



**REOFFERING CIRCULAR**  
**\$18,740,000**  
**DORMITORY AUTHORITY**  
**OF THE STATE OF NEW YORK**  
**TERESIAN HOUSE HOUSING CORPORATION**  
**REVENUE BONDS, SERIES 2003**

**Original Issuance Date: July 22, 2003**

**Due: July 1, 2033**

This Reoffering Circular is being issued in connection with the remarketing of the Dormitory Authority of the State of New York Teresian House Housing Corporation Revenue Bonds, Series 2003 (the “Series 2003 Bonds”) and supersedes the Official Statement dated July 16, 2003, authorized in connection with the offering, sale and delivery of the Series 2003 Bonds. Pursuant to the Resolution (as defined below), all of the Outstanding Series 2003 Bonds will be remarketed on February 26, 2009 as a result of the substitution of the original irrevocable direct pay letter of credit (the “Original Letter of Credit”) issued by Sovereign Bank by the Letter of Credit issued by the Bank (each as defined below). The Series 2003 Bonds were originally issued by the Dormitory Authority of the State of New York (the “Authority”) on July 22, 2003 pursuant to the Authority’s Teresian House Housing Corporation Revenue Bond Resolution, adopted by the Authority on June 25, 2003 (the “Original Resolution”), as amended and supplemented by the First Supplemental Resolution, adopted by the Authority on January 28, 2009 (the “First Supplemental Resolution”, and collectively with the Original Resolution, the “Resolution”), the Authority’s Teresian House Housing Corporation Series 2003 Resolution Authorizing Up To \$42,200,000 Teresian House Housing Corporation Revenue Bonds, Series 2003 adopted by the Authority on June 25, 2003 (the “Series 2003 Resolution”, and together with the Resolution, the “Resolutions”) and the Bond Series Certificate, dated as of July 22, 2003 (the “Bond Series Certificate”).

**Payment and Security:** The Series 2003 Bonds are special obligations of the Authority payable from, and secured by a pledge of (i) moneys and investments held in the funds and accounts established under the Series 2003 Resolution other than the Arbitrage Rebate Fund and the Credit Facility Provider Repayment Fund, each as defined herein, and (ii) certain payments to be made under the Loan Agreement, dated as of June 25, 2003 (the “Loan Agreement”), by and between Teresian House Housing Corporation (the “Institution”) and the Authority, and as provided in the Resolutions. The Loan Agreement is a general obligation of the Institution. The obligations of the Institution under the Loan Agreement are secured by a pledge of certain revenues of the Institution and by a leasehold mortgage granted by the Institution to the Authority on the Mortgaged Property (the “Mortgage”). For a more complete description of the security for the obligations of the Institution under the Loan Agreement, see “PART 2 - SOURCES OF PAYMENT OF AND SECURITY FOR THE SERIES 2003 BONDS.”

On and after February 26, 2009, the Series 2003 Bonds will be additionally secured by an irrevocable direct pay letter of credit (the “Letter of Credit”) issued by



(the “Bank”), held by The Bank of New York Mellon, as trustee and tender agent (the “Trustee”). The Letter of Credit securing the Series 2003 Bonds provides for payment of an amount not to exceed the principal of and up to fifty-one (51) days’ interest on the Series 2003 Bonds, at a maximum rate of 10% per annum, and the Purchase Price of Series 2003 Bonds tendered for purchase and not remarketed as described herein. The Letter of Credit will expire on February 26, 2014, unless terminated or extended prior to such date, in accordance with its terms. See “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2003 BONDS - The Letter of Credit.”

**The Series 2003 Bonds will not be a debt of the State of New York (the “State”) nor will the State be liable thereon. The Authority has no taxing power.**

**Description:** The Series 2003 Bonds will be remarketed on February 26, 2009 and will bear interest at the Weekly Rate until the Fixed Rate Conversion Date, if any. Interest on the Series 2003 Bonds is payable on the first Thursday of each calendar month for as long as the Series 2003 Bonds pay interest at a Weekly Rate, and upon remarketing of the Series 2003 Bonds, will be payable commencing April 2, 2009. Following conversion to a Fixed Rate, interest will be payable at the times and in the manner set forth herein.

The Series 2003 Bonds may be converted in accordance with the provisions of the Resolutions permanently to a Fixed Rate. At the time of a conversion to a Fixed Rate, the Series 2003 Bonds are subject to mandatory tender for purchase at the Purchase Price, as set forth herein. The Series 2003 Bonds are also subject to mandatory tender for purchase under other circumstances and to tender for purchase at the option of the Holder when bearing interest at the Weekly Rate, as set forth herein. The Series 2003 Bonds tendered for purchase are to be remarketed by Manufacturers and Traders Trust Company as remarketing agent (the “Remarketing Agent”). Under the Letter of Credit, the Bank is obligated to pay the Purchase Price of Series 2003 Bonds tendered or deemed tendered for purchase but not remarketed.

As long as the Series 2003 Bonds bear interest at the Weekly Rate, the Series 2003 Bonds shall be issued in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof. So long as the Series 2003 Bonds bear interest at the Fixed Rate they will be issued in denominations of \$5,000 or integral multiples thereof. The Series 2003 Bonds have been issued 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 2003 Bonds will be made in book-entry form (without certificates). So long as DTC or its nominee is the registered owner of the Series 2003 Bonds, payments of the principal and Redemption Price of and interest on the Series 2003 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 2003 BONDS - Book-Entry Only System” herein.

**Redemption:** *The Series 2003 Bonds are subject to redemption prior to maturity, as more fully described herein.*

**Tax Matters:** The opinion of Nixon Peabody LLP, Rochester, New York, Bond Counsel to the Authority, delivered on the date of original delivery of the Series 2003 Bonds (the “Original Opinion”) stated that, under existing law and assuming compliance with the tax covenants described therein, and the accuracy of certain representations and certifications made by the Authority and the Institution described therein, interest on the Series 2003 Bonds is excluded from gross income for Federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”). The Original Opinion also stated that such interest is not a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations but that interest on the Series 2003 Bonds is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations. The Original Opinion further stated that interest on the Series 2003 Bonds is exempt from personal income taxes of the State of New York and its political subdivisions. The Original Opinion is not required to be, and has not been, updated or reissued in connection with the reoffering of the Series 2003 Bonds. Bond Counsel is of the opinion that the delivery of the Substitute Credit Facility will not, in and of itself, adversely affect the exclusion of interest on the Series 2003 Bonds. See “TAX MATTERS” herein.

**Price of all Series 2003 Bonds: 100%**

*The Series 2003 Bonds are remarketed when, as and if received by the Remarketing Agent. The remarketing of the Series 2003 Bonds may be subject to prior sale or may be withdrawn or modified at any time without notice. The remarketing is subject to the approval of legality by Nixon Peabody LLP, Rochester, New York, Bond Counsel, and to certain other conditions. Certain legal matters will be passed upon for the Institution by its counsel, Tobin & Grifferty, P.C., Albany, New York. Certain legal matters will be passed upon for the Remarketing Agent by its counsel, Harris Beach PLLC, Rochester, New York and for the Bank by its Deputy General Counsel, Mark W. Warren, Esq. as well as by its outside counsel, Lemery Greisler LLC, Saratoga Springs, New York. The remarketing of the Series 2003 Bonds is expected to be completed on or about February 26, 2009.*



No dealer, broker, salesperson or other person has been authorized by the Authority, the Institution, the Remarketing Agent or the Bank to give any information or to make any representations with respect to the Series 2003 Bonds other than the information and representations contained in this Reoffering Circular. If given or made, any such information or representations must not be relied upon as having been authorized by the Authority, the Institution, the Remarketing Agent or the Bank.

This Reoffering Circular does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any remarketing of the Series 2003 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, remarketing, solicitation or sale.

Certain information in this Reoffering Circular has been supplied by the Institution, the Bank and other sources that the Authority believes are reliable. The Authority does not guarantee the accuracy or completeness of such information, and such information is not to be construed as a representation of the Authority.

References in this Reoffering Circular to the Act, the Resolutions, the Loan Agreement, the Intercreditor Agreement, the Letter of Credit and the Reimbursement Agreement, and to documents that secure the Institution's obligation to the Bank do not purport to be complete. Refer to the Act, the Resolutions, the Loan Agreement, the Intercreditor Agreement, the Letter of Credit and the Reimbursement Agreement, and to such security documents for full and complete details of their provisions. Copies of the Resolutions, the Loan Agreement, the Intercreditor Agreement, the Letter of Credit and the Reimbursement Agreement are on file with the Authority and the Trustee.

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

Under no circumstances shall the delivery of this Reoffering Circular, or any sale made after its delivery, create any implication that the affairs of the Authority, the Institution or the Bank have remained unchanged after the date of this Reoffering Circular.

