

NEW ISSUE



Moody's: A1/VMIG1  
(See "Ratings" herein)

<b>\$26,710,000</b> <b>DORMITORY AUTHORITY OF THE STATE OF NEW YORK</b> <b>D'YOUVILLE COLLEGE</b> <b>REVENUE BONDS, SERIES 2008</b> <b>CUSIP <sup>(1)</sup> 6499036A4</b>	
<b>Dated: Date of Delivery</b>	<b>Due July 1, 2038</b>

**Payment and Security:** The Series 2008 Bonds (the "Series 2008 Bonds") are special obligations of the Dormitory Authority of the State of New York (the "Authority") payable solely from certain payments to be made by the Bank (as hereinafter defined) under the Letter of Credit (as hereinafter defined) and, if such amounts are insufficient, the Revenues (as hereinafter defined) and secured by the Letter of Credit and a pledge of (i) certain payments to be made under the Loan Agreement (the "Loan Agreement"), dated as of October 29, 2008, between D'Youville College (the "College") and the Authority, and (ii) all funds and accounts (except the Arbitrage Rebate Fund, any fund or account established for the payment of the purchase price of Option Bonds tendered for purchase and the Credit Facility Repayment Fund) established under the Authority's D'Youville College Revenue Bond Resolution, adopted October 29, 2008 (the "Resolution") and the Series Resolution, adopted on October 29, 2008, authorizing such Series (the "Series 2008 Resolution" and, together with the Resolution, the "Resolutions").

KeyBank National Association (the "Bank") has issued an irrevocable direct pay Letter of Credit (the "Letter of Credit") held by U.S. Bank National Association, New York, as trustee and tender agent (the "Trustee"), to provide for the payment of, and as security for, the Series 2008 Bonds.



The Letter of Credit provides for payment of an amount not to exceed the principal of and up to 35 days' interest on the Series 2008 Bonds, at a maximum rate of 12% per annum, and the Purchase Price of the Series 2008 Bonds tendered for purchase and not remarketed as described herein. The Letter of Credit will expire on December 10, 2013, unless terminated or extended prior to such date, in accordance with its terms. The College and the Bank will enter into a Letter of Credit Reimbursement and Construction Loan Agreement, dated as of December 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 Loan Agreement is a general obligation of the College and requires the College to pay, in addition to the fees and expenses of the Authority and the Trustee, amounts sufficient to pay, when due, the principal and Redemption Price of and interest on the Series 2008 Bonds. The obligations of the College under the Loan Agreement to make such payments are secured by a pledge of tuition and fees of the College in an amount equal to the maximum annual debt service on the Outstanding Bonds. Such pledge is subordinate to certain Prior Pledges. The Authority's interest in the Loan Agreement will be assigned to the Trustee for the benefit of Bondholders and the Bank.

**The Series 2008 Bonds will not be a debt of the State of New York (the "State") and the State will not be liable on the Series 2008 Bonds. The Authority has no taxing power.**

**Description:** The Series 2008 Bonds will be issued initially as fully registered Variable Interest Rate Bonds and Option Bonds in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof payable at the principal corporate trust office of the Trustee. The Series 2008 Bonds will bear interest through and including their date of delivery at the Initial Rate. Thereafter, the Series 2008 Bonds will bear interest at a Weekly Rate. Interest on the Series 2008 Bonds is payable on January 2, 2009 and thereafter on the first Thursday of each month (or if such Thursday is not a Business Day, the next succeeding Business Day) 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. Because the Series 2008 Bonds are secured by the Letter of Credit, this Official Statement does not contain information relating to the College or its ability to pay principal and purchase price of and interest on the Series 2008 Bonds. The investment decision to purchase the Series 2008 Bonds should be made solely on the basis of the creditworthiness of the Bank, as issuer of the Letter of Credit.**

While the Series 2008 Bonds are in the Weekly Rate Mode, the Series 2008 Bonds are subject to optional and mandatory tender for purchase as described herein. KeyBanc Capital Markets Inc. is the remarketing agent for the Series 2008 Bonds (the "Remarketing Agent").

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, Redemption Price and Purchase 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.

**Redemption or Purchase:** *The Series 2008 Bonds are subject to mandatory tender and optional tender for purchase and to redemption prior to maturity as more fully described herein.*

**Tax Exemption:** In the opinion of Bond Counsel, under existing law and assuming compliance with the tax covenants described herein, interest on the Series 2008 Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. Such interest is, however, taken into account in determining adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations. Bond Counsel is further of the opinion that interest on the Series 2008 Bonds is exempt under existing laws from personal income taxes imposed by New York State or any political subdivision thereof (including The City of New York and the City of Yonkers). See "PART 12 - TAX MATTERS" herein.

*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 Hiscock & Barclay LLP, Albany, New York, Bond Counsel, and to certain other conditions. Certain legal matters will be passed upon for the College by its counsel, Hodgson Russ, LLP, Buffalo, New York. Certain legal matters will be passed upon for the Underwriter by its counsel, Squire, Sanders & Dempsey L.L.P., New York, New York. Certain legal matters will be passed upon for the Bank by its counsel, Bond, Schoeneck & King, PLLC, Syracuse, New York and its co-counsel, Calfee, Halter & Griswold LLP, Cleveland, Ohio. The Authority expects to deliver the Series 2008 Bonds in definitive form in New York, New York, on or about December 10, 2008.*

**KeyBanc Capital Markets**

December 3, 2008

(1) A CUSIP number has been assigned by an organization not affiliated with the Authority or the College and is included solely for the convenience of the Holders of the Series 2008 Bonds. Neither the Authority nor the College is responsible for the selection or uses of this CUSIP number, nor is any representation made as to its correctness on the Series 2008 Bonds or as indicated above.

No dealer, broker, salesperson or other person has been authorized by the Authority, the Bank, the College or the Underwriter 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 Bank, the College or the Underwriter.

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 College, the Bank, the Remarketing Agent and other sources that the Authority believes are reliable. Neither the Authority nor the Underwriter guarantee the accuracy or completeness of such information, and such information is not to be construed as a representation of the Authority or of the Underwriter.

Other than with respect to information concerning the Bank hereto contained under the caption "PART 1 – INTRODUCTION – The Letter of Credit," "PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS – The Letter of Credit," "– Reduction and Reinstatement of Letter of Credit" and "– The Reimbursement Agreement" and in "PART 4 – THE BANK" and "Appendix D – Summary of Certain Provisions of the Reimbursement Agreement" herein, none of the information in this Official Statement has been supplied or verified by the Bank, and the Bank makes no representation or warranty, express 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.

The Underwriter has reviewed the information in this Official Statement pursuant to its responsibilities to investors under the federal securities law, but the Underwriter does not guarantee the accuracy or completeness of such information.

References in this Official Statement to the Act, the Resolution, the Series 2008 Resolution, the Bond Series Certificate, the Loan Agreement, the Intercreditor Agreement, the Reimbursement Agreement and the Letter of Credit do not purport to be complete. Refer to the Act, the Resolution, the Series 2008 Resolution, the Bond Series Certificate, the Loan Agreement, the Intercreditor Agreement, the Reimbursement Agreement and the Letter of Credit for full and complete details of their provisions. Copies of the Resolution, the Series 2008 Resolution, the Bond Series Certificate, the Loan Agreement, the Intercreditor Agreement, the Reimbursement Agreement, and the Letter of Credit 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 will 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 College 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  
PAUL T. WILLIAMS, JR. – EXECUTIVE DIRECTOR

515 BROADWAY, ALBANY, N.Y. 12207  
GAIL H. GORDON, ESQ. – CHAIR

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## OFFICIAL STATEMENT RELATING TO

### \$26,710,000 DORMITORY AUTHORITY OF THE STATE OF NEW YORK D'YOUVILLE COLLEGE REVENUE BONDS, SERIES 2008

#### PART 1 — INTRODUCTION

##### **Purpose of the Official Statement**

The purpose of this Official Statement, including the cover page and appendices, is to provide information about the Authority, the Bank and the College, in connection with the offering by the Authority of \$26,710,000 aggregate principal amount of its D'Youville College Revenue Bonds, Series 2008 (the "Series 2008 Bonds").

The following is a brief description of certain information concerning the Series 2008 Bonds, the Authority, the Bank and the College. A more complete description of such information and additional information that may affect decisions 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 are defined in Appendix A hereto.

##### **Purpose of the Issue**

The Series 2008 Bonds are being issued for the purpose of providing funds which, together with other available moneys, will be used (i) to finance the construction of the 2008 Project, (ii) to refund and defease the Erie County Industrial Development Agency's outstanding Adjustable Rate Demand Civic Facility Revenue Bonds (2004 D'Youville College Project), Series 2004 (the "Refunded Bonds") and (ii) to pay the Costs of Issuance of the Series 2008 Bonds. See "PART 5 — THE 2008 PROJECT," "PART 6 — THE REFUNDING PLAN" and "PART 7 — ESTIMATED SOURCES AND USES OF FUNDS."

##### **Authorization of Issuance**

The Resolution authorizes the issuance of Bonds pursuant to separate Series Resolutions for the benefit of the College. The Series 2008 Bonds will be issued pursuant to the Act, the Resolution, and the Series 2008 Resolution. The Series 2008 Bonds are the first Series of Bonds to be issued under the Resolution. In addition to the Series 2008 Bonds, the Resolution authorizes the issuance of other Series of Bonds (collectively, the "Bonds") to pay other Costs of one or more other Projects, to pay the Costs of Issuance of such Series of Bonds and to refund all or a portion of Outstanding Bonds or other notes or bonds of the Authority issued on behalf of the College. Each Series of Bonds will be separately secured from each other Series of Bonds. There is no limit on the amount of additional Bonds that may be issued under the Resolution, which Bonds may be issued at any time prior to or after the scheduled delivery date of the Series 2008 Bonds. See "PART 3 — 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 described herein. The Series 2008 Bonds will bear interest through and including their date of delivery at the Initial Rate and thereafter will bear interest at a Weekly Rate as determined by the Remarketing Agent until the Series 2008 Bonds are converted to a Daily Rate, a Term

Rate or a Fixed Rate. All Series 2008 Bonds Outstanding at the time of a conversion are to be converted to the same 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 January 2, 2009 and thereafter on the first Thursday of each month, unless such Thursday is not a Business Day, in which case interest is payable on the next succeeding Business Day.

The Series 2008 Bonds are subject to mandatory tender on a Conversion Date, the expiration of the Letter of Credit, the delivery of a Substitute Credit Facility and upon an Event of Default under the Reimbursement Agreement (and election by the Bank to effect a mandatory tender in connection therewith). While the Series 2008 Bonds bear interest at the Weekly Rate, Bondholders will have the right to tender the Series 2008 Bonds (or portion thereof under certain circumstances) as described herein. See “PART 3 — THE SERIES 2008 BONDS — Tender of the Series 2008 Bonds.”

**Payment of the Series 2008 Bonds**

The Series 2008 Bonds are special obligations of the Authority payable solely from certain payments to be made by the Bank under the Letter of Credit and, if such amounts are insufficient, the Revenues, which consist of certain payments to be made by the College under the Loan Agreement. The Loan Agreement is a general obligation of the College. See “PART 2 — SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS — Payment of the Series 2008 Bonds.”

**Security for the Series 2008 Bonds**

The Series 2008 Bonds will be secured by the payments to be made under the Letter of Credit, by the pledge and assignment to the Trustee of the Revenues, by the security interest in the Pledged Revenues, subject to the Prior Pledges, granted by the College to the Authority under the Loan Agreement and by all funds and accounts established under the Resolutions (with the exception of the Arbitrage Rebate Fund, any fund or account established for the payment of the purchase price of Option Bonds tendered for purchase and the Credit Facility Repayment Fund). See “PART 2 — SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS — Security for the Series 2008 Bonds.”

**The Letter of Credit**

Pursuant to the Reimbursement Agreement, the Bank will deliver an irrevocable direct pay letter of credit (the “Letter of Credit”), dated the date of the Series 2008 Bonds, pursuant to which the Bank will be obligated, subject to the terms and conditions of the Letter of Credit, to pay, when due, an amount not to exceed the principal of and up to 35 days interest on the Series 2008 Bonds and the Purchase Price of such Bonds tendered for purchase pursuant to the Resolutions and the Bond Series Certificate to the extent remarketing proceeds are not available for such purchase. See “PART 2 — SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS — The Letter of Credit.”

While in the Weekly Rate Mode, the Series 2008 Bonds are subject to optional and mandatory tender for purchase as described herein. Pursuant to the Letter of Credit, the Bank will be obligated to purchase Series 2008 Bonds tendered for purchase pursuant to the Bond Series Certificate to the extent remarketing proceeds are not available for such purchase. The Letter of Credit will expire on December 10, 2013 unless renewed or extended or terminated pursuant thereto. See “PART 2 — SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2008 BONDS — The Letter of Credit” and “— Reduction and Reinstatement of Letter of Credit.”

**The 2008 Project**

A portion of the proceeds of the Series 2008 Bonds will be used to finance the construction of a new 6-story academic facility. See “PART 5 — THE 2008 PROJECT.”

## **The Refunding Plan**

A portion of the proceeds of the Series 2008 Bonds will be used to refund the Refunded Bonds. Such proceeds will be used to provide for the payment of the principal and the redemption price of and interest on the Refunded Bonds. See “PART 6 — THE REFUNDING PLAN.”

## **The College**

The College is an independent, not-for-profit institution of higher education chartered by the Regents of the University of the State of New York. The College is located in Buffalo, New York.

**As described herein, the Series 2008 Bonds are secured by the Letter of Credit and are expected to be paid from amounts drawn under the Letter of Credit. Therefore, this Official Statement does not contain information relating to the College or its ability to pay principal and purchase price of and interest on the Series 2008 Bonds. The investment decision to purchase the Series 2008 Bonds should be made solely on the basis of the creditworthiness of the Bank, as issuer of the Letter of Credit. Prospective investors should look solely to the Bank and the Letter of Credit for payments of the principal and purchase price of or interest on the Series 2008 Bonds.**

## **The Authority**

The Authority is a public benefit corporation of the State, created for the purpose of financing and constructing a variety of public-purpose facilities for certain educational, healthcare, governmental and not-for-profit institutions. See “PART 9 — THE AUTHORITY.”

## **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 Loan Agreement, the Resolution, the Series 2008 Resolution, the Bond Series Certificate, the Intercreditor Agreement, the Reimbursement Agreement and the Letter of Credit. Copies of the Loan Agreement, the Resolution, the Series 2008 Resolution, the Bond Series Certificate, the Intercreditor Agreement, the Reimbursement Agreement and the Letter of Credit 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 the Bond Series Certificate” and “Appendix D — Summary of Certain Provisions of the Reimbursement Agreement” for a more complete statement of the rights, duties and obligations of the parties thereto.*

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

The Series 2008 Bonds will be special obligations of the Authority payable from proceeds received by the Trustee from drawings under the Letter of Credit and, if such amounts are insufficient, the Revenues.

Payments of principal and interest on the Series 2008 Bonds are expected 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 as described herein.

The Loan Agreement is a general obligation of the College and obligates the College to make payments to satisfy the principal and Redemption Price of and interest on Outstanding Series 2008 Bonds. Payments made by the College in respect of interest on the Series 2008 Bonds that bear interest at variable interest rates, are to be made three (3) days prior to an Interest Payment Date on such Series 2008 Bonds (or, if such day is not a Business Day, the preceding Business Day), assuming that if the interest rate is then unknown on such date, such Series 2008 Bonds will, from and after the next succeeding date on which the rates at which such Series 2008 Bonds bear interest are to be determined, bear interest at a rate per annum equal to the rate per annum on such Series 2008 Bonds on the immediately preceding Interest Payment Date, plus one hundred basis points (1.0%).

The Authority has directed the College, and the College has agreed, to make such payments directly to the Trustee. Such payments are to be applied by the Trustee to repay the Bank with respect to draws under the Letter of Credit or, if such amounts drawn under the Letter of Credit are insufficient to pay Bondholders, the payment of the principal of and interest on the Series 2008 Bonds.

The Series 2008 Bonds are not subject to mandatory redemption pursuant to any mandatory sinking fund payments. The principal amount of the Series 2008 Bonds is payable on the maturity date. However, the College has agreed with the Bank to cause the optional redemption of the Series 2008 Bonds in part on a schedule corresponding to a sinking fund schedule (the “Expected Optional Redemptions”). See “PART 3 – THE SERIES 2008 BONDS – Redemption and Purchase in Lieu of Redemption – *Optional Redemption*”.

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

The Series 2008 Bonds will be secured by the payments described above to be made under the Letter of Credit, by the Revenues, by the Authority’s security interest in the Pledged Revenues and by all funds and accounts established under the Resolution (with the exception of the Arbitrage Rebate Fund, any fund or account established for the payment of the purchase price of Option Bonds tendered for purchase and the Credit Facility Repayment Fund established to hold amounts dedicated to reimbursement of the Bank for amounts advanced under the Letter of Credit). The Revenues and the right to receive them have been pledged to the Trustee for the benefit of the Bank and the Holders of the Series 2008 Bonds.

As security for its obligations under the Loan Agreement, the College has granted to the Authority a security interest in the Pledged Revenues, subject to the Prior Pledges, consisting of, during any Bond Year, an aggregate amount of tuition charged to students and received or receivable by the College equal to the maximum annual debt service on the then Outstanding Series 2008 Bonds. The Authority has pledged and assigned to the Trustee for the benefit of the Bank and the Holders of Series 2008 Bonds its security interest in the Pledged Revenues.

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. Neither the State nor the Authority has any responsibility to make payments with respect to the Series 2008 Bonds except for the Authority’s responsibility to make payments from moneys received from the College pursuant to the Loan Agreement and from amounts held in the funds and accounts under the Resolution and pledged therefor.

Each Series of Bonds issued pursuant to the Resolution will be separately secured from each other Series of Bonds. See “Appendix C – Summary of Certain Provisions of the Resolutions and the Bond Series Certificate.”

### **Intercreditor Agreement**

In addition, in order to secure the obligations of the Authority under the Resolutions and to secure the payment of all amounts due and owing by the Authority to the Holders of the Bonds and in order to secure the obligations of the College to the Bank under the Reimbursement Agreement, the Authority will assign to the Trustee and the Bank all of its right, title and interest in the Loan Agreement (subject to certain reserved rights) pursuant to a Intercreditor Agreement, dated as of December 1, 2008, by and among the Authority, the Bank and the Trustee (the “Intercreditor Agreement”). As long as the Letter of Credit is in effect and no event has occurred which would limit the Bank’s rights under the Intercreditor Agreement, the Bank shall have the sole right (subject to certain reserved rights) to pursue (or, at its option, to direct the Trustee to pursue to the extent permitted by the Loan Agreement or the Reimbursement Agreement) remedies pursuant to the Loan Agreement or the Reimbursement Agreement.

### **The Letter of Credit**

*The following, in addition to the information provided elsewhere in this Official Statement, summarizes certain provisions of the Letter of Credit. Reference is hereby made to the Letter of Credit for the detailed terms and provisions thereof.*

The Letter of Credit which is issued in connection with the Series 2008 Bonds is irrevocable, and shall be issued in an original stated amount of \$27,017,348.00 (the "Letter of Credit Commitment"), of which \$26,710,000.00 shall be with respect to the principal of the Series 2008 Bonds or the portion of the Purchase Price corresponding to the principal thereof, and \$307,348.00 shall be with respect to 35 days of accrued interest on the Series 2008 Bonds or the portion of the Purchase Price corresponding to interest thereon, calculated at a rate of 12% per annum, based on the actual number of days elapsed in a year of 365.

The Letter of Credit shall terminate automatically on the earliest of (i) the payment by the Bank to the Trustee of the final drawing available to be made under the Letter of Credit; (ii) receipt by the Bank of the Letter of Credit and a certificate signed by an officer of the Trustee stating that no Series 2008 Bonds remain outstanding; (iii) receipt by the Bank of the Letter of Credit and a certificate signed by an officer of the Trustee stating that a Substitute Credit Facility in substitution for the Letter of Credit has been accepted by the Trustee and is in effect; (iv) receipt by the Bank of the Letter of Credit and a certificate signed by an officer of the Trustee stating that all of the Series 2008 Bonds have been converted to a Rate Mode other than the Weekly Rate Mode effective as of the date set forth in such certificate; or (v) December 10, 2013.

### **Reduction and Reinstatement of Letter of Credit**

Drawings may be made under the Letter of Credit in order to pay the principal of and interest on the Series 2008 Bonds when due and the Purchase Price, consisting of the principal amount of and accrued and unpaid interest on the Series 2008 Bonds tendered pursuant to the Resolutions and the Bond Series Certificate, to the extent remarketing proceeds are not available for such purchase (a "Remarketing Drawing"). Multiple drawings may be made under the Letter of Credit, provided that drawings shall not exceed the Letter of Credit Commitment, as the Letter of Credit Commitment may be reduced or reinstated pursuant to the Letter of Credit.

The amount available under the Letter of Credit for the purpose of paying interest on the Series 2008 Bonds (the "Interest Commitment") shall be reduced in an amount equal to any draw to pay interest on the Series 2008 Bonds (an "Interest Drawing"). On the day on which the Bank pays an Interest Drawing, the Interest Commitment shall be automatically reinstated by an amount equal to the amount of such Interest Drawing.

The amount available under the Letter of Credit for the purpose of paying principal on the Series 2008 Bonds (the "Principal Commitment") shall be reduced in an amount equal to any draw to pay principal on the Series 2008 Bonds. The Bank will reinstate amounts drawn under the Letter of Credit pursuant to a Remarketing Drawing, as to the Principal Commitment and the Interest Commitment, to the extent that money is received by the Bank (other than from drawings on the Letter of Credit) as reimbursement for amounts drawn pursuant to such Remarketing Drawing.

No drawing under the Letter of Credit shall be honored in an amount exceeding the amount available to be drawn under such Letter of Credit at the time of such drawing, and no drawing shall be made in order to pay the principal of or interest when due on, or the Purchase Price of, the Series 2008 Bonds pledged to the Bank as security for unreimbursed Remarketing Drawings.

### **The Reimbursement Agreement**

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

The Reimbursement Agreement establishes various representations, warranties and covenants of the College and establishes various events of default thereunder. See "Appendix D – Summary of Certain Provisions of the Reimbursement Agreement."

The terms of the Reimbursement Agreement and certain related documents may be modified, amended or supplemented by the Bank and the College 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 College or additional covenants of the College 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. See "Appendix D - Summary of Certain Provisions of the Reimbursement Agreement."

### **Substitute Credit Facility**

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

The replacement of the Letter of Credit with a Substitute Credit Facility will cause a mandatory tender of all Series 2008 Bonds. In no event shall the Letter of Credit be surrendered to the Bank upon delivery of a Substitute Credit Facility until any drawing theretofore made on or against the existing Letter of Credit, including any drawing to pay the Purchase Price of the Series 2008 Bonds tendered for purchase and not remarketed, has been honored by the Bank and the Bank certifies that the College has complied with the requirements of the Reimbursement Agreement. No such Substitute Credit Facility shall be or become effective unless it meets the requirements set forth in the Bond Series Certificate.

### **Events of Default and Acceleration**

The following are events of default under the Resolution with respect to the Series 2008 Bonds: (i) a default by the Authority in the payment of the principal or Redemption Price of any Bond; (ii) a default by the Authority in the payment of interest on any Bond; (iii) a default by the Authority in the due and punctual performance of any covenant or agreement contained in the Series 2008 Resolution to comply with the provisions of the Code necessary to maintain the exclusion of interest on such Bonds from gross income for purposes of federal income taxation; (iv) a default by the Authority in the due and punctual performance of any covenants, conditions, agreements or provisions contained in the Bonds or in the Resolutions 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 the Holders of not less than 25% in principal amount of Outstanding Bonds) or if such default is not capable of being cured within 30 days, if the Authority fails to commence within 30 days and diligently prosecute the cure thereof; or (v) the Authority shall have notified the Trustee that an "Event of Default," as defined in the Loan Agreement, has occurred and is continuing and all sums payable by the College under the Loan Agreement have been declared immediately due and payable (unless such declaration shall have been annulled). Unless all sums payable by the College under the Loan Agreement are declared immediately due and payable, an event of default under the Loan Agreement is not an event of default under the Resolution.

The Resolution provides that, if an event of default (other than as described in clause (iii) of the preceding paragraph) occurs and continues, the Trustee may, and upon the written request of Holders of not less than 25% in principal amount of the Outstanding Series 2008 Bonds, shall declare the principal of and interest on all the Outstanding Series 2008 Bonds to be due and payable. At the expiration of 30 days from the giving of such notice, such principal and interest will become due and payable. At any time after the principal of the Series 2008 Bonds 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, or before the completion of the enforcement of any other remedy under the Resolution, 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, by written notice to the Authority, annul such declaration and its consequences under the terms and conditions specified in the Resolution with respect to such annulment.

The Resolution provides that the Trustee is to give notice in accordance with the Resolution of each event of default known to the Trustee to the College and to the Bank within five days, and to the Holders within 30 days, in each case after obtaining 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 or Redemption Price of or interest on any of the Series 2008 Bonds, the Trustee will 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.

### **Bank Consent Rights**

If no Credit Facility Issuer Default is occurring, the Bank, and not the actual Holders of the Series 2008 Bonds, shall be deemed to be the Holder of the Series 2008 Bonds for the purpose of exercising any right or power, consenting to an amendment, modification or waiver, or requesting or directing the Trustee to take or not to take any action under the Resolutions and the Bond Series Certificate.



### **Issuance of Additional Bonds**

In addition to the Series 2008 Bonds, the Resolution authorizes the issuance of other Series of Bonds to finance one or more projects and for other specified purposes, including to refund Outstanding Bonds or other notes or bonds of the Authority issued on behalf of the College. The Bonds which may be issued include Capital Appreciation Bonds, Deferred Income Bonds, Option Bonds, Variable Interest Rate Bonds and Fixed Rate Bonds. Each Series of Bonds will be separately secured from each other Series of Bonds. There is no limit on the amount of additional Bonds that may be issued under the Resolution, which Bonds may be issued at any time prior to or after the scheduled delivery date of the Series 2008 Bonds. The Series 2008 Bonds will be the first Series of Bonds issued under the Resolution.

### **General**

The Series 2008 Bonds will not be a debt of the State and the State will not be liable on the Series 2008 Bonds. The Authority has no taxing power. The Authority has never defaulted in the timely payment of principal or of interest on its bonds or notes. See “PART 9 — THE AUTHORITY.”

## **PART 3 — THE SERIES 2008 BONDS**

*Set forth below is a narrative description of certain provisions relating to the Series 2008 Bonds. These provisions have been summarized and this description does not purport to be complete. Reference should be made to the Resolution and the Loan Agreement, copies of which are on file with the Authority and the Trustee. See also “Appendix B — Summary of Certain Provisions of the Loan Agreement” and “Appendix C — Summary of Certain Provisions of the Resolutions and the Bond Series Certificate” for a more complete description of certain provisions of the Series 2008 Bonds.*

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

The Series 2008 Bonds will be issued pursuant to the Act, the Resolution, the Series 2008 Resolution and the Bond Series Certificate. The Series 2008 Bonds will be dated the date of their initial delivery and will bear interest through and including such date at the Initial Rate. Thereafter, the Series 2008 Bonds will bear interest at Weekly Rates as determined by the Remarketing Agent 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 changed, as described herein. All Series 2008 Bonds must bear interest at the same Rate Mode. Under the Bond Series Certificate, the term Weekly Rate Period means a period commencing on a Thursday of a calendar week and extending to and including the next succeeding Wednesday (or earlier Conversion Date). While in the Weekly Rate Mode, interest on the Series 2008 Bonds is payable on January 2, 2009 and thereafter on the first Thursday of each month, unless such Thursday is not a Business Day, in which case interest is payable on the next succeeding Business Day. 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.”

