Information. The Obligated Group covenants that it will:

(i) Within 30 days after receipt of the audit report mentioned below but in no event later than one hundred fifty (150) after the end of each Fiscal Year, furnish to the Master Trustee, the Authority, each Repository (if Members of the Obligated Group are then subject to the requirements for disclosure to Repositories pursuant to Rule 15C2-12 of the Securities and Exchange Commission), each Bondholder who is the registered owner of in excess of an aggregate \$1 million principal amount of the Series 2008 Bonds who has so requested and such other parties as an Authorized Officer of the Authority may designate, a copy of the Audited Financial Statements of the Obligated Group. Such Audited Financial Statements shall be audited by an independent public accountant satisfactory to the Authority and prepared in conformity with generally accepted accounting principles applied on a consistent basis, except that such audited financial statements may contain such changes as are concurred in by such accountants, and shall include such statements necessary for a fair presentation of financial position, statement of activity and changes in net assets and cash flows of such fiscal reporting period.

(ii) Within 30 days after receipt of the audit report mentioned above but in no event later than one hundred fifty (150) days after the end of each fiscal reporting period, file with the Authority, an Officer's Certificate stating the Required Ratios for such fiscal reporting period and stating whether, to the best knowledge of the signer, any Member of the Obligated Group is in default in the performance of any covenant contained in the Master Indenture and, if so, specifying each such default of which the signer may have knowledge.

(iii) Furnish no later than forty-five (45) days subsequent to the last day of each of the first three quarters in each Fiscal Year to (1) the Authority and such other parties as the Authority may designate, (2) if Members of the Obligated Group are then subject to the requirements for disclosures to Repositories pursuant to Rule 15C2-12 of the Securities and Exchange Commission, each Repository, (3) so long as the Related Credit Facility is outstanding, the Credit Facility Issuer that issued the Related Credit Facility and (4) each Bondholder who is the registered owner of in excess of an aggregate \$1 million principal amount of the Series 2008 Bonds who has so requested, the following information: the unaudited consolidated financial statements of the Obligated Group, including the balance sheet as of the end of such quarter, the statement of operations, changes in net assets and cash flows, utilization statistics of each Member of the Obligated Group for such quarter, including aggregate discharges per facility, patient days, average length of stay, average daily census, emergency room visits, ambulatory

surgery visits and home care visits (if applicable) and discharges by each Member of the Obligated Group by major payor mix.

(iv) Furnish annually, not later than one hundred fifty (150) days after the end of the Fiscal Year, to the Master Trustee, the Authority and such other parties as an Authorized Officer of the Authority may designate, including rating services, a certificate stating whether the Obligated Group is in compliance with the provisions hereof and such other statements, reports and schedules describing the finances, operation and management of the Obligated Group and such other information reasonably required by an Authorized Officer of the Authority.

(v) If an Event of Default shall have occurred and be continuing, file with the Authority such other financial statements and information concerning its operations and financial affairs (or of any consolidated or Obligated Group of companies, including its consolidated or combined Affiliates, including any Member of the Obligated Group) as the Master Trustee may from time to time reasonably request, excluding specifically donor records, patient records and personnel records.

(vi) Within 30 days after its receipt thereof, file with the Authority a copy of each report which any provision of the Master Indenture requires to be prepared by a Consultant or an Insurance Consultant.

(g) Withdrawal from the Obligated Group.

(i) No Member of the Obligated Group may withdraw from the Obligated Group without the prior written consent of the Obligated Group Representative; and provided further, that prior to the taking of such action, there is delivered to the Master Trustee and the Credit Facility Issuer, if any:

(A) If all amounts due on any Tax Exempt Series 2008 Bonds have not been paid to the holders thereof, there shall be delivered to the Master Trustee an Opinion of Bond Counsel, in form and substance satisfactory to the Master Trustee, to the effect that under then existing law such Member's withdrawal from the Obligated Group, whether or not contemplated on any date of delivery of any Related Bond, would not cause the interest payable on such Series 2008 Bonds to become includable in the gross income of the recipient thereof under the Code;

(B) An Officer's Certificate of a Member of the Obligated Group demonstrating either that (1) any Series 2008 Bonds issued on behalf of such Member are no longer outstanding; or (2) there has been deposited with the Master Trustee either moneys in an amount which shall be sufficient, or Defeasance Securities, which obligations are not subject to redemption prior to maturity other than at the option of the holder or which have been irrevocably called for redemption on a stated future date, the principal of and interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Master Trustee at the same time, shall be sufficient to pay when due the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, and interest due and to become due on the Series 2008 Bonds of such withdrawing Member;