IN CONNECTION WITH THE REMARKETING OF THE SERIES 2003 BONDS, THE REMARKETING AGENT MAY OVER-ALLOT BONDS OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICES OF THE SERIES 2003 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

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GAIL H. GORDON, ESQ. – CHAIR

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**REOFFERING CIRCULAR RELATING TO  
\$18,740,000  
DORMITORY AUTHORITY  
OF THE STATE OF NEW YORK  
TERESIAN HOUSE HOUSING CORPORATION REVENUE BONDS,  
SERIES 2003**

**PART 1 - INTRODUCTION**

**Purpose of the Reoffering Circular**

The purpose of this Reoffering Circular, including the cover page and appendices, is to provide information about the Authority, the Institution, the Project and the Bank in connection with the remarketing by the Remarketing Agent of the Authority's Outstanding principal amount of \$18,740,000 Series 2003 Bonds. Pursuant to the Resolution, all of the Series 2003 Bonds will be remarketed on February 26, 2009 as a result of the substitution of the original irrevocable direct pay letter of credit (the "Original Letter of Credit") issued by Sovereign Bank by the Letter of Credit issued by the Bank that will also provide security for the Series 2003 Bonds as described below. **This Reoffering Circular supersedes the Official Statement dated July 16, 2003 relating to the Series 2003 Bonds.**

The Original Resolution provides for the consent of the Remarketing Agent as bondholder to amendments permitted thereunder. In accordance with the Original Resolution, the Remarketing Agent will consent as the sole bondholder to the terms of the First Supplemental Resolution prior to the reoffering of the Series 2003 Bonds on February 26, 2009. The First Supplemental Resolution amends the Original Resolution to remove the requirement thereunder that the Authority maintain a Confirming Letter of Credit. The First Supplemental Resolution further provides that during any period in which the Authority has elected not to maintain a Confirming Letter of Credit, all references in the Original Resolution to a "Confirming Letter of Credit" or the "Confirming Bank" shall be ineffective and the Original Resolution shall be read as though such references did not appear. The First Supplemental Resolution also provides the Authority with the option, at the request of the Institution, at any time while no Confirming Letter of Credit is in effect, to deliver or cause to be delivered to the Trustee a Substitute Confirming Letter of Credit provided by the Institution. If the Authority were to exercise such option, the First Supplemental Indenture amends the Original Resolution to provide for a mandatory tender of the Series 2003 Bonds on the Substitution Date with respect to such Substitute Confirming Letter of Credit and makes certain additional amendments to the Substitute Confirming Letter of Credit provisions necessary to allow for such delivery. The First Supplemental Resolution also provides that the first Interest Payment Date for the Series 2003 Bonds after the remarketing hereunder will be April 2, 2009 and makes a technical correction with respect to the timing of transfers from the Debt Service Reserve Fund to the Debt Service Fund.

The following is a brief description of certain information concerning the Series 2003 Bonds, the Authority, the Institution, the Bank and the Project. A more complete description of such information and additional information that may affect decisions to invest in the Series 2003 Bonds is contained throughout this Reoffering Circular, which should be read in its entirety. Certain terms used in this Reoffering Circular are defined in Appendix A hereto.

### **Purpose of the Issue**

The proceeds of the Series 2003 Bonds were used to make a loan to the Institution under the Loan Agreement to be used, together with other available moneys, (i) to pay a portion of the Costs of the Project, (ii) to make a deposit to the Debt Service Reserve Fund, and (iii) to pay certain Costs of Issuance of the Series 2003 Bonds.

### **Authorization of Issuance**

The Series 2003 Bonds were issued pursuant to the Resolution, the Series 2003 Resolution, the Bond Series Certificate and the Act. The Series 2003 Bonds were the first and only Series of Bonds issued under the Resolution to date. In addition to the Series 2003 Bonds, the Resolution authorizes the issuance of other Series of Bonds to pay other Costs of one or more projects, to make deposits to the Debt Service Reserve Fund, to pay the Costs of Issuance of such Series of Bonds and to refund all or a portion of Outstanding Series 2003 Bonds or other notes or bonds of the Authority issued for the benefit of the Institution. Each Series of Bonds will be secured by a Credit Facility delivered with respect to such Series. All Bonds issued under the Resolution will be secured equally and ratably with respect to the Pledged Revenues and the Mortgaged Property. See "PART 3 - THE SERIES 2003 BONDS."

### **The Authority**

The Authority is a public benefit corporation of the State, created for the purposes of financing and constructing a variety of public-purpose facilities for certain educational and not-for-profit institutions. See "PART 7 - THE AUTHORITY".

### **The Institution**

*The Letter of Credit is the primary source of payment for the Series 2003 Bonds. Purchasers of the Series 2003 Bonds should make their decision to invest in the Series 2003 Bonds solely upon their assessment of the creditworthiness of the Bank. No attempt is made in this Reoffering Circular to describe the Institution or its operations in a manner that would enable purchasers of the Series 2003 Bonds to assess the creditworthiness of the Institution.*

Teresian House Housing Corporation (the "Institution") is a not-for-profit corporation that was formed to own and operate an independent living retirement community located in the City of Albany, New York. The Institution is an organization described in Section 501(c)(3) of the Code and is exempt from federal income tax pursuant to Section 501(a) thereof. See "PART 5 - THE INSTITUTION."

### **The Series 2003 Bonds**

The Series 2003 Bonds will bear interest at the Weekly Rate until the Series 2003 Bonds are converted to a Fixed Rate. The Series 2003 Bonds may be converted permanently to a Fixed Rate. See "PART 3 - THE SERIES 2003 BONDS - Description of the Series 2003 Bonds."

Interest on the Series 2003 Bonds is payable (i) prior to the Fixed Rate Conversion Date, on the first Thursday of each calendar month, and upon the remarketing of the Series 2003 Bonds, will be payable commencing on April 2, 2009 and (ii) from and after the Fixed Rate Conversion Date, on each January 1 and July 1 of each year, commencing with the first January 1 or July 1 occurring after the Fixed Rate Conversion Date.

**A conversion of the Series 2003 Bonds to a Fixed Rate or the delivery of a Substitute Credit Facility or a Substitute Confirming Letter of Credit will cause a mandatory purchase of all Series 2003 Bonds.**

The Series 2003 Bonds will be subject to acceleration upon the occurrence of an Event of Default, as more fully described in "PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2003 BONDS - Events of Default and Remedies under the Resolution." Notwithstanding their stated maturity, the Series 2003 Bonds are subject to optional redemption prior to maturity.

With respect to any Interest Period, the Resolution requires that the interest rate borne by the Series 2003 Bonds will be determined by the Remarketing Agent to be the minimum annual rate of interest that, in the sole best judgment of the Remarketing Agent, under prevailing financial market conditions, enables such Series 2003 Bonds to be sold at a price of par (plus accrued interest, if any) on the first day of the applicable Interest Period. In no event

may the interest rate on any Series 2003 Bond for any Interest Period exceed the maximum rate permitted by law or the Maximum Interest Rate as set forth in the Resolutions.

Each Bondholder, at certain times while the Series 2003 Bonds bear interest at the Weekly Rate, will have the right and, at certain other times, will have the obligation, to tender the Series 2003 Bonds (or portion thereof under certain circumstances) owned by such Bondholder for purchase at a purchase price of 100% of the principal amount of such Series 2003 Bonds, plus accrued interest, if any, as described herein, by delivering the tendered Series 2003 Bonds to the Tender Agent. The right or obligation to tender Series 2003 Bonds shall terminate following the conversion of the Series 2003 Bonds to the Fixed Rate mode. See "PART 3 - THE SERIES 2003 BONDS - Description of the Series 2003 Bonds."

The Series 2003 Bonds will not be a debt of the State nor will the State be liable thereon. The Authority has no taxing power.

#### **Payment of the Series 2003 Bonds**

The Series 2003 Bonds are special obligations of the Authority payable solely from certain payments to be made by the Bank under the Letter of Credit, certain payments to be made by the Institution under the Loan Agreement, and from amounts on deposit in the funds and accounts held by the Trustee under the Resolutions (other than the Arbitrage Rebate Fund and the Credit Facility Provider Repayment Fund). The Loan Agreement is a general obligation of the Institution. See "PART 2 – SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2003 BONDS – Payment of the Series 2003 Bonds."

#### **The Letter of Credit**

Pursuant to the Reimbursement Agreement, dated as of February 26, 2009 (the "Reimbursement Agreement"), by and between the Institution and the Bank, the Bank will deliver the Letter of Credit 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 fifty-one (51) days' interest on the Series 2003 Bonds and the Purchase Price of such Bonds tendered for purchase pursuant to the Resolutions but not remarketed. See "PART 2 – SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2003 BONDS – The Letter of Credit."

*The Letter of Credit is the primary source of payment for the Series 2003 Bonds. Purchasers of the Series 2003 Bonds should make their decision to invest in the Series 2003 Bonds solely upon their assessment of the creditworthiness of the Bank. No attempt is made in this Reoffering Circular to describe the Institution or its operations in a manner that would enable purchasers of the Series 2003 Bonds to assess the creditworthiness of the Institution.*

#### **The Project**

The Project consists of the construction and equipping of a full service retirement community consisting of an approximately 271,000 total square foot project comprised of 152 independent living units consisting of 128 one and two bedroom apartments and 24 duplex cottages, and a community center, with various common areas including: administrative offices, a kitchen and dining areas, a lounge and activities area, a convenience store, a library, indoor pool, cafe, arts and hobby studio, a beauty/barber shop and supporting infrastructure located off Columbia Circle Drive in the City of Albany, Albany County, New York, on approximately 13 acres of land under a long term ground lease to the Institution. The Project was completed in August 2004. A planned expansion incorporates an additional 44 apartments in 1 bed room, 1 bed room den and 2 bed room designs. The new apartments will be in a free standing three story building on lands to be leased from Burke Community Service Corporation. The new apartments are not being financed at this time. The Bank has issued a commitment to finance the new construction under the Construction Loan (as defined below). Timing of the construction will depend on the pre-sales of the new apartments. Seven deposits have been received for unit holds, and additional presale of 28 units is required to meet the condition precedent to the construction financing. See "PART 6 - THE PROJECT."