The Series 2008 Bonds will be issued 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 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 Bank Bond) will bear interest at the Weekly Rate established for such Series 2008 Bonds. The Weekly Rate is required to be determined by the Remarketing Agent to be the rate of interest that, if borne 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 Bond and that are comparable as to credit and maturity or tender dates with the credit and maturity or tender dates, would be the lowest interest rate that would enable the Series 2008 Bond 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 Bank requesting the same.

The Remarketing Agent shall determine a Weekly Rate for each Weekly Rate Period by 5:00 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 under the Bond Series Certificate, (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 Index on the date such Weekly Rate was to have been determined by the Remarketing Agent.

No Series 2008 Bonds (other than a Bank Bond) will bear interest at a rate that exceeds the Maximum Rate.

### **Redemption and Purchase in Lieu of Redemption**

The Series 2008 Bonds will be subject to redemption prior to maturity as provided below.

*No Mandatory Sinking Fund Requirements.* The Series 2008 Bonds are not subject to mandatory redemption prior to maturity pursuant to any mandatory sinking fund requirements.

*Optional Redemption.* The Series 2008 Bonds are subject to redemption prior to maturity at the election of the Authority upon the request of the College, 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.

The College has agreed with the Bank to fund, and then request the Authority to cause, the optional redemption of the Series 2008 Bonds at any point during the years presented in the following schedule, which is subject to change by the College and the Bank without approval of the Authority or the holders of the Series 2008 Bonds:

### Schedule of Expected Optional Redemptions

<u>Year</u>	<u>Optional Redemptions</u>	<u>Year</u>	<u>Optional Redemptions</u>
2010	\$435,000	2025	\$ 895,000
2011	460,000	2026	935,000
2012	480,000	2027	985,000
2013	505,000	2028	1,030,000
2014	530,000	2029	1,080,000
2015	555,000	2030	1,135,000
2016	580,000	2031	1,190,000
2017	610,000	2032	1,245,000
2018	640,000	2033	1,310,000
2019	670,000	2034	1,370,000
2020	700,000	2035	1,440,000
2021	740,000	2036	1,510,000
2022	775,000	2037	1,585,000
2023	810,000	2038†	1,660,000
2024	850,000		

† Final maturity.

Failure of the College to fund such expected optional redemptions, or agreement by the College and the Bank to revise the schedule of such expected optional redemptions, is not an Event of Default under the Loan Agreement or the Resolutions. The College may at any time fund the optional redemption of Series 2008 Bonds in amounts greater and at times earlier than contemplated by the schedule of expected optional redemptions.

*Redemption of Bank Bonds.* The Series 2008 Bonds that are Bank Bonds shall be subject to redemption prior to maturity in whole at the option of the Bank at a Redemption Price equal to 100% of the principal amount of the Bank Bonds or portion thereof to be redeemed at the times and in the principal amounts required by the Reimbursement Agreement. Bank Bonds are to be redeemed prior to other Series 2008 Bonds.

*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.* 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 may 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 College 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 the College and the purchasers with the consent of the Authority. If the College elects to purchase Series 2008 Bonds, the College shall give written notice to the Authority, the Trustee and the Bank of such election, which notice shall set forth the Bonds to be purchased.

*Selection of Series 2008 Bonds to be Redeemed.* If less than all of the Outstanding Series 2008 Bonds of like maturity are to be redeemed or purchased in lieu of redemption as described herein, Bank Bonds, if any, shall be redeemed first. Thereafter, the Trustee shall select for redemption Series 2008 Bonds, 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 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 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 Bond Series Certificate. Optional Tender Date means any Business Day.

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 Business 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;
- (ii) on a date that is not less than three Business Days prior to the Expiration Date of the Letter of Credit, which Letter of Credit 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 Letter of Credit 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 Letter of Credit shall be drawn upon to pay the Purchase Price of Tendered Bonds that have not been remarketed; and
- (iv) on a date not less than two, nor more than ten Business Days after the receipt by the Trustee, the Remarketing Agent and the Authority of a notice delivered by the Bank or its agent 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 Letter of Credit (other than a draw relating to a permanent reduction of the stated amount of the Letter of Credit), and
  - (B) the Bank has elected to require a mandatory tender of the Series 2008 Bonds as provided in the Reimbursement Agreement.

*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 more 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 Letter of Credit 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 Letter of Credit 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 the Bank, not less than one Business Day prior to the date of the mandatory tender.

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 and in following order of priority: the proceeds of remarketing of the Tendered Bonds; amounts drawn on the Letter of Credit or certain other Available Moneys, if any, under the Bond Series Certificate. No Tendered Bond so purchased with moneys made available by the Bank 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 Bond Series Certificate 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.

Notwithstanding any other provision of the Series 2008 Resolution or the Bond Series Certificate to the contrary, so long as any Series 2008 Bond is registered in the name of Cede & Co, as nominee of DTC, 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 DTC'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 the Letter of Credit is in effect, remarket Tendered Bonds if:

(A) upon such remarketing the amount available to be drawn under the Letter of Credit, together with amounts on deposit in the Credit Facility Account of the Debt Service Fund, 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 Bank Bonds, or an amount available to be drawn under the Letter of Credit for payment of the interest on such Outstanding Series 2008 Bonds, is less than the minimum amount required to be available under the Letter of Credit in accordance with the Bond Series Certificate;

(B) the Letter of Credit will expire or terminate within 20 days after the Tender Date of the Tendered Bonds, unless and until the Letter of Credit 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 the Bank following an Event of Default under the Reimbursement Agreement.

(ii) No Tendered Bonds shall be remarketed by the Remarketing Agent to the Authority or the College, unless there has been delivered to the Trustee an Opinion of Bond Counsel and an opinion of counsel reasonably satisfactory to the Trustee and any Rating Service to the effect that payment of the Purchase Price of Tendered Bonds from moneys paid by or on behalf of the Authority or the College 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 the College thereunder.

(iii) The Remarketing Agent is required to use its best efforts to remarket the tendered Series 2008 Bonds for which it serves as Remarketing Agent. However, the Remarketing Agent is not required to remarket any tendered Series 2008 Bonds under certain circumstances, including if the Remarketing Agent has actual knowledge that an event of default with respect to the Series 2008 Bonds has occurred and is continuing under the Resolutions or the Loan Agreement. In addition, the Remarketing Agreement provides that the Remarketing Agent is not required to remarket any tendered Series 2008 Bonds if (a) the Remarketing Agent determines in its sole discretion upon consultation with counsel that any applicable disclosure document or continuing disclosure undertaking required in connection with the remarketing of the Series 2008 Bonds is either unavailable or not reasonably satisfactory to the Remarketing Agent, (b) the Remarketing Agent has received an opinion of Bond Counsel that substantial grounds exist where the exclusion from gross income of interest on the Series 2008 Bonds for federal income tax purposes, or the exemption from registration under the Securities Act of 1933, or the exemption from qualification of the Resolutions under the Trust Indenture Act of 1939 can be challenged, or (c) each of the Resolutions, the Bond Series Certificate and the Loan Agreement shall not be in full force and effect or shall have been amended, modified or supplemented in any way which would materially and adversely affect the remarketing of Series 2008 Bonds, except as may have been agreed to in writing by the Remarketing Agent. In addition, the Authority, with the consent of the College so long as no event of default has occurred and is continuing under the Loan Agreement, or the College with the consent of the Authority may direct the Remarketing Agent to suspend the remarketing of Series 2008 Bonds.

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

The Authority, at the direction of the College, may, from time to time, by written direction to the Remarketing Agent, the Trustee, the Tender Agent, the Bank, 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 15 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 described herein. See “Appendix C – Summary of Certain Provisions of the Resolutions and the Bond Series Certificate.”

The Bond Series Certificate 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 Bond Series Certificate.

In the event the requirements described in the preceding sentence are not met, or the Remarketing Agent notifies the Trustee, the Authority, the College and the Bank, that the Series 2008 Bonds to be converted cannot be remarketed, or the Authority notifies the Remarketing Agent, the Bank 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 Weekly 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 Authority has appointed KeyBanc Capital Markets Inc., as the Remarketing Agent for the Series 2008 Bonds. In accordance with the Resolutions, the Bond Series Certificate and the Remarketing Agreement, the Remarketing Agent will use its best efforts to find purchasers for Tendered Bonds. The Remarketing Agent can be contacted at 45 Rockefeller Plaza – 33<sup>rd</sup> Floor, New York, New York 10111.

### **Amendments to the Bond Series Certificate**

The provisions of the Bond Series Certificate may be amended in any way without the consent of the Holders of the Series 2008 Bonds, but with the consent of the Bank: (i) on any Mandatory Tender Date; and (ii) at any time during the Weekly Rate Mode provided that notice of such amendment is given by first class mail to each Holder of Series 2008 Bonds at least 30 days prior to the effective date of such amendment.

## **Special Considerations Relating to the Series 2008 Bonds Bearing Interest at a Weekly Rate**

***The Remarketing Agent Is Paid by the College.*** The Remarketing Agent's responsibilities include determining the interest rate from time to time and using best efforts to remarket Series 2008 Bonds that are optionally or mandatorily tendered by the owners thereof (subject, in each case, to the terms of the Remarketing Agreement and the Bond Series Certificate), as further described in this Official Statement. The Remarketing Agent is appointed by the Authority and is paid by the College for its services. As a result, the interests of the Remarketing Agent may differ from those of existing Bondholders and potential purchasers of Series 2008 Bonds.

***The Remarketing Agent Routinely Purchases Series 2008 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, routinely purchases 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, routinely acquires such tendered Series 2008 Bonds in order to achieve a successful remarketing of the Series 2008 Bonds (*i.e.*, because there otherwise are not enough buyers to purchase the Series 2008 Bonds) or for other reasons. However, the Remarketing Agent is not obligated to purchase 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 routinely purchasing and selling 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.

***Bonds May Be Offered at Different Prices on Any Date Including a Rate Determination Date.*** Pursuant to the Remarketing Agreement, the Remarketing Agent is required to use its best efforts 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 applicable interest rate at par plus accrued interest, if any, on and as of the applicable Reset Date. 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 Bonds for its own account). There may or may not be Series 2008 Bonds tendered and remarketed on a Reset Date, the Remarketing Agent may or may not be able to remarket any Series 2008 Bonds tendered for purchase on such date at par and the Remarketing Agent may sell Series 2008 Bonds at varying prices to different 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 the 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, including the Reset 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 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 their Series 2008 Bonds other than by tendering the 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 its remarketing efforts, without a successor having been named, subject to the terms of the Remarketing Agreement and the Bond Series Certificate. In the event there is no Remarketing Agent, the Trustee may assume such duties as described in the Resolutions and the Bond Series Certificate, which are limited to accepting notices of tender.

## **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 requested by an authorized representative of DTC. One fully-

registered Series 2008 Bond certificate will be issued for each maturity of the Series 2008 Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC 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 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 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 is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. 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 about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of 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 each 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. Beneficial Owners are, however, 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 the 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 DTC nominee do not effect any 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 a maturity are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2008 Bonds unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an 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 on the 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, the Bank 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 will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its Series 2008 Bond tendered for purchase, through its Participant, to the Tender Agent and the Remarketing Agent, and shall effect delivery of such Series 2008 Bond by causing the Direct Participant to transfer the Participant's interest in the Series 2008 Bond, on DTC's records, to the Tender Agent. The requirement for physical delivery of Series 2008 Bonds in accordance with an optional tender for 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.

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 and 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 Direct or Indirect Participant, any person claiming a beneficial ownership interest in the Series 2008 Bonds under or through DTC or any Direct or Indirect 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 Direct or Indirect Participant; the payment by DTC or any Direct or Indirect 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 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 Direct or Indirect Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of the Direct or Indirect Participants.

DTC may discontinue providing its service as depository with respect to the Series 2008 Bonds at any time by giving reasonable notice to the Authority and the Trustee. Under such circumstances, in the event that a successor depository is not obtained, the Series 2008 Bond certificates are required to be printed and delivered.

The Authority may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, the Series 2008 Bond certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Authority believes to be reliable, but the Authority takes no responsibility for the accuracy thereof.

Each person for whom a Participant acquires an interest in the Series 2008 Bonds, as nominee, may desire to make arrangements with such Participant to receive a credit balance in the records of such Participant, and may desire to make arrangements with such Participant to have all notices of redemption or other communications of DTC, which may affect such persons, to be forwarded in writing by such Participant and to have notification made of all interest payments. **NEITHER THE AUTHORITY NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO SUCH PARTICIPANTS OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO THE SERIES 2008 BONDS.**

So long as Cede & Co. is the registered owner of the Series 2008 Bonds, as nominee for DTC, references herein to the Bondholders or registered owners of the Series 2008 Bonds (other than under the caption "PART 12 — TAX MATTERS" herein) shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Series 2008 Bonds.

When reference is made to any action which is required or permitted to be taken by the Beneficial Owners, such reference only relates to those permitted to act (by statute, regulation or otherwise) on behalf of such Beneficial Owners for such purposes. When notices are given, they will be sent by the Trustee to DTC only.

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

The Authority, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the Series 2008 Bonds if the Authority determines that (i) DTC is unable to discharge its responsibilities with respect to the Series 2008 Bonds, or (ii) a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC, is not in the best interests of the Beneficial Owners. In the event that no substitute securities depository is found by the Authority or restricted registration is no longer in effect, Series 2008 Bond certificates will be delivered as described in the Resolutions and the Bond Series Certificate.

NEITHER THE AUTHORITY NOR THE BANK NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, TO INDIRECT PARTICIPANTS, OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (I) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT, OR ANY INDIRECT PARTICIPANT, (II) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE SERIES 2008 BONDS UNDER THE RESOLUTIONS; (III) THE SELECTION BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE SERIES 2008 BONDS; (IV) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR REDEMPTION PREMIUM, IF ANY, OR INTEREST DUE WITH RESPECT TO THE SERIES 2008 BONDS; (V) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF THE SERIES 2008 BONDS; OR (VI) ANY OTHER MATTER.

#### **PART 4 — THE BANK**

*The following information has been provided by the Bank for use in this Official Statement. Such information is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by the Authority, the College, the Underwriter or the Remarketing Agent. This information has not been independently verified by the Authority, the College, the Underwriter or the Remarketing Agent. No representation is made by the Authority, the College, the Underwriter, or the Remarketing Agent as to the accuracy or adequacy of such information or as to the absence of material adverse changes in such information subsequent to the date hereof.*

#### **General**

KeyBank National Association (the “Bank”) is a national banking association headquartered in Cleveland, Ohio serving markets throughout the United States. The Bank provides customized financial services to individuals, businesses and other institutions.

At September 30, 2008, the Bank had total assets of approximately \$97.8 billion and total shareholder’s equity of approximately \$7.7 billion.

All of the Bank’s capital stock is owned by KeyCorp, a publicly-held multi-line financial services company headquartered in Cleveland, Ohio, the common stock of which is registered under the Securities Exchange Act of 1934. At September 30, 2008, the Bank represented approximately 96% of the assets of KeyCorp. KeyCorp files annual and other reports containing audited, consolidated financial and other information with the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20659 and copies of this information may be obtained from the Commission upon payment of copying charges, or examined at the Commission’s offices without charge. THE LETTER OF CREDIT IS AN UNSECURED OBLIGATION OF THE BANK AND NOT OF KEYCORP. KEYCORP HAS NOT GUARANTEED THE BANK’S OBLIGATION UNDER THE LETTER OF CREDIT OR THE REIMBURSEMENT AGREEMENT AND IS NOT AND WILL NOT BECOME OBLIGATED IN ANY MANNER WITH RESPECT THERETO.

The Bank will supply, without charge to any person to whom this Official Statement is delivered, a copy of the KeyCorp Form 10-K for the year ended December 31, 2007, as well as copies of reports on Forms 10-Q or 8-K as filed with the Securities and Exchange Commission, by calling our Toll Free Financial Report Request Line 1-888-539-3322.

### **Limitation of Responsibilities**

The Bank is responsible only for the information contained in this “PART 4 – THE BANK” and did not participate in the preparation of, or in any way verify the information contained in any other part of this Official Statement. Accordingly, the Bank assumes no responsibility for and makes no representation or warranty as to the accuracy or completeness of information contained in any other part of this Official Statement.

### **PART 5 — THE 2008 PROJECT**

The 2008 Project consist of the construction of a new 6-story academic facility. The structure will house classrooms, laboratories, student services, faculty and College operation offices and conference rooms. The College also plans to use the facility to house a planned future pharmacy program.

### **PART 6 — THE REFUNDING PLAN**

A portion of the Proceeds of the Series 2008 Bonds will be used to refund the Refunded Bonds. Upon issuance of the Series 2008 Bonds, such moneys are expected to provide moneys sufficient to pay the principal and the redemption price of the Refunded Bonds and the interest on such Refunded Bonds to the date fixed for redemption.

Such moneys will be deposited with the trustee for the Refunded Bonds (the “Prior Trustee”) upon the issuance and delivery of the Series 2008 Bonds and will be held in trust solely for the payment of the redemption price of and interest on the Refunded Bonds. At the time of such deposit the Erie County Industrial Development Agency will give the Prior Trustee irrevocable instructions to give notice of the redemption of the Refunded Bonds and to apply those moneys to the payment of the redemption price of and interest on the Refunded Bonds. In the opinion of Bond Counsel, upon making such deposits with the Prior Trustee and the issuance of certain irrevocable instructions to such trustee, the Refunded Bonds will, under the terms of the indenture under which they were issued, be deemed to have been paid and will no longer be outstanding and the pledge of the revenues or other moneys and securities pledged to the Refunded Bonds and all other rights granted by such indenture to the Refunded Bonds shall be discharged and satisfied.

### **PART 7 — ESTIMATED SOURCES AND USES OF FUNDS**

The estimated sources and uses of funds are as follows:

#### **Sources of Funds**

Principal Amount of Series 2008 Bonds .....	<u>\$26,710,000</u>
Total Sources .....	<u>\$26,710,000</u>

#### **Uses of Funds**

Deposit to the Construction Fund .....	\$19,125,000
Deposit to the Refunding Escrow .....	6,710,000
Costs of Issuance <sup>1</sup> .....	779,486
Underwriter’s Discount .....	<u>95,514</u>
Total Uses .....	<u>\$26,710,000</u>

<sup>1</sup> Includes legal, letter of credit fees, state bond issuance charge and associated costs relating to the Series 2008 Bonds.

### **PART 8 — THE COLLEGE**

The following information is furnished solely to provide limited introductory information about the College and does not purport to be comprehensive. As described in this Official Statement, the Series 2008 Bonds are secured by the Letter of Credit and therefore this Official Statement does not contain information relating to the College or its ability to pay principal and purchase price of and interest on the Series 2008 Bonds. The investment decision to purchase the Series 2008 Bonds should be made solely on the basis of the

**creditworthiness of the Bank, as issuer of the Letter of Credit. Prospective investors should look solely to the Bank and the Letter of Credit for payments of the principal and purchase price of or interest on the Series 2008 Bonds.**

D'Youville College is an independent, urban, coeducational institution of higher education located in Buffalo, New York. The College provides professional programs and liberal arts programs for more than 3,000 undergraduate and graduate students in day, evening, weekend, and summer sessions.

D'Youville was founded in 1908 by the Grey Nuns of the Sacred Heart as the first college for women in western New York State. The College became coeducational in 1971. A self-perpetuating board of trustees has governed the College since a charter amendment in 1970.

The College offers a variety of baccalaureate, master's-level and post-baccalaureate programs, as well as advanced certificate programs in health-related professions. The College also offers doctoral programs in health policy and health education, educational leadership, chiropractic and physical therapy. Graduate programs include community health nursing, family nurse practitioner, nursing (choice of clinical focus), early childhood, childhood, middle childhood, adolescent, special education, teaching English to speakers of other languages (TESOL), health services administration, international business, business administration (MBA) and physical assistant. Five-year programs leading to dual degrees have been established in dietetics, international business, occupational therapy and physician assistant. Occupational therapy has a stand-alone masters program. The College also features a special RN-BS/MS degree in nursing. Additionally, certificate programs are offered in clinical research associate, family nurse practitioner, health services administration, improving performance, long-term care administration, nursing and health-related professions. Post-baccalaureate teacher certification programs are also available in childhood and adolescent education.

The College is accredited by the Middle States Association of Colleges and Schools. The undergraduate and graduate programs in nursing are accredited by the Commission on Collegiate Nursing Education (CCNE). The occupational therapy program is accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association (AOTA). The three-year graduate DPT program is fully accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE) of the American Physical Therapy Association. The MS in international business is accredited by the International Assembly for Collegiate Business Education (IACBE). The Physician Assistant program is accredited by the Commission on Accreditation of Allied Health Education Programs. The combined BS/MS dietetics program is accredited by the American Dietetic Association Council on Education. The combined BS/MS physician assistant program is accredited by the Accreditation Review Commission for the Physician Assistant Inc. (ARC-PA). The four-year Doctor of Chiropractic program is fully accredited by the Commission on Accreditation on Chiropractic Education. All programs in the department of education, leading to New York State teacher certification, are accredited by Regents Accreditation of Teacher Education (RATE).

## **PART 9 — 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><u>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>
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>
Totals Public Programs.....	<u>\$ 43,312,953,036</u>	<u>\$ 19,679,196,666</u>	<u>\$ 0</u>	<u>\$ 19,679,196,666</u>
<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>
Totals Non-Public Programs.....	<u>\$ 32,043,680,329</u>	<u>\$ 17,033,577,833</u>	<u>\$184,725,000</u>	<u>\$ 17,218,302,833</u>
Grand Totals Bonds and Notes.....	<u>\$ 75,356,633,365</u>	<u>\$ 36,712,774,499</u>	<u>\$184,725,000</u>	<u>\$ 36,897,499,499</u>

**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>
Total Non-Public Programs.....	<u>\$ 9,265,549,927</u>	<u>\$ 382,825,939</u>
Total MCFFA Outstanding Debt.....	<u>\$ 13,082,780,652</u>	<u>\$ 382,825,939</u>

## 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 10 — 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.

The Series 2008 Bonds may be deposited with the State Comptroller to secure deposits of State moneys in banks, trust companies and industrial banks.

## **PART 11 — NEGOTIABLE INSTRUMENTS**

The Series 2008 Bonds are 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 12 — TAX MATTERS**

In the opinion of Bond Counsel, under existing law and assuming compliance by the Authority and the College with certain covenants and the accuracy and completeness of certain representations of the Authority and the College, interest on the Series 2008 Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax on individuals and corporations. However, interest on the Series 2008 Bonds is taken into account in determining adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations. Corporate purchasers of the Bonds should contact their tax advisers concerning the computation of any alternative minimum tax.

The Internal Revenue Code of 1986, as amended to the date hereof (the “Code”), imposes various requirements that must be met in order that interest on the Series 2008 Bonds will be and remain excludable from gross income for federal income tax purposes. Included among these requirements are restrictions on the investment and use of

proceeds of the Series 2008 Bonds and the rebate of certain earnings in respect of such investments to the United States. Failure to comply with the requirements of the Code may cause interest on the Series 2008 Bonds to be includable in gross income for purposes of federal income tax retroactive to the date of original execution and delivery of the Series 2008 Bonds, regardless of the date on which the event causing such inclusion occurs. The Authority and the College have covenanted in the Resolutions, the Loan Agreement and the Tax Compliance Agreement to comply with the requirements of the Code and have made representations in such documents addressing various matters relating to the requirements of the Code. The opinion of Bond Counsel assumes continuing compliance with such covenants as well as the accuracy of such representations made by the Authority and the College.

Certain requirements and procedures contained or referred to in the Resolutions, the Loan Agreement, the Tax Compliance Agreement 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 Bond Counsel. The opinion of Hiscock & Barclay, LLP states that such firm, as Bond Counsel, expresses no opinion as to any Series 2008 Bond or the interest thereon if any such change occurs or action is taken upon the advice or approval of Bond Counsel other than Hiscock & Barclay, LLP.

Prospective purchasers of the Series 2008 Bonds should be aware that ownership of, accrual or receipt of interest on, or disposition of the Series 2008 Bonds may have collateral federal income tax consequences for certain taxpayers, including financial institutions, insurance companies, Subchapter S Corporations, certain foreign corporations, individual recipients of social security or railroad retirement benefits, individuals benefiting from the earned income credit and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. Prospective purchasers should consult their tax advisers as to any possible collateral consequences of their ownership of, accrual or receipt of interest on, or disposition of the Series 2008 Bonds. Bond Counsel expresses no opinion regarding any such collateral federal income tax consequences.

Interest paid on tax-exempt obligations is subject to information reporting to the Internal Revenue Service in a manner similar to interest paid on taxable obligations. Although information reporting does not, in and of itself, affect the excludability of such interest from gross income for federal income tax purposes, the reporting requirement causes payment of interest on the bonds to be subject to backup withholding. Interest on the Series 2008 Bonds may be subject to backup withholding if such interest is paid to a registered owner who or which (i) fails to provide certain identifying information (such as the registered owner's taxpayer identification number) in the manner required by the Internal Revenue Service, or (ii) has been identified by the Internal Revenue Service as being subject to backup withholding. Amounts withheld under the backup withholding rules will be paid to the Internal Revenue Service as federal income tax withheld on behalf of the registered owner of the Series 2008 Bonds and will be allowed as a refund or credit against such owner's federal income tax liability (or the federal income tax liability of the beneficial owner of the Series 2008 Bonds, if other than the registered owner).

In the opinion of Bond Counsel, interest on the Series 2008 Bonds is exempt, under existing statutes, from personal income taxes of the State of New York and its political subdivisions, as applicable. See "Appendix E - Form of Approving Opinion of Bond Counsel."

Bond Counsel's engagement with respect to the Series 2008 Bonds ends with the issuance of the Series 2008 Bonds and, unless separately engaged, Bond Counsel is not obligated to defend the Issuer or the Bondholders regarding the tax-exempt status of the Series 2008 Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the Authority and its appointed counsel, including the Bondholders, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the Issuer legitimately disagrees, may not be practicable. Any action of the IRS, including but not limited to selection of the Series 2008 Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the Series 2008 Bonds, and may cause Issuer or the Bondholders to incur significant expense.

## **PART 13 — STATE NOT LIABLE ON THE SERIES 2008 BONDS**

The Act provides that notes and bonds of the Authority are not a debt of the State, that the State is not liable on them and that such notes and bonds are not payable out of any funds other than those of the Authority. The Resolution specifically provides that the Series 2008 Bonds are not a debt of the State and that the State is not liable on them.

## **PART 14 — 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 15 — 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 Hiscock & Barclay L.L.P., Albany, New York, Bond Counsel, whose approving opinions will be delivered with the Series 2008 Bonds. The proposed form of Bond Counsel's opinion is set forth in Appendix E hereto.