(C) An Officer's Certificate of the Obligated Group Representative demonstrating that assuming such withdrawal and any payments or extinguishment of Obligations to be made in connection therewith had occurred at the beginning of the calculation period, the Long-Term Debt Service Coverage Ratio of the remaining Members for each of the most recent period of twelve (12) full consecutive calendar months preceding the date of delivery of the certificate of the Obligated Group Representative for which there are Audited Financial Statements available, taking all Long-Term Indebtedness incurred after such period into account, would not be less than 1.5 to 1.0; and

(D) A written report of a Consultant demonstrating that the forecasted average Long-Term Debt Service Coverage Ratio for the twelve full consecutive calendar months succeeding the proposed date of such withdrawal is greater than 1.5 to 1.0.

(ii) Upon the withdrawal of any Member from the Obligated Group pursuant to subsection (i) of this Section, the Master Trustee shall release or consent to the release of all collateral of such withdrawing Member held by or for the benefit of the Obligation Holders, and all liability of such Member of the Obligated Group with respect to all Obligations Outstanding under this Master Indenture shall cease.

(iii) Notwithstanding anything herein to the contrary, Mercy Hospital of Buffalo and Sisters of Charity Hospital of Buffalo, New York shall each remain a Member of the Obligated Group.

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## **Appendix E**

### **Summary of Certain Provisions of the Reimbursement Agreement**

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## APPENDIX E

### SUMMARY OF CERTAIN PROVISIONS OF THE REIMBURSEMENT AGREEMENT

The Bank will agree to issue the Letter of Credit pursuant to the terms of the Reimbursement Agreement with the Obligated Group. Reference is made to the Reimbursement Agreement for complete details of the terms thereof. The following is a brief outline of certain provisions of the Reimbursement Agreement and should not be considered a full statement thereof.

#### Issuance of the Letter of Credit

The Bank will agree, subject to the terms and conditions set forth in the Reimbursement Agreement and at the request of and for the account of the Obligated Group, to issue the Letter of Credit in favor of the Trustee.

#### Payments

The Obligated Group agrees to pay to the Bank all amounts that are drawn under the Letter of Credit, together with interest on all such amounts.

#### Fees, Commissions and Expenses

Pursuant to the Reimbursement Agreement, the Obligated Group also agrees to pay to the Bank (i) a commission on the face amount of the Letter of Credit and an administrative fee for each drawing under the Letter of Credit, and (ii) an origination fee for the issuance of the Letter of Credit. The Obligated Group also must pay any costs and expenses incurred by the Bank with respect to each drawing under the Letter of Credit, each transfer of the Letter of Credit from the Trustee to a successor trustee, the enforcement of the Bank's rights under the Reimbursement Agreement, the preparation and issuance by the Bank of the Letter of Credit and the Reimbursement Agreement and fees in connection with the syndication of the Bank's interest in the Reimbursement Agreement. Further, if a change in any law or regulation or interpretation thereof causes an increase or decrease in the costs of the Bank to issue or maintain letters of credit, such increase or decrease will be passed on to the Obligated Group pursuant to the Reimbursement Agreement.

#### Certain Affirmative and Negative Covenants

The Company makes certain affirmative and negative covenants in the Reimbursement Agreement with respect to its legal, business and financial affairs.

#### Events of Default

The following events constitute an "Events of Default" under the Reimbursement Agreement:

(a) (i) failure of the Obligated Group to reimburse the Bank for any drawing honored under any Letter of Credit as required herein, or (ii) failure of the Obligated Group to make any payment required under the Bond Financing Documents when due, or (iii) failure of the

Obligated Group to make any payment of any fees or other amounts due hereunder within five (5) Business Days after such fees or other amounts becomes due in accordance herewith;

(b) any representation or warranty in any of the Letter of Credit Documents or Bond Financing Documents, in any certificate or report furnished in connection herewith or in any amendment to the Reimbursement Agreement, shall prove to be false or misleading in any material respect when made or given or deemed made or given;