### **PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2003 BONDS**

*Set forth below is a narrative description of certain contractual provisions relating to the sources of payment of and the security for the Series 2003 Bonds and certain related covenants. These provisions and covenants have been summarized, and this description does not purport to be complete. Reference should be made to the Act, the*

*Mortgage, the Resolutions, the Loan Agreement, the Intercreditor Agreement, the Gross Receipts Security Agreement, the Letter of Credit and the Reimbursement Agreement. Copies of the Resolution, the Loan Agreement, the Intercreditor Agreement, the Gross Receipts Security Agreement, the Letter of Credit and the Reimbursement Agreement are on file with the Authority and the Trustee. See also "Appendix B - Summary of Certain Provisions of the Loan Agreement" and "Appendix C - Summary of Certain Provisions of the Resolution" for a more complete statement of the rights, duties and obligations of the parties thereto.*

### **Payment of the Series 2003 Bonds**

The Series 2003 Bonds along with all other Bonds issued pursuant to the Resolution, will be special obligations of the Authority payable, as described below under "Security for the Series 2003 Bonds," from proceeds received by the Trustee from drawings under the Letter of Credit or any Substitute Credit Facility or Substitute Confirming Letter of Credit issued with respect to the Series 2003 Bonds, certain payments to be made by the Institution under the Loan Agreement and from amounts on deposit in the funds and accounts held by the Trustee under the Resolutions (other than the Arbitrage Rebate Fund and the Credit Facility Provider Repayment Fund). Moneys to be deposited to such funds and accounts, in addition to Bond proceeds and proceeds drawn under the Letter of Credit, consist of payments to be made by the Institution under a Loan Agreement between the Institution and the Authority.

For Series 2003 Bonds which are in the Weekly Rate mode, payments of principal and interest are to be made to the holders of the Series 2003 Bonds from funds drawn under the Letter of Credit and, in the case of the Purchase Price, from remarketing proceeds or, if remarketing proceeds are inadequate, from funds drawn on the Letter of Credit.

### **A conversion of the Series 2003 Bonds to a Fixed Rate will cause a mandatory purchase of all Series 2003 Bonds, at which time a Fixed Rate Credit Support, as required by the Resolution, must be obtained.**

The Loan Agreement is a general obligation of the Institution and obligates the Institution to make payments to satisfy the principal, Sinking Fund Installments and Purchase Price of and interest on Outstanding Series 2003 Bonds. Payments of principal and Sinking Fund Installments are to be made on the tenth (10<sup>th</sup>) day of each month in an amount equal to one-twelfth of the principal and Sinking Fund Installments coming due on the next succeeding July 1. Payments of interest are to be made by the Institution (i) during the Weekly Interest Rate Period, on the third (3<sup>rd</sup>) Business Day immediately preceding each Interest Payment Date, in an amount in immediately available funds equal to the interest payable on such Interest Payment Date, and (ii) during the Fixed Rate Interest Period, on the 10th day of each month, commencing on the 10th day of the month in which the Series 2003 Bonds commenced to bear interest at the Fixed Rate, in an amount equal to one-sixth of the interest coming due on the immediately succeeding Interest Payment Date, with adjustments for payment periods of less than six months. On any date, if the amount on deposit in the Debt Service Fund is less than the amounts required for the payment of principal, interest or Sinking Fund Installments due and payable on such date, the Institution is obligated to pay the amount of such deficiency. The Loan Agreement also obligates the Institution to pay, prior to a redemption date of Series 2003 Bonds called for redemption, the amount, if any, required to pay the Redemption Price of such Series 2003 Bonds. For a more complete description of payments required to be made under the Loan Agreement, see "Appendix B - Summary of Certain Provisions of the Loan Agreement."

The Authority has directed the Institution, and the Institution has agreed, to make such payments directly to the Trustee. Such payments are to be applied by the Trustee to reimburse the Bank for the payment of the principal, Sinking Fund Installments, Purchase Price and Redemption Price of and interest on the Series 2003 Bonds before being applied for any other purpose.

### **Security for the Series 2003 Bonds**

The Series 2003 Bonds are secured, together with any additional Series of Bonds that may be issued from time to time under the Resolution, by the Authority's security interest in the Pledged Revenues granted by the Institution to secure its obligations under the Loan Agreement. The Series 2003 Bonds are further secured by the Revenues and all funds and accounts established by the Series Resolution (with the exception of the Arbitrage Rebate Fund and the Credit Facility Provider Repayment Fund), including, without limitation, the Debt Service Reserve Fund.

In addition, the obligations of the Institution under the Loan Agreement are secured by the Mortgage on the Mortgaged Property. Pursuant to the terms of the Resolutions, the Authority has assigned the Mortgage to the Trustee, for the benefit of the Bondholders, and to the Bank, as successor by assignment to Sovereign Bank. Additional Series of Bonds issued under the Resolution may have a lien on the Pledged Revenues and the Mortgaged Property on a parity with the Series 2003 Bonds. Further, pursuant to the Loan Agreement, the Institution may, with the prior written consent of the Authority and the Bank, incur indebtedness that is secured on a parity basis with the Series 2003 Bonds by the Mortgaged Property and the Pledged Revenues. The respective rights and remedies of the Authority, the Trustee and the Bank with regard to the Mortgage, the Revenues and the Pledged Revenues will be controlled by the terms of the Amended and Restated Intercreditor Agreement, dated the date of the remarketing of the Series 2003 Bonds, by and among the Authority, the Trustee and the Bank (the "Intercreditor Agreement").

In addition, the payment of the principal, Sinking Fund Installments, Purchase Price and fifty-one (51) days' interest at a maximum rate of ten percent (10%) on the Series 2003 Bonds will be secured by and payable from amounts to be drawn under the Letter of Credit. Upon compliance with the provisions of the Resolutions, a Substitute Credit Facility or a Substitute Confirming Letter of Credit may be issued in substitution for the Letter of Credit or the Credit Facility then in effect. All of the Series 2003 Bonds are subject to mandatory purchase (i) on the date which is five (5) days prior to the date on which the Letter of Credit is replaced by a Substitute Credit Facility or a Confirming Letter of Credit is replaced by a Substitute Confirming Letter of Credit or a Substitute Confirming Letter of Credit is delivered at the option of the Authority in accordance with the Resolution (or if such day is not a Business Day, the immediately succeeding Business Day), or (ii) on the fifteenth (15<sup>th</sup>) day prior to the Expiration Date of the Letter of Credit or the Credit Facility then in effect (or if such day is not a Business Day, the immediately succeeding Business Day), in each case at a Purchase Price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to such Purchase Date. Such Purchase Price shall be payable from the proceeds of a drawing under the Letter of Credit or the Credit Facility then in effect. See "PART 3 - THE SERIES 2003 BONDS - Purchase of the Series 2003 Bonds - *Mandatory Tender for Purchase and Required Purchase.*"

#### **The Letter of Credit**

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

The Letter of Credit is an irrevocable obligation of the Bank to pay to the Trustee, upon drawings thereon in accordance with the terms thereof, up to (a) an amount equal to the aggregate principal amount of the outstanding Series 2003 Bonds (other than Institution Bonds or Custody Bonds) (i) to pay the principal of the Series 2003 Bonds in Weekly Rate mode (other than Institution Bonds or Custody Bonds) when due at maturity or upon redemption or acceleration, or (ii) to pay the portion of the Purchase Price of the Series 2003 Bonds (other than Institution Bonds or Custody Bonds) tendered for purchase pursuant to the Resolution corresponding to the principal of such Series 2003 Bonds to the extent remarketing proceeds are not available for such purpose, plus (b) an amount equal to fifty-one (51) days' interest on the Series 2003 Bonds (other than Institution Bonds or Custody Bonds) in the Weekly Rate mode (i) to pay interest on such Series 2003 Bonds when due, or (ii) to pay the portion of the Purchase Price of the Series 2003 Bonds (other than Institution Bonds or Custody Bonds) tendered for purchase pursuant to the Resolution corresponding to the accrued interest, if any, on such Series 2003 Bonds, to the extent remarketing proceeds are not available for such purpose.

The Trustee is required to draw moneys under the Letter of Credit to make timely payments of the principal of, the principal portion of the redemption price of, and interest on the Series 2003 Bonds in the Weekly Rate mode (other than Institution Bonds or Custody Bonds) when due on an Interest Payment Date, at maturity or upon redemption or acceleration. In addition, the Trustee is required to draw moneys under the Letter of Credit in accordance with the terms thereof to the extent necessary to make timely payments of the Purchase Price required to be made as described below under "THE SERIES 2003 BONDS – Purchase of the Series 2003 Bonds".

In each case that the Series 2003 Bonds are redeemed or deemed to have been paid pursuant to the Resolution, the amount available under the Letter of Credit shall be reduced to an amount equal to the principal amount of the Series 2003 Bonds outstanding, plus fifty-one (51) days' interest on such principal amount computed at a Maximum Interest Rate based on a 365-day year with respect to the Series 2003 Bonds (other than Institution Bonds or Custody Bonds) in the Weekly Rate mode.