Certain legal matters will be passed upon for the College by its Counsel, Hodgson Russ LLP, Buffalo, New York. Certain legal matters will be passed upon for the Underwriter by its counsel, Squire, Sanders & Dempsey L.L.P., New York, New York. Certain legal matters will be passed upon for the Bank by its counsel, Bond, Schoeneck & King, PLLC, Syracuse, New York and its co-counsel, Calfee, Halter & Griswold LLP, Cleveland, Ohio.

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 16 — UNDERWRITING**

KeyBanc Capital Markets Inc. (the "Underwriter"), will agree, subject to certain conditions, to purchase the Series 2008 Bonds from the Authority at an aggregate purchase price of \$26,614,486.50 and to make a public offering of Series 2008 Bonds at par. The Underwriter will be obligated to purchase all such Series 2008 Bonds if any are purchased.

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.

KeyBanc Capital Markets Inc. is also serving as Remarketing Agent with respect to the Series 2008 Bonds.

## **PART 17 — CONTINUING DISCLOSURE**

The Series 2008 Bonds are, upon their issuance in the Weekly Rate Mode, exempt from Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission, and the Authority, the College and the Bank will not be required to provide any continuing disclosure in accordance with the Rule.

## **PART 18 — RATINGS**

Moody's Investors Service ("Moody's"), is expected to assign a rating of "A1/VMIG1" to the Series 2008 Bonds, with the understanding that upon delivery of the Series 2008 Bonds, the Letter of Credit will be issued by the Bank. Such ratings reflect only the views of such organization and any desired explanation of the significance of such ratings should be obtained from Moody's at 99 Church Street, New York, New York 10007. There is no assurance that such ratings will prevail 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 its judgment, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Series 2008 Bonds.

## **PART 19 — MISCELLANEOUS**

References in this Official Statement to the Act, the Resolution, the Series 2008 Resolution, the Bond Series Certificate, the Loan Agreement, the Intercreditor Agreement, the Reimbursement Agreement and the Letter of Credit do not purport to be complete. Refer to the Act, the Resolution, the Series 2008 Resolution, the Bond Series Certificate, the Loan Agreement, the Intercreditor Agreement, the Reimbursement Agreement and the Letter of Credit for full and complete details of their provisions. Copies of the Resolution, the Series 2008 Resolution, the Bond Series Certificate, the Loan Agreement, the Intercreditor Agreement, the Reimbursement Agreement and the Letter of Credit 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 Resolution and the Bond Series Certificate. 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 College was supplied by the College. 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 only system has been furnished by DTC. The Authority believes that this information is reliable, but makes no representations or warranties whatsoever as to the accuracy or completeness of this information.

The information regarding the Bank and the Letter of Credit has been furnished by the Bank. No representation is made herein by the Authority, the College or the Underwriter as to the accuracy or adequacy of such information or as to the absence of material adverse changes in such information subsequent to the date hereof. None of the Authority, the College or the Underwriter has made any independent investigation of the Bank or its Letter of Credit.

"Appendix A — Certain Definitions," "Appendix B — Summary of Certain Provisions of the Loan Agreement," "Appendix C — Summary of Certain Provisions of the Resolutions and the Bond Series Certificate" and "Appendix E — Form of Approving Opinions of Bond Counsel" have been prepared by Hiscock & Barclay LLP, Albany, New York, Bond Counsel.

"Appendix D — Summary of Certain Provisions of the Reimbursement Agreement" has been prepared by Bond, Schoeneck & King, PLLC, Syracuse, New York, Bank Counsel.

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

**CERTAIN DEFINITIONS**

*Appendix A*

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## CERTAIN DEFINITIONS

In addition to the other terms defined in this Official Statement, when used in the summaries of certain provisions of the Loan Agreement, the Resolutions and the Bond Series Certificate, the following terms have the meanings ascribed to them below:

**Act** means the Dormitory Authority Act being Title 4 of Article 8 of the Public Authorities Law of the State, as amended, including without limitation by the Health Care Financing Construction Act, being Title 4-B of Article 8 of the Public Authorities Law of the State.

**Annual Administrative Fee** means the fee payable during each Bond Year by the College for the general administrative and supervisory expenses of the Authority.

**Applicable** means (i) with respect to any Construction Fund, Arbitrage Rebate Fund, Debt Service Fund, Debt Service Reserve Fund, or any other fund or account therein, the fund or account so designated and established by an Applicable Series Resolution or Bond Series Certificate 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, such 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, such Loan Agreement by and between the Authority and the College and the contractual obligations contained therein relating to particular Projects, (vi) with respect to a Bond Series Certificate, such certificate authorized pursuant to a particular Series Resolution, (vii) with respect to any Credit Facility, or Reserve Fund Facility and Provider thereof, if any, such Credit Facility, Reserve Fund Facility or Provider relating to a particular Series of Bonds and (viii) with respect to any other item or document, agreement or instrument, such other item or document, agreement or instrument relating to an Applicable Series of Bonds.

**Arbitrage Rebate Fund** means with respect to each Series of Bonds the fund so designated and established pursuant to the 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 (5) 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 Treasurer, an Assistant Treasurer, the Secretary, an Assistant Secretary, the Executive Director, the Deputy Executive Director, the Chief Financial Officer, a Managing Director and the General Counsel, and when used with reference to any act or document also means any other person authorized by a resolution or the by-laws of the Authority to perform such act or execute such document; (ii) in the case of the College, when used with reference to any act or document, means the person or persons authorized by a resolution or the by-laws of the College to perform such act or execute such document; and (iii) in the case of the Trustee, the President, a Vice President, an Assistant Vice President, a Corporate Trust Officer, an Authorized Signatory, an Assistant Corporate Trust Officer, a Trust Officer or an Assistant Trust Officer of the Trustee.

**Bank Bond** means any Series 2008 Bond purchased by or on behalf of the College or the Credit Facility Issuer with the proceeds of drawing under the Credit Facility to fund the purchase of a Series 2008 Bond upon a tender (or deemed tender) for purchase in accordance with the terms of the Bond, and initially means any "Pledged Bond" as defined in the initial Credit Facility.

**Bank Bond Rate** means the per annum rate of interest applicable to Bank Bonds as provided in the Reimbursement Agreement.

**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.

**Bond or Bonds** means any of the bonds of the Authority authorized and issued pursuant the Resolution and to a Series Resolution.

**Bond Counsel** means a law firm appointed by the Authority with respect to a 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 in the Summary of Certain Provisions of the Resolution, a certificate of an Authorized Officer 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 Resolution or under a Series Resolution, as it may be amended from time to time. Otherwise **Bond Series Certificate** means the Bond Series Certificate made and executed pursuant to the Series 2008 Resolution with respect to the Series 2008 Bonds to a new Rate Mode.

**Bond Year** means, unless otherwise stated in a 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 or Holder** 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.

**Book Entry Bond** means a Bond of a Series authorized to be issued to, and issued to and registered in the name of, a Depository for the participants in such Depository or the beneficial owner of such Bond.

**Business Day** means any day other than a Saturday, Sunday or other day on which the New York Stock Exchange is closed or on which banks are authorized to be closed in the City of New York, New York, or the cities in which the principal office of the Trustee, the Credit Facility Issuer, the Tender Agent or the Remarketing Agent are located.

**Campus** means the real property owned and used by the College used directly or indirectly in or in support of its programs, including, without limitation, the Project.

**Certificate of Determination** means a certificate of an Authorized Officer of the Authority executed upon the Conversion of Series 2008 Bonds out of a Rate Mode to an Initial Rate Period, if any, prior to the Conversion of Series 2008 Bonds to a Daily Rate Mode or a Weekly Rate Mode, setting forth the Initial Rate, the Initial Rate Period, the first Interest Payment Date if other than a date on which interest would otherwise be payable under the Bond Series Certificate, and the matters required thereby to be reflected in a Credit Facility, if applicable.

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

**College** means D'Youville College, a corporation duly organized and existing under the laws of the State, which is an institution for higher education located in the State and authorized to confer degrees by law or by the Board of Regents of the State, or any successor thereto.

**Construction Fund** means the fund so designated and established by a Series Resolution pursuant to the Resolution, and means with respect to the Series 2008 Bonds, the fund so designated with respect to the Series 2008 Project.

**Contract Documents** means any general contract or agreement for the construction of the 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 College relating to the construction of the Project, and any amendments to the foregoing.

**Conversion** means a change in the Rate Mode of a Series 2008 Bond made in accordance with the provisions of the Bond Series Certificate.

**Conversion Date** means the day on which the interest rate on a Series 2008 Bond is converted from one Rate Mode to a different Rate Mode or was proposed to be converted from one Rate Mode to another Rate Mode, which date must be a Reset Date or an Interest Payment Date for such Series 2008 Bond.

**Conversion Notice** means a notice of Conversion given pursuant to the Bond Series Certificate.

**Cost or Costs of Issuance** means the items of expense incurred in connection with the authorization, sale and issuance of Bonds of a Series, 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, a Provider or a Depository, legal fees and charges, professional consultants' fees, fees and charges for execution, transportation and safekeeping of such Bonds, premiums, fees and charges for insurance on such Bonds, commitment fees or similar charges relating to a Credit Facility, a Liquidity Facility, a Reserve Fund Facility, an Interest Rate Exchange Agreement or a Remarketing Agreement, costs and expenses in connection with the refunding of Bonds or other bonds or notes of the Authority, costs and expenses incurred pursuant to a remarketing agreement and other costs, charges and fees, including those of the Authority, in connection with the foregoing.

**Cost or Costs of the Project** means when used in relation to a Project, the costs and expenses or the refinancing of costs and expenses determined by the Authority to be necessarily or appropriately incurred in connection with the 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 College 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 College 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 money borrowed from parties other than the College), (viii) interest on the Bonds of a Series, bonds, notes or other obligations of the Authority issued to finance Costs of the Project that accrued 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 the Project or pursuant the Resolution or to the Applicable Loan Agreement or Mortgage, or to a Credit Facility, a Liquidity Facility or a Remarketing Agreement in connection with Option Bonds or Variable Interest Rate Bonds.

**Credit Facility** means, with respect to a Series of Bonds, an irrevocable letter of credit (and any confirming letter of credit), surety bond, loan agreement, or other agreement, facility or insurance or guaranty arrangement pursuant to which the Authority is entitled to obtain money to pay the principal and Sinking Fund Installments of and interest on particular Bonds whether or not the Authority is in default under the Resolution, which is issued or provided by:

(1) a bank, a trust company, a national banking association, an organization 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 or a saving and loan association;

(2) an insurance company or association chartered or organized under the laws of any state of the United States of America;

- (3) the Government National Mortgage Association or any successor thereto;
- (4) the Federal National Mortgage Association or any successor thereto;
- (5) a Federal Home Loan Bank; or
- (6) any other federal agency or instrumentality approved by the Authority.

Any such Credit Facility may also constitute a Liquidity Facility if it also meets the requirements of the definition of a Liquidity Facility.

With respect to the Series 2008 Bonds, the Letter of Credit constitutes a Credit Facility.

**Credit Facility Account** means the Credit Facility Account of the Debt Service Fund established pursuant to the Bond Series Certificate.

**Credit Facility Issuer** means initially the Bank as issuer of the Letter of Credit and thereafter any provider of any other Credit Facility delivered in accordance with the Bond Series Certificate.

**Credit Facility Issuer Default** means any one of the following events:

(i) the institution of insolvency proceedings by or against the Credit Facility Issuer under any bankruptcy act or any similar law which may be hereafter enacted (an "Insolvency"), unless such petition shall have been dismissed and such dismissal shall be final and not subject to appeal; provided, that if any such petition is filed against the Credit Facility Issuer, the Credit Facility Issuer shall have 90 days to obtain such dismissal and further, provided, that so long as there exists an amount due and owing under the Reimbursement Agreement and the Credit Facility Issuer has honored all properly presented and conforming drawings, no Credit Facility Issuer Default shall exist; or

(ii) any uncured failure by the Credit Facility Issuer to honor any drawing timely presented under the Credit Facility and made in strict compliance with the terms of the Credit Facility, within one (1) day following the date such drawing is received by the Credit Facility Issuer, where (A) there is no Insolvency and (B) such failure does not result from a restraint imposed upon the Credit Facility Issuer by a court order or any similar restriction; or

(iii) any repudiation in writing by the Credit Facility Issuer of its obligation to honor any drawing timely presented, which drawing is in compliance with the terms of the Credit Facility.

**Credit Facility Repayment Fund** means the Credit Facility Repayment Fund established pursuant to the Bond Series Certificate.

**Daily Rate** means the rate at which a Series 2008 Bond converted to the Daily Rate Mode bears interest, as established in accordance with the Bond Series Certificate.

**Daily Rate Mode** means a Rate Mode in which a Series 2008 Bond in such Rate Mode bears interest at a Daily Rate.

**Debt Service Fund** means with respect to each Series of Bonds the fund so designated and established pursuant to the Resolution.

**Defeasance Security** means:

(i) a Government Obligation of the type described in clauses (i), (ii), (iii) or (iv) of the definition of Government Obligation;

(ii) a Federal Agency Obligation described in clauses (i) or (ii) of the definition of Federal Agency Obligation; and

(iii) an Exempt Obligation, provided such Exempt Obligation (a) 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, (b) 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 interest payment dates and 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 Government Obligations 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 interest payment dates and maturity date thereof or on the redemption date specified in the irrevocable instructions referred to in clause (i) above, and (iv) is rated by at least two Rating Services in the highest rating category for such Exempt Obligation (without regard to qualification of such rating by symbols such as “+” or “-” and numerical notation);

*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.

**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 Applicable 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.

**Direction to Cause Optional Redemption** means the document so-named, dated as December 1, 2008, executed by the College, (a) setting forth the schedule of Expected Optional Redemptions of the Bonds and (b) directing the Authority to make such Expected Optional Redemptions, as the Direction to Cause Optional Redemption may be amended from time to time in accordance with the Loan Agreement.

**Eligible Account** means an account that is either (a) maintained with a federal or state chartered depository institution or trust company that has the Rating Service’s short term debt rating of at least “A-2” (or, if no short term debt rating, a long term debt rating of “BBB+”); or (b) maintained with the corporate trust department of a federal depository institution or state chartered depository institution subject to regulations regarding fiduciary funds on deposit which, in either case, has corporate trust powers and is acting in its fiduciary capacity. In the event that an account required to be an “Eligible Account” no longer complies with the requirement, the Trustee or Tender Agent, as applicable, should promptly (and, in any case, within not more than 30 calendar days) move such account to another financial institution such that the Eligible Account requirement will again be satisfied.

**Excess Earnings** means, with respect to a 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:

(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 under the Resolution, 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 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.

**Expected Optional Redemptions** means the optional redemptions of the Bonds which the College has covenanted with the Credit Facility Issuer (i) to fund and (ii) to request and direct the Authority to make pursuant to the Direction to Cause Optional Redemption.

**Expiration Date** when used in connection with a particular Credit Facility means the date on which such Credit Facility will expire, as such date may be extended from time to time or any earlier date on which the Credit Facility will terminate, expire or be cancelled.

**Federal Agency Obligation** means:

(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 registered under the Securities Act of 1933, as amended, and operated in accordance with Rule 2a – 7 of the Investment company Act of 1940, as amended, wholly comprised of any of the foregoing obligations.

**Fixed Rate** means the rate at which a Series 2008 Bond converted to Fixed Rate Mode bears interest to its maturity.

**Fixed Rate Mode** means a Rate Mode in which a Series 2008 Bond in such Rate Mode bears interest at a Fixed Rate.

**Government Obligation** means:

(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 by the United States of America;

(iii) an obligation to which the full faith and credit of the United States of America is 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 registered under the Securities Act of 1933, as amended, and operated in accordance with Rule 2a – 7 of the Investment company Act of 1940, as amended, 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 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 the Project or Campus or any part thereof.

**Initial Rate** means the rate the Series 2008 Bonds bear for one day from their Issue Date.

**Institution Payments Account** means the Institution Payments Account of the Debt Service Fund established pursuant to the Bond Series Certificate.

**Insurance Consultant** means a person or firm which is qualified to survey risks and to recommend insurance coverage for College facilities and services and organizations engaged in like operations and which is selected by the College and which may be the College's insurance agent.

**Intercreditor Agreement** means the Intercreditor Agreement by and among the Authority, the Trustee and the Bank and defining their respective rights and obligations relating to the Resolution, the Loan Agreement, and the Reimbursement Agreement.

**Interest Payment Date** means during any Weekly Rate Period, the first Thursday of each month. If any such date is not a Business Day, the Interest Payment Date shall be the succeeding Business Day.

**Interest Rate Exchange Agreement** means (i) an agreement entered into by the Authority or the College in connection with the issuance of or which relates to Bonds of a Series which provides that during the term of such agreement the Authority or the College is to pay to the counterparty thereto interest accruing at a fixed or variable rate per annum on an amount equal to a principal amount of such Bonds and that such counterparty is to pay to the Authority or the College an amount based on the interest accruing on a principal amount equal to the same principal amount of such Bonds at a fixed or variable rate per annum, in each case computed according to a formula set forth in such agreement, or that one shall pay to the other any net amount due under such agreement or (ii) an interest rate cap agreement, an interest rate floor agreement, an interest rate collar agreement and any other interest rate related hedge agreement or arrangement relating to Bonds of a Series.

**Investment Agreement** means a repurchase agreement or other agreement for the investment of money with a Qualified Financial Institution.

**Issue Date** means December 10, 2008.

**Liquidity Facility** means, with respect to a Series of Bonds, an irrevocable letter of credit (and any confirming letter of credit), a surety bond, a loan agreement, a Standby Purchase Agreement, a line of credit or other agreement or arrangement pursuant to which money may be obtained upon the terms and conditions contained therein for the purchase of such Bonds tendered for purchase in accordance with the terms of a Series Resolution authorizing such Bonds or a Bond Series Certificate relating to such Bonds, which is issued or provided by:

(i) a bank, a trust company, a national banking association, an organization 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 or a savings and loan association;

(ii) an insurance company or association chartered or organized under the laws of any state of the United States of America;

(iii) the Government National Mortgage Association or any successor thereto;

(iv) the Federal National Mortgage Association or any successor thereto;

(v) a Federal Home Loan Bank; or

(vi) any other federal agency or instrumentality approved by the Authority.

With respect to the Series 2008 Bonds, the Letter of Credit constitutes a Liquidity Facility.

**Loan Agreement** means in the Summary of Certain Provisions of the Resolution, the Applicable Loan Agreement, between the Authority and the College in connection with the issuance of a Series of Bonds, as the same from time to time shall have been amended, supplemented or otherwise modified as permitted hereby and by such Loan Agreement, and otherwise means the Loan Agreement dated as of October 29, 2008 between the Authority and the College, as the same may be amended from time to time as permitted by the Resolutions.

**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.

**Maximum Annual Debt Service** means on any date, when used with respect to the Bonds, the greatest amount required in the then current or any future Bond Year to pay the sum of the principal, Sinking Fund Installments, if any, and Expected Optional Redemptions, if any, of and interest on Outstanding Bonds payable during such year, and, in the case of Variable Interest Rate Bonds, interest payable during a calendar year will be calculated at a rate 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).

**Maximum Interest Rate** means, with respect to any particular Variable Interest Rate Bond, the numerical rate of interest, if any, set forth in the Applicable Series Resolution authorizing such Bond or the Applicable Bond Series Certificate relating to such Bond as the maximum rate at which such Bond may bear interest at any time and with respect to the Series 2008 Bonds means 12% per annum.

**Maximum Lawful Rate** means the maximum rate of interest on the relevant obligation permitted by applicable law.

**Mortgage** means a mortgage, if any, or modification or amendment thereto granted by the College to the Authority pursuant to an Applicable Loan Agreement, in form and substance satisfactory to the Authority and the Applicable Provider of a Credit Facility, if any, on the Mortgaged Property mortgaged in connection therewith, as security for the performance of the College's obligations under an Applicable Loan Agreement as such Mortgage may be amended or modified from time to time as provided for therein or in the Applicable Loan Agreement.

**Mortgaged Property** means the land described in a Mortgage and the buildings and improvements thereon or hereinafter erected thereon and the fixtures, furnishings and equipment owned or leased by the College and now or hereafter located therein or thereon, as from time to time amended, supplemented or otherwise modified.

**Official Statement** means the Official Statement of the Authority, dated December 2, 2008, relating to the Series 2008 Bonds.

**Opinion of Bond Counsel** means an opinion of Bond Counsel addressed to the Authority, the Trustee, the Remarketing Agent and the Credit Facility Issuer, to the effect that the action proposed to be taken will not cause interest on the Series 2008 Bonds to be includable in the gross income of the owners of such Series 2008 Bonds for purposes of federal income taxation and such action is authorized or permitted by the Resolutions.

**Option Bond** means any Bond of a Series which by its terms may be or is required to be tendered by and at the option of the Holder thereof for redemption by the Authority prior to the stated maturity thereof or for purchase by the Authority prior to the stated maturity 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.



**Outstanding**, when used in reference to Bonds of a Series, means, as of a particular date, all Bonds of such Series authenticated and delivered under the Resolution and under a Series Resolution except:

(i) any Bond canceled by the Trustee at or before such date;

(ii) any Bond deemed to have been paid in accordance with terms of the Resolution;

(iii) any Bond in lieu of or in substitution for which another Bond shall have been authenticated and delivered pursuant to the Resolution; and

(iv) any Option Bond tendered or deemed tendered in accordance with the provisions of the Applicable Series Resolution authorizing such Bond or the Applicable Bond Series Certificate relating to such Bond 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 Bond or the Applicable Bond Series Certificate relating to such Bond.

**Parity Indebtedness** means any indebtedness issued by the College or any other issuer on behalf of the College to the extent permitted pursuant to a Series Resolution and secured equally and ratably by the Applicable Mortgaged Property and/or the Applicable Pledged Revenues.

**Participant** means, with respect to Depository or another Depository, a member of or participant in Depository or such other Depository, respectively.

**Paying Agent** means, with respect to a 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 a Series Resolution, a Bond Series Certificate or any other resolution of the Authority adopted prior to authentication and delivery of such Series of Bonds for which Paying Agent or Paying Agents shall be so appointed.

**Permitted Collateral** means:

(i) Government Obligations described in clauses (i), (ii) or (iii) of the definition of Government Obligation:

(ii) Federal Agency Obligations described in clauses (i) or (ii) of the definition of Federal Agency Obligation;

(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 Rating Service and (c) is issued by a domestic corporation whose unsecured senior debt is rated by at least one Rating Service no lower than in the second highest rating category;

(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 Rating Service in the highest rating category; and

(v) bankers' acceptances issued by a bank rated in the highest short term rating category by at least one nationally recognized rating organization and having maturities of not longer than three hundred sixty five (365) days from the date they are pledged.

**Permitted Encumbrances** means, when used in connection with the Campus, any of the following:

(1) The lien of taxes and assessments which are not delinquent;

(2) The lien of taxes and assessments which are delinquent but the validity of which is being contested in good faith unless thereby the property or the interest of the Authority therein may be in danger of being lost or forfeited;

(3) Minor defects and irregularities in the title to such property which do not in the aggregate materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held;

(4) Easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held;

(5) Any instrument evidencing a transfer of the Project or any part thereof permitted pursuant to the Loan Agreement; and

(6) Such other liens, encumbrances, defects, and irregularities which exist on the date of the delivery of the Issue Date and are not expressly prohibited hereby or by the terms of the Reimbursement Agreement and such other liens as may thereafter exist that are expressly permitted by the Reimbursement Agreement or to which the Credit Facility Provider or, if there is no Credit Facility Provider with respect to the Bonds at that time, the Authority has given its prior written consent.

**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 Rating Services in at least the second highest rating category, and (b) fully collateralized by Permitted Collateral;

(vi) commercial paper issued by a domestic corporation rated in the highest short term rating category by at least one Rating Service and having maturities of not longer than two hundred seventy (270) days from the date of purchase;

(vii) bankers' acceptances issued by a bank rated in the highest short term rating category by at least one Rating Service and having maturities of not longer than three hundred sixty five (365) days from the date they are purchased;

(viii) any Investment Agreement that is fully collateralized by Permitted Collateral; and

(ix) a share or interest in a mutual fund, partnership or other fund registered under the Securities Act of 1933, as amended, and operated in accordance with Rule 2a – 7 of the Investment Company Act of 1940, as amended, whose objective is to maintain a constant share value of \$1.00 per share and that is rated in the highest short term rating category by at least one Rating Service.

**Pledged Revenues** means all tuition, and fees received by the College from any source and all rights to receive the same, whether in the form of accounts receivable, contract rights, chattel paper, instruments or other rights, and the proceeds thereof, and any insurance thereon, whether now existing or hereafter coming into existence and whether now owned or held or hereafter acquired by the College securing 100% of Maximum Annual Debt Service, subject only to the Prior Pledges; provided, however, that there shall be excluded from Pledged Revenues gifts, grants, bequests, donations and contributions heretofore or hereafter made, designated at the time of making thereof by the donor or maker as being for certain specific purposes, and the income derived therefrom, to the extent required by such designation.

**Prior Pledges** means, with respect to all property of the College constituting the Pledged Revenues, the right to receive the same and the proceeds thereof, any lien, charge or encumbrance thereupon, pledge thereof or security interest therein, which lien, charge, encumbrance, pledge or security interest is existing at the date such property, or the right to receive such property, is pledged to secure indebtedness of the College under loan agreements between the College and the Authority dated, respectively, September 23, 1998 and January 31, 2001.

**Project** means a “dormitory” as defined in the Act, which may include more than one part, financed in whole or in part from the proceeds of the sale of a Series of Bonds, as more particularly described in the Resolution, in or pursuant to a Series Resolution or in or pursuant to a Bond Series Certificate.

**Provider** means the issuer or provider of a Credit Facility, a Liquidity Facility or Reserve Fund Facility and as otherwise defined in a Series Resolution with respect to a Series of Bonds. With respect to drawings under a Credit Facility, a Liquidity Facility or a Reserve Fund Facility that is a letter of credit confirmed by a standby confirming letter of credit, “Provider” includes the issuer or provider of the standby confirming letter of credit.

**Provider Payments** means the amount, certified by a Provider to the Trustee, payable to such Provider by the College on account of amounts advanced by it under a Credit Facility, a Liquidity Facility or Reserve Fund Facility, including interest on amounts advanced and fees and charges with respect thereto.

**Purchase Account** means the account so designated and established within the Purchase and Remarketing Fund pursuant to the Bond Series Certificate.

**Purchase and Remarketing Fund** means the Purchase and Remarketing Fund established pursuant to the Bond Series Certificate.

**Purchase Price** means:

(i) when used in relation to Tendered Bonds, other than Series 2008 Bonds tendered upon a Conversion from a Term Rate Mode, an amount equal to:

(a) 100% of the principal amount of any Series 2008 Bond tendered or deemed tendered to the Tender Agent for purchase pursuant to Section 4.01 of the Bond Series Certificate, or

(b) the amount payable to the registered owner of a Bank Bond following receipt by such owner of a purchase notice from the Remarketing Agent; and

(ii) when used in relation to Tendered Bonds mandatorily tendered pursuant to the Bond Series Certificate upon Conversion from a Term Rate Mode on a date other than a Reset Date, an amount equal to the Redemption Price that would be payable if such Series 2008 Bonds had been called for redemption on the Conversion Date;

plus in each case accrued and unpaid interest thereon to the date of purchase; **provided, however**, that, in each case, if the date of purchase is an Interest Payment Date, then the Purchase Price shall not include accrued and unpaid interest, which shall be paid to the Holder of record on the applicable Record Date.