(c) (i) default shall be made in the payment of any obligation of the Obligated Group or any Member thereof for borrowed money with a principal balance of greater than \$100,000.00 (except as provided in Section 7.01(a) above), or (ii) default shall be made in respect of any agreement or obligation relating to any obligation of the Obligated Group or any Member for borrowed money, if the effect of such default or the result of any action by the obligee is to accelerate the maturity of such obligation or to permit the holder or obligee thereof (or a trustee on behalf of such holder or obligee) to cause such obligation to become due prior to the stated maturity thereof or which, with the passage of time, the giving of notice or both would constitute an event of default under any such agreement, or any such obligation shall not be paid when due after giving effect to any applicable grace period;

(d) an event of default shall have occurred and be continuing on the Term Loan;

(e) default shall be made in the due observance or performance of any covenant, condition or agreement to be performed pursuant to the Reimbursement Agreement other than as described in Section 7.01 of the Reimbursement Agreement, which shall include but not be limited to the covenant to maintain the Required Ratios, which shall continue unremedied for more than ten (10) days after notice by the Bank;

(f) any of the Letter of Credit Documents shall cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested or any party thereto shall deny that it has any further liability to the Bank with respect thereto;

(g) any Member shall (i) voluntarily commence any case, proceeding or other action or file any petition seeking relief under Title 11 of the United States Code or any other existing or future Federal domestic or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the employment of a receiver, trustee, custodian, sequestrator or similar official for the Member or for a substantial part of its respective property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take action for the purpose of effecting any of the foregoing;

(h) an involuntary case, proceeding or other action shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) the appointment of a receiver, trustee, custodian, sequestrator or similar official for any Member or for a substantial part of its property, or (ii) the winding-up or liquidation of any Member; and such

proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for 60 days;

(i) there shall be commenced against any Member any case, proceeding or other action seeking issuance of a warrant of attachment, execution, restraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged or stayed or bonded pending appeal within sixty (60) days from the entry thereof;

(j) a judgment or order for the payment of money in excess of \$250,000 (after giving effect to any applicable insurance benefits payable in connection therewith) shall be rendered against any Member and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of ten (10) consecutive days during which a stay or enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

(k) any Person shall engage in any “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any “accumulated funding deficiency” (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan, or any lien shall arise on the assets of any Member or any Commonly Controlled Entity in favor of the PBGC or a Plan, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed (or a trustee shall be appointed) to administer, or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Bank, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) any Member or any Commonly Controlled Entity shall, or in the opinion of the Bank is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could subject the Member or any of its Subsidiaries to any tax, penalty or other liabilities in the aggregate material in relation to the business, operation, property or financial or other condition of the Member or any of its Subsidiaries;

(l) any Member shall become liable at any time for remediation and/or environmental compliance expenses and/or fines, penalties or other charges in excess of \$250,000;

(m) any Material Adverse Change with respect to any Member or the Obligated Group;

(n) any default beyond any applicable notice or cure period under any of the other Letter of Credit Documents or the Bond Financing Documents;

(o) the Obligated Group or any Member thereof shall fail to perform any obligation under or there shall exist any event of default beyond any applicable notice or cure period under any other document or instrument executed and delivered by the Obligated Group or any

Member thereof to the Bank evidencing or securing the Reimbursement Agreement or otherwise in connection with the Letter of Credit, including the Bond Financing Documents and the Control Agreement;

(p) any provision of the Reimbursement Agreement, the Bond Financing Documents or the Control Agreements shall at any time for any reason cease to be valid and binding on the Obligated Group, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the Obligated Group or any Member, or a proceeding shall be commenced by any governmental agency or authority or other party having jurisdiction over the Obligated Group or any Member seeking to establish the invalidity or unenforceability thereof, or the Obligated Group shall deny that it has any or further liability or obligation under the Reimbursement Agreement;

(q) any Member shall fail to pay within thirty (30) days of notice and demand by the Bank, any installment of any assessment against the Mortgaged Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a lien on the Mortgaged Property;