Drawings on the Letter of Credit will reduce the amount available to be drawn under it. However, effective immediately on the date of each drawing under the Letter of Credit with respect to a payment of interest on the Series 2003 Bonds, the interest component of the Letter of Credit will be reinstated automatically to an amount equal to fifty-one (51) days' interest (computed at the Maximum Interest Rate based on a 365/366-day year with respect to the Series 2003 Bonds in the Weekly Rate mode on the then applicable principal component of the Letter of Credit). In addition, after a drawing under the Letter of Credit with respect to the principal portion of the Purchase Price of the Series 2003 Bonds in the Weekly Rate mode tendered for purchase at the option of the Bondowners pursuant to the Resolution, the principal component of the Letter of Credit will be reinstated upon (a) receipt by the Bank of (and to the extent of) any payment by the Institution of its reimbursement obligation to the Bank pursuant to the Reimbursement Agreement with respect to the principal portion of such drawing, or (b) receipt by the Bank (and to the extent of the specified cash amount) of funds from the Trustee equal to the principal portion received from the remarketing of the tendered Series 2003 Bonds, in each case together with an appropriate certificate signed by the Trustee.

The Letter of Credit expires on February 26, 2014 unless extended. The Letter of Credit will terminate prior to such date upon the earliest of (a) the Bank's honoring of the Final Drawing thereunder upon the maturity, acceleration or redemption in whole of the Series 2003 Bonds, (b) receipt by the Bank of a certificate of the Trustee stating that the Trustee has received a Substitute Credit Facility in accordance with the Resolution, accompanied by the Letter of Credit, or (c) the tenth (10<sup>th</sup>) Business Day following receipt of written notice by the Trustee and the Authority from the Bank stating that an Event of Default (as defined in the Reimbursement Agreement) has occurred and is continuing and instructing the Trustee to cause a mandatory tender of the Bonds pursuant to the Resolution.

#### **The Reimbursement Agreement**

The Letter of Credit is being issued pursuant to the Reimbursement Agreement, under which the Institution 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 Institution 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 Institution from time to time without giving notice to or obtaining the consent of the Bondowners. Any amendment, modification or supplement to the Reimbursement Agreement may contain amendments or modifications to the covenants of the Institution or additional covenants of the Institution and these amended or modified covenants may be more or less restrictive than those in effect at the date of issuance of the Series 2003 Bonds.

The Bank has issued a commitment letter for a construction loan to the Institution in an amount not to exceed \$10,600,000 (the "Construction Loan") to provide funding for the construction of 44 independent living units representing an expansion of the Project. It is anticipated that the Institution will grant a second priority mortgage lien on the Project subordinate to the lien of the Mortgage to secure the Construction Loan. A default by the Institution under the Construction Loan would constitute an Event of Default under the Reimbursement Agreement.

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

The Series 2003 Resolution establishes the Debt Service Reserve Fund to be held by the Trustee, to be applied solely for the purposes specified in the Resolution and which is pledged to secure the payment of the principal, Sinking Fund Installments, Redemption Price of and interest on the Series 2003 Bonds. The Debt Service Reserve Fund for the Series 2003 Bonds shall be maintained at an amount set forth in the Series 2003 Resolution, however, in no event may the amount maintained in the Debt Service Reserve Fund for the Series 2003 Bonds exceed the maximum amount permitted under the Code to be deposited in the Debt Service Reserve Fund from the proceeds of the Series 2003 Bonds.

Moneys in the Debt Service Reserve Fund are to be withdrawn and deposited in the Debt Service Fund whenever the amount in such Debt Service Fund on the second (2<sup>nd</sup>) business day prior to an interest payment date is less than the amount required for payment of the interest on and the principal and Sinking Fund Installments of the Outstanding Series 2003 Bonds payable on such interest payment date, or for the payment of the Redemption Price of such Outstanding Series 2003 Bonds called for redemption, plus accrued interest thereon to the date of



redemption. The Loan Agreement requires that the Institution restore the Debt Service Reserve Fund to its requirement by paying the amount of any deficiency to the Trustee within five (5) business days after receiving notice of a deficiency. Moneys in the Debt Service Reserve Fund in excess of its requirement shall be withdrawn and applied in accordance with the Resolution. See "Appendix C - Summary of Certain Provisions of the Resolution."

### **The Loan Agreement**

The Loan Agreement is a general obligation of the Institution and obligates the Institution to make payments of the principal of, the Redemption Price of and any Sinking Fund Installments of and the interest on the Series 2003 Bonds and, during the Weekly Interest Rate Period, to pay the Purchase Price of Series 2003 Bonds that are not remarketed. Payments in respect of interest are to be made, prior to the Fixed Rate Conversion Date, on the date which is three (3) Business Day prior to each Interest Payment Date in the amount of interest to become due on such Interest Payment Date, and from and after the Fixed Rate Conversion Date, on the tenth (10<sup>th</sup>) day of each month in an amount equal to one-sixth (1/6) of the amount due on the next Interest Payment Date. Payments with respect to the principal of and Sinking Fund Installments on the Series 2003 Bonds are to be made on the tenth (10<sup>th</sup>) day of each month in an amount equal to one-twelfth of the principal and Sinking Fund Installments coming due on the Series 2003 Bonds on the next succeeding July 1. Payments with respect to the Purchase Price are to be made on the Purchase Date, in an amount equal to the principal amount of the Series 2003 Bonds tendered for purchase plus accrued interest through the Purchase Date; provided, however, to the extent such Purchase Price is paid from either (i) proceeds from the remarketing of the tendered Series 2003 Bonds, or (ii) a draw on the Letter of Credit to pay the Purchase Price of tendered Series 2003 Bonds which have not been remarketed, the Institution shall be deemed to have paid such Purchase Price of the tendered Series 2003 Bonds.

The Authority has directed, and the Institution has agreed, to make all of such payments directly to the Trustee. Such payments are to be applied by the Trustee to pay the principal or Purchase Price of and the interest on the Series 2003 Bonds purchased, or to reimburse the Bank for amounts drawn on the Letter of Credit to pay principal or interest in the Series 2003 Bonds before being applied for any other purposes.

The obligations of the Institution to make such payments under the Loan Agreement and under the Reimbursement Agreement are secured by a lien on Pledged Revenues, pursuant to the Gross Receipts Security Agreement and by the Mortgage. The Authority's rights under the Loan Agreement to such payments (other than with respect to payment of certain fees, expenses and indemnification rights) and the Authority's rights under the Mortgage and the Gross Receipt Security Agreement have been collectively assigned to the Trustee for the benefit of the Bondholders and to the Bank, as successor by assignment to Sovereign Bank. Only the Authority or the Trustee has any rights to enforce such payment obligations under the Loan Agreement and only the Authority, the Trustee or the Bank will have any rights to enforce the Gross Receipts Security Agreement or the Mortgage or to declare an event of default thereunder. Additionally, the Loan Agreement provides that if there shall not have been paid to the Trustee for deposit in the Debt Service Fund at the time required therefor pursuant to the Resolutions the full amount required to pay the principal of and interest on the Series 2003 Bonds when due, the Institution will cause funds to be made available to the Trustee in an amount sufficient to pay principal of and interest due on such Series 2003 Bonds.

### **Substitute Credit Facility**

The Authority may at any time at its option, prior to the Expiration Date replace the Credit Facility then in effect, either in whole or in part, with a Substitute Credit Facility or replace the Confirming Letter of Credit then in effect, if any, either in whole or in part, with a Substitute Confirming Letter of Credit provided by the Institution. Under the provisions of the Resolution, a Substitute Credit Facility or a Substitute Confirming Letter of Credit, if required, must provide, among other things, for direct payments to or upon the order of the Trustee for the payment or purchase of all of the Series 2003 Bonds then Outstanding. The terms of the Substitute Credit Facility or the Substitute Confirming Letter of Credit must be in all material respects the same as or more favorable to the Bondholders than the terms of the Letter of Credit or the Confirming Letter of Credit, as applicable. The Substitute Credit Facility or Substitute Confirming Letter of Credit must be delivered to the Trustee in accordance with the Resolution. A Substitute Credit Facility or Substitute Confirming Letter of Credit must provide for direct payment

of the full principal amount of the Series 2003 Bonds then Outstanding, including, without limitation, any Custody Bonds, plus at least fifty-one (51) days' accrued interest on the Series 2003 Bonds (at the Maximum Interest Rate).

Any Substitute Credit Facility or Substitute Confirming Letter of Credit delivered to the Trustee must also be accompanied by (i) an opinion of counsel to the Credit Facility Provider or the Confirming Bank issuing such Substitute Credit Facility or Substitute Confirming Letter of Credit to the effect that such Substitute Credit Facility or Substitute Confirming Letter of Credit has been duly authorized, executed and delivered by such Credit Facility Provider or Confirming Bank and constitutes a legal, valid and binding obligation of the Credit Facility Provider or the Confirming Bank enforceable in accordance with its terms, subject to such bankruptcy and similar exceptions as are allowed by the Resolution; (ii) an opinion of Bond Counsel to the effect that the execution and delivery of the Substitute Credit Facility or Substitute Confirming Letter of Credit is authorized under the Resolution and complies with the terms thereof and that the issuance of the Substitute Credit Facility or the Substitute Confirming Letter of Credit will not adversely affect the exclusion from gross income of interest on the Series 2003 Bonds under the Code and (iii) written evidence from each Rating Agency then assigning a rating to the Series 2003 Bonds to the effect that such Rating Agency has reviewed the proposed Substitute Credit Facility or Substitute Confirming Letter of Credit and designating the rating that will be assigned to the Series 2003 Bonds as a result of the delivery of such Substitute Credit Facility or such Substitute Confirming Letter of Credit.