**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 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 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 credit criteria of an entity that provides a Credit Facility or financial guaranty agreement in connection with Outstanding Bonds of a Series;

(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, an insurance company or association chartered or organized under the laws of the United States of America, any state of the United States of America or any foreign nation, whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one 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 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 credit criteria of an entity that provides a Credit Facility or financial guaranty agreement in connection with Outstanding Bonds of a Series;

(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, whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one 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 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 credit criteria of an entity that provides a Credit Facility or financial guaranty agreement in connection with Outstanding Bonds of a Series;

(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; or

(v) a corporation whose obligations, including any investments of any money held under the Resolution purchased from such corporation, are insured by an insurer that meets the applicable rating requirements set forth above.

**Rate** means the Initial Rate, Daily Rate, Weekly Rate, Term Rate, Bank Bond Rate or Fixed Rate.

**Rate Mode** means the Daily Rate Mode, Weekly Rate Mode, Term Rate Mode or Fixed Rate Mode.

**Rating Service(s)** means each of Moody's Investors Service, Inc., Standard & Poor's Ratings Services, and Fitch Ratings, or their respective successors and assigns, in each case, which has, at the time of reference, assigned a rating to Outstanding Bonds at the request of the Authority.

**Record Date** means, with respect to each Interest Payment Date, the close of business on the Business Day preceding such Interest Payment Date.

**Redemption Account** means the Redemption Account of the Debt Service Fund established pursuant to the Bond Series Certificate.

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

**Refunded Bonds** means the Erie County Industrial Development Agency Adjustable Rate Demand Civic Facility Revenue Bonds (2004 D'Youville College Project), Series 2004.

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

**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 and Construction Loan Agreement, dated as of December 1, 2008, between the Bank and the College, pursuant to which the Bank has agreed to provide the Letter of Credit.

**Related Agreements** means each Remarketing Agreement, Interest Rate Exchange Agreement, or agreement entered into in connection with a Liquidity Facility or Credit Facility, to which the College is a party, including without limitation, the Reimbursement Agreement.

**Remarketing Agent** when used in connection with the Series 2008 Bonds means the remarketing agent for such Series 2008 Bonds appointed and serving in such capacity pursuant to the Bond Series Certificate and initially means KeyBanc Capital Markets Inc. or any successor remarketing agent.

**Remarketing Agreement** when used in connection with the Series 2008 Bonds means the Remarketing Agreement by and between the Authority, the College and the Remarketing Agent for such Series 2008 Bonds, as the same may be amended or supplemented from time to time in accordance with the provisions thereof, and initially means the Remarketing Agreement, dated as of December 1, 2008, between KeyBanc Capital Markets Inc., the Authority and the College, or any subsequent agreement relating to the powers, duties and obligations of a successor remarketing agent.

**Remarketing Proceeds Account** means the account so designated and established within the Purchase and Remarketing Fund pursuant to the Bond Series Certificate.

**Resolution** means the D'Youville College Revenue Bond Resolution, adopted by the Authority October 29, 2008, as from time to time amended or supplemented by Supplemental Resolutions or Series Resolutions in accordance with the terms and provisions thereof.

**Revenues** means, with respect to a Series of Bonds, all payments received or receivable by the Authority that pursuant to the Applicable Loan Agreement, except as provided in the Applicable Intercreditor Agreement, are required to be paid to the Trustee for such Series of Bonds (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 Arbitrage Rebate Fund or any fund or account established solely for purposes of making payments to reimburse a Provider of a Credit Facility or Liquidity Facility).

**Series** means all of the Bonds authenticated and delivered on original issuance and pursuant the Resolution and to the Applicable Series Resolution authorizing such Bonds as a separate Series of Bonds or a Bond Series Certificate, 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.

**Series Resolution** means a resolution of the Authority authorizing the issuance of a Series of Bonds adopted by the Authority pursuant to the Resolution

**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.

**Sinking Fund Installment** means, with respect to a Series of Bonds, as of any date of calculation:

(i) when used with respect to any Bonds of such Series, other than Option Bonds or Variable Interest Rate Bonds, so long as any such Bonds 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 relating thereto to be paid on a single future July 1 for the retirement of any Outstanding Bonds of said Series which mature after said future July 1, but does not include any amount payable by the Authority by reason only of the maturity of a Bond, and said future July 1 is deemed to be the date when a 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; and

(ii) when used with respect to Option Bonds or Variable Interest Rate Bonds of a Series, so long as such Bonds 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 relating thereto to be paid on a single future date for the retirement of any Outstanding Bonds of said Series which mature after said future date, but does not include any amount payable by the Authority by reason only of the maturity of a Bond, and said future date is deemed to be the date when a Sinking Fund Installment is payable and the date of such Sinking Fund Installment and said Outstanding Option Bonds or Variable Interest Rate Bonds of such Series are deemed to be Bonds entitled to such Sinking Fund Installment.

**Substitute Credit Facility** means a Credit Facility delivered to the Trustee in accordance with the Bond Series Certificate upon the expiration or earlier termination of a Credit Facility.

**Supplemental Resolution** means any resolution of the Authority amending or supplementing the Resolution, any Series Resolution or any Supplemental Resolution adopted and becoming effective in accordance with the terms and provisions of the Resolution.

**Tax Certificate** means the certificate of the Authority or agreement entered into by the Authority, including the appendices, schedules and exhibits thereto, executed in connection with the issuance of the Bonds in which the Authority makes representations and agreements as to arbitrage and compliance with the provisions of Sections 141 through 150, inclusive, of the Internal Revenue Code of 1986, 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.

**Tender Agent** means the Trustee 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 to the Bond Series Certificate.

**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.

**Term Rate** means the rate at which a Series 2008 Bond bears interest during a Term Rate Period, as established in accordance with the Bond Series Certificate.

**Term Rate Mode** means a Rate Mode designated as such in a Conversion Notice in which a Series 2008 Bond in such Rate Mode bears interest at a Term Rate.

**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 or determining 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;

(ii) a determination of the lowest interest rate as would enable the Remarketing Agent, under prevailing financial market conditions for obligations of the same general nature of the Bonds in question and that are comparable to the Bonds in question in terms of credit and maturity or tender dates, to remarket such Bonds at a price of par, plus accrued interest, if any; or

(iii) a stated interest rate that may be changed from time to time as provided in such Series Resolution or Bond Series Certificate;

*provided, however*, that in each case such variable interest rate may be subject to a Maximum Interest Rate and/or a Minimum Interest Rate as provided in the Applicable Series Resolution authorizing such Bonds or the Applicable Bond Series Certificate relating thereto, and that Series Resolution or 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 of a Series 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 bears 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 bears 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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**SUMMARY OF CERTAIN PROVISIONS  
OF THE LOAN AGREEMENT**

*Appendix B*

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## SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

The following is a brief summary of certain provisions of the Loan Agreement. This summary does not purport to be complete and reference is made to the Loan Agreement for full and complete statements of each of its provisions. The headings below are not part of the Loan Agreement but have been added for ease of reference only. Capitalized terms used in this summary which are not defined in the body of the Official Statement shall have the meanings ascribed to them in Appendix A.

### **Construction of the Project**

The College agrees that, whether or not there are sufficient moneys available to it under the provisions of the Resolution and the Series Resolution and under the Loan Agreement, the College shall complete the acquisition, design, construction, reconstruction, rehabilitation and improving or otherwise providing and furnishing and equipping of the Project, substantially in accordance with the Contract Documents related to such Project. Subject to the conditions of the Loan Agreement, the Authority will, to the extent of moneys available in the Construction Fund, cause the College to be reimbursed for, or pay, any costs and expenses incurred by the College which constitute Costs of the Project, provided such costs and expenses are approved by the Authority, which approval shall not be unreasonably withheld, and provided such costs and expenses are approved in writing by the Credit Facility Issuer with a Credit Facility issued and existing with respect to the Series 2008 Bonds

*(Section 5)*

### **Amendment of the Project**

The College, with the prior written consent of the Authority and the Credit Facility Issuer, which consent will not be unreasonably withheld, may amend the Project 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, renovation, improving, or otherwise providing, furnishing and equipping of the Project which the Authority is authorized to undertake. After the date of the Loan Agreement, the College shall not enter into, amend or modify, by change order or otherwise, any Contract Document that materially affects the scope or nature of the Project, without the prior written approval of the Authority and the Credit Facility Issuer, which approval shall not be unreasonably withheld. The College shall deliver to the Authority and the Credit Facility Issuer copies of such change orders as the Authority may from time to time request. The College shall provide such moneys as in the reasonable judgment of the Authority may be required for the cost of completing the Project in excess of the moneys in the Construction Fund established for such Project, whether such moneys are required as a result of an increase in the scope of the Project or otherwise. Such moneys shall be paid to the Trustee for deposit in the Construction Fund within fifteen (15) days after receipt by the College of written notice from the Authority that such moneys are required.

*(Section 6)*

### **Financial Obligations**

Except to the extent that moneys are available therefor under the Resolution or the Series Resolution or under the Loan Agreement, including moneys in the Debt Service Fund (but excluding any moneys from a draw under a Credit Facility), and interest accrued but unpaid on investments held in the Debt Service Fund, the College unconditionally agrees to pay or cause to be paid, so long as Series 2008 Bonds are Outstanding, to or upon the order of the Authority, from its general funds or any other moneys legally available to it:

(i) On or before the date of delivery of the Series 2008 Bonds, the Authority fee agreed to by the Authority and the College in connection with issuance of the Series 2008 Bonds;

(ii) On or before the date of delivery of Series 2008 Bonds, such amount, if any, as is required, in addition to the proceeds of such Series 2008 Bonds available therefor, to pay the Costs of Issuance of the Series 2008 Bonds, and other costs in connection with the issuance of the Series 2008 Bonds;

(iii) Three days (or the preceding Business Day if such day is not a Business Day) prior to an interest payment date on Outstanding Variable Interest Rate Bonds, the interest coming due on such Variable Interest Rate Bonds on such interest payment date, assuming that, to the extent the interest rate is not known on such date for the remaining period until the interest payment date, 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;

(iv) On or before the tenth (10<sup>th</sup>) day of each month commencing on the tenth (10<sup>th</sup>) day of the sixth (6<sup>th</sup>) month immediately preceding the date on which interest on Outstanding Series 2008 Bonds that are not Variable Interest Rate Bonds becomes due, one-sixth (1/6) of the interest coming due on such Series 2008 Bonds on the immediately succeeding interest payment date on such Series 2008 Bonds; **provided, however,** that, if with respect to such Outstanding Series 2008 Bonds there are more or less than six (6) such payment dates prior to the first interest payment on such Series 2008 Bonds, on each payment date prior to such interest payment date the College shall pay with respect to such Series 2008 Bonds an amount equal to the interest coming due on such Series 2008 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 such Series 2008 Bonds;

(v) On or before the tenth (10<sup>th</sup>) day of each month commencing on the tenth (10<sup>th</sup>) day of the July immediately preceding the July 1 (or in the case of Sinking Fund Installments or Expected Optional Redemptions with respect to Outstanding Variable Interest Rate Bonds with respect to which July 1 is not an interest payment date, on the interest payment date immediately succeeding July 1) on which the principal or a Sinking Fund Installment of Outstanding Series 2008 Bonds becomes due or an Expected Optional Redemption is scheduled, one-twelfth (1/12) of the principal and Sinking Fund Installment on such Series 2008 Bonds coming due on such date, together with one-twelfth (1/12) of the Expected Optional Redemption scheduled on such date; **provided, however,** that, if with respect to the Outstanding Series 2008 Bonds there are less than twelve (12) such payment dates prior to the date (or immediately succeeding interest payment date) on which principal or Sinking Fund Installments come due, or Expected Optional Redemptions are scheduled, on such Series 2008 Bonds, on each payment date prior to such date (or interest payment date) the College shall pay with respect to such Series 2008 Bonds an amount equal to the principal and Sinking Fund Installments of such Series 2008 Bonds coming due, and Expected Optional Redemptions scheduled, on such date (or 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 such date; **provided, however,** with respect to Sinking Fund Installments or Expected Optional Redemptions of Option Bonds or Variable Interest Rate Bonds that come due in months other than July, the terms of this subsection shall apply except that references to July shall be replaced with the applicable month(s) in which the related Sinking Fund Installment comes due or Expected Optional Redemptions are scheduled;

(vi) Except as provided below, by 1:30 p.m., New York City time, on the day on which payment of the purchase price of an Option Bond tendered for purchase which has not been remarketed or remarketed at less than the principal amount thereof and for which there is no Liquidity Facility then in effect, is due, the purchase price of such Option Bond, which shall be paid in immediately available funds; **provided, however,** that (A) if the College has received notice that such payment is due after 10:00 a.m., New York City time, but prior to 3:00 p.m., New York City time, on such day, then payment by the College shall be made by 5:00 p.m., New York City time on such day, and (B) if such notice is given after 3:00 p.m., New York City time, on such day, then payment by the College shall be made by 10:00 a.m. on the next succeeding Business Day;

(vii) At least forty-five (45) days prior to any date on which the Redemption Price or purchase price of Series 2008 Bonds previously called for redemption or contracted to be purchased, other than an Option Bond to be purchased or redeemed pursuant to an optional or mandatory tender thereof or Series 2008 Bonds being redeemed pursuant to Sinking Fund Installments or Expected Optional Redemptions in accordance with clause (v) above, is to be paid, the amount required to pay the Redemption Price or purchase price of such Series 2008 Bonds;

(viii) On January 10 of each Bond Year one-half (1/2) of the Annual Administrative Fee payable during such Bond Year in connection with the Series 2008 Bonds, and on July 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 Series 2008 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 Series 2008 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);

(ix) 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 (A) for the Authority Fee then unpaid, (B) to reimburse the Authority for payments made by it pursuant to the Loan Agreement and any expenses or liabilities incurred by the Authority pursuant to the Loan Agreement, (C) to reimburse the Authority for any external costs or expenses incurred by it attributable to the issuance of the Series 2008 Bonds or the financing or construction of the Project, including but not limited to any fees or other amounts payable by the Authority under a Remarketing Agreement, a Liquidity Facility or a Credit Facility, (D) for the costs and expenses incurred by the Authority to compel full and punctual performance by the College of all the provisions of the Loan Agreement or of the Resolution in accordance with the terms thereof, (E) for the fees and expenses of the Trustee and any Paying Agent in connection with performance of their duties under the Resolution and (F) to pay any Provider Payments then due and unpaid;

(x) Promptly upon demand by the Authority (a copy of which shall be furnished to the Trustee), all amounts required to be paid by the College as a result of an acceleration pursuant to the Loan Agreement;

(xi) Promptly upon demand by the Authority, the difference between the amount on deposit in the Arbitrage Rebate Fund available to be rebated in connection with the Series 2008 Bonds the interest of which is excluded from gross income for federal income tax purposes or otherwise available therefor under the Resolution and the amount required to be rebated to the Department of the Treasury of the United States of America in accordance with the Code in connection with such Series 2008 Bonds;

(xii) Promptly upon demand by the Authority, all amounts required to be paid by the Authority to a counterparty of any derivative agreement in accordance with an Interest Rate Exchange Agreement or to reimburse the Authority for any amounts paid to a counterparty of any derivative agreement in accordance with an Interest Rate Exchange Agreement;

(xiii) Promptly after notice from the Trustee, the Authority, or the Credit Facility Issuer, if the amount on deposit in the Credit Facility Repayment Fund (as such term is defined in the Bond Series Certificate relating to the Series 2008 Bonds) is insufficient to reimburse the Credit Facility Issuer for an amount drawn upon the Credit Facility with respect to either a drawing for the payment of interest or principal or a Sinking Fund Installment of the Series 2008 Bonds, the amount required to reimburse the Credit Facility Issuer (unless the College has otherwise reimbursed the Credit Facility Issuer); and

(xiv) To the extent not otherwise set forth in the Loan Agreement, including without limitation, in the event of any insufficiency, any amounts necessary to pay the principal, Sinking Fund Installments, Expected Optional Redemptions or Redemption Price associated with other redemptions, if any, of, and interest on, the Series 2008 Bonds, on the dates, in the amounts, at the times and in the manner provided in or pursuant to the Resolution and the Series Resolution, whether at maturity, upon acceleration, redemption or otherwise.

Subject to the provisions of the Loan Agreement and of the Resolution or the Series Resolution, the College shall receive a credit against the amount required to be paid by the College during a Bond Year pursuant to Loan Agreement on account of any Sinking Fund Installments and Expected Optional Redemptions if, prior to the date notice of redemption is given pursuant to the Resolution with respect to Series 2008 Bonds to be redeemed through any Sinking Fund Installments or Expected Optional Redemptions during the next succeeding Bond Year, either (i)

the College delivers to the Trustee for cancellation one or more Series 2008 Bonds of the maturity to be so redeemed or (ii) the Trustee, at the direction of the Authority, has purchased one or more Series 2008 Bonds of the maturity to be so redeemed from amounts on deposit in the Debt Service Fund in accordance with Section 5.06(b) of the Resolution during such Bond Year. The amount of the credit shall be equal to the principal amount of the Series 2008 Bonds so delivered.

The Authority under the Loan Agreement directs the College, and the College under the Loan Agreement agrees, to make the payments required by the Loan Agreement as follows: (i) the payments required by paragraphs (iii), (iv), (v), (vii) and (xiii) above directly to the Trustee for deposit and application in accordance with the Resolutions; (ii) the payments described in (i), (viii) and (ix) above directly to the Authority; and (iii) except as otherwise provided by this paragraph, the payments described in (vi), (xi) and (xii) above to or upon the written order of the Authority.

Notwithstanding any provisions in the Loan Agreement or in the Resolution to the contrary (except as otherwise specifically provided for in this paragraph), all moneys paid by the College to the Trustee pursuant to the Loan Agreement or otherwise held by the Trustee shall be applied in reduction of the College'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 Series 2008 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 Series 2008 Bonds and as a result thereof Series 2008 Bonds have been paid or deemed to have been paid in accordance with Section 12.01(b) of the Resolution. Except as otherwise provided in the Resolution, the Trustee shall hold such moneys in trust in accordance with the applicable provisions of the Resolution for the sole and exclusive benefit of the Holders of Series 2008 Bonds and the Credit Facility Issuer, regardless of the actual due date or applicable payment date of any payment to the Holders of Series 2008 Bonds.

The obligations of the College to make payments or cause the same to be made under the Loan Agreement shall be absolute 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 College may otherwise have against the Authority, the Trustee or any Holder of Series 2008 Bonds for any cause whatsoever including, without limiting the generality of the foregoing, failure of the College to complete the Project or the completion thereof with defects, failure of the College to occupy or use the Project, any declaration or finding that the Series 2008 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 (i) diminish the rights of the College to modify the Expected Optional Redemptions as and to the extent provided in the Loan Agreement or (ii) 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 shall fail to perform any such agreement, duty or obligation, the College may institute such action as it may deem necessary to compel performance or recover damages for non-performance. Notwithstanding the foregoing, the Authority shall have no obligation to perform its obligations under the Loan Agreement to cause advances to be made to reimburse the College for, or to pay, the Costs of the Project beyond the extent of moneys in the Construction Fund established for such Project available therefor.

The Loan Agreement and the obligations of the College to make payments under the Loan Agreement are general obligations of the College.

The Authority, for the convenience of the College, shall furnish to the College statements of the due date, purpose and amount of payments to be made pursuant to the Loan Agreement. The failure to furnish such statements shall not excuse non-payment of the amounts payable under the Loan Agreement at the time and in the manner provided under the Loan Agreement. The College shall notify the Authority as to the amount and date of each payment made to the Trustee by the College.

The Authority shall have the right in its sole discretion to make on behalf of the College any payment required pursuant to the Loan Agreement which has not been made by the College when due. No such payment by the Authority shall limit, impair or otherwise affect the rights of the Authority under the Loan Agreement arising out

of the College'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 College to make such payment.

The College, if it is not then in default under the Loan Agreement, shall have the right to make voluntary payments in any amount to the Trustee. In the event of a voluntary payment, the amount so paid shall be deposited in the Debt Service Fund and applied in accordance with Section 5.06 of the Resolution or held by the Trustee for the payment of Series 2008 Bonds in accordance with Section 12.01 of the Resolution. Upon any voluntary payment by the College or any payment made pursuant to the Loan Agreement, the Authority agrees to direct the Trustee to purchase or redeem Series 2008 Bonds in accordance with the Resolution or to give the Trustee irrevocable instructions in accordance with Section 12.01(b) of the Resolution with respect to such Series 2008 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 Series 2008 Bonds Outstanding, or to pay or provide for the payment of all Series 2008 Bonds Outstanding in accordance with Section 12.01(b) of the Resolution, the Authority agrees, in accordance with the instructions of the College, to direct the Trustee to purchase or redeem all Series 2008 Bonds Outstanding, or to cause all Series 2008 Bonds Outstanding to be paid or to be deemed paid in accordance with Section 12.01(b) of the Resolution.

If the College elects to purchase Series 2008 Bonds, with the written consent of the Authority, the College shall give written notice to the Authority and the Trustee whenever Series 2008 Bonds are to be purchased at the election of the College, which written notice shall include the maturity and principal amount of the Series 2008 Bonds to be so purchased. All such purchases shall be subject to the condition that money for the payment of the purchase price therefor is available on the date set for each such purchase.

Promptly upon demand by the Tender Agent or the Authority, the College shall pay to the Tender Agent such compensation due the Tender Agent in accordance with the provisions of the Bond Series Certificate relating to the Series 2008 Bonds.

The College may amend the Direction to Cause Optional Redemptions and the schedule of Expected Optional Redemptions set forth therein at any time after the College and the Credit Facility Provider have amended the schedule of required optional redemptions of the Series 2008 Bonds set forth in the Reimbursement Agreement; provided, however, that (x) no such amendment shall have any effect unless it is in a writing executed by the College and accompanied by (A) an original counterpart of the amendment to the Reimbursement Agreement upon which the amendment of the Direction to Cause Optional Redemptions is based and (B) an opinion of Bond Counsel to the effect that such amendment does not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2008 Bonds, and (y) no amendment of the schedule of Expected Optional Redemptions shall be effective to reduce the amount of any Expected Optional Redemption scheduled to occur fewer than [thirty (30)] days after all requirements of clause (x) above are satisfied. To the extent that any amendment to the schedule of Expected Optional Redemptions is effective pursuant to the Loan Agreement, Schedule E of the Loan Agreement shall be deemed amended, and the payment obligations of the College under the Loan Agreement shall be adjusted to reflect the amended schedule, and any amounts paid by the College that constitute overpayments under the amended schedule shall be credited against future payment obligations of the College under the Loan Agreement or returned to the College, as in either case, the College shall direct the Trustee in writing, with a copy to the Authority. In the absence of any such direction from the College, within thirty (30) days from an amendment of the schedule of Expected Optional Redemptions, the Trustee shall apply the overpayment to reduce the payment obligations of the College under the Loan Agreement, applicable.

*(Section 9)*

#### **Warranties of Title; Utilities and Access**

The College warrants, represents and covenants to the Authority that (i) it has good and marketable title to the Campus, free and clear of liens and encumbrances, except Permitted Encumbrances, so as to permit it to have quiet enjoyment and use thereof for purposes of the Loan Agreement and the College's programs and (ii) the College has such rights of way, easements or other rights in land as may be reasonably necessary for ingress and egress to and from the Campus for proper operation and utilization of the Campus and for utilities required to serve

the Campus, together with such rights of way, easements or other rights in, to and over land as may be necessary for construction, use and operation by the College of the Project and the remainder of the Campus.

The College warrants, represents and covenants that the Project and the remainder of the Campus (i) is and will be serviced by all necessary utilities (including, to the extent applicable, without limitation, electricity, gas, water, sewer, steam, heating, air-conditioning and ventilation) and (ii) to the extent applicable, has and will have its own separate and independent means of access, apart from any other property owned by the College or others; **provided, however**, that such access may be through common roads or walks owned by the College used also for other parcels owned by the College.

The College covenants that title to the Campus shall be kept free from any encumbrances, liens or commitments of any kind, other than Permitted Encumbrances, and such other encumbrances approved in writing by the Authority and the Credit Facility Issuer.

*(Section 13)*

### **Additional Representation and Covenants**

The College warrants and represents that (i) it has the requisite power and authority (A) to authorize, execute and deliver, and to perform its obligations under, the Loan Agreement and the Related Agreements, and (B) to incur the indebtedness contemplated under the Loan Agreement and thereby, (ii) the Loan Agreement and the Related Agreements constitute valid and binding obligations of the College enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting or relating to the rights of the creditors generally, and general principles of equity, and (iii) the execution and delivery of, consummation of the transaction contemplated by and performance of the College's obligations under the Loan Agreement and each of the Related Agreements do not violate, conflict with or constitute a default under the charter or by-laws of the College or any indenture, mortgage, trust, or other commitment or agreement to which the College is a 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 College or any of its properties.

The College covenants, warrants and represents that it is duly authorized by all applicable laws, its charter, by-laws or other organizational documents to pledge and grant a security interest in and to assign to the Authority and the Trustee, for the benefit of the Bondholders and the Credit Facility Issuer, the Pledged Revenues in the manner and to the extent provided in the Loan Agreement and in the Resolution. The College further covenants, warrants and represents that any and all pledges, security interests in and assignments to the Authority and the Trustee, for the benefit of the Bondholders and the Credit Facility Issuer, granted or made pursuant to the Loan Agreement are and shall be free and clear of any pledge, lien, charge, security interest or encumbrance prior thereto, or of equal rank therewith, other than the Prior Pledges or the Permitted Encumbrances, and that all corporate action on the part of the College to that end has been duly and validly taken.

The College further covenants that the provisions of the Loan Agreement are and shall be valid and legally enforceable obligations of the College in accordance with their terms. The College further covenants that it shall at all times, to the extent permitted by law, defend, preserve and protect the pledge, security interest in and assignment of the Pledged Revenues and all of the rights of the Authority, the Credit Facility Issuer and the Bondholders under the Loan Agreement and under the Resolution, any Series Resolution, and any Bond Series Certificate against all claims and demands of all persons whomsoever. The College further covenants, warrants and represents that the grant of a security interest in the Pledged Revenues and assignment thereof as security under the Loan Agreement, and the consummation of the transactions contemplated under the Loan Agreement and compliance with the provisions of 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, by-laws or other organization documents of the College or any indenture or mortgage, or any trusts, endowments or other commitments or agreements to which the College 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 College or any of its properties.

*(Section 15)*



## **Tax-Exempt Status of the College**

The College 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 letter or other notification as represented to the Internal Revenue Service continue to exist; and (vi) it is exempt from federal income taxes under Section 501(a) of the Code, except for payment of unrelated business income tax. The College agrees that: (a) it shall not perform any act or enter into any agreement which shall adversely affect such federal income tax status and shall conduct its operations in the manner which will conform to the standards necessary to qualify the College as an educational organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law; and (b) it shall not perform any act, enter into any agreement or use or permit the Project to be used in a manner, or for any trade or business unrelated to the educational purposes of the College, which could adversely affect the exclusion of interest on the Series 2008 Bonds from federal gross income pursuant to Section 103 of the Code. The College covenants with the Authority that it will not enter into any leases in connection with the Project or the project financed by the Refunded Bonds (other than such leases or agreements that may be entered into from time to time in connection with the use of such project for student residences) unless the College has obtained an opinion of Bond Counsel that such lease will not adversely affect the exclusion of interest on the Series 2008 Bonds from federal gross income pursuant to Section 103 of the Code, which opinion of Bond Counsel shall be delivered to the Authority prior to the College executing and delivering such lease.