(r) a Federal tax lien is filed against the Obligated Group or any Member or the Mortgaged Property and the same is not discharged of record within thirty (30) days after the same is filed unless such Federal tax lien is being diligently contested by the Obligated Group or the applicable Member, as the case may be, in good faith, and the Obligated Group or the applicable Member, as the case may be, shall have set aside cash reserves in a manner satisfactory to the Bank which, in the opinion of the Bank, will be sufficient to cover the Federal tax lien and all interest and penalties thereon; provided (i) that such Federal tax lien does not have a materially adverse effect on the business, assets or financial or other condition of the Obligated Group or the applicable Member, as the case may be, or on the Mortgaged Property, the collateral or the liens thereof, and (ii) that if, at any time, payment of such Federal tax and related charges, interest or penalties, if any, shall become necessary to prevent the enforcement of a lien because of non-payment of any such sums, then the Obligated Group or the applicable Member, as the case may be, shall pay or cause to be paid the sums in sufficient time to prevent the delivery of such tax deed;

(s) Without the consent of the Bank (which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Bank), any part of the Mortgaged Property, or any other interest of any nature whatsoever therein or any interest of any nature whatsoever in the Obligated Group or any Member (whether partnership, membership, stock, equity, beneficial, profit, loss or otherwise) or all or substantially all of the assets of the Obligated Group or any Member, is in any manner, by operation of law or otherwise, whether directly or indirectly, further encumbered, sold, transferred, assigned or conveyed, except in the ordinary course of business or as expressly permitted herein, and irrespective of whether any such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of law;

(t) Without the consent of the Bank, any of the Mortgaged Property (except for the normal replacement of the equipment and fixtures therein) is removed, demolished or materially altered, or the Mortgaged Property is not kept in good condition and repair, provided that this



provision shall not apply to obsolete fixtures and equipment no longer necessary for the operation of the Mortgaged Property;

(u) The Obligated Group or any Member shall fail to comply with any material requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Mortgaged Property within three (3) months from the issuance thereof, or the time period set forth therein, whichever is less, unless the Obligated Group or the applicable Member, as the case may be, shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement of any actions with respect thereto, the assessment of any liens or penalties or collection of the same and the creation of liens against the Mortgaged Property or sale of the Mortgaged Property or any part thereof, to satisfy the same;

(v) The Obligated Group shall fail to pay the Bank within ten (10) Business Days of demand any and all insurance premiums and/or taxes paid by the Bank pursuant to the Reimbursement Agreement or the Bond Financing Documents, together with any late payment charge and interest thereon calculated at the Default Rate;

(w) The Mortgaged Property shall become subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's lien, mechanic's or materialman's lien or other lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of the Bank by the title company insuring the lien of the Mortgages within a period of thirty (30) days after the applicable Member receives notice that the same has been filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of the Mortgages and irrespective of whether the same constitutes a perfected or inchoate lien or encumbrance on the Mortgaged Property or is only a matter of record or notice, unless, with respect to (i) only, such tax lien is being diligently contested by the Member in good faith, and the Member shall have set aside cash reserves in a manner satisfactory to the Bank which in the opinion of the Bank will be sufficient to cover the tax lien and all interest and penalties thereon; provided (i) the Bank is reasonably satisfied that such tax lien does not have a materially adverse effect on the business, assets or financial or other condition of the Obligated Group or on the Mortgaged Property, the Mortgages or the lien thereof, and (ii) that if, at any time, payment of such tax and related charges, interest or penalties, if any, shall become necessary to prevent the delivery of a tax deed conveying the Mortgaged Property or any portion thereof because of non-payment of any such sums, then the Member shall pay or cause to be paid the sums in sufficient time to prevent the delivery of such tax deed; or

(x) Any Member shall fail to maintain the licenses, certifications and permits necessary to continue operations as a hospital.

Notwithstanding anything under the caption to the contrary, a Member's failure to maintain the license necessary to continue operations as a hospital shall not constitute an Event of Default provided that (a) such failure is a result of the implementation of a recommendation of the Commission on Health Care Facilities in the 21<sup>st</sup> Century that the Health Care Facilities

operated by such Member be closed; and (b) such Member satisfies the requirements for withdrawal set forth in the Master Indenture and the applicable Supplemental Indenture.

If any Event of Default occurs under the Reimbursement Agreement, the Bank may exercise any and all remedies, legal or equitable, to collect the amounts due from the Obligated Group, including its right to notify the Authority that an Event of Default has occurred pursuant to the Reimbursement Agreement and to require a mandatory tender of the Series 2008 Bonds.