### **Fixed Rate Credit Support**

If the Authority determines, at the request of the Institution, to convert interest on the Series 2003 Bonds to the Fixed Rate, the Institution shall cause to be delivered to the Trustee an irrevocable direct pay letter of credit, bond insurance, a standby bond purchase agreement or other credit support for the Series 2003 Bonds (the "Fixed Rate Credit Support"), which Fixed Rate Credit Support shall be effective on a date (the "Effective Date") occurring on the Fixed Rate Conversion Date, provided that such Fixed Rate Credit Support (i) shall provide for an amount sufficient to pay the principal of the Outstanding Series 2003 Bonds when due at stated maturity or upon redemption or acceleration plus an amount up to 210 days' interest on the Outstanding Series 2003 Bonds at the Fixed Rate to pay interest accrued on the Series 2003 Bonds on or prior to the expiration of such Fixed Rate Credit Support, or (ii) shall be in the form of a bond insurance policy insuring the regularly scheduled payment of principal (including sinking fund redemption) and interest on the Series 2003 Bonds. The Resolution requires such Fixed Rate Credit Support to have administrative provisions reasonably satisfactory to the Trustee and to be satisfactory to the Authority. A Fixed Rate Credit Support shall have a term of not less than one year and 15 days and shall expire at least 15 days after an Interest Payment Date. Any Fixed Rate Credit Support delivered to the Trustee must be accompanied by the opinions described in the preceding paragraph.

### **The Mortgage**

The obligations of the Institution under the Loan Agreement and the Reimbursement Agreement are secured by a leasehold mortgage on the Mortgaged Property (the "Mortgage") and a security interest in certain fixtures, furnishings and equipment then or thereafter located therein. Pursuant to the Mortgage, the fee owner of the Mortgaged Property, has agreed to subordinate its fee interest in such property to the lien of the Mortgage. The Authority has assigned the Mortgage to the Trustee, for the benefit of the Holders of the Series 2003 Bonds, and to the Bank, as successor by assignment to Sovereign Bank. The respective rights of the Trustee, the Authority and the Bank with regard to the Mortgage shall be controlled by the terms of the Intercreditor Agreement.

### **Events of Default and Remedies Under the Resolution**

The following are events of default under the Resolution: (i) payment of the principal, Sinking Fund Installments, Redemption Price, Purchase Price or installment of interest of any Series 2003 Bond, other than a Custody Bond or a Series 2003 Bond held for or registered in the name of the Institution or a designee thereof, shall not be made by the Authority when due and payable, either at maturity or by proceeds for redemption or otherwise; (ii) the Authority shall default in the due and punctual performance of its covenant not to take or to cause to be taken any action or to omit to take or to permit the omission of any action, if such action or omission would adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2003 Bonds under the Code, and, as a result of such default, the interest on the Series 2003 Bonds is no longer excludable from gross income under Section 103 of the Code; (iii) the Authority shall default in the due and punctual performance of any

other covenants, conditions, agreements or provisions, for the benefit of the Holders of the Series 2003 Bonds, contained in the Resolution or in the Series 2003 Bonds or in any Series Resolution on the part of the Authority to be performed and such default continues for thirty (30) days after written notice thereof is 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 25% of the principal amount of the Outstanding Series 2003 Bonds; or (iv) an “Event of Default,” as defined in the Loan Agreement shall have occurred and be continuing and all sums payable by the Institution under the Loan Agreement shall have been declared immediately due and payable, which declaration shall not have been annulled. Unless all sums payable by the Institution 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 an event of default described in clause (ii) of the immediately preceding paragraph) occurs and continues, the Trustee may, and upon the written request of the Holders of not less than 25% in principal amount of the Outstanding Series 2003 Bonds with the prior written consent of the Bank, shall declare the principal of and interest on all the Outstanding Series 2003 Bonds to be due and payable. At the expiration of thirty (30) days from the giving of notice of acceleration with respect to an Event of Default described in clause (i), (iii) or (iv) of the immediately preceding paragraph, such principal and interest shall become and be immediately due and payable, and interest on such Series 2003 Bonds shall cease to accrue on such date, anything in the Resolution or in any Series Resolution to the contrary notwithstanding. At any time after the principal of the Series 2003 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 may, with the written consent of the Bank and the Holders of not less than 25% in principal amount of the Outstanding Series 2003 Bonds, 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 shall give notice in accordance with the Resolution of each event of default known to the Trustee to the Bank and the Institution within five (5) days after knowledge of the occurrence thereof, and to the Holders of the Series 2003 Bonds within thirty (30) days after knowledge of the occurrence thereof unless such default has been remedied or cured before the giving of such notice; provided, however, that except in the case of default in the payment of principal, Sinking Fund Installments or Redemption Price of, or interest on, any of the Series 2003 Bonds, the Trustee shall be protected in withholding such notice thereof to the Holders if the Trustee in good faith determines that the withholding of such notice is in the best interest of the Holders of the Series 2003 Bonds.

For a more complete description of events of default, acceleration and other remedies under the Resolutions, see “Appendix C – Summary of Certain Provisions of the Resolution.”

## **General**

The Series 2003 Bonds will not be a debt of the State nor will the State be liable thereon. The Authority has no taxing power. See “PART 7 - THE AUTHORITY”.

## **PART 3 - THE SERIES 2003 BONDS**

*Set forth below is a narrative description of certain provisions relating to the Series 2003 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 Resolution” for a more complete description of certain provisions of the Series 2003 Bonds.*

### **Description of the Series 2003 Bonds**

The Series 2003 Bonds are issued pursuant to the Resolution, are dated the date of their initial delivery, and bear interest at a Weekly Rate until such time, if ever, as the interest rate period of the Series 2003 Bonds is changed, as set forth herein. Prior to the Fixed Rate Conversion Date, interest on the Series 2003 Bonds is payable

on the first Thursday of each calendar month, and upon remarketing of the Series 2003 Bonds, commencing on April 2, 2009, and from and after the Fixed Rate Conversion Date, on each January 1 and July 1, commencing with the first January 1 or July 1 occurring after the Fixed Rate Conversion Date.

The Series 2003 Bonds are 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 2003 Bonds, payments of the principal, Redemption Price and Purchase Price of and interest on the Series 2003 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 2003 Bonds is the responsibility of the Direct Participants and the Indirect Participants (as hereinafter defined). See "PART 3 - THE SERIES 2003 BONDS - Book-Entry Only System."

If the Series 2003 Bonds are not registered in the name of DTC or its nominee, Cede & Co., the principal, Sinking Fund Installments, if any, Redemption Price or Purchase Price of Series 2003 Bonds prior to the Fixed Rate Conversion Date will be payable upon presentation and surrender of such Series 2003 Bonds at the principal corporate trust office of the Tender Agent. On or after the Fixed Rate Conversion Date, principal or Redemption Price will be payable at the principal corporate trust office of The Bank of New York Mellon, as Trustee upon presentation and surrender of such Series 2003 Bonds to the Trustee. Interest on the Series 2003 Bonds will be payable by check or draft mailed to the Holders of the Series 2003 Bonds at their addresses as shown on the registration books held by the Trustee on the Record Date; provided, however, that prior to the Fixed Rate Conversion Date, the Tender Agent shall, at the request of a Holder of Series 2003 Bonds of at least \$1,000,000 in principal amount, provide for the payment of interest by wire transfer to the wire transfer address within the United States of America designated by such Holder or may make arrangements for payment of interest satisfactory to it and the Holder. The Record Date is the Business Day immediately preceding an Interest Payment Date, for a Bond bearing interest at the Weekly Rate, or the fifteenth (15<sup>th</sup>) day of the month immediately preceding the month of an Interest Payment Date for a Bond bearing interest at the Fixed Rate; provided that, if sufficient funds for the payment of interest on any Interest Payment Date are not available on such date, but are thereafter received by the Trustee, the Trustee shall establish a special "Record Date" for the payment of overdue interest upon not less than ten (10) days' written notice to the Bondholders.

The Series 2003 Bonds have been issued as fully registered bonds in denominations of \$100,000 or any integral multiples of \$5,000 in excess thereof. Prior to the Fixed Rate Conversion Date, the Series 2003 Bonds are issuable in denominations of \$100,000 or any integral multiples of \$5,000 in excess thereof, and from and after the Fixed Rate Conversion Date, the Series 2003 Bonds are issuable in denominations of \$5,000 or any integral multiple thereof. The Series 2003 Bonds may be exchanged for other Series 2003 Bonds in any other authorized denominations upon payment of a charge sufficient to reimburse the Authority or the Trustee for any tax, fee or other governmental charge required to be paid with respect to such exchange and for the cost of preparing the new bond, and otherwise as provided in the Resolution.

Depending on the interest rate period then in effect for the Series 2003 Bonds, the Interest Payment Dates, the dates interest rates are effective, the dates that notices of tender are required to be filed, the dates Series 2003 Bonds are to be tendered, the dates for notices of conversion to other interest rate modes, and provisions for mandatory tender for purchase applicable to the Series 2003 Bonds will vary. (See the Interest Rate Period Table below for further details.) When interest is payable at the Weekly Rate, interest will be determined weekly and paid monthly; and when payable at the Fixed Rate, interest will be set at a Fixed Rate to maturity and paid semiannually on each January 1 and July 1. Interest on Series 2003 Bonds payable during a Weekly Interest Rate Period shall be computed on the basis of a year of 365 or 366 days, as appropriate, for the actual number of days elapsed, and during the Fixed Interest Rate Period, on the basis of a 360-day year of twelve 30-day months.