*(Section 16)*

## **Securities Acts Status**

The College represents that: (i) it is an organization organized and operated (A) exclusively for educational or charitable purposes and (B) not for pecuniary profit; and (ii) no part of the net earnings of which inures to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended. The College agrees that it shall not perform any act or enter into any agreement which shall adversely affect such status as set forth in the Loan Agreement.

*(Section 17)*

## **Maintenance of Corporate Existence**

The College covenants that it will (i) maintain its corporate existence, (ii) continue to operate as a non-profit educational organization, (iii) obtain, maintain and keep in full force and effect such governmental approvals, consents, licenses, permits and accreditation as may be necessary for it to continue to so operate, (iv) except as expressly permitted under the Loan Agreement, not dissolve or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another person or permit one or more persons to consolidate with or merge into it. The College, with the prior written consent of the Authority, which consent shall not be unreasonably withheld, may (A) sell or otherwise transfer all or substantially all of its assets to, or consolidate with or merge into, another organization or corporation which qualifies as an organization described in Section 501(c)(3) of the Code, or any successor provision of federal income tax law, (B) permit one or more corporations or any other organization to consolidate with or merge into it, or (C) acquire all or substantially all of the assets of one or more corporations or other organizations. Notwithstanding the foregoing provisions of the Loan Agreement, no disposition, transfer, consolidation or merger otherwise permitted under the Loan Agreement shall be permitted unless (1) the same would not in the opinion of Bond Counsel adversely affect the exclusion of interest on any Series 2008 Bond from gross income for purposes of federal income taxation, (2) the College will not as a result thereof be in default under the Loan Agreement or under any Related Agreement, (3) the surviving, resulting or transferee corporation, as the case may be, is incorporated or qualified to do business or operate under the laws of the State and is qualified as an organization described in Section 501(c)(3) of the Code or any successor provision of federal income tax law, and

(4) the surviving, resulting or transferee corporation of the College assumes in writing all of the obligations of the College under the Loan Agreement, under the Continuing Disclosure Agreement, if any, and under the Related Agreements, and furnishes to the Authority (x) a certificate to the effect that upon such sale, transfer, consolidation, merger or acquisition such corporation will be in compliance with each of the provisions of the Loan Agreement and of the Related Agreements, and will meet the requirements of the Act, and (y) such other certificates and documents as the Authority may reasonably require to establish compliance with the Loan Agreement.

*(Section 18)*

### **Environmental Quality Review and Historic Preservation**

For the purpose of assisting the Authority in making any findings or determinations which might be required by (i) Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereunder (collectively, "SEQRA") or (ii) the New York State Historic Preservation Act of 1980 and the regulations promulgated thereunder (collectively the "Preservation Act"), the College agrees to abide by the requirements relating thereto as set forth in the Loan Agreement.

*(Section 19)*

### **Use and Possession of the Project**

Subject to the rights, duties and remedies of the Authority under the Loan Agreement, the College shall have sole and exclusive control and possession of and responsibility for (i) the Project (ii) the operation of the Project and supervision of the activities conducted therein or in connection with any part thereof and (iii) the maintenance, repair and replacement of the Project; ***provided, however***, that, except as otherwise limited under the Loan Agreement, the foregoing shall not prohibit use of the Project by persons other than the College or its students, staff or employees in furtherance of the College's corporate purposes, if such use will not adversely affect the exclusion of interest on any Series 2008 Bonds from gross income for federal income tax purposes.

*(Section 20)*

### **Restrictions on Religious Use**

The College agrees that with respect to the 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 shall 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 shall not prohibit the free exercise of any religion; ***provided, further***, that if at any time hereafter, in the opinion of Bond Counsel, the then applicable law would permit the 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 the Authority deems necessary to determine whether the Project or any portion or real property thereof financed by Series 2008 Bonds is being used for any purpose proscribed under the Loan Agreement. The College under the Loan Agreement further agrees that prior to any disposition of any portion of the Project for less than fair market value, it shall 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 instance 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 the Project, or, if included in the Project, 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. For the purposes of the Loan Agreement an involuntary transfer or disposition of the Project or a portion thereof, upon foreclosure or otherwise, shall be considered a sale for the fair market value thereof.

*(Section 21)*

### **Sale of the Project**

The College covenants that it will not transfer, sell or convey the Project or any part thereof or interest therein, including development rights, without the prior approval of the Authority and the Credit Facility Issuer, unless (a) in the opinion of Bond Counsel, the same will not adversely affect the exclusion of interest on any Series 2008 Bond from gross income for federal income tax purposes and (b) the College pays to the Trustee either for deposit into the Debt Service Fund, or, pursuant to Section 12.01(b) of the Resolution, to be set aside or to purchase Defeasance Securities in accordance with the direction of the Authority.

Notwithstanding the foregoing, the College may remove equipment, furniture or fixtures that is part of the Project and was financed with the proceeds of Series 2008 Bonds if such equipment is obsolete and no longer needed for the Project, or if the College promptly substitutes for such equipment, furniture or fixtures additional equipment, furniture or fixtures having a value and utility at least equal to the equipment, furniture or fixtures removed or replaced.

*(Section 22)*

### **Maintenance, Repair and Replacement**

The College agrees that, throughout the term of the Loan Agreement, it shall, at its own expense, hold, operate and maintain the Campus 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 safe condition, reasonable wear and tear excepted, and shall from time to time make all necessary and proper repairs, replacements and renewals so that at all times the operation thereof may be properly and advantageously conducted. The College shall give the Authority not less than fifteen (15) days prior written notice of its intention to make a change or alteration that materially alters the scope or nature of the Campus or a portion thereof. The College shall have the right to remove or replace any type of fixtures, furnishings and equipment in the Campus which may have been financed by the proceeds of the sale of Series 2008 Bonds if obsolete and no longer needed for the Project or if the College substitutes for any such 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.

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

*(Section 23)*

### **Covenants as to Insurance**

The College agrees to maintain or cause to be maintained insurance with insurance companies or by means of self-insurance, insurance of such type, against such risks and in such amounts as are customarily carried by private colleges and universities located in the State of a nature similar to that of the College, which insurance shall include property damage, fire and extended coverage, public liability and property damage liability insurance in amounts estimated to indemnify the reasonably anticipated damage, loss or liability, subject to reasonable deductible provisions. The College shall at all times also maintain worker's compensation coverage and disability benefits insurance coverage as required by the laws of the State.

The College shall furnish to the Authority annually (1) a certificate or report of an Insurance Consultant that the insurance coverage maintained by the College is adequate and in accordance with the standards above, and

(2) any certificates of workers' compensation insurance and disability benefits insurance coverage required by the New York State Workers' Compensation Board.

If the Authority shall so request in writing, the College shall provide to the Authority summaries or other evidence of its insurance coverage and shall obtain endorsements reasonably requested by the Authority.

*(Section 24)*

### **Damage or Condemnation**

In the event of a taking of the Project or any portion thereof by eminent domain or condemnation, or of damage or destruction affecting all or part thereof, all property casualty insurance, condemnation or eminent domain proceeds not applied to reimburse the College for costs incurred to repair or restore the same, and subject to the provisions of the Intercreditor Agreement and the Reimbursement Agreement, shall be paid to the Trustee for deposit in the Construction Fund. Subject to the provisions of the Intercreditor Agreement and the Reimbursement Agreement, all proceeds derived from an award for such taking or from property casualty insurance shall be applied as provided below.

(i) If within one hundred twenty (120) days (or such longer period as the Authority and the College may agree) after the Authority receives actual notice or knowledge of the taking or damage, the College, the Credit Facility Issuer and the Authority agree in writing that the property or the affected portion thereof shall be repaired, replaced or restored, the College shall proceed to repair, replace or restore the same, or the affected portion thereof, including all fixtures, furniture, equipment and effects, to its original condition insofar as possible with such changes and additions as shall be appropriate to the needs of the College and approved in writing by the Authority and the Credit Facility Issuer. The funds required for such repair, replacement or restoration shall be paid, subject to such conditions and limitations as the Authority and the Credit Facility Issuer may impose, from the proceeds of insurance, condemnation or eminent domain awards received by reason of such occurrence and to the extent such proceeds are not sufficient, from funds to be provided by the College.

(ii) If no agreement for the repair, restoration or replacement of the property or affected portion shall have been reached by the Authority, the Credit Facility Issuer and the College within such period, the proceeds then held by the College shall be paid the Trustee for deposit in the Debt Service Fund and the proceeds then held in the Construction Fund shall be transferred to the Debt Serv

*(Section 25)*

### **Taxes and Assessments**

The College shall 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 Project or any part thereof, and upon all ordinary costs of operating, maintaining, repairing and replacing such Project and its equipment. The College shall file exemption certificates as required by law. The College agrees to exhibit to an Authorized Officer of the Authority within ten (10) days after written demand by the Authority, certificates or receipts issued by the appropriate authority showing full payment of all taxes, assessments, water and sewer charges and other impositions; provided, however, that the good faith contest of such impositions shall be deemed to be complete compliance with the requirements of the Loan Agreement if the College sets aside such reserves as may be required by good accounting practice. Notwithstanding the foregoing, the Authority in its sole discretion, after notice in writing to the College, may pay any such charges, taxes and assessments if, in the reasonable judgment of the Authority, the Project or any part thereof would be in substantial danger by reason of the College's failure to pay such charges, taxes and assessments of being sold, attached, forfeited, foreclosed, transferred, conveyed, assigned or otherwise subjected to any proceeding, equitable remedy, lien, charge, fee or penalty that would impair (i) the interests or security of the Authority under the Loan Agreement or under the Resolution; (ii) the ability of the Authority to enforce its rights thereunder; (iii) the ability of the Authority to fulfill the terms of any covenants or perform any of its obligations under the Loan Agreement or under the Resolution; or (iv) the ability of the College to fulfill the terms of any covenants or perform any of its obligations under the Loan

Agreement and the College agrees to reimburse the Authority for any such payment, with interest thereon from the date payment was made by the Authority at a rate equal to the highest rate of interest payable on any investment held for the Debt Service Fund on the date such payment was made by the Authority.

*(Section 26)*

## **Defaults and Remedies**

As used in the Loan Agreement, the term “Event of Default” shall mean:

(i) the College shall (A) default in the timely payment of any amount payable pursuant to the Loan Agreement (other than pursuant to Section 9(a)(iii) or 9(a)(vi) thereof) or the payment of any other amounts required to be delivered or paid by or on behalf of the College in accordance with the Loan Agreement or with the Resolution or the Series Resolution, and such default continues for a period in excess of seven (7) days or (B) default in the timely payment of any amount payable pursuant to Section 9(a)(iii) or 9(a)(vi) the Loan Agreement; or

(ii) the College defaults in the due and punctual performance of any other covenant in the Loan Agreement and such default continues for thirty (30) days after written notice requiring the same to be remedied shall have been given to the College by the Authority or the Trustee or, if such default is not capable of being cured within thirty (30) days, the College fails to commence within said thirty (30) days to cure the same and to diligently prosecute the cure thereof; or

(iii) as a result of any default in payment or performance required of the College under the Loan Agreement or any other Event of Default under the Loan Agreement, whether or not declared, continuing or cured, the Authority shall be in default in the payment or performance of any of its obligations under the Resolution or 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 Series 2008 Bonds shall be seeking the enforcement of any remedy under the Resolution as a result thereof; or

(iv) the College shall (A) be generally not paying its debts as they become due, (B) 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, (C) make a general assignment for the benefit of its general creditors, (D) 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, (E) be adjudicated insolvent or be liquidated or (F) take corporate action for the purpose of any of the foregoing; or

(v) a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the College, 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 College, or any petition for any such relief shall be filed against the College and such petition shall not be dismissed or stayed within ninety (90) days; or

(vi) the charter of the College shall be suspended or revoked; or

(vii) a petition to dissolve the College shall be filed by the College with the Board of Regents of the State of New York, the legislature of the State or other governmental authority having jurisdiction over the College; or

(viii) an order of dissolution of the College shall be made by the Board of Regents of the State of New York, the legislature of the State or other governmental authority having jurisdiction over the College, which order shall remain undismissed or unstayed for an aggregate of thirty (30) days; or

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

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

(xi) a final non-appealable judgment for the payment of money, at least one million dollars (\$1,000,000) of which is not covered by insurance or reserves set aside by the College, which in the judgment of the Authority will adversely affect the rights of the Holders of the Series 2008 Bonds shall be rendered against the College and at any time after forty-five (45) days from the entry thereof, (A) such judgment shall not have been discharged or paid, or (B) the College 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

(xii) the giving of notice by the Credit Facility Issuer to the Authority and the Trustee of an Event of Default under and as defined in the Reimbursement Agreement and requesting the Trustee to direct a mandatory tender of the Series 2008 Bonds in accordance with the Bond Series Certificate with respect to the Series 2008 Bonds.

Subject to the Intercreditor Agreement and the Prior Pledges, upon the occurrence of an Event of Default the Authority shall provide the Credit Facility Issuer with written notice thereof upon obtaining actual knowledge thereof and may take any one or more of the following actions:

(i) declare all sums payable by the College under the Loan Agreement immediately due and payable;

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

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

(iv) maintain an action against the College under the Loan Agreement to recover any sums payable by the College or to require its compliance with the terms of the Loan Agreement;

(v) to the extent permitted by law, (A) enter upon the Project and complete the construction thereof in accordance with the plans and specifications with such changes therein as the Authority may deem appropriate and employ watchmen to protect the Project, all at the risk, cost and expense of the College, consent to such entry being given by the College, (B) at any time discontinue any work commenced in respect of the construction of the Project or change any course of action undertaken by the College and not be bound by any limitations or requirements of time whether set forth in the Loan Agreement or otherwise, (C) assume any construction contract made by the College in any way relating to the construction of the Project and take over and use all or any part of the labor, materials, supplies and equipment contracted for by the College, whether or not previously incorporated into the construction of such Project, and (D) in connection with the construction of the Project undertaken by the Authority pursuant to the provisions of this subparagraph (v), (1) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment in connection with the construction of such Project, (2) pay, settle or compromise all bills or claims which may become liens against the Project or against any moneys of the Authority applicable to the construction of such Project, or which

have been or may be incurred in any manner in connection with completing the construction of the Project or for the discharge of liens, encumbrances or defects in the title to the Project or against any moneys of the Authority applicable to the construction of such Project, and (3) take or refrain from taking such action under the Loan Agreement as the Authority may from time to time determine. The College shall be liable to the Authority for all sums paid or incurred for construction of the Project whether the same shall be paid or incurred pursuant to the provisions of this subparagraph (v) 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 College to the Authority upon demand. The College 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 College for the purpose of exercising the rights granted to the Authority by this subparagraph (v) during the term of the Loan Agreement; and (vi) realize upon any security interest which the Authority may then have in the pledge and assignment of the Pledged Revenues and the rights to receive the same, all to the extent provided in the Loan Agreement, by any one or more of the following actions: (i) enter the College and examine and make copies of the financial books and records of the College relating to the Pledged Revenues and, to the extent of the assigned Pledged Revenues, take possession of all checks or other orders for payment of money and moneys in the possession of the College representing Pledged Revenues or proceeds thereof; (ii) notify any account debtors obligated on any Pledged Revenues to make payment directly to the Authority or to the Trustee, as the Authority may direct, and of the amount to be so paid; provided, however, that the Authority may, in its discretion, immediately collect the entire amount of interest, principal, and Sinking Fund Installments, if any, coming due with respect to the Series 2008 Bonds on or before the next July 1 and January 1 (or, if the Series 2008 Bonds are Variable Interest Rate Bonds, on the interest payment dates occurring on or immediately after the next July 1 and January 1), to the extent of Pledged Revenues, and may continue to do so commencing on each July 1 and January 1 (or, in the case of Variable Interest Rate Bonds, on each interest payment date on or immediately succeeding each July 1 and January 1) to the extent of amounts due to the Authority under the Loan Agreement on the next July 1 and January 1 (or immediately succeeding interest payment date), with respect to Pledged Revenues, until such amounts are fully collected; provided, however, that written notice of such notification shall be mailed to the College five (5) days prior to mailing or otherwise making such notification to account debtors; and provided further that until the College shall receive such notice it shall have full authority and responsibility to enforce and collect Pledged Revenues owing from its account debtors; (iii) following the above-mentioned notification to account debtors, collect, compromise, settle, compound or extend amounts payable as Pledged Revenues which are in the form of accounts receivable or contract rights from the College's account debtors by suit or other means and give a full acquittance therefor and receipt therefor in the name of the College whether or not the full amount of any such account receivable or contract right owing shall be paid to the Authority; (iv) require the College to deposit all moneys, checks or other orders for the payment of money which represent Pledged Revenues in an amount equal to the Pledged Revenues assigned under the Loan Agreement within five (5) business days after receipt of written notice of such requirement, and thereafter as received, into a fund or account to be established for such purpose by the Authority, provided that the moneys in such fund or account shall be applied by the Authority to the payment of any of the obligations of the College under the Loan Agreement including the fees and expenses of the Authority, and provided further that the Authority in its sole discretion may authorize the College to make withdrawals from such fund or account for its corporate purposes, and provided further that the requirement to make such deposits shall cease and the balance of such fund or account shall be paid to the College when all Events of Default under the Loan Agreement by the College have been cured; (v) forbid the College to extend, compromise, compound or settle any accounts receivable or contract rights which represent any unpaid assigned Pledged Revenues, or release, wholly or partly, any person liable for the payment thereof (except upon receipt of the full amount due) or allow any credit or discount thereon; and

(vi) endorse in the name of the College any checks or other orders for the payment of money representing any unpaid assigned Pledged Revenues or the proceeds thereof.

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.

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 pursuant to paragraph (b) of the Loan Agreement and its consequences if such Event of Default shall be cured. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereto.\

*(Section 30)*

### **Investment of Moneys**

The College acknowledges that the Authority may in its sole discretion direct the investment of certain moneys held under the Resolution and the Series Resolution as provided therein and that no representation or warranty has been made by the Authority with respect to interest rates on, or the amount to be earned as a result of, any such investment. Neither the Authority nor the Trustee shall have any liability arising out of or in connection with the making of any investment authorized by the provisions of Article VI of the Resolution in the manner provided therein, or for any loss, direct or indirect, resulting from any such investment. The Authority agrees that it shall direct the making of investments as permitted by the Resolution as soon as practicable when moneys are legally available therefor.

*(Section 32)*

### **Limitations on Agreements**

The College shall not enter into any contract or agreement which impairs the College's ability to comply with the provisions of the Loan Agreement in any material respect.

*(Section 34)*

### **Arbitrage; Tax Exemption**

Each of the College and the Authority covenants that it shall take no action, nor shall it approve the Trustee's taking any action or making any investment or use of the proceeds of the Series 2008 Bonds, which would cause the Series 2008 Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code, and any proposed or final regulations thereunder as are applicable to the Series 2008 Bonds at the time of such action, investment or use. The College (or any related person, as defined in Section 147(a)(2) of the Code) shall not purchase Bonds of a Series other than for delivery to and cancellation by the Trustee, unless the Trustee shall have received an opinion of Bond Counsel to the effect that the purchase by the College or by a related person of Bonds of a Series will not cause interest on the Bonds of such Series to be included in the gross income of the owners of such Bonds for the purposes of federal income taxation. The College 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 Section 7.13 of the Resolution. The College shall be required to pay for any consultant or report necessary to satisfy any such arbitrage and rebate requirements.

The College covenants that it will not take any action or fail to take any action which would cause any representation or warranty of the College contained in the Tax Certificate then to be untrue and shall comply with all covenants and agreements of the College contained in the Tax Certificate, in each case to the extent required by and otherwise in compliance with such Tax Certificate.

*(Section 35)*

### **Limitations on Authority Rights**

As long as no Event of Default has occurred and is continuing, and no event has occurred that, with the giving of notice or lapse of time, or both, would constitute an Event of Default, the Authority will not, without the prior written consent of the College (i) change the dates on which an Option Bond is to be tendered for purchase or



the period during which a Variable Interest Rate Bond is to bear interest at a particular rate, (ii) convert a Variable Interest Rate Bond to bear interest at a fixed rate to its maturity, (iii) seek the removal or resignation of a Remarketing Agent or appoint a successor Remarketing Agent, (iv) amend or modify the dates on or Redemption Price at which a Variable Interest Rate Bond after its conversion to bear interest at a fixed rate to the maturity date thereof may be redeemed at the election or direction of the Authority in accordance with Section 4.02 of the Resolution or (v) remarket at a price other than par any Option Bond tendered or deemed to have been tendered for purchase. The College may, at any time no Event of Default, or an event that, with the giving of notice or lapse of time, or both, would constitute an Event of Default, has occurred and is continuing, request the Authority to take such action as may be required by the Resolution or the Series Resolution or the applicable Bond Series Certificate to change the dates on which such Option Bonds are to be tendered for purchase or the period during which such Variable Interest Rate Bonds shall bear interest at a particular rate or to convert such Variable Interest Rate Bonds to bear interest at a fixed rate to their maturity.

*(Section 36)*

### **Certificate as to Representations and Warranties**

The obligations of the Authority under the Loan Agreement and the delivery of the Series 2008 Bonds are conditioned upon the receipt by the Authority at or prior to delivery of the Series 2008 Bonds of a certificate of an Authorized Officer of the College acceptable to the Authority to the effect that the representations and warranties contained in the Loan Agreement are true and correct in all material respects and in full force and effect on and as of the date of delivery of the Series 2008 Bonds as if made on the date of delivery of the Series 2008 Bonds.

*(Section 39)*

### **Further Assurances**

The College, at any and all times, shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as are necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, moneys, securities, funds and security interests under the Loan Agreement or by the Resolution pledged, assigned or granted, or intended so to be, or which the College may hereafter become bound to pledge, assign or grant to the Authority pursuant to the Loan Agreement.

*(Section 42)*

### **Amendments to Loan Agreement and Reimbursement Agreement; Substitute Credit Facility**

The Loan Agreement may be amended only in accordance with Section 7.11 of the Resolution and the Intercreditor Agreement and each amendment shall be made by an instrument in writing signed by the College and the Authority, an executed counterpart of which shall be filed with the Trustee. The College also covenants that (i) it shall not amend or supplement any Reimbursement Agreement (which covenant shall not apply to waivers) nor shall it execute a reimbursement agreement to provide for a Substitute Credit Facility, in either case, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed and (ii) it shall promptly provide a copy of any amendment or supplement to any Reimbursement Agreement to the Trustee.

The College shall use its best efforts to obtain an extension of any Credit Facility or a Substitute Credit Facility not later than the 90th day prior to the expiration date of such Credit Facility or such earlier day if required by the terms of the then-existing Credit Facility.

*(Section 43)*

### **Termination**

The Loan Agreement shall remain in full force and effect until no Series 2008 Bonds are Outstanding and until all other payments, expenses and fees payable under the Loan Agreement by the College shall have been made

or provision made for the payment thereof; provided, however, that the liabilities and the obligations of the College under the Loan Agreement and to provide reimbursement for or indemnification against expenses, costs or liabilities made or incurred pursuant to the Loan Agreement shall nevertheless survive any such termination. Upon such termination, the Authority shall promptly deliver such documents as may be reasonably requested by the College to evidence such termination and the discharge of the College's duties under the Loan Agreement and the release or surrender of any security interests granted by the College to the Authority pursuant to the Loan Agreement.

*(Section 44)*

**Covenants as to Credit Facility and Liquidity Facility**

The College covenants to maintain a Credit Facility and a Liquidity Facility (as such terms are defined in the applicable Bond Series Certificate relating to the Series 2008 Bonds) with respect to the Series 2008 Bonds pursuant to and in accordance with the requirements set forth in such Bond Series Certificate; provided, however, that all rights of the Credit Facility Issuer pursuant to the Loan Agreement shall be suspended during any period while a Credit Facility Issuer Default has occurred and is continuing.

*(Section 50)*

**SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTIONS  
AND THE BOND SERIES CERTIFICATE**

*Appendix C*

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## **SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTIONS AND THE BOND SERIES CERTIFICATE**

The following is a brief summary of certain provisions of the Resolutions and the Bond Series Certificate pertaining to the Bonds. This summary does not purport to be complete and reference is made to the Resolutions and the Bonds Series Certificate for full and complete statements of each of their provisions. The headings below are not part of the Resolutions or the Bond Series Certificate but have been added for ease of reference only. All parenthetical section references are to sections in the Resolution unless otherwise indicated. Capitalized terms used in this summary which are not defined in the body of the Official Statement shall have the meanings ascribed to them in Appendix A.

### **Resolution and Bonds Constitute a Contract**

It is the intent of the Resolution to authorize the issuance by the Authority, from time to time, of its D'Youville College Revenue Bonds in one or more Series, each such Series to be authorized by a separate Series Resolution and, *inter alia*, to be separately secured from each other Series of Bonds provided, however, that each Series of Bonds may be equally and ratably secured by the Pledged Revenues and the Mortgaged Property as provided in the Applicable Series Resolution. Each such Series of Bonds may 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 respective 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 a Series authorized to be issued under the Resolution and under a Series Resolution by those who shall hold or own the same from time to time, the Resolution and such Series Resolution shall be deemed to be and shall constitute a contract among the Authority, the Trustee and the Holders from time to time of such Bonds of a Series, and the pledge and assignment to the Trustee made in the Resolution and the covenants and agreements set forth to be performed by or on behalf of the Authority shall 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, shall be of equal rank without preference, priority or distinction of any Bonds of such Series over any other Bonds of such Series except as expressly provided in the Resolution or permitted hereby or by a Series Resolution.

*(Section 1.03)*

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

With respect to each Series of Bonds, as security and collateral for (x) the payment of the principal, Sinking Fund Installments, if any, purchase price, and Redemption Price of, and interest on, the Outstanding Bonds of such Series and for the performance of any other obligation of the Authority under the Resolution and under the Applicable Series Resolution, and (y) the payment of all amounts owed to a Provider of a Credit Facility and for the performance of any other obligations of the College thereunder, the Authority may assign to the Trustee and to the Applicable Provider of a Credit Facility all of the Authority's estate, right, title, interest and claim in, to and under the Applicable Loan Agreement and Mortgage, subject only to the terms of the Applicable Intercreditor Agreement, and together with all rights, powers, security interests, privileges, options and other benefits of the Authority thereunder, including, without limitation, the immediate and continuing right to receive, enforce and collect (and to apply the same in accordance herewith) all insurance proceeds, sale proceeds and other payments and other security now or hereafter payable to or receivable by the Authority under the Applicable Mortgage or Loan Agreement and the right to make all waivers and agreements in the name and on behalf of the Authority, and to perform all other necessary and appropriate acts under the Applicable Loan Agreement and Mortgage, subject to the following conditions: (a) that the Holders of the Bonds shall 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; and (b) that the Applicable Mortgage and the security interest in Pledged Revenues granted to the Authority pursuant to the Applicable Loan Agreement may not be assigned by any party thereto without the written consent of the other parties thereto except to the Trustee and the Applicable Provider of a Credit Facility as permitted hereby and except as provided in the Intercreditor Agreement; provided, however, that any grant, pledge and assignment of moneys, revenues, accounts, rights or other property of the College made with respect to the Applicable Mortgage and the security interest in Pledged Revenues granted to the Authority pursuant to the Applicable Loan Agreement pursuant

to this paragraph shall secure only the payment of amounts payable under the Applicable Mortgage and Loan Agreement; provided, further, that the Authority shall retain a parity interest in the proceeds of any remedial action with respect to the security interest in Pledged Revenues granted to the Authority pursuant to the Applicable Loan Agreement in an amount equal to the College's obligations to the Authority and to the right to the payment of fees, costs and expenses of the Authority payable pursuant to the Applicable Loan Agreement, the rights to the indemnities provided thereby, and the rights to the payments, if any, required to be made pursuant to such indemnities. In addition, to the extent necessary to reflect the issuance of a Credit Facility with respect to the Applicable Series of Bonds, an Authorized Officer of the Trustee shall, upon request of an Authorized Officer of the Authority, execute and deliver such amendments to or supplements of such assignment as shall be necessary to add the Provider of such Credit Facility as beneficiary of such assignment or to accept a re-assignment from such Credit Facility Provider pursuant to the terms of the Applicable Intercreditor Agreement.