## **Appendix F**

### **Proposed Form of Approving Opinion of Bond Counsel**

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[PROPOSED FORM OF APPROVING OPINION OF BOND COUNSEL]

*Upon delivery of the Series 2008 Bonds, Harris Beach PLLC, Bond Counsel to the Authority, proposes to issue its approving opinion in substantially the following form:*

[Closing Date]

Dormitory Authority of the State of New York  
515 Broadway  
Albany, New York 12207

**Re:    \$ \_\_\_\_\_ Dormitory Authority of the State of New York  
          Catholic Health System Obligated Group Revenue Bonds, Series 2008**

Ladies and Gentlemen:

We have examined a record of proceedings relating to the sale and issuance of Authority's \$ \_\_\_\_\_ aggregate principal amount of Catholic Health System Obligated Group Revenue Bonds, Series 2008 (the "Series 2008 Bonds") of the Dormitory Authority of the State of New York (the "Authority"), a body corporate and politic constituting a public benefit corporation of the State of New York, created and existing under and pursuant to the Constitution and statutes of the State of New York, including the Dormitory Authority Act, being Chapter 524 of the Laws of 1944 of the State of New York, as amended from time to time by, including but not limited to, the Health Care Financing Consolidation Act and as incorporated thereby, the New York State Medical Care Facilities Finance Agency Act, being Chapter 392 of the Laws of the State of New York, each as amended by Chapter 83 of the Laws of 1995 of the State of New York (the "Act"). We have also examined such certificates, documents, records and matters of law as we have deemed necessary for the purpose of rendering the opinions hereinafter set forth.

The Series 2008 Bonds are issued under and pursuant to (i) the Constitution and laws of the State of New York, including in particular the Act, (ii) the Authority's Catholic Health System Obligated Group Revenue Bond Resolution adopted by the Authority on October 25, 2006 (the "General Resolution"), (iii) the Authority's Series Resolution authorizing the Series 2006 Resolution Authorizing Orange Regional Medical Center Obligated Group Revenue Bonds, Series 2008 Bonds adopted by the Authority on October 29, 2008 (the "Series 2008 Resolution" and, together with the General Resolution, the "Resolutions"); and (iv) the Bond Series Certificate relating to the Series 2008 Bonds, dated as of November \_\_, 2008, executed by an Authorized Officer of the Authority in accordance with the Resolutions (the "Series Certificate").

The Bonds are being issued for the purposes set forth in the Resolutions. All capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Resolutions.

The Series 2008 Bonds are dated their date of closing and will bear interest at the Weekly Rate for the Weekly Rate Period until converted to another Rate Mode. Interest on the Series 2008 Bonds will be payable on the first Business Day of each calendar month, commencing on December

1, 2008, for so long as the Series 2008 Bonds bear interest at the Weekly Rate. The Series 2008 Bonds shall mature on July 1 in the years and in the principal amounts as set forth in the Bond Series Certificate.

The Series 2008 Bonds are issuable initially in the form of fully registered bonds in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof. The Series 2008 Bonds are lettered and numbered “R- ” followed by the number from such bond. The Series 2008 Bonds are numbered consecutively from one upward in order of issuance.

The Series 2008 Bonds are subject to redemption prior to maturity in the manner and upon the terms and conditions set forth in the Resolutions and in the Bond Series Certificate.

The Authority has entered into a Loan Agreement with Mercy Hospital of Buffalo (the “Institution”) dated as of October 29, 2008 (the “Loan Agreement”), providing, among other things, for a loan by the Authority to the Institution of the proceeds of the Series 2008 Bonds for the purposes permitted thereby and by the Resolutions. Pursuant to the Loan Agreement, the Institution is required to make payments sufficient to pay the principal of and interest on the Series 2008 Bonds as the same shall become due, which payments have been pledged by the Authority to the Trustee for the benefit of the Holders of the Series 2008 Bonds.

The Internal Revenue Code of 1986, as amended (the “Code”), establishes certain requirements that must be met subsequent to the issuance and delivery of the Series 2008 Bonds in order that interest thereon be and remain excluded from gross income for federal income tax purposes under Section 103 of the Code. Included among these continuing requirements are certain restrictions and prohibitions on the use and investment of bond proceeds and other moneys or property, required ownership of the facilities financed with the Series 2008 Bonds by an organization described in Section 501(c)(3) of the Code or a governmental unit, and the rebate to the United States of certain earnings in respect of investments. In the Resolutions, the Loan Agreement, the Tax and Arbitrage Certificate of the Authority, dated the date hereof (the “Arbitrage Certificate”), and the Tax Certificate of the Institution, dated the date hereof (the “Tax Certificate”), the Authority and the Institution have covenanted to comply with certain procedures, and have made certain representations and certifications, designed to assure satisfaction of the requirements of the Code (the Arbitrage Certificate and the Tax Certificate being collectively referred to herein as the “Tax Documents”).