#### **Determination of Interest Rate**

The Series 2003 Bonds may bear interest at a Weekly Rate or Fixed Rate. With respect to any Interest Period, the Resolution requires that the interest rate borne by the Series 2003 Bonds will be determined by the Remarketing Agent to be the minimum rate of interest that, in the sole best judgment of the Remarketing Agent, under prevailing financial market conditions, enable such Series 2003 Bonds to be sold at a price of par (plus accrued interest, if any) on the Rate Adjustment Date applicable to such Interest Period. The maximum annual rate of interest which the

Series 2003 Bonds may bear during any Interest Period in which the Series 2003 Bonds bear interest at the Weekly Rate shall be the lesser of 10% per annum or such other maximum rate permitted under a Substitute Credit Facility then securing the Series 2003 Bonds.

On each Rate Adjustment Date, the Remarketing Agent shall give notice of the interest rate or rates determined on such Rate Adjustment Date, the Interest Period, the next scheduled Mandatory Purchase Date applicable to the Series 2003 Bonds determined on such day, and, if applicable, the designation of any serial or term bond maturities of the Series 2003 Bonds (upon a conversion to a Fixed Rate), such notice to be given by telephone, telex or other electronic transmission (promptly confirmed in writing) to the Authority, the Tender Agent and the Trustee. On or before each Interest Payment Date, the Tender Agent will compute the amount of interest payable on the Series 2003 Bonds from the rates supplied by the Remarketing Agent. The Tender Agent will promptly notify the Institution and the Trustee by telephone, promptly confirmed in writing, of the amount so to become due. The Trustee is required to confirm the effective interest rate by telephone or in writing to the owner of any Series 2003 Bond, upon such owner's request. The setting of the rates and the calculation of interest payable on the Series 2003 Bonds as provided in the Resolution will be conclusive and binding on the owners of the Series 2003 Bonds, the Authority, the Trustee, the Bank, the Institution and the Tender Agent.

### **Conversion to Fixed Rate Mode**

On any Interest Payment Date, the interest rate mode for all (but not less than all) of the Series 2003 Bonds may be changed by the Authority upon the direction of the Institution in accordance with the provisions of the Resolution. Series 2003 Bonds may be converted to Bonds bearing interest at the Fixed Rate, which conversion shall become effective on a Business Day which is at least forty-five (45) days after the Authority, the Remarketing Agent, the Tender Agent, the Bank and the Trustee receive written notice from the Institution (i) exercising its option to so convert the Series 2003 Bonds; and (ii) specifying the Fixed Rate Conversion Date.

No conversions shall occur to the Fixed Rate, unless the Institution causes to be delivered to the Trustee a Fixed Rate Credit Support for the Series 2003 Bonds in accordance with the Resolution, the Institution has executed and delivered to the Trustee an Agreement to Provide Continuing Disclosure and an opinion of nationally recognized bond counsel to the effect that the proposed conversion will not adversely affect the exclusion from gross income of interest on the Series 2003 Bonds under the Code. Bonds bearing interest at the Fixed Rate may not be converted to Bonds bearing interest at the Weekly Rate.

When a change in the interest rate determination is to be made, the Trustee will notify each Rating Agency and the Bondholders by first-class mail at least fifteen (15) but not more than sixty (60) days before the effective date of the change. The notice is required to state: (i) that the interest rate mode will be converted to a Fixed Rate; (ii) the Fixed Rate Conversion Date; and (iii) that a mandatory purchase will result on the Fixed Rate Conversion Date as provided in the Series 2003 Bonds.

Notwithstanding any provision of the Resolutions, no change shall be made in the interest rate mode if the Trustee shall receive written notice prior to such change that the Institution has rescinded its election to make such change. As provided in the Resolution, if the Trustee shall have sent any notice to Bondholders regarding a change in the interest rate mode, then, in the event of such rescission, the Trustee shall promptly notify all Bondholders of such rescission.

### **Weekly Rate**

Commencing on the date of remarketing of the Series 2003 Bonds, and continuing until, but excluding, the Fixed Rate Conversion Date or the final maturity date, as the case may be, the Series 2003 Bonds shall bear interest at the Weekly Rate. The Weekly Rate shall be determined in accordance with the provisions described herein and as set forth in the Resolution by the Remarketing Agent and announced by the close of business on the Wednesday of each week or on the next preceding Business Day if such Wednesday is not a Business Day. Once determined, the Weekly Rate shall be effective from and including the then occurring Rate Adjustment Date (the Rate Adjustment Date is the Thursday of each week) to, but excluding, the next succeeding Rate Adjustment Date (the Wednesday preceding the following Thursday).

If for any Rate Adjustment Date during the period that the Series 2003 Bonds bear interest at the Weekly Rate, the Remarketing Agent fails to determine the Weekly Rate for the Series 2003 Bonds on such Rate Adjustment Date

or a court of competent jurisdiction holds that the rate so determined is invalid or unenforceable, the Weekly Rate for such Rate Adjustment Date shall be equal to 80% of the average annual bond equivalent yield applicable to 13-week United States Treasury Bills at the most recent Treasury auction prior to such Rate Adjustment Date at which such Treasury Bills were sold, as announced by the Federal Reserve Bank of New York, until the Weekly Rate can again be determined and applied in the manner described above.

### **Fixed Rate**

Commencing on the Fixed Rate Conversion Date and continuing until, but not including, the final maturity date, the Series 2003 Bonds shall bear interest at the Fixed Rate or, if required, separate Fixed Rates. The Remarketing Agent will set a Fixed Rate or Rates to become effective as of the Fixed Rate Conversion Date not later than the close of business on the Business Day no fewer than 7 nor more than 15 Business Days before the beginning of the Interest Period in which interest on the Series 2003 Bonds will be payable at the Fixed Rate.

Except as may otherwise be provided in a supplemental resolution adopted by the Authority with respect to the Series 2003 Bonds and delivered to the Trustee together with a Favorable Opinion of Bond Counsel prior to the Fixed Rate Conversion Date, in connection with a conversion of the interest on the Series 2003 Bonds to a Fixed Rate: (i) if the final maturity of the Series 2003 Bonds is at least 21 years following the Fixed Rate Conversion Date, then each of the 10 July firsts immediately following the Fixed Rate Conversion Date shall be designated as a serial maturity date for a portion of the Series 2003 Bonds, each such serial maturity to be in a principal amount equal to the principal amount of such bonds otherwise required to be redeemed by Sinking Fund Installment on each such July 1, and the July 1 10 years prior to the final maturity of the Series 2003 Bonds shall be designated as an intermediate term maturity for such Series 2003 Bonds in a principal amount equal to the sum of the principal amounts of such Series 2003 Bonds otherwise required to be redeemed on the July 1 following the last serial maturity and each subsequent July 1 to and including the intermediate term maturity date (such Series 2003 Bonds to remain subject to redemption by Sinking Fund Installment in the amounts already specified in the Resolution); (ii) if the final maturity of such Series 2003 Bonds is at least 11 years but less than 21 years following the Fixed Rate Conversion Date, then each of the 10 July firsts immediately following the Fixed Rate Conversion Date shall be designated as a serial maturity date for a portion of the Series 2003 Bonds, each such serial maturity to be in a principal amount equal to the principal amount of such Series 2003 Bonds otherwise required to be redeemed by Sinking Fund Installment on each July 1 but no intermediate term maturity for such Series 2003 Bonds shall be established; (iii) if the period between the Fixed Rate Conversion Date and the final maturity of the Series 2003 Bonds is less than 11 years, no serial maturities and no intermediate term maturity for such Series 2003 Bonds shall be established. Upon a conversion to a Fixed Rate, if serial maturities or any intermediate term maturity for the Series 2003 Bonds are required to be designated as provided in the Resolution, the Remarketing Agent shall establish subject to the receipt by the Trustee and the Remarketing Agent of the prior written consent of the Authority a separate Fixed Rate for each designated maturity of the Series 2003 Bonds in the same manner as for the establishment of a single Fixed Rate. Subject to the consent of the Authority as provided in the Resolution, the determination by the Remarketing Agent of the Fixed Rate or Rates shall be binding and conclusive on the Bondholders, the Authority, the Tender Agent, the Trustee, the Bank and the Institution.

If for any reason the Remarketing Agent does not set the Fixed Rate or Rates or a court of competent jurisdiction holds that the interest rate or rates set for the Fixed Rate or Rates is invalid or unenforceable, the Series 2003 Bonds will automatically convert to the Weekly Rate, such rate determined in the manner described above under "PART 3 - THE SERIES 2003 BONDS - Weekly Rate."

### **Purchase of the Series 2003 Bonds**

*Optional Tender for Purchase.* When the Series 2003 Bonds bear interest at the Weekly Rate, the applicable Bondholders have the right to have such Series 2003 Bonds purchased at a price of 100% of the principal amount thereof plus interest accrued to but not including the date of purchase under certain circumstances described below. Neither the Remarketing Agent nor the Tender Agent is required to purchase Series 2003 Bonds other than from proceeds of the remarketing of such Series 2003 Bonds, draws upon the Credit Facility and funds made available for that purpose by the Institution. Payment will be made in immediately available funds by the close of business on the date specified by the Bondholders for purchase, if the conditions described below have been strictly complied with. There will be no optional tenders for purchase while the Series 2003 Bonds bear interest at the Fixed Rate.