At or prior to the initial issuance and delivery of a Series of Bonds to be issued under the Resolution, upon delivery to the Trustee of evidence in writing from Authorized Officers of both the Authority and the Applicable Provider of a Credit Facility with respect to such Series of Bonds to the effect that the Intercreditor Agreement among the Authority, such Provider of a Credit Facility and the Trustee is in form and substance satisfactory to them (which may be evidenced by the execution thereof by the Authority and such Provider of a Credit Facility), an Authorized Officer of the Trustee shall, upon determination by the Trustee that such Intercreditor Agreement is in form and substance satisfactory to it (which determination by the Trustee shall not be unreasonably withheld or delayed), execute and deliver to the Authority and such Provider of a Credit Facility such Intercreditor Agreement. In addition, an Authorized Officer of the Trustee shall execute and deliver to the Authority and such Provider of a Credit Facility such amendments to or supplements of such Intercreditor Agreement as may be requested by an Authorized Officer of the Authority.

*(Section 1.04)*

## **Refunding Bonds**

All or any portion of one or more Series of Refunding Bonds may be authenticated and delivered upon original issuance to refund all Outstanding Bonds, one or more Series of Outstanding Bonds, a portion of a Series of Outstanding Bonds or a portion of a maturity of a Series of Outstanding Bonds. The Authority may issue Refunding Bonds of a Series in an aggregate principal amount sufficient, together with other money 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.

The Refunding Bonds of such Series shall be authenticated and delivered by the Trustee only upon receipt by the Trustee (in addition to the documents required by the Resolution) of:

- (a) If the Bonds to be refunded are to be redeemed, irrevocable instructions to the Trustee, satisfactory to it, to give due notice of redemption of all the Bonds to be refunded on a redemption date specified in such instructions;
- (b) Irrevocable instructions to the Trustee, satisfactory to it, to duly give the notice provided for in the Resolution to the Holders of the Bonds being refunded;
- (c) Either (i) money in an amount sufficient to effect payment of the principal at maturity or the applicable Redemption Price of the Bonds to be refunded, together with accrued interest on such Bonds to the maturity or redemption date, which money shall be held by the Trustee or any one or more of the Paying Agents in a separate fund or account irrevocably in trust for and assigned to the respective Holders of the Bonds to be refunded or (ii) Defeasance Securities in such principal amounts, of such maturities, bearing such interest and otherwise having such terms and qualifications, as shall be necessary to comply with the provisions of the Resolution, which Defeasance Securities and money shall be held in trust and used only as provided in the Resolution; and

(d) A certificate of an Authorized Officer of the Authority containing such additional statements as may be reasonably necessary to show compliance with the requirements of the Resolution.

The proceeds, including accrued interest, of Refunding Bonds shall be applied simultaneously with the delivery of such Refunding Bonds in the manner provided in or as determined in accordance with the Series Resolution authorizing such Refunding Bonds or the Bond Series Certificate relating to such Series of Refunding Bonds.

*(Section 2.04)*

#### **Additional Obligations; Incurrence of Parity Indebtedness**

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, except as provided in the Resolution with respect to Parity Indebtedness, entitled to a charge, lien or right prior or equal to the charge or lien created hereby, or prior or equal to the rights of the Authority and Holders of Bonds as provided by the Resolution.

*(Section 2.05)*

### **Redemption and Purchase of Bonds**

#### **Authorization of Redemption**

Bonds of a Series subject to redemption prior to maturity pursuant to the Resolution or to a Series Resolution or a Bond Series Certificate shall be redeemable, in accordance with the Resolution, at such times, at such Redemption Prices and upon such terms as may otherwise be specified in the Resolution or in the Series Resolution authorizing such Series or the Applicable Bond Series Certificate.

*(Section 4.01)*

#### **Redemption at the Election or Direction of the Authority**

In the case of any redemption of Bonds other than as provided in the Resolution, the Authority shall give written notice to the Trustee and each Applicable Provider of its election or direction to redeem, of the Series and of the principal amounts of the Bonds of each maturity of such Series to be redeemed. The Series, maturities and principal amounts thereof to be redeemed at the election or direction of the Authority shall be determined by the Authority in its sole discretion, subject to any limitations with respect thereto contained in the Resolution or in the Series Resolution authorizing such Series or the Applicable Bond Series Certificate. Such notice shall be given to the Trustee and each Applicable Provider at least forty-five (45) days prior to the date on which such Bonds are to be redeemed, or such lesser number of days as shall be acceptable to the Trustee. Unless the notice of redemption required by the Resolution provides that the redemption is subject to the condition that money for payment of the Redemption Price is available on the redemption date, such notice shall not be given unless prior to the date such notice is given, the Authority shall have paid or caused to be paid to the Trustee an amount which, in addition to other amounts available therefor held by the Trustee, is sufficient to redeem, on the redemption dates at the Redemption Price thereof, together with interest accrued and unpaid thereon to the redemption date, all of the Bonds of such Series to be so redeemed.

*(Section 4.02)*

## **Redemption Other Than at Authority's Election or Direction**

Whenever by the terms of the Resolution the Trustee is required to redeem Bonds of a Series through the application of mandatory Sinking Fund Installments, the Trustee shall select the Bonds of such Series and maturities to be redeemed in the manner provided in the Resolution, give the notice of redemption and pay out of money available therefor the Redemption Price thereof, together with interest accrued and unpaid thereon to the redemption date, to the appropriate Paying Agents in accordance with the terms of the Resolution.

*(Section 4.03)*

## **Selection of Bonds to Be Redeemed**

Unless otherwise provided in the Series Resolution authorizing the issuance of Bonds of a Series or the Bond Series Certificate relating to such Bonds, in the event of redemption of less than all of the Outstanding Bonds of like Series, maturity and tenor, the Trustee shall assign to each Outstanding Bond of the Series, maturity and tenor to be redeemed a distinctive number for each unit of the principal amount of such Bond equal to the lowest denomination in which the Bonds of such Series are authorized to be issued and shall select by lot, using such method of selection as it shall deem proper in its discretion, from the numbers assigned to such Bonds as many numbers as, at such unit amount equal to the lowest denomination in which the Bonds of such Series are authorized to be issued, shall equal the principal amount of such Bonds to be redeemed. In making such selections the Trustee may draw such Bonds by lot (i) individually or (ii) by one or more groups, the grouping for the purpose of such drawing to be by serial numbers (or, in the case of Bonds of a denomination of more than the lowest denomination in which the Bonds of such Series are authorized to be issued, by the numbers assigned thereto as in the Resolution) which end in the same digit or in the same two digits. If in such a case, upon any drawing by groups, the total principal amount of Bonds drawn shall exceed the amount to be redeemed, the excess may be deducted from any group or groups so drawn in such manner as the Trustee may determine. The Trustee may in its discretion assign numbers to aliquot portions of Bonds and select part of any Bond for redemption. The Bonds to be redeemed shall be the Bonds to which were assigned numbers so selected; provided, however, that only so much of the principal amount of each such Bond of a denomination of more than the lowest denomination in which the Bonds of such Series are authorized to be issued shall be redeemed as shall equal the product of the lowest denomination in which the Bonds of such Series are authorized to be issued times the number of numbers assigned to it and so selected.

For purposes of the Resolution, the lowest denomination in which a Capital Appreciation Bond is authorized to be issued shall be the lowest Accreted Value authorized to be due at maturity on such Bonds and the lowest denomination in which a Deferred Income Bond is authorized to be issued shall be the lowest Appreciated Value on the Interest Commencement Date authorized for such Bonds.

*(Section 4.04)*

## **Notice of Redemption**

Whenever Bonds of a Series are to be redeemed, the Trustee shall give notice of the redemption of such Bonds in the name of the Authority which notice shall specify: (i) the Bonds to be redeemed which shall be identified pursuant to the Resolution, the maturity dates and interest rates of the Bonds to be redeemed and the date such Bonds were issued; (ii) the numbers and other distinguishing marks of the Bonds to be redeemed, including CUSIP numbers; (iii) the redemption date; (iv) the Redemption Price; (v) the principal amount of each Bond to be redeemed; (vi) the date of publication, if any, of the notice of redemption; (vii) that, except in the case of Book-Entry Bonds, such Bonds will be redeemed at the principal corporate trust office of the Trustee giving the address thereof and the name and telephone number of a representative of the Trustee to whom inquiries may be directed; (viii) that no representation is made as to the correctness of the CUSIP number either as printed on the Bonds or as contained in such notice and that an error in a CUSIP number as printed on such Bond or as contained in such notice shall not affect the validity of the proceedings for redemption and (ix) if the Authority's obligation to redeem the Bonds is subject to conditions, a statement that describes the condition to such redemption. Any notice of redemption, other than a notice for special or extraordinary redemption provided for in a Series Resolution or Bond Series Certificate, may state that the redemption is conditioned upon receipt by the Trustee, on or prior to the redemption date, of moneys sufficient to pay the Redemption Price of the Bonds to be redeemed, and that if such



moneys are not received such notice shall be of no force or effect and such Bonds shall not be required to be redeemed.

Such notice shall further state that on such date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, together with interest accrued and unpaid thereon to the redemption date, and that, from and after such date, payment having been made or provided for, interest thereon shall cease to accrue. Such notice shall be given by mailing a copy of such notice not less than thirty (30) days nor more than forty-five (45) days prior to the redemption date or, in the case of Variable Interest Rate Bonds or Option Bonds, such shorter period as shall be established by the Series Resolution authorizing such Bonds or the Bond Series Certificate relating thereto, but in no event less than fifteen (15) days prior to the redemption date. Such notice shall be sent by first class mail, postage prepaid, to the registered owners of the Bonds which are to be redeemed, at their last known addresses, if any, appearing on the registration books not more than ten (10) Business Days prior to the date such notice is given. Upon giving such notice, the Trustee shall promptly certify to the Authority that it has mailed or caused to be mailed such notice to the Holders of the Bonds to be redeemed in the manner provided in the Resolution. Such certificate shall be conclusive evidence that such notice was given in the manner required hereby. The failure of any Holder of a Bond of a Series to be redeemed to receive such notice shall not affect the validity of the proceedings for the redemption of the Bonds. If directed in writing by an Authorized Officer of the Authority, the Trustee shall also give such notice by publication thereof once in an Authorized Newspaper, such publication to be not less than thirty (30) days nor more than forty-five (45) days prior to the redemption date or, in the case of Variable Interest Rate Bonds or Option Bonds, such shorter period as shall be established by the Series Resolution authorizing such Bonds or the Bond Series Certificate relating thereto, but in no event less than fifteen (15) days prior to the redemption date; provided, however, that such publication shall not be a condition precedent to such redemption, and failure to so publish any such notice or a defect in such notice or in the publication thereof shall not affect the validity of the proceedings for the redemption of the Bonds.

In addition, unless otherwise provided for in a Series Resolution or Bond Series Certificate with respect to a Series of Bonds, the Trustee shall (i) if any of the Bonds to be redeemed are Book Entry Bonds, mail a copy of the notice of redemption to the Depository for such Book Entry Bonds not less than thirty-five (35) days prior to the redemption date, but, if notice of redemption is to be published as aforesaid, in no event later than five (5) Business Days prior to the date of publication, and (ii) mail a copy of the notice of redemption to Kenny Information Systems Notification Service and to Standard & Poor's Called Bond Record, or to any successor thereof in each case at the most recent address therefor. Such copies shall be sent by certified mail, return receipt requested, but mailing such copies shall not be a condition precedent to such redemption and failure to so mail or of a person to which such copies were mailed to receive such copy shall not affect the validity of the proceedings for the redemption of the Bonds.

*(Section 4.05)*

### **Payment of Redeemed Bonds**

Notice having been given by mail in the manner provided in the Resolution, the Bonds of a Series or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender of such Bonds, other than Book Entry Bonds, at the office or offices specified in such notice, and, in the case of Bonds presented by other than the registered owner, together with a written instrument of transfer duly executed by the registered owner or his duly authorized attorney, such Bonds, or portions thereof, shall be paid at the Redemption Price plus interest accrued and unpaid to the redemption date. For so long as the Bonds shall not be issued in book-entry only form, payment of the Redemption Price shall be made, upon the request of the registered owner of one million dollars (\$1,000,000) or more in principal amount of Bonds to be redeemed, by wire transfer to such registered owner at the wire transfer address in the continental United States to which such registered owner has, at the time such Bonds are surrendered to the Trustee, directed in writing the Trustee to wire such Redemption Price. If there shall be drawn for redemption less than all of the principal amount of a registered Bond of a Series, the Authority shall execute and the Trustee shall authenticate and deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the registered Bond so surrendered, Bonds of like Series, maturity and tenor in any of the authorized denominations. If, on the redemption date, money for the redemption of all Bonds of a Series or portions thereof to be redeemed, together with interest

accrued and unpaid thereon to the redemption date, shall be held by the Trustee and Paying Agents so as to be available therefor on such date and if notice of redemption shall have been mailed as aforesaid, then, from and after the redemption date, interest on such Bonds or portions thereof so called for redemption shall cease to accrue and such Bonds shall no longer be considered to be Outstanding. If such money shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

*(Section 4.06)*

### **Purchase of Purchased Bonds**

Whenever Bonds are to be purchased at the election of the College, written notice thereof and of the Bonds of the Series and maturity to be so purchased having been given by the College to the Authority, the Trustee, and each Applicable Provider, the Trustee shall select the particular Bonds of such Series and maturity to be so purchased in the same manner as provided in the Resolution for the selection of Bonds to be redeemed in part. Promptly thereafter the Trustee shall give notice of the purchase of the Bonds at the times and in the manner provided in the Series Resolution authorizing such Bonds or the Bond Series Certificate related thereto. The Trustee shall not give such notice unless prior to the date such notice is given, the College has caused to be delivered to the Trustee the written consent to such purchase of the Authority and each Applicable Provider. All such purchases may be subject to conditions of the Authority, the Trustee and any Provider to the College's obligation to purchase such Bonds and shall be subject to the condition that money for the payment of the purchase price therefor is available on the date set for such purchase. Notice of purchase having been given in the manner required by the Series Resolution authorizing the Bonds to be so purchased or the Bond Series Certificate relating thereto, then, if sufficient money to pay the purchase price of such Bonds is held by the Trustee, the purchase price of the Bonds or portions thereof so called for purchase shall become due and payable on the date set for purchase, upon presentation and surrender of such Bonds (other than Book Entry Bonds) to be purchased at the office or offices specified in such notice, and, in the case of Bonds presented by other than the registered owner, together with a written instrument of transfer duly executed by the registered owner or his duly authorized attorney. Payment of the purchase price of other than Book Entry Bonds shall be made, upon the request of the registered owner of one million dollars (\$1,000,000) or more in principal amount of Bonds to be so purchased, by wire transfer to such registered owner at the wire transfer address in the continental United States to which such registered owner has prior to the purchase date directed in writing the Trustee to wire such purchase price. Bonds so purchased shall be considered to be Outstanding and each such Bond so purchased that is not a Book Entry Bond shall be registered in the name or at the direction of the College.

*(Section 4.07)*

## **Pledge of Revenues; Funds and Accounts; Revenues and Application Thereof**

### **Pledge of Revenues**

The proceeds from the sale of a Series of Bonds, the Applicable Revenues, the Authority's security interest in the Pledged Revenues and, except as otherwise provided in the Resolution, all funds and accounts established hereby, other than the Arbitrage Rebate Fund, Purchase and Remarketing Fund and Credit Facility Repayment Fund, are hereby, subject to the adoption of a Series Resolution, pledged and assigned to the Trustee and the Applicable Provider, if any, subject to the terms of the Intercreditor Agreement, as security for the payment of the principal and Redemption Price of and interest on such Series of Bonds, all in accordance with the provisions of the Resolution and Series Resolution. The pledge made hereby shall relate only to the Bonds of a Series authorized by such Series Resolution and no other Series of Bonds and such pledge shall not secure any such other Series of Bonds provided, however, that Bonds of more than one Series may be equally and ratably secured with respect to the Pledged Revenues and/or the Mortgaged Property, to the extent required by, and consented to by, the Applicable Providers. The pledge made hereby is valid, binding and perfected from the time when the pledge attaches and the proceeds from the sale of a Series of Bonds, the Applicable Revenues, the Authority's security interest in the Applicable Pledged Revenues and all funds and accounts established hereby and by a Series Resolution which are pledged hereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall 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 shall 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 Applicable Revenues, the Authority's security interest in the Applicable Pledged Revenues and the funds and accounts established hereby and pursuant to a Series Resolution and which are pledged hereby as provided in the Resolution, which pledge shall constitute a first parity lien thereon, subject to only, with respect to the Pledged Revenues, the Prior Pledges and any existing or future parity liens in the Pledged Revenues as permitted under the Applicable Loan Agreement.

*(Section 5.01)*

### **Establishment of Funds and Accounts**

In addition to such funds as may be provided by a Series Resolution or a Bond Series Certificate, the following funds are authorized to be established and shall be held and maintained for each Series of Bonds by the Trustee separate and apart from any other funds established and maintained pursuant to the Resolution, any Series Resolution or any Bond Series Certificate:

Construction Fund;  
Debt Service Fund;  
Arbitrage Rebate Fund;  
Purchase and Remarketing Fund, if any;  
Credit Facility Repayment Fund, if any; and  
Debt Service Reserve Fund, if any.

In addition to the funds required to be established by the Resolution, the Authority may for purposes of internal accounting establish such other accounts and subaccounts as the Authority or the Trustee deems proper, necessary or desirable in a Series Resolution or a Bond Series Certificate. In addition to the accounts and subaccounts, if any, required to be established hereby or by any Series Resolution, or any Bond Series Certificate, the Authority may for purposes of internal accounting establish such other accounts and subaccounts as the Authority or the Trustee deems proper, necessary or desirable. All money at any time deposited in any fund, account or subaccount created and pledged hereby or by a Series Resolution or Bond Series Certificate or required thereby to be created shall be held in trust for the benefit of the Holders of Bonds of such Series, but shall nevertheless be disbursed, allocated and applied solely for the uses and purposes provided in the Resolution, unless otherwise provided in the Applicable Series Resolution or Bond Series Certificate relating to such Bonds; provided, however, that the proceeds derived from the remarketing of Option Bonds tendered or deemed to have been tendered for purchase in accordance with the Series Resolution authorizing the issuance of such Bonds or the Bond Series Certificate relating to such Bonds or derived from a Liquidity Facility relating to such Bonds, and any fund or account established by or pursuant to such Series Resolution or Bond Series Certificate for the payment of the purchase price of Option Bonds so tendered or deemed to have been tendered, shall not be held in trust for the benefit of the Holders of Bonds other than such Option Bonds and are pledged hereby for the payment of the purchase price of such Option Bonds.

*(Section 5.02)*

### **Debt Service Fund**

There is established in the Debt Service Fund (i) a Credit Facility Account, (ii) a Redemption Account, and (iii) an Institution Payments Account. The Credit Facility Account shall be held by the Trustee for the benefit of the holders of the Series 2008 Bonds and the Credit Facility Issuer in accordance with the terms of the Resolution; provided, however notwithstanding anything to the contrary contained in the Resolution or in the Resolution, amounts on deposit in the Credit Facility Account may be invested only in direct obligations of the United States of America, obligations the timely payment of principal of, and interest on, which are fully and unconditionally guaranteed by the United States of America or obligations (other than obligations subject to variation in principal repayment) to which the full faith and credit of the United States of America are pledged which mature on the earlier

of thirty days from the date the investment is made or the date on which such amounts will be needed to pay the principal of, or interest on, the Series 2008 Bonds.

*(Bond Series Certificate Section 5.06)*

### **Credit Facility Repayment Fund**

There is established a Credit Facility Repayment Fund. The Credit Facility Repayment Fund is to be held by the Trustee for the exclusive benefit of the Credit Facility Issuer with respect to the Series 2008 Bonds. On the day that amounts drawn under the Credit Facility for the payment of interest on, principal of or the redemption price of Series 2008 Bonds redeemed are received by the Trustee and deposited in the Credit Facility Account of the Debt Service Fund, the Trustee shall withdraw from the Institution Payments Account of the Debt Service Fund an amount sufficient to reimburse the applicable Credit Facility Issuer for the amount of such draw under the Credit Facility and for any other previously unreimbursed draw on the Credit Facility for such purposes (but not for purchases of tendered or deemed tendered Series 2008 Bonds), and shall transfer such amounts to the Credit Facility Repayment Fund. Subject to the succeeding sentence, on any day on which the Trustee has received amounts drawn under a Credit Facility for the payment of interest, principal or redemption price, the Trustee shall withdraw from the Credit Facility Repayment Fund an amount sufficient to reimburse the Credit Facility Issuer under whose Credit Facility funds were drawn for the amount of such draw and shall transfer such amount to the Credit Facility Issuer. The Trustee shall not transfer moneys from the Debt Service Fund or any other fund or account to reimburse the Credit Facility Issuer for amounts drawn on such Credit Facility until after the amounts drawn on the Credit Facility shall have been deposited into the Credit Facility Account. The Trustee shall notify the College in writing promptly following each payment to the Credit Facility Issuer with amounts in the Credit Facility Repayment Fund.

*(Bond Series Certificate Section 5.05)*

### **Purchase and Remarketing Fund**

Pursuant to the Resolution and the Series 2008 Resolution, there is established a Purchase and Remarketing Fund to be held by the Tender Agent for the benefit of the holders of the Series 2008 Bonds that have been tendered and the Credit Facility Issuer, with the following accounts therein: (i) the Purchase Account, (ii) the Remarketing Proceeds Account and (iii) the Authority Available Moneys Account. The Purchase Account, the Remarketing Proceeds Account, the Authority Available Moneys Account and the moneys derived from the remarketing of the Series 2008 Bonds (including Bank Bonds) or from a Credit Facility from time to time on deposit therein are hereby pledged by the Authority, and the Authority hereby grants a security interest therein, to the Trustee and the Credit Facility Issuer, subject to the terms of the Intercreditor Agreement, to secure payment of the Purchase Price of Tendered Bonds and the obligations of the College to the Credit Facility Issuer under the Reimbursement Agreement. Amounts in the Purchase Account, the Remarketing Proceeds Account and the Authority Available Moneys Account shall, except as otherwise described below, be held separate and apart from and not be commingled with amounts held in any other fund or account established under the Resolution or with any other moneys of the Authority, the Tender Agent or the Trustee. The moneys in such accounts within the Purchase and Remarketing Fund shall be held uninvested and without liability on the part of the Tender Agent or the Trustee for interest thereon.

All amounts received by the Tender Agent from a Remarketing Agent representing the proceeds from the remarketing of Tendered Bonds (including Bank Bonds) shall be deposited in the Remarketing Proceeds Account and shall be used only for the payments of the Purchase Price of Tendered Bonds (including Bank Bonds) so remarketed as provided in the Resolution. Only amounts derived from a drawing on a Credit Facility to pay the Purchase Price of Tendered Bonds that are not remarketed shall be deposited in the Purchase Account and such amounts shall be used only for the payment of the Purchase Price of Tendered Bonds in the manner at the times specified in the Resolution. All other Available Moneys, if any, to be applied to the payment of the Purchase Price of Tendered Bonds shall be deposited in the Authority Available Moneys Account and used only for the payment of the Purchase Price of Tendered Bonds in the manner specified in the Resolution. No moneys provided by the Authority or the College shall be accepted for deposit to the credit of the Purchase Account, the Remarketing Proceeds Account or the Authority Available Moneys Account (except for Available Moneys deposited to the Authority Available Moneys Account), nor shall any such moneys (other than any such Available Moneys), if

deposited by mistake or otherwise, be used to pay the Purchase Price of Tendered Bonds. Moneys in the Purchase and Remarketing Fund shall be held in Eligible Accounts. The Tender Agent shall hold all moneys delivered to it for the purchase of Series 2008 Bonds in trust as agent and bailee of, and in escrow for the benefit of, the person or entity which shall have so delivered such moneys until such Series 2008 Bonds are purchased with such moneys.

The Purchase Price of Tendered Bonds shall be paid solely with available moneys on deposit in the accounts within the Purchase and Remarketing Fund in the following order of priority:

First: From Available Moneys in the Remarketing Proceeds Account;

Second: From Available Moneys in the Purchase Account; and

Third: From Available Moneys in the Authority Available Moneys Account.

*(Bond Series Certificate Section 5.02)*

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

As soon as practicable after the delivery of a Series of Bonds, the Trustee shall deposit in the Construction Fund the amount required to be deposited therein pursuant to the Series Resolution authorizing such Series or the Bond Series Certificate relating to such Series. In addition, the Authority shall pay over to the Trustee and the Trustee shall deposit in the Construction Fund any money paid to the Authority pursuant to the Resolution and all amounts paid by the College which by the terms of the Applicable Loan Agreement are required to be deposited therein.

Except as otherwise provided in the Resolution and in any Applicable Series Resolution or Bond Series Certificate, money deposited in the Construction Fund shall be used only to pay the Costs of Issuance and the Costs of the Project with respect to such Series of Bonds. The Applicable Series Resolution or Bond Series Certificate may provide for the establishment of a Capitalized Interest Account in the Construction Fund to pay or provide for the payment of interest on such Series of Bonds and fees related to the Applicable Provider of a Credit Facility and the Applicable remarketing fees of such Series of Bonds during the construction of a Project and for a reasonable time after the completion of such Project. The Applicable Series Resolution or Bond Series Certificate may provide for the establishment of an Equity Account in the Construction Fund to pay or provide for a portion of the Costs of Issuance and the Costs of the Project.

Payments for Costs of Issuance shall be made by the Trustee upon receipt of, and in accordance with, a certificate or certificates signed by an Authorized Officer 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 and approved in writing by the Provider of a Credit Facility, subject to the provisions of an applicable disbursement agreement, if any. Payments for Costs of each Project shall be made by the Trustee upon receipt of, and in accordance with, a certificate or certificates signed by an Authorized Officer of the Authority, substantiated by a certificate filed with the Authority in accordance with a Loan Agreement naming the Project in connection with which payment is to be made and describing in reasonable detail the purpose for which money was used and the amount thereof, and further stating that such purpose constitutes a necessary part of the Costs of such Project and approved in writing by the Provider of a Credit Facility, if any, subject to the provisions of an applicable disbursement agreement, if any, except that payments to pay interest on Bonds of a Series and fees of the Provider of a Credit Facility shall 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 Capitalized Interest Account of the Construction Fund to the Debt Service Fund or to pay such fees to the Provider of a Credit Facility, the Remarketing Agent or the Authority.