In rendering the opinion set forth in paragraph 5 below, we have assumed the accuracy of certain factual certifications of, and continuing compliance with, the covenants, representations, warranties, provisions and procedures set forth in the Resolutions, the Loan Agreement and the Tax Documents by the Authority and the Institution. In the event of the inaccuracy or incompleteness of any of the certifications made by the Authority or the Institution, or the failure by the Authority or the Institution to comply with their covenants, representations, warranties, provisions and procedures set forth in the Resolutions, the Loan Agreement and the Tax Documents, interest on the Series 2008 Bonds could become includable in gross income for federal income tax purposes retroactive to the date of the original issuance and delivery of the Series 2008 Bonds, regardless of the date on which the event causing such inclusion occurs. We render no opinion as to any federal, state or local tax consequences with respect to the Bonds, or the interest thereon, if any change occurs or action is taken or omitted under the Resolutions, the Loan Agreement or the Tax Documents or under any other relevant documents without the advice or approval of, or upon the advice or approval of any bond counsel other than, Harris Beach PLLC. In addition, we have not undertaken to determine, or



to inform any person, whether any actions taken, or not taken, or events occurring, or not occurring, after the date of issuance of the Series 2008 Bonds may affect the tax status of interest on the Series 2008 Bonds. Further, although interest on the Series 2008 Bonds is not included in gross income for purposes of federal income taxation, receipt or accrual of the interest may otherwise affect the tax liability of a holder of a Bond depending upon the tax status of such holder and such holder's other items of income and deduction. Except as stated in paragraphs 5 and 6 herein, we express no opinion as to federal or state and local tax consequences of the ownership or disposition of, or the accrual or receipt of interest on, the Series 2008 Bonds.

We have also examined one of the Series 2008 Bonds as executed and authenticated.

Based on the foregoing, and subject to the further assumptions and qualifications hereinafter set forth, we are of the opinion that:

1. The Authority is a body corporate and politic constituting a public benefit corporation of the State of New York, with the right and lawful authority and power to adopt the Resolutions and to issue the Series 2008 Bonds thereunder.

2. The Resolutions have been duly and lawfully adopted by the Authority, are in full force and effect, and constitute legal, valid and binding obligations of the Authority enforceable in accordance with their respective terms.

3. The Series 2008 Bonds have been duly and validly authorized and issued in accordance with the Constitution and statutes of the State of New York, including the Act, and in accordance with the Resolutions. The Series 2008 Bonds are legal, valid and binding special obligations of the Authority payable as provided in Resolutions, are enforceable in accordance with their terms and the terms of the Resolutions, and are entitled to the equal benefits of the Resolutions and the Act.

4. The Authority has the right and lawful authority and power to enter into the Loan Agreement and the Loan Agreement has been duly authorized, executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms.

5. Under existing statutes, regulations, administrative rulings and court decisions as of the date hereof, the interest on the Series 2008 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code. We are also of the opinion that interest on the Series 2008 Bonds is not an "item of tax preference" for purposes of computing the federal alternative minimum tax imposed on individuals and corporations; we note, however, that interest on the Series 2008 Bonds is included in "adjusted current earnings" for purposes of calculating the federal alternative minimum tax liability, if any, of certain corporations.

6. Under existing statutes, including the Act, interest on the Series 2008 Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof.

The foregoing opinions are qualified only to the extent that the enforceability of the Resolutions, the Loan Agreement and the Series 2008 Bonds may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other laws heretofore or hereafter enacted and

judicial decisions relating to or affecting the enforcement of creditors' rights or remedies or contractual obligations generally and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

In rendering the foregoing opinions we have made a review of such legal proceedings as we have deemed necessary to approve the legality and validity of the Series 2008 Bonds. In rendering the foregoing opinions we have not been requested to examine any document or financial or other information concerning the Authority or the Institution other than the record of proceedings referred to above, and we express no opinion as to the adequacy or sufficiency of any financial or other information which has been or will be supplied to purchasers of the Series 2008 Bonds.

Very truly yours