In the case of all optional tenders of Bonds for purchase, physical delivery of Series 2003 Bonds (or, if such Bonds are in book-entry form, confirmation of ownership) properly endorsed is required in order for the owner to exercise the option to have any Series 2003 Bond purchased. All Series 2003 Bonds tendered must be accompanied by an instrument of transfer satisfactory to the Tender Agent, executed in blank by the owner and with the signature of such owner guaranteed by a bank, trust company or member firm of the New York Stock Exchange. Bonds optionally tendered by a Bondholder for purchase on a date after a call for redemption but before the redemption date will be purchased pursuant to the tender.

*Weekly Rate Optional Tender.* When interest on the Series 2003 Bonds is payable at a Weekly Rate, an owner of Bonds has the option to tender its Bonds, or portions thereof in integral multiples of \$100,000 or multiples of \$5,000 in addition thereto, for purchase by (i) delivering a notice to the Tender Agent by 11:30 a.m., New York City time, on a Business Day at least seven days prior to the purchase date, said notice to be irrevocable and effective upon receipt by the Tender Agent, stating the principal amount of the Series 2003 Bonds to be purchased, the name of the registered owner, the Bond number or numbers and the date the Series 2003 Bonds are to be purchased, and (ii) delivering such Bonds (or, if such Bonds are in book-entry form, confirmation of ownership) to the Tender Agent, on or prior to 11:30 a.m., New York City time, on the date (which shall be a Business Day) on which such Bonds are to be purchased; provided that of such Bond is not so delivered, such Bond shall be deemed to have been tendered at said time if there shall have been deposited with the Tender Agent or the Trustee an amount sufficient to pay the Purchase Price of such Bond on such date.

*Mandatory Tender for Purchase.* On the Fixed Rate Conversion Date, the Series 2003 Bonds must be tendered to the Tender Agent for purchase.

The Series 2003 Bonds are also subject to mandatory purchase (i) on the fifteenth (15<sup>th</sup>) day prior to the Expiration Date of the Letter of Credit (or if such date is not a Business Day, the immediately succeeding Business Day) or (ii) on the date which is five (5) days prior to (A) the date upon which the Letter of Credit or the Confirming Letter of Credit is replaced by a Substitute Credit Facility or Substitute Confirming Letter of Credit, as applicable, or (B) the date on which a Substitute Confirming Letter of Credit is delivered at the option of the Authority as provided in the Resolution (if such date is not a Business Day, the immediately succeeding Business Day) (the "Substitution Date"). All mandatory purchases described in this paragraph will be made on the date of such mandatory purchase at a Purchase Price of 100% of the principal amount of the Series 2003 Bonds being purchased plus interest accrued to but excluding the purchase date.

The Series 2003 Bonds are also subject to a mandatory purchase on the third (3<sup>rd</sup>) Business Day immediately following the day that the Trustee and the Authority have received notice from the Bank to the effect that (i) the interest component of the Letter of Credit has not been reinstated, or (ii) an Event of Default under the Reimbursement Agreement has occurred and is continuing, and directing the Trustee, to the extent that the occurrence of such Event of Default under the Reimbursement Agreement entitles the Bank to so direct the Trustee, to cause a mandatory purchase of the Series 2003 Bonds, in either case at a purchase price equal to 100% of the principal amount thereof plus accrued interest; provided, however, the Series 2003 Bonds shall not be subject to mandatory tender as described in this paragraph if the Trustee has accelerated the Series 2003 Bonds and declared such Bonds to be immediately due and payable pursuant to the Resolution. If any day for a mandatory purchase described in this paragraph is not a Business Day, then the Series 2003 Bonds shall be subject to mandatory purchase on the next succeeding Business Day; provided, however, that in any event the Series 2003 Bonds subject to mandatory tender as described in this paragraph shall cease to accrue interest on the date that the Trustee and the Authority receive the notice from the Bank.

All Series 2003 Bonds subject to such mandatory purchase must be delivered to the Tender Agent, with an appropriate endorsement for transfer or accompanied by a bond power endorsed in blank in form satisfactory to the Tender Agent, at or prior to 12:00 noon (New York City time) on the Mandatory Purchase Date.

*Notice of Mandatory Purchases.* A notice shall be mailed to each Bondholder at least fifteen (15) days before any Mandatory Purchase Date or, in the case of a mandatory purchase due to receipt by the Trustee and the Authority of a notice from the Bank that the interest component of the Letter of Credit has not been reinstated or that an event of default under the Reimbursement Agreement has occurred and is continuing and directing the Trustee to mandatorily purchase the Series 2003 Bonds, on the date the Trustee receives such notice. The notice shall set forth the following matters, to the extent applicable:

(a) that the interest rate mode of the Series 2003 Bonds will be converted to the Fixed Rate, whether a Substitute Credit Facility will replace the Letter of Credit or a Substitute Confirming Letter of Credit will replace the Confirming Letter of Credit, that the Letter of Credit or Confirming Letter of Credit will expire without substitution, or that the interest component of the Letter of Credit has not been reinstated or an event of default has occurred under the Reimbursement Agreement (as the case may be), or that any credit rating assigned to the Series 2003 Bonds may be reduced, suspended or withdrawn as a result of a substitution or expiration of the Letter of Credit or the Confirming Letter of Credit (and stating the new rating, if any, to be assigned and indicating whether such rating is a reduced rating) and the Mandatory Purchase Date.

(b) if applicable, that, if the Mandatory Purchase Date is a date 5 days prior to a Substitution Date or the 15th day prior to the Stated Termination Date of the Letter of Credit, the Series 2003 Bonds will be secured by a Substitute Credit Facility and/or a Substitute Confirming Letter of Credit and not by the Letter of Credit or Confirming Letter of Credit, that the Letter of Credit or Confirming Letter of Credit will expire without substitution or that all Series 2003 Bonds will be purchased by the Bank and that as a result of such substitution or expiration, the rating assigned to the Series 2003 Bonds by the Rating Agency may be reduced or withdrawn (and stating the new rating, if any, and noting if the new rating is a reduced rating);

(c) if applicable, that, if the Mandatory Purchase Date is the 3<sup>rd</sup> Business Day after receipt of notice by the Trustee and the Authority from the Bank that either the interest component of the Letter of Credit has not been reinstated or an event of default has occurred under the Reimbursement Agreement, that interest on the Series 2003 Bonds has ceased to accrue as of the date of such notice and that the Series 2003 Bonds may be remarketed only with the permission of the Bank and only if the Letter of Credit has been reinstated to the amount required under the Resolutions;

(d) that all Series 2003 Bonds (other than Custody Bonds) must be tendered for purchase on the Mandatory Purchase Date to the Tender Agent, and that Series 2003 Bonds so tendered will be purchased on such Mandatory Purchase Date at a Purchase Price equal to the principal amount thereof plus accrued interest, if any, thereon; and

(e) that if there shall be on deposit with the Tender Agent or the Trustee an amount sufficient to pay the Purchase Price of the Series 2003 Bonds on such Mandatory Purchase Date, the Series 2003 Bonds (other than Custody Bonds) will be deemed to have been purchased on such Mandatory Purchase Date and will cease to bear interest as of such Mandatory Purchase Date, whether or not such Series 2003 Bonds are tendered to the Tender Agent on such date, and that the holders of such Series 2003 Bonds shall cease to have rights with respect thereto or under the Resolution except to receive the Purchase Price of such Series 2003 Bonds.

*Remarketing of Series 2003 Bonds.* The Resolution provides that, with certain exceptions, on the delivery of Series 2003 Bonds to the Remarketing Agent or the Tender Agent pursuant to a tender for purchase at the Bondholder's option or a mandatory purchase or required purchase, the Remarketing Agent will offer such Bonds for sale and use its best efforts to sell such Series 2003 Bonds, at a price equal to 100% of their principal amount plus accrued interest to the Purchase Date. The Remarketing Agent shall use its best efforts to remarket Custody Bonds in the manner described above; provided that remarketed Custody Bonds may not be delivered to the purchasers thereof unless the Letter of Credit has been fully reinstated. There will be no remarketings of Series 2003 Bonds if an Event of Default under the Resolution has occurred and is continuing. The Remarketing Agent may not remarket a Series 2003 Bond called for redemption unless it advises the purchaser thereof of such call.

*Series 2003 Bonds Deemed Purchased.* No purchase of Series 2003 Bonds through the Tender Agent, the Remarketing Agent, the Trustee or any other party with amounts realized from a remarketing of such Bonds or under the Letter of Credit shall be deemed a payment or redemption of such Series 2003 Bonds and no such purchase will operate to extinguish or discharge the indebtedness evidenced by such Series 2003 Bonds; provided, however, that any such purchase of a Series 2003 Bond that has been called for redemption in accordance with the provisions of the Resolution shall be deemed to be a redemption of such Series 2003 Bond and shall operate to extinguish and discharge the indebtedness evidenced by such Series 2003 Bond, provided further, however, that Series 2003 Bonds purchased as a result of the expiration of a Credit Facility shall be deemed extinguished at the option of the Credit Facility Issuer on any date after the purchase thereof. Any Series 2003 Bond (other than a Custody Bond) purchased or redeemed for the payment of which the Trustee has deposited moneys or caused moneys to be deposited and which is not delivered to the Trustee will nevertheless be deemed purchased or redeemed. If moneys sufficient to pay the Purchase Price or Redemption Price of a Series 2003 Bond have been



irrevocably provided to the Tender Agent or the Trustee, owners of those Series 2003 Bonds will not be entitled to additional interest after the redemption or purchase date.

**Interest Rate Period Table**

The Interest Rate Period Table that follows is provided for the convenience of the Holder. The information contained in the chart is not intended to be comprehensive. Reference is made to the above description and the Resolution for a more complete description.