Unless the Mortgage or the Intercreditor Agreement requires otherwise, any proceeds of insurance, condemnation or eminent domain awards received by the Trustee, the Authority or the College with respect to a Project shall be deposited in the Construction Fund and, if necessary, such fund may be re-established for such

purpose and, if not used to repair, restore or replace the Project, transferred to the Debt Service Fund for the redemption of Bonds in accordance with the Applicable Series Resolution or Bond Series Certificate.

A Project shall be deemed to be complete upon delivery to the Authority, the Provider of a Credit Facility and the Trustee of a final, unconditional certificate of occupancy and a certificate signed by an Authorized Officer of the College, which certificate shall be delivered as soon as practicable after the date of completion of such Project, or upon delivery to the College, the Provider of a Credit Facility and the Trustee of a certificate signed by an Authorized Officer of the Authority which certificate may be delivered at any time after completion of such Project. Each such certificate shall state that the 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 or use, and, in the case of a certificate of an Authorized Officer of the College, shall specify the date of completion.

Upon receipt by the Trustee of a certificate relating to the completion of a Project, the money, if any, then remaining in the Construction Fund relating to such Project, after making provision in accordance with the direction of an Authorized Officer of the Authority for the payment of any Costs of Issuance and Costs of such Project then unpaid, shall be paid or applied by the Trustee as follows and in the following order of priority:

First: Upon the direction of an Authorized Officer of the Authority, to the Arbitrage Rebate Fund, the amount set forth in such direction; and

Second: To the Debt Service Reserve Fund, if any, such amount as shall be necessary to make the amount on deposit in such fund equal to the Applicable Debt Service Fund Requirement; and

Third: To the Debt Service Fund, to be applied in accordance with the Resolution, any balance remaining.

*(Section 5.04)*

#### **Deposit of Revenues and Allocation Thereof**

Notwithstanding the Resolution, the Revenues and any other moneys that, by any of the provisions of the Loan Agreement, are required to be paid to the Trustee (other than moneys paid to the Trustee for deposit in the Construction Fund pursuant to the Series 2008 Resolution) shall upon receipt thereof be deposited or paid by the Trustee as follows and in the following order of priority:

First: To the Institution Payments Account of the Debt Service Fund each month, the amount, if any, necessary to make the amount in the Debt Service Fund equal to:

(i) the product of the number of months since the later of the date of the issuance of the Series 2008 Bonds and the immediately preceding Interest Payment Date times one-sixth (1/6) of the interest coming due on the Series 2008 Bonds on the immediately succeeding Interest Payment Date for such Bonds; provided, however, that, if there are less than six (6) such monthly payment dates between the issuance of the Series 2008 Bonds and the first such Interest Payment Date on the Series 2008 Bonds, on each payment date prior to such Interest Payment Date the College shall pay with respect to such Series 2008 Bonds an amount equal to the interest coming due on such Series 2008 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 months prior to the first Interest Payment Date on the Series 2008 Bonds; provided, further, that while the Series 2008 Bonds are in the Daily Rate Mode or the Weekly Rate Mode with interest payable monthly, such transfer will be made by the third day preceding the monthly Interest Payment Date (or if such third day is not a Business Day, on the preceding Business Day) in an amount at least equal to the interest which will accrue on the Series 2008 Bonds through the Interest Payment Date from the date of issuance of the Series 2008 Bonds or the preceding Interest Payment Date through which interest has been paid; and

(ii) the product of the number of months since the later of the date of the issuance of the Series 2008 Bonds and the immediately preceding July Interest Payment Date times one-twelfth (1/12) of the principal, Sinking Fund Installments, if any, and Expected Optional Redemptions, if any, on the Series 2008 Bonds coming due or scheduled to be made on the next July Interest Payment Date; provided, however, that, if there are less than twelve (12) such monthly payment dates prior to the first July Interest Payment Date on which principal or Sinking Fund Installments or Expected Optional Redemptions come due or scheduled to be made on the Series 2008 Bonds, on each payment date prior to such July Interest Payment Date the College shall pay with respect to such Series 2008 Bonds an amount equal to the principal and Sinking Fund Installments and Expected Optional Redemptions of the Series 2008 Bonds coming due or are scheduled to be made on such July 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 such July Interest Payment Date; provided, however, with respect to Sinking Fund Installments of Option Bonds or Variable Interest Rate Bonds that come due in the months other than July, the terms of this subsection shall apply except that references to July shall be replaced with the applicable month(s) in which the related Sinking Fund Installment comes due;

Second: To reimburse the Credit Facility Issuer for amounts drawn under the Credit Facility that are then currently payable to the Credit Facility Issuer and that have not been reimbursed from funds in the Credit Facility Repayment Fund under the Resolution;

Third: Upon the written direction of an Authorized Officer of the Authority, to the Arbitrage Rebate Fund for such Series in the amount set forth in such direction; and

Fourth: To the Institution Payment Account of the Debt Service Fund for disbursement to the Authority upon receipt by the Trustee of a certificate signed by an Authorized Officer of the Authority, stating in reasonable detail the amounts payable, unless otherwise paid, 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 hereby,

(ii) all other expenditures reasonably and necessarily incurred by the Authority in connection with the financing of the Project, including expenses incurred by the Authority to compel full and punctual performance of all the provisions of the Loan Agreement in accordance with the terms thereof, and

(iii) any fees of the Authority.

*(Bond Series Certificate Section 5.04)*

### **Debt Service Fund**

The Trustee shall on or before the Business Day preceding each interest payment date pay to itself and any other Paying Agent out of the Debt Service Fund:

(i) the interest due and payable on all Outstanding Bonds of a Series on such interest payment date;

(ii) the principal amount due and payable on all Outstanding Bonds of a Series on such interest payment date; and

(iii) the Sinking Fund Installments or other amounts related to a mandatory redemption, if any, due and payable on such interest payment date on Outstanding Bonds of a Series.

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

Notwithstanding the provisions of paragraph (a) of the Resolution, the Authority may, at any time subsequent to the first day of July 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 money on deposit in the Debt Service Fund, at a price not in excess of par plus interest accrued and unpaid to the date of such purchase, Term Bonds of a Series to be redeemed from such Sinking Fund Installment. In addition, the College pursuant to the Applicable Loan Agreement may deliver, at any time subsequent to July 1 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, to the Trustee for cancellation one or more Term Bonds of the Series and maturity to be so redeemed on such date from such Sinking Fund Installment.

Any Term Bond so purchased and delivered to the Trustee shall be canceled upon receipt thereof by the Trustee and evidence of such cancellation shall 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, however, that such Term Bond is canceled by the Trustee prior to the date on which notice of redemption is given.

Money in the 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 and prior to the next succeeding July 1, the interest on Outstanding Bonds of a Series payable on and prior to the earlier of the next succeeding July 1 or January 1, 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 Outstanding Bonds of a Series 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 Outstanding Bonds of a 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 Debt Service Fund of a Series of Bonds, such money shall be applied by the Trustee if directed by an Authorized Officer of the Authority given pursuant to the Resolution to the redemption of Bonds of such Series as provided in the Resolution, at the Redemption Prices specified in the Applicable Series Resolution authorizing the issuance of the Bonds to be redeemed or the Bond Series Certificate relating to such Bonds.

*(Section 5.06)*

### **Arbitrage Rebate Fund**

The Trustee shall deposit to the Arbitrage Rebate Fund any money delivered to it by the College for deposit therein and, notwithstanding any other provisions of the Resolution, shall transfer to the Arbitrage Rebate Fund, in accordance with the directions of an Authorized Officer of the Authority, money on deposit in any other funds held by the Trustee under the Resolution at such times and in such amounts as shall be set forth in such directions.

Money on deposit in the Arbitrage Rebate Fund shall be applied by the Trustee in accordance with the direction of an Authorized Officer 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. Money which an Authorized Officer of the Authority determines to be in excess of the amount required to be so rebated shall, first, be applied to reimburse, pro rata, each Provider for money advanced under an Applicable Credit Facility or Liquidity Facility, including interest thereon, which is then unpaid, in proportion to the respective amounts advanced by each such Provider, and, then, be deposited to any fund or account established under the Resolution in accordance with the written direction of such Authorized Officer.



The Authority shall periodically determine the amount which may be required by the Code to be rebated to the Department of the Treasury of the United States of America with respect to a Series of Bonds and direct the Trustee to (i) transfer from any other of the funds and accounts held by the Trustee under the Resolution and deposit to the Arbitrage Rebate Fund such amount as the Authority shall have determined to be necessary in order to enable it to comply with its obligation to rebate money to the Department of the Treasury of the United States of America with respect to such Series of Bonds and (ii) if and to the extent required by the Code, pay out of the 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 5.07)*

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

Notwithstanding any other provisions of the Resolution, if at any time the amounts held in the Debt Service Fund and the Debt Service Reserve Fund, if any, are sufficient to pay the principal or Redemption Price of all Outstanding Bonds of a Series and the interest accrued and unpaid and to accrue on such Bonds to the next date of redemption when all such Bonds are redeemable, or to make provision pursuant to the Resolution for the payment of the Outstanding Bonds at the maturity or redemption dates thereof, the Trustee shall so notify the Authority and the College. Upon receipt of such notice, the Authority may, and at the direction of the College the Authority shall (i) direct the Trustee to redeem all such Outstanding Bonds of a Series, whereupon the Trustee shall proceed to redeem or provide for the redemption of such Outstanding Bonds in the manner provided for redemption of such Bonds as provided in Article IV of the Resolution, or (ii) give the Trustee irrevocable instructions in accordance with the Resolution and make provision for the payment of such Outstanding Bonds at the maturity or redemption dates thereof in accordance therewith.

*(Section 5.08)*

### **Transfer of Investments**

Whenever money in any fund or account established under the Resolution or under a Series Resolution or a Bond Series Certificate is to be paid in accordance herewith to another such fund or account, such payment may be made, in whole or in part, by transferring to such other fund or account investments held as part of the fund or account from which such payment is to be made, whose value, together with the money, if any, to be transferred, is at least equal to the amount of the payment then to be made; provided, however, that no such transfer of investments would result in a violation of any investment standard or guideline applicable to such fund.

*(Section 5.09)*

## **Security for Deposits and Investment of Funds**

### **Security for Deposits**

All money held under the Resolution by the Trustee shall be continuously and fully secured, for the benefit of the Authority and the Holders of a Series of Bonds, by direct obligations of the United States of America or obligations the principal of and interest on which are guaranteed by the United States of America of a market value equal at all times to the amount of the deposit so held by the Trustee; provided, however, (a) that if the securing of such money is not permitted by applicable law, then in such other manner as may then be required or permitted by applicable State or federal laws and regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds, and (b) that it shall not be necessary for the Trustee or any Paying Agent to give security for the deposit of any money with them pursuant to the Resolution and held in trust for the payment of the principal, Sinking Fund Installments, if any, or Redemption Price of or interest on a Series of Bonds, or for the Trustee to give security for any money which shall be represented by obligations purchased or other investments made under the provisions of the Resolution as an investment of such money.

*(Section 6.01)*

## **Investment of Funds and Accounts**

Money held under the Resolution by the Trustee, 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, signed by an Authorized Officer of the Authority (which direction shall specify the amount thereof to be so invested), in Government Obligations, Federal Agency Obligations or Exempt Obligations; provided, however, that each such investment shall permit the money so deposited or invested to be available for use at the times at which the Authority reasonably believes such money will be required for the purposes of the Resolution.

In lieu of the investments of money in obligations authorized in the Resolution, the Trustee shall, to the extent permitted by law, upon direction of the Authority given or confirmed in writing, signed by an Authorized Officer of the Authority, invest money in the Construction Fund in any Permitted Investment; provided, however, that each such investment shall permit the money so deposited or invested to be available for use at the times at which the Authority reasonably believes such money 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 of the Trustee approved by an Authorized Officer of the Authority, and (z) the Permitted Collateral shall be free and clear of claims of any other person.

Permitted Investments purchased as an investment of money in any fund or account held by the Trustee under the provisions of the Resolution shall be deemed at all times to be a part of such fund or account and the income or interest earned, profits realized or losses suffered by a fund or account due to the investment thereof shall be retained in, credited or charged, as the case may be, to such fund or account.

In computing the amount in any fund or account held by the Trustee under the provisions of the Resolution, each Permitted Investment shall be valued at par or the market value thereof, plus accrued interest, whichever is lower.

Notwithstanding anything to the contrary in the Resolution, the Authority, in its discretion, may direct the Trustee to, and the Trustee shall, sell, 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 shall 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 money to meet any payment or transfer from the fund or account in which such investment is held. The Trustee shall advise the Authority and the College 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 and account 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 shall 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 and account in the previous month.

No part of the proceeds of a 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 of a Series to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

*(Section 6.02)*

## **Particular Covenants**

### **Payment of Principal and Interest**

The Authority shall pay or cause to be paid the principal, Sinking Fund Installments, if any, or Redemption Price of and interest on every Bond of each Series on the date and at the places and in the manner provided in such Bonds according to the true intent and meaning thereof.

*(Section 7.01)*

### **Further Assurance**

The Authority, at any and all times, shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, pledges and assignments hereby and by the Applicable Series Resolution or Bond Series Certificate created or made or intended to be created or made, or which the Authority may hereafter become bound to pledge or assign.

*(Section 7.04)*

### **Accounts and Audits**

The Authority shall keep proper books of records and accounts (separate from all other records and accounts), which may be kept on behalf of the Authority by the Trustee, in which complete and correct entries shall be made of its transactions relating to a Series of Bonds, including but not limited to the objects and purposes for which proceeds of such Bonds were expended and the respective amounts expended for such objects and purposes. Such books and accounts, at reasonable hours and subject to the reasonable rules and regulations of the Authority, shall be subject to the inspection of the College, the Trustee or of any Holder of a Bond of a Series or his representative duly authorized in writing. The Trustee shall annually prepare a report which shall be furnished to the Authority, to each Provider and to the College. Such report shall include at least: a statement of all funds (including investments thereof) held by such Trustee and the Authority pursuant to the provisions of the Resolution and the Applicable Series Resolution and Bond Series Certificate; a statement of the Revenues collected in connection herewith and with each Series Resolution; and complete and correct entries of the Authority's transactions relating to each Series of Bonds. A copy of such report shall, upon receipt of a written request therefor, and payment of any reasonable fee or charge made in connection therewith, be furnished to the registered owner of a Bond of a Series or any beneficial owner of a Book Entry Bond requesting the same.

*(Section 7.05)*

### **Creation of Liens**

Except as permitted hereby or by a Series Resolution, the Authority shall not create, cause to be created or suffer or permit the creation of any lien or charge prior or equal to that of the Bonds of a Series on the proceeds from the sale of such Bonds, the Applicable Revenues, the Applicable Pledged Revenues of the College, the rights of the Authority to receive payments to be made under a Loan Agreement that are to be deposited with the Trustee or the funds and accounts established hereby and by any Series Resolution and Bond Series Certificate which are pledged hereby other than, with respect to the Pledged Revenues, the Prior Pledges and any existing or future parity lien on the Pledged Revenues to secure Parity Indebtedness; provided, however, that each Series of Bonds may be equally and ratably secured by the Pledged Revenues and the Mortgaged Property, to the extent required by and consented to by the Applicable Providers; and; provided, further however, that nothing contained in the Resolution shall prevent the Authority from (i) issuing bonds, notes or other obligations or otherwise incurred indebtedness under another and separate resolution so long as the charge or lien created by such resolution is not prior to the charge or lien created hereby and by any Series Resolution and (ii) incurring obligations with respect to a Credit Facility or a

Liquidity Facility which are secured by a lien upon and pledge of the Applicable Revenues of equal priority with the lien created and the pledge made hereby and by any Applicable Series Resolution.

*(Section 7.06)*

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

The Authority shall take all legally available action to cause the College to perform fully all duties and acts and comply fully with the covenants of the College required by a Loan Agreement in the manner and at the times provided in such Loan Agreement; provided, however, that the Authority may (i) delay or defer enforcement of one or more provisions of such Loan Agreement (other than provisions requiring the payment of money 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 or deferment will not materially adversely affect the interests of the Holders of the Bonds of such Series and (ii) at any time prior to the occurrence of an event of default under the Resolution, annul any declaration that the indebtedness under such Loan Agreement is immediately due and payable and, if prior to the entry of a final judgment or decree in any action or proceeding instituted on account of an event of default under such Loan Agreement, discontinue such action or proceeding if the College shall have cured each event of default under such Loan Agreement.

*(Section 7.07)*

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

In addition to the proceeds of Bonds of a Series to be deposited in the Construction Fund, any money paid to the Authority for the acquisition, construction, reconstruction, renovation or equipment of a Project, including, if not inconsistent with the Applicable Mortgage and Applicable Intercreditor Agreement, the proceeds of any insurance or condemnation award to be so applied, shall be deposited in the Construction Fund.

*(Section 7.08)*

### **Offices for Payment and Registration of Bonds**

The Authority shall at all times maintain an office or agency in the State where Bonds of a Series may be presented for payment. The Authority may, pursuant to a Supplemental Resolution or a Series Resolution or pursuant to a resolution adopted in accordance with the Resolution, designate an additional Paying Agent or Paying Agents where Bonds of the Series authorized thereby or referred to therein may be presented for payment. The Authority shall at all times maintain an office or agency in the State where Bonds of a Series may be presented for registration, transfer or exchange and the Trustee is hereby appointed as its agent to maintain such office or agency for the registration, transfer or exchange of such Bonds.

*(Section 7.09)*

### **Amendment of Loan Agreement**

The Loan Agreement may not be amended, changed, modified, altered or terminated nor may any provision thereof be waived if any such amendment, change, modification, alteration, termination or waiver would adversely affect the interest of the Holders of Outstanding Bonds of the Applicable Series to which such Loan Agreement relates in any material respect unless consented to in writing by the Holders of at least a majority in aggregate principal amount of the Bonds of such Series then Outstanding; provided, however, that no such amendment, change, modification, alteration, or termination will reduce the percentage of the aggregate principal amount of Outstanding Bonds of a Series 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 the College under such Loan Agreement that is to be deposited with the Trustee or extend the time of payment thereof. Any consent given pursuant to this paragraph by the Holders of Bonds shall, except as otherwise provided in the Resolution, be given in the same manner required by the Resolution.

The Loan Agreement may be amended, changed, modified or altered (i) to make changes necessary or appropriate in connection with the acquisition, construction, reconstruction, rehabilitation and improvement, or otherwise providing, furnishing and equipping of any facilities constituting a part of any Project or to otherwise amend the Project or (ii) with the consent of the Trustee, to cure any ambiguity, or to correct or supplement any provisions contained in such Loan Agreement which may be defective or inconsistent with any other provisions contained in the Resolution or in the Applicable Loan Agreement or (iii) with the consent of the Applicable Provider of a Credit Facility, to cure any ambiguity, or to correct or supplement any provision contained in the Applicable Loan Agreement which may be defective. Except as otherwise provided in the Resolution, a Loan Agreement may be amended, changed, modified or altered without the consent of the Holders of Outstanding Bonds or the Trustee. 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.

The purchasers of Bonds of a Series, whether purchasing as underwriters, Remarketing Agent or otherwise for resale, may upon such purchase consent to an amendment, change, modification, alteration, termination or waiver permitted by the Resolution in the manner provided in the Resolution, except that no proof of ownership shall be required, and with the same effect as a consent given by the Holder of such Bonds; provided, however, that, if such consent is given by a purchaser who is purchasing as an underwriter or Remarketing Agent or for resale, the nature of the amendment, change, modification, alteration, termination or waiver and the provisions for the purchaser consenting thereto shall be described in the official statement, prospectus, offering memorandum or other offering document prepared in connection with the initial offering, reoffering or resale of the Bonds of such Series.

For the purposes of the paragraph summarized in the Resolution, a Series shall be deemed to be adversely affected by an amendment, change, modification, alteration or termination of the Applicable Loan Agreement or the waiver of any provision thereof 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, alteration, termination or waiver and any such determination shall be binding and conclusive on the College, the Authority and all Holders of Bonds of such Series.

For all purposes of the Resolution, 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, alteration, termination or waiver adversely affects the interests of any Holders of Bonds of a Series then Outstanding in any material respect.

*(Section 7.11)*

#### **Notices as Event of Default of Loan Agreement**

The Authority shall notify the Trustee 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 as soon as practicable after the Authority has obtained actual knowledge thereof.

*(Section 7.12)*

### **Series Resolutions and Supplemental Resolution**

#### **Modification and Amendment without Consent**

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

(a) To provide for the issuance of a Series of Bonds pursuant to the provisions of the Resolution and to prescribe the terms and conditions pursuant to which such Bonds may be issued, paid or redeemed;

(b) To add additional covenants and agreements of the Authority for the purpose of further securing the payment of the Bonds of a 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;

(c) To prescribe further limitations and restrictions upon the issuance of Bonds of a 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;

(d) 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;

(e) To confirm, as further assurance, any pledge under the Resolution and under a Series Resolution, and the subjection to any lien, claim or pledge of the Revenues, or any pledge of any other money, securities or funds created or to be created by the provisions of the Resolution and by the provisions of a Series Resolution, of the Revenues;

(f) To modify any of the provisions of the Resolution or of any previously adopted Series Resolution or Supplemental Resolution in any other respects, provided that such modifications shall not be effective until after all Bonds of any Series of Bonds Outstanding as of the date of adoption of such Supplemental Resolution or Series Resolution shall cease to be Outstanding, and all Bonds issued under such resolutions shall contain a specific reference to the modifications contained in such subsequent Resolutions;

(g) To modify or amend a Project; or

(h) 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 herewith as theretofore in effect, or to modify any of the provisions of the Resolution or of any previously adopted Series Resolution or Supplemental Resolution in any other respect, provided that such modification shall not adversely affect the interests of the Bondholders of a Series in any material respect.

*(Section 9.01)*

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

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

*(Section 9.02)*

### **General Provisions Relating to Series Resolutions and Supplemental Resolutions**

The Resolution or a Series Resolution shall not be modified or amended in any respect except in accordance with and subject to the provisions of the Resolution. Nothing contained in the Resolution shall affect or limit the rights or obligations of the Authority to adopt, make, do, execute or deliver any resolution, act or other

instrument pursuant to the provisions of the Resolution or the right or obligation of the Authority to execute and deliver to the Trustee or any Paying Agent any instrument elsewhere in the Resolution provided or permitted to be delivered to the Trustee or any Paying Agent.

A copy of every Series Resolution and Supplemental Resolution adopted by the Authority, when filed with the Trustee, shall be accompanied by an opinion of Bond Counsel stating that such Series Resolution or Supplemental Resolution has been duly and lawfully adopted in accordance with the provisions of the Resolution, is authorized or permitted hereby and is valid and binding upon the Authority and enforceable in accordance with its terms. The Trustee shall transmit a copy of such Supplemental Resolution to the College and to each Applicable Provider upon its becoming effective.

The Trustee is hereby authorized to accept delivery of a certified copy of any Series Resolution or Supplemental Resolution permitted or authorized pursuant to the provisions of the Resolution and to make all further agreements and stipulations which may be contained therein, and, in taking such action, the Trustee shall be fully protected in relying on the opinion of Bond Counsel that such Series Resolution or Supplemental Resolution is authorized or permitted by the provisions of the Resolution.

No Series Resolution or Supplemental Resolution changing, amending or modifying any of the rights or obligations of the Trustee, a Paying Agent or a Provider shall become effective without the written consent of the Trustee, the Paying Agent or Provider affected thereby.

*(Section 9.03)*

## **Amendment of Resolution**

### **Powers of Amendment**

Any modification or amendment of the Resolution and of the rights and obligations of the Authority and of the Holders of the Bonds under the Resolution or of any Series Resolution, in any particular, may be made by a Supplemental Resolution with the written consent, given as hereinafter provided in the Resolution, (i) of the Holders of at least a majority in principal amount of the Bonds Outstanding of a Series at the time such consent is given of each Series affected by such modification or amendment, or (ii) in case the modification or amendment changes the amount or date of any Sinking Fund Installment, of the Holders of at least a majority in principal amount of the Bonds Outstanding at the time such consent is given of the particular Series, maturity and interest rate entitled to such Sinking Fund Installment. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond of a 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 the consent of the Holders of which is required to effect any such modification or amendment. For the purposes of the Resolution, a 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 in any material respect. The Trustee may in its discretion determine whether or not, in accordance with the foregoing provisions, the Bonds of a particular 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 any particular Series or maturity would be so affected by any such modification or amendment of the Resolution. The Trustee shall transmit a copy of such Supplemental Resolution to the College upon its becoming effective.

*(Section 10.01)*

### **Consent of Bondholders**

The Authority may at any time adopt a Supplemental Resolution making a modification or amendment permitted by the provisions of the Resolution to take effect when and as provided in the Resolution. A copy of such

Supplemental Resolution (or brief summary thereof or reference thereto in form approved by the Trustee) together with a request to the Bondholders of a Series of Bonds affected thereby for their consent thereto in form satisfactory to the Trustee, shall promptly after adoption be mailed by the Authority to such Bondholders (but failure to mail such copy and request to any particular Bondholder shall not affect the validity of the Supplemental Resolution when consented to as in the Resolution provided). Such Supplemental Resolution shall not be effective unless and until (i) there shall have been filed with the Trustee (a) the written consent of the Holders of the percentages of Outstanding Bonds of a Series specified in the Resolution and (b) an opinion of Bond Counsel stating that such Supplemental Resolution has been duly and lawfully adopted and filed by the Authority in accordance with the provisions of the Resolution, is authorized or permitted hereby, and is valid and binding upon the Authority and enforceable in accordance with its terms, and (ii) a notice shall have been mailed as hereinafter in the Resolution provided. Each such consent shall be effective only if accompanied by proof of the holding or owning at the date of such consent, of the Bonds of a Series with respect to which such consent is given, which proof shall be such as is permitted by the Resolution. A certificate or certificates by the Trustee filed with the Trustee that it has examined such proof and that such proof is sufficient in accordance with the Resolution shall be conclusive proof that the consents have been given by the Holders of the Bonds of a Series described in the certificate or certificates of the Trustee.

Any consent given by a Bondholder shall be binding upon the Bondholder giving such consent and, anything in the Resolution to the contrary notwithstanding, upon any subsequent Bondholder and of any Bonds of a Series issued in exchange therefor (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by the Bondholder giving such consent or a subsequent Holder thereof by filing with the Trustee, prior to the time when the written statement of the Trustee hereinafter in the Resolution provided for is filed, such revocation. The fact that a consent has not been revoked may likewise be proved by a certificate of the Trustee filed with the Trustee to the effect that no revocation thereof is on file with the Trustee. At any time after the Holders of the required percentages of Bonds of a Series shall have filed their consents to the Supplemental Resolution, the Trustee shall make and file with the Authority and the Trustee a written statement that such Holders of such required percentages of Bonds have filed such consents. Such written statement shall be conclusive that such consents have been so filed.

At any time thereafter notice, stating in substance that the Supplemental Resolution (which may be referred to as a Supplemental Resolution adopted by the Authority on a stated date, a copy of which is on file with the Trustee) has been consented to by the Holders of the required percentages of Bonds of a Series and will be effective as provided in the Resolution, shall be given to such Bondholders by the Authority by mailing such notice to such Bondholders and, at the discretion of the Authority, by publishing the same at least once not more than ninety (90) days after the Holders of the required percentages of Bonds of such Series shall have filed their consents to the Supplemental Resolution and the written statement of the Trustee hereinabove provided for is filed (but failure to publish such notice shall not prevent such Supplemental Resolution from becoming effective and binding as in the Resolution provided). The Authority shall file with the Trustee proof of the mailing of such notice, and, if the same shall have been published, of the publication thereof. A transcript, consisting of the papers required or permitted by the Resolution to be filed with the Trustee, shall be proof of the matters therein stated. Such Supplemental Resolution making such amendment or modification shall be deemed conclusively binding upon the Authority, the Trustee, each Paying Agent, and the Holders of all Bonds of such Series upon the filing with the Trustee of proof of the mailing of such notice or at the expiration of thirty (30) days after the filing with the Trustee of the proof of the first publication of such last mentioned notice, if such notice is published, except in the event of a final decree of a court of competent jurisdiction setting aside such Supplemental Resolution in a legal action or equitable proceeding for such purpose commenced within such thirty (30) day period; provided, however, that the Authority, the Trustee and any Paying Agent during such thirty (30) day period and any such further period during which any such action or proceeding may be pending shall be entitled in their reasonable discretion to take such action, or to refrain from taking such action, with respect to such Supplemental Resolution as they may deem expedient.

For the purposes of the Resolution, the purchasers of the Bonds of a Series, whether purchasing as underwriters or Remarketing Agent, for resale or otherwise, upon such purchase, may consent to a modification or amendment permitted by the Resolution in the manner provided therein, except that no proof of ownership shall be required, and with the same effect as a consent given by the Holder of such Bonds; provided, however, that, if such consent is given by a purchaser who is purchasing as an underwriter or Remarketing Agent or for resale, the provisions for the purchaser consenting thereto shall be described in the official statement, prospectus, offering



memorandum or other offering document prepared in connection with the primary offering of the Bonds of such Series by the Authority.

*(Section 10.02)*

### **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 a Series may be modified or amended in any respect upon the adoption and filing with the Trustee by the Authority of a copy of a Supplemental Resolution certified by an Authorized Officer of the Authority and the consent of the Holders of all of the Bonds of a Series then Outstanding, such consent to be given as provided in the Resolution, except that no notice to the Bondholders either by mailing or publication shall be required.

*(Section 10.03)*

### **Consent of Provider**

Whenever by the terms of the Resolution the consent of any of the Holders of the Bonds of a Series to a modification or amendment of the Resolution made by a Series Resolution or Supplemental Resolution is required, such modification or amendment shall not become effective until the written consent of each Applicable Provider has been obtained. No modification or amendment of the Resolution which adversely affects a Provider shall be made without the written consent thereto of the Applicable Provider affected thereby. Notice of the adoption of any such Series Resolution or Supplemental Resolution and of the effectiveness of the modification or amendment made thereby shall be given to each Applicable Provider by mail at the times and in the manner provided in the Resolution with respect to notices thereof required to be given to the Holders of the Bonds of a Series. Notice thereof shall also be given to each Rating Service as soon as practical after adoption of such Series Resolution or Supplemental Resolution and of the effectiveness thereof. In the event that the Provider is has provided a letter of credit (the “primary letter of credit”) and, as security for the performance of its obligations under the primary letter of credit, a confirming standby letter of credit from another institution, consent shall only be required from the Provider of the primary letter of credit and shall not be required from the provider of the confirming standby letter of credit.

*(Section 10.04)*

## **Defaults and Remedies**

### **Events of Default**

An event of default shall exist under the Resolution and under a Series Resolution (an “event of default”) if:

(a) With respect to the Applicable Series of Bonds, payment of the principal, Sinking Fund Installments or Redemption Price of any 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 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 Bonds, the Authority shall default in the due and punctual performance of any covenants contained in the Applicable Series Resolution authorizing the issuance thereof to the effect that the Authority shall comply with the provisions of the Code applicable to such Bonds necessary to maintain the exclusion of interest therein from gross income under Section 103 of the Code and shall not take any action which would adversely affect the exclusion of interest on such Bonds from gross income under Section 103 of the Code and, as a result thereof, the interest on the Bonds of such Series shall 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 contained in the Resolution or in such Bonds 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 same to be remedied shall have been given to the Authority by the Trustee, 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 such Series, or if such default is not capable of being cured within thirty (30) days, if the Authority fails to commence within said thirty (30) days and diligently prosecute the cure thereof; or

(e) With respect to the Applicable Series of Bonds, the Authority shall have notified the Trustee that an “Event of Default” as defined in the Applicable Loan Agreement shall have occurred and be continuing and all sums payable by the College under the Applicable Loan Agreement shall have been declared to be immediately due and payable, which declaration shall not have been annulled.

*(Section 11.02)*

### **Acceleration of Maturity**

Upon the happening and continuance of any event of default specified in the Resolution, other than an event of default specified in the Resolution, then and in every such case the Trustee may, and, upon the written request of the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds of a Series, shall, by a notice in writing to the Authority, declare the principal of and interest on all of the Outstanding Bonds of such Series to be immediately due and payable. At the expiration of thirty (30) days after notice of such declaration has been given, such principal and interest shall become and be immediately due and payable, anything in the Resolution or in a Series Resolution or in the Bonds of a Series to the contrary notwithstanding. At any time after the principal of such Bonds 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, or before the completion of the enforcement of any other remedy under the Resolution, the Trustee shall, with the written consent of the Holders of not less than twenty-five per centum (25%) in principal amount of the Bonds of such Series not then due by their terms and then Outstanding, by written notice to the Authority, annul such declaration and its consequences if: (i) money shall have accumulated in the Debt Service Fund sufficient to pay all arrears of interest, if any, upon all of the Outstanding Bonds of such Series (except the interest accrued on such Bonds since the last interest payment date); (ii) money 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 such Bonds (other than a default in the payment of the principal of such Bonds then due only because of a declaration under the Resolution) shall have been remedied to the reasonable satisfaction of the Trustee. No such annulment shall 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 may proceed, and, 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 Series affected thereby, shall proceed (subject to the provisions of the Resolution) to protect and enforce its rights and the rights of the Bondholders 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 under the Resolution or under the Applicable Series Resolution or in aid or execution of any power in the Resolution or therein granted, 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 shall deem most effectual to protect and enforce such rights, including the foreclosure of any defaulted Mortgage assigned to the Trustee.

In the enforcement of any remedy under the Resolution and under a Series Resolution the Trustee shall 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 a Series Resolution or of the Bonds of a Series, 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 a 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 a 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 money adjudged or decreed to be payable.

*(Section 11.04)*

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

No Holder of any of the Bonds of a Series shall 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 for any other remedy under the Resolution unless such Holder previously shall have 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 a Series affected thereby, 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 hereby 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 hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of the Resolution or for any other remedy under the Resolution and in equity or at law. It is understood and intended that no one or more Holders of the Bonds of a Series secured hereby and by a 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 Series Resolution or to enforce any right under the Resolution or a Series Resolution except in the manner within the Resolution provided and the Series 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 a Series shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, 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 Bonds of a Series the principal, Sinking Fund Installments, if any, or Redemption Price of and interest thereon, at the times and in the manner stipulated therein, in the Resolution, and in the Applicable Series Resolution and Bond Series Certificate, then the pledge of the Revenues or other money and securities pledged to such Bonds and all other rights granted hereby to such Bonds shall be discharged and satisfied. In such event, the Trustee shall, upon the request of the Authority, execute and deliver such documents to evidence such discharge and satisfaction as may be reasonably required by the Authority, and all money or securities held by it pursuant to the Resolution and to the Applicable Series Resolution which are not required for the payment or redemption of Bonds of such Series shall be paid or delivered by the Trustee as follows: first, to the Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to each Applicable Provider, the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each such

Provider; third, to the Authority the amount certified by an Authorized Officer of 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, the balance thereof to the College. Such securities so paid or delivered shall be released from any trust, pledge, lien, encumbrance or security interest created hereby or by the Applicable Loan Agreement.

Bonds for the payment or redemption of which money shall have been set aside and shall be held in trust by the Trustee (through deposit of money 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 Resolution. All Outstanding Bonds of any Series or any maturity within such Series or a portion of a maturity within a 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 Resolution if (i) 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 give as provided in the Resolution notice of redemption on said date of such Bonds, (ii) there shall have been deposited with the Trustee either money in an amount which shall be sufficient, or Defeasance Securities the principal of and interest on which when due will provide money which, together with the money, if any, deposited with the 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 said Bonds on and prior to the redemption date or maturity date thereof, as the case may be, (iii) the Trustee shall have received the written consent to such defeasance of each Applicable Provider which has given written notice to the Trustee and the Authority that amounts advanced under a Credit Facility or Liquidity Facility issued by it or the interest thereon have not been repaid to such Provider, and (iv) in the event said 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 last known addresses appearing on the registration books, and, if directed by the 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 clause (ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with the Resolution and stating such maturity or redemption date upon which money is to be available for the payment of the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on said Bonds. The Authority shall give written notice to the Trustee of its selection of the Series and maturity the payment of which is to be made in accordance with the Resolution. The Trustee shall select the Bonds of like Series and maturity payment of which shall be made in accordance with the Resolution in the manner provided in the Resolution. Neither Defeasance Securities nor money 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 said Bonds; provided, however, that any money received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in 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 said Bonds on and prior to such redemption date or maturity date, as the case may be; provided, further, that money and Defeasance Securities may be withdrawn and used by the Authority for any purpose upon (i) the simultaneous substitution therefor of either money in an amount which shall be sufficient, or Defeasance Securities the principal of and interest on which when due will provide money which without regard to reinvestment, together with the money, if any, held by or deposited with the 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 such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, and (ii) receipt by the Trustee of a letter or other written report of a firm of independent certified public accountants verifying the accuracy of the arithmetical computations which establish the adequacy of such money and Defeasance Securities for such purpose. Any income or interest earned by, or increment to, the investment of any such money so deposited, shall, to the extent certified by the Trustee to be in excess of the amounts 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 Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to each Applicable Provider, the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Provider; third, to the Authority the amount certified by an Authorized Officer of 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, the balance thereof to the College, and any such money so paid by the Trustee shall be released of any trust, pledge, lien, encumbrance or security interest created hereby or by the Applicable Loan Agreement.

For purposes of determining whether Variable Interest Rate Bonds of a Series shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, by the deposit of money, or Defeasance Securities and money, if any, in accordance with the Resolution, 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 money 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 the Resolution, the Trustee shall, if requested by the Authority, pay the amount of such excess as follows: first, to the Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to each Applicable Provider, the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Provider; third, to the Authority the amount certified by an Authorized Officer of 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, the balance thereof to the College, and any such money so paid by the Trustee shall be released of any trust, pledge, lien, encumbrance or security interest created hereby.

Option Bonds of a Series shall be deemed to have been paid in accordance with the Resolution only if, in addition to satisfying the requirements of clauses (i) and (iii) of such sentence, there shall have been deposited with the Trustee money in an amount which shall be sufficient to pay when due the maximum amount of principal of and premium, if any, and interest on such Bonds which could become payable to the Holders of such Bonds upon the exercise of any options provided to the Holders of such Bonds; provided, however, that if, at the time a deposit is made with the Trustee pursuant to the Resolution, the options originally exercisable by the Holder of an Option Bond are no longer exercisable, such Bond shall not be considered an Option Bond for purposes of this paragraph. If any portion of the money deposited with the Trustee for the payment of the principal of and premium, if any, and interest on Option Bonds is not required for such purpose, the Trustee shall, if requested by the Authority, pay the amount of such excess as follows: first, to the Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to each Applicable Provider, the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Provider; third, to the Authority the amount certified by an Authorized Officer of 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, the balance thereof to the College, and any such money so paid by the Trustee shall be released of any trust, pledge, lien, encumbrance or security interest created hereby

Anything within the Resolution to the contrary notwithstanding, any money held by the Trustee or a Paying Agent in trust for the payment and discharge of any of the Bonds of a Series or the interest thereon which remain unclaimed for one (1) year after the date when all of the Bonds of such Series have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such money was held by the Trustee or Paying Agent at such date, or for one (1) year after the date of deposit of such money if deposited with the Trustee or Paying Agent after said date when all of the Bonds of such Series become due and payable, shall, 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 Paying Agent shall thereupon be released and discharged with respect thereto and the Holders of Bonds 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 Paying Agent may, at the expense of the Authority, cause to be published in an Authorized Newspaper a notice that such money remains unclaimed and that, after a date named in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after the date of publication of such notice, the balance of such money then unclaimed shall be returned to the Authority.

*(Section 12.01)*

## **Provider Provisions**

### **Consent Rights of the Credit Facility Issuer**

If no Credit Facility Issuer Default is occurring, the Credit Facility Issuer, and not the actual Holders of the Series 2008 Bonds, shall be deemed to be the Holder of the Series 2008 Bonds payable from such Credit Facility for the purpose of exercising any right or power, consenting to an amendment, modification or waiver, or requesting or directing the Trustee to take or not to take any action under the Resolution; provided, however, that the provisions of the Resolution shall not apply to any change in the terms of redemption or maturity of the principal of any Outstanding Bond 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, or shall reduce the percentages or otherwise affect the classes of Bonds the consent of the Holders of which is required to effect any such modification or amendment.

*(Bond Series Certificate Section 7.09)*

**SUMMARY OF CERTAIN PROVISIONS OF THE REIMBURSEMENT AGREEMENT**

*Appendix D*

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

The following is a summary of certain provisions of the Reimbursement Agreement pursuant to which the Letter of Credit will be issued and maintained. This summary is not a complete recital of the terms of the Reimbursement Agreement or the documents that secure the Reimbursement Agreement and reference is made to the Reimbursement Agreement and those documents in their entirety. During the initial offering period, potential purchasers of the Bonds can obtain a copy of the Reimbursement Agreement and the other documents referenced below in connection with the Reimbursement Agreement from the Underwriter at no cost and are encouraged to review the same before investing in the Bonds. Following the initial offering period, potential purchasers can examine such documents at the office of the Trustee. Among other matters of concern to purchasers of the Bonds that are set forth in such documents, if an Event of Default occurs under the Reimbursement Agreement, the Bank can cause the Bonds to be accelerated and redeemed.

Any reimbursement agreement pursuant to which a Substitute Credit Facility is issued may have terms substantially different from those of the Reimbursement Agreement. The rights and obligations of the parties to the Reimbursement Agreement and the documents that secure the Reimbursement Agreement do not extend to the Trustee or to the Bondholders.

### **Reimbursement by the College**

The College 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 College also agrees to pay to the Bank a commission on the face amount of the Letter of Credit (including amounts of unreimbursed remarketing drawings that will be reinstated to the Letter of Credit upon reimbursement to the Bank), and an administrative fee for each drawing under the Letter of Credit. The College must also pay any costs and expenses incurred by the Bank with respect to each drawing under the Letter of Credit, each extension of 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, and the preparation and issuance by the Bank of the Letter of Credit and 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 College pursuant to the Reimbursement Agreement.

### **Certain Affirmative and Negative Covenants**

The College makes certain affirmative and negative covenants in the Reimbursement Agreement with respect to its legal, business and financial affairs.

### **Security for Reimbursement Agreement**

As security for its obligations under the Reimbursement Agreement, the College will execute a negative pledge agreement and a bond pledge agreement (collectively, the "Reimbursement Collateral Documents"). The Reimbursement Agreement and the Reimbursement Collateral Documents are hereinafter collectively referred to as the "Credit Documents."

THE REIMBURSEMENT COLLATERAL DOCUMENTS SECURE PAYMENTS DUE FROM THE COLLEGE TO THE BANK UNDER THE REIMBURSEMENT AGREEMENT AND DO NOT SECURE THE BONDS OR THE PAYMENT OF DEBT SERVICE UNDER THE RESOLUTION AND IS NOT FOR THE BENEFIT OF THE HOLDERS OF THE BONDS.

## Events of Default

The following summarizes certain events which constitute events of default under the Reimbursement Agreement:

(a) If the College fails to make or cause to be made any payment, including but not limited to any reimbursement or payment of principal and/or interest to the Bank required to be made pursuant to the terms of the Reimbursement Agreement or any of the other Credit Documents or fails to observe or perform any of the other covenants or conditions to be performed by the College under the terms of the Reimbursement Agreement or any other Credit Document; or

(b) The disapproval by Bank or Bank's Consultant at any time of any construction work and failure of the College to cause the same to be corrected to the satisfaction of Bank within the cure period provided in the Reimbursement Agreement.

(c) A delay in the construction or a discontinuance for a period of fifteen (15) days after written notice from the Bank concerning such delay or discontinuance (other than unavoidable delays), or in any event a delay in the construction so that the same is not, in the Bank's judgment (giving due consideration to the assessment of Bank's consultant), likely to be completed on or before the completion date.

(d) The bankruptcy or insolvency of the construction manager and failure of the College to procure a contract with a new construction manager satisfactory to Bank within thirty (30) days from the occurrence of such bankruptcy or insolvency.

(e) Any transfer or other disposition in violation of the Reimbursement Agreement.

(f) Any material default by the College under the terms of the Loan Agreement following the expiration of any applicable notice and cure period, provided that if the Loan Agreement does not provide a notice and cure period, then the notice and cure period provided in the Reimbursement Agreement will apply, which period shall commence upon written notice of default from Bank.

(g) If any warranty, representation, statement, report or certificate made now or hereafter by the College is untrue or incorrect in any material respect at the time made or delivered, provided that if such breach is reasonably susceptible of cure, then no event of default shall exist so long the College cures said breach within the notice and cure period provided in the Reimbursement Agreement.

(h) The College shall commence a voluntary case concerning the College under the Bankruptcy Code; or an involuntary proceeding is commenced against the College under the Bankruptcy Code and relief is ordered against the College, or the petition is controverted but not dismissed or stayed within sixty (60) days after the commencement of the case, or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of the College; or the College commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar Law of any jurisdiction whether now or hereafter in effect relating to the College; or there is commenced against the College any such proceeding which remains undismissed or unstayed for a period of sixty (60) days; or the College fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding, or any order of relief or other order approving any such case or proceeding is entered; or the College by any act or failure to act indicates its consent to, approval of, or acquiescence in any such case or proceeding or the appointment of any custodian or the like of or for it for any substantial part of its property or suffers any such appointment to continue undischarged or unstayed for a period of sixty (60) days.

(i) The College shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof or if all or a substantial part of the assets of the College are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.

(j) If the College is permanently, or temporarily for a period exceeding thirty (30) days, enjoined, restrained or in any way prevented by any court order from constructing or operating the Project Facility.

(k) Failure by the College to increase or to make any additional equity investment when required under the Reimbursement Agreement.

(l) One or more final, unappealable judgments are entered against the College in amounts aggregating in excess of \$250,000, and said judgments are not stayed or bonded over within thirty (30) days after entry.

(m) If the College shall fail to pay any indebtedness for borrowed money owed by it or is in default under any agreement with the Bank or any other party (other than a failure or default for which the College's maximum liability does not exceed \$250,000) and such failure or default continues after any applicable grace period specified in the instrument or agreement relating thereto.

(n) If a material adverse change occurs with respect to the College or the Project Facility (except unrealized losses with respect to the College's investment portfolio shall not constitute such a Material Adverse Change provided the College continues to comply with the financial covenants contained in the Reimbursement Agreement).

(o) A Resolution Default shall have occurred under the Resolution, subject to any applicable grace or cure periods provided for in the Resolution.

(p) A determination that interest on the Series 2008 Bonds must be included in the gross income of the Bondholders for federal income tax purposes.

(q) If the College shall cease to be an organization described under Section 501(c)(3) of the Code.

(r) The occurrence of any other event or circumstance denominated as an Event of Default herein or under any of the other Credit Documents and the expiration of any applicable grace or cure periods, if any, specified for such Event of Default herein or therein, as the case may be.

**If an Event of Default occurs, the Bank may exercise any and all remedies, legal or equitable, to collect the amounts due from the College pursuant to the Reimbursement Agreement, and in its sole discretion, may instruct the Trustee to accelerate the Bonds pursuant to the Resolution. Upon receipt by the Trustee of such instructions from the Bank, the Bonds shall be accelerated. No failure on the part of the Bank to exercise, and no delay in exercising, any right thereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right thereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.**

Notice by the Bank to the Trustee that an event of default under the Reimbursement Agreement has occurred and is continuing constitutes an Event of Default under the Resolution.

### **Liability of the Bank**

As between the College and the Bank, the College assumes all risks of the acts or omissions of the Trustee and any transferee of the Letter of Credit or any issuer of a Substitute Letter of Credit (each a "Credit Facility") with respect to the use of the Credit Facility.

### **Extension of Letter of Credit**

Upon delivery by College to Bank of its annual audited financial reports pursuant to the Reimbursement Agreement, College may, no later than October 1 of each year, request in writing that Bank extend the Expiration Date of the Letter of Credit. The Bank may in writing, extend the Expiration Date of the Letter of Credit for an additional one-year period from the then Expiration Date; provided, however, that such extension shall be, in each instance, made in the sole discretion of the Bank and the Bank may at any time, upon written notice delivered to Borrower and Trustee, elect not to extend the Expiration Date. The Bank shall notify College, the Authority and Trustee of its

decision of whether the Expiration Date shall be extended no later than November 1 of each year, provided that the failure of Bank to deliver such notice, or to deliver any notice, shall not mean that Bank has elected to extend the Expiration Date. If the Bank extends the Expiration Date, it shall do so in the form of an amendment to the Letter of Credit, which it shall promptly deliver to Trustee. The Expiration Date may be extended for a maximum of twenty-five (25) additional one year terms.

**FORM OF APPROVING OPINION  
OF BOND COUNSEL**

*Appendix E*

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## FORM OF APPROVING OPINION OF BOND COUNSEL

December 10, 2008

Dormitory Authority of the State of New York  
515 Broadway  
Albany, New York 12207

Ladies and Gentlemen:

We have examined the record of proceedings relating to the \$26,710,000 aggregate principal amount D'Youville College Revenue Bonds, Series 2008 (the "Series 2008 Bonds") issued by 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 (the "State"), created and existing under and pursuant to the Constitution and statutes of the State, including the Dormitory Authority Act, being Chapter 524 of the Laws of 1944 of the State (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. Capitalized terms used herein without other definition have the meanings set forth in the Resolution or the Bond Series Certificate (hereinafter defined.)

The Series 2008 Bonds are issued under and pursuant to the Act, the Authority's D'Youville College Revenue Bond Resolution adopted October 29, 2008 (the "Resolution") and the Authority's Series 2008 Resolution Authorizing D'Youville College Revenue Bonds, Series 2008 adopted October 29, 2008 (the "Series 2008 Resolution"). Certain terms of the Series 2008 Bonds are established in the Authority's Bond Series Certificate Relating to \$26,710,000 D'Youville College Revenue Bonds, Series 2008 dated December 9, 2008 (the "Bond Series Certificate"). The Resolution and the Series 2008 Resolution are herein collectively called the "Resolutions". The Series 2008 Bonds are being issued for the purposes set forth in the Resolutions.

The Series 2008 Bonds are dated the date hereof and are issued as Variable Interest Rate Bonds in Weekly Rate Mode, convertible to Daily Rate Mode, Term Rate Mode or Fixed Rate Mode.

The Authority has entered into a Loan Agreement with D'Youville College (the "College"), dated as of October 29, 2008 (the "Loan Agreement") providing, among other things, for a loan to the College for the purposes permitted thereby and by the Resolutions. Pursuant to the Loan Agreement, the College is required to make payments sufficient to pay the principal, sinking fund installments, if any, and redemption price, if applicable, of and interest on the Series 2008 Bonds as the same 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 Authority and the College have entered into a Tax Compliance Agreement as of the date hereof relating to the Series 2008 Bonds (the "Tax Compliance Agreement").

Based upon the foregoing, we are of the opinion that:

1. The Authority is a body corporate and politic constituting a public benefit corporation of the State with the right and lawful authority and power to adopt the Resolutions and to issue the Series 2008 Bonds thereunder.

2. The Resolution has been duly and lawfully adopted by the Authority. The Series 2008 Resolution has been duly and lawfully adopted by the Authority in accordance with the provisions of the Resolution and is authorized and permitted by the Resolution. The Resolutions are in full force and effect, and are legal, valid and binding obligations of the Authority enforceable in accordance with their respective terms. The Resolutions create the valid pledge and the valid lien upon the Revenues which they purport to create, subject only to the provisions of the Resolutions permitting the withdrawal, payment, setting apart or appropriation thereof for the purposes and on the terms and conditions set forth in the Resolutions.

3. The Series 2008 Bonds have been duly and validly authorized and issued in accordance with the Constitution and statutes of the State, 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 the Resolutions, are enforceable in accordance with their terms pursuant to 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. The Loan Agreement has been duly authorized, executed and delivered by the Authority and, assuming due authorization, execution and delivery of the Loan Agreement by the College, constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms.

5. Under existing law:

(a) interest on the Series 2008 Bonds is excludable from gross income for federal income tax purposes pursuant to Section 103 of the Code;

(b) interest on the Series 2008 Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, however, such interest is taken into account in determining adjusted current earnings of certain corporations for purposes of computing alternative minimum tax imposed on such corporations; and

(c) interest on the Series 2008 Bonds is exempt from personal income taxes of the State or any political subdivision thereof (including The City of New York and the City of Yonkers).

In rendering the opinions set forth in paragraph 5, we have assumed the accuracy of certain representations of, and continuing compliance with the covenants and procedures set forth in the Resolutions, the Loan Agreement and the Tax Compliance Agreement by the Authority and the College. In the event of the inaccuracy or incompleteness of any of the representations made by the Authority or the College, or of the failure by the Authority or the College to comply with the covenants and procedures set forth in the Resolutions, the Loan Agreement and the Tax Compliance Agreement, the interest on the Series 2008 Bonds could become includable in gross income for federal income tax purposes retroactive to the date of original execution and delivery of the Series 2008 Bonds, regardless of the date on which the event causing such inclusion occurs.

Further, although the interest is excludable in gross income for purposes of federal income taxation, receipt or accrual of such interest may otherwise affect the tax liability of a holder of a Series 2008 Bond depending on the tax status of such holder and such holder's other items of income and deduction. Except as stated in paragraph 5, we express no opinion as to federal or state or local tax consequences of the ownership or disposition of, or the accrual or receipt of interest on, the Series 2008 Bonds.

Certain requirements and procedures contained or referred to in the Resolutions and certain other documents delivered in connection with the issuance of the Series 2008 Bonds 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 Bond Counsel. We express no opinion as to any of the Series 2008 Bonds or the interest thereon with respect to any change or action taken upon the advice or approval of bond counsel other than Hiscock & Barclay, LLP.

We have examined a fully executed Series 2008 Bond and, in our opinion, the forms of said Bonds and their execution are regular and proper.

The opinions contained in paragraphs 2, 3 and 4 above are qualified to the extent that the enforceability of the Resolutions, the Loan Agreement and the Series 2008 Bonds may be limited by bankruptcy, insolvency, moratorium, reorganization or other laws effecting creditors' rights generally and as to the availability of any particular remedy.

Very truly yours,