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**INTEREST RATE PERIOD TABLE**

<u>Interest Rate Mode</u>	<u>Duration of Interest Period</u>	<u>Interest Payment Dates</u>	<u>Interest Rate Determination Dates</u>	<u>Optional Tender Date</u>	<u>Bondholder Notice of Tender Due</u>	<u>Date for Conversion to Interest Period</u>
Weekly	From and including each Thursday to and including the following Wednesday	The first Thursday of each calendar month	By close of business on each Wednesday (or the immediately preceding Business Day if such Wednesday is not a Business Day)	Any Business Day	No later than 3:00 p.m. New York City time on a Business Day not less than 7 days prior to Bondholders' Purchase Date	Not applicable
Fixed	From date of conversion to such Interest Period to and including the maturity date	January 1 and July 1 of each year	By close of business on a Business Day which is not less than 7 nor more than 15 Business Days prior to the first day of such Interest Period	No Optional Tender	Not applicable	Any Interest Payment Date at least 45 days after notice to Trustee of election to change Interest Period

**Redemption Provisions**

The Series 2003 Bonds of each issue are subject to optional, extraordinary and mandatory redemption as described below.

*Optional Redemption*

Series 2003 Bonds bearing interest at the Weekly Rate may be redeemed in whole or in part, at a price equal to the principal amount of the Series 2003 Bonds to be redeemed plus accrued interest to the redemption date, at the option of the Authority upon the direction of the Institution on any Interest Payment Date upon not more than 45 days nor less than 20 days prior notice to redeem given by the Institution to the Trustee, the Remarketing Agent, the Credit Facility Provider, the Tender Agent and the Authority.

When the interest on the Series 2003 Bonds is payable at the Fixed Rate, the Series 2003 Bonds may be redeemed at the option of the Authority upon the direction of the Institution as provided in the Resolution, in whole or in part on any Interest Payment Date on and after the Fixed Rate Conversion Date. Any Series 2003 Bonds so redeemed shall be redeemed on and after the dates and at the redemption prices (plus accrued interest, if any, to the date of redemption) specified below.

<u>Years to Final Maturity</u>	<u>Commencement of Redemption Period</u>	<u>Redemption Price as Percentage of Principal</u>
More than 12 years	Tenth Anniversary of Fixed Rate Conversion Date	102%, declining by 1% on each succeeding anniversary of the first day of the redemption period until reaching 100%, and thereafter at 100%.
More than 9, but not more than 12 years	Sixth Anniversary of Fixed Rate Conversion Date	101%, declining by 1% on each succeeding anniversary of the first day of the redemption period until reaching 100%, and thereafter at 100%.
9 years or less	Bonds not subject to optional redemption	

*Extraordinary Redemption*

During any period in which the Series 2003 Bonds bear interest at the Fixed Rate, the Series 2003 Bonds shall be subject to redemption at the option of the Authority at the direction of the Institution pursuant to the terms of the Loan Agreement (i) to the extent of insurance proceeds, condemnation awards or proceeds of conveyances in lieu of condemnation deposited with the Trustee pursuant to the terms of the Loan Agreement and the Mortgage, subject to the terms of the Intercreditor Agreement, and available for such purpose, or (ii) to the extent that there are unexpended proceeds of the Series 2003 Bonds upon the abandonment of all or a portion of the Project due to a legal or regulatory impediment of such Project, in either case in whole or in part at any time, at a Redemption Price equal to 100% of the principal amount thereof, plus accrued interest to the redemption date. Such redemption shall be made upon the earliest practicable date not less than 30 days after notice is given to the holders of the Series 2003 Bonds.

*Mandatory Redemption*

The Series 2003 Bonds shall be subject to mandatory redemption from Sinking Fund Installments at a redemption price equal to 100% of principal amount plus accrued interest on July 1 of each year as follows

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2009	\$315,000	2022	\$810,000
2010	335,000	2023	845,000
2011	350,000	2024	885,000
2012	370,000	2025	925,000
2013	390,000	2026	970,000
2014	560,000	2027	1,015,000
2015	585,000	2028	1,065,000
2016	615,000	2029	1,115,000
2017	640,000	2030	1,165,000
2018	675,000	2031	1,220,000
2019	705,000	2032	1,280,000
2020	735,000	2033*	400,000
2021	770,000		

\* Final maturity.

Any optional redemption of Series 2003 Bonds (See “Redemption Provisions – *Optional Redemption*” above), shall be applied as a set-off against subsequent Sinking Fund Installments in inverse chronological order.

*Selection of Bonds to be Redeemed.* If less than all of the Series 2003 Bonds are to be selected for redemption, the Trustee shall select first from Custody Bonds and second from Series 2003 Bonds then owned by the Remarketing Agent pursuant to the Remarketing Agreement. To the extent additional Series 2003 Bonds still need to be redeemed, the Trustee shall select for redemption from among the remaining Outstanding Series 2003 Bonds by lot or in such other manner as the Trustee deems proper; provided that, prior to the Fixed Rate Conversion Date, any redemptions shall be applied to reduce Sinking Fund Installments in inverse chronological order; provided further, that, after the Fixed Rate Conversion Date, if two or more maturities are established pursuant to the Resolution, such selections shall be made in the case of redemption by Sinking Fund Installments or any other redemption, in direct order of maturities and by lot (or such other manner the Trustee deems proper) within each maturity.

Series 2003 Bonds selected for redemption prior to the Fixed Rate Conversion Date shall be in the principal amount of \$100,000 or an integral multiple of \$5,000 in excess thereof and in selecting Series 2003 Bonds for redemption, the Trustee shall treat each Series 2003 Bond as representing that number of Series 2003 Bonds that is obtained by dividing the principal amount of such Bond by \$100,000 and by dividing any remaining principal of such Bond in excess of such multiple of \$100,000 by \$5,000; provided, however, that no portion of any Series 2003 Bond shall be redeemed in any amount that would result in the unredeemed portion of such Bond being in a denomination of less than \$100,000. Series 2003 Bonds bearing interest at the Fixed Rate shall be selected for redemption in the principal amount of \$5,000 or an integral multiple thereof and, in selecting Series 2003 Bonds for redemption, the Trustee shall treat each Series 2003 Bond as representing that number of Series 2003 Bonds that is obtained by dividing the principal amount of such Bond by \$5,000. Upon surrender of any Series 2003 Bond redeemed in part, the Trustee will authenticate for the owner, without charge, a new Series 2003 Bond or Series 2003 Bonds equal in principal amount to the unredeemed portion of such Bond.

*Notice of Redemption.* The Trustee (or the Tender Agent, if prior to the Fixed Rate Conversion Date) is required to give notice of any redemption by first class mail to each Bondholder at its registered address. The notice shall specify, among other things provided in the Resolution, (i) the Series 2003 Bonds to be redeemed, (ii) the date fixed for redemption, (iii) the Redemption Price, (iv) the source of the funds to be used for redemption, (v) that payment for the Redemption Price will be made in accordance with the terms of the Series 2003 Bonds, (vi) in the case of

Series 2003 Bonds to be redeemed in part only, the portion of the principal amount thereof to be redeemed and (vi) that on or after the date fixed for redemption, interest on the Series 2003 Bonds or portions of Series 2003 Bonds called for redemption will cease to accrue, along with other requirements listed in the Resolution. A failure to give a notice or a defect in such notice to any holder of a Bond shall not affect the validity of the proceedings or the redemption of any other Bond. Notice of a Mandatory Redemption or an Extraordinary Redemption of the Series 2003 Bonds is required to be made not less than 30 days prior to the redemption date. Notice of any other redemption of the Series 2003 Bonds is required to be given at least 15 days prior to the redemption date.

For a more complete description of the redemption and other provisions relating to the Series 2003 Bonds, see “Appendix C - Summary of Certain Provisions of the Resolution.”

### **The Remarketing Agent**

The Authority has appointed Manufacturers and Traders Trust Company as the remarketing agent (the “Remarketing Agent”) for the Series 2003 Bonds. In accordance with the Resolution and the Remarketing Agreement, dated as of February 20, 2009 (the “Remarketing Agreement”), by and between the Remarketing Agent and the Authority, the Remarketing Agent will use its best efforts to find purchasers for tendered Bonds. The Remarketing Agent can be contacted at Manufacturers and Traders Trust Company, One Fountain Plaza, 12<sup>th</sup> Floor, Buffalo, New York 14203, telephone number (716) 848-7484, Attention: Richard Rickli.

### **Special Considerations Relating to the Remarketing of the Series 2003 Bonds**

*The Remarketing Agent Is Paid by the Institution.* The Remarketing Agent's responsibilities include determining the interest rate from time to time and using best efforts to remarket Series 2003 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 Reoffering Circular. The Remarketing Agent is appointed by the Authority and is paid by the Institution for its services. As a result, the interests of the Remarketing Agent may differ from those of existing Bondholders and potential purchasers of Series 2003 Bonds.

*The Remarketing Agent Routinely Purchases Series 2003 Bonds for Its Own Account.* The Remarketing Agent acts as remarketing agent for the Series 2003 Bonds while they bear interest at the Weekly Rate and, in its sole discretion, is permitted, but not obligated, to purchase tendered Series 2003 Bonds for its own account in order to achieve a successful remarketing of the Series 2003 Bonds (i.e., because there otherwise are not enough buyers to purchase the Series 2003 Bonds) or for other reasons. However, the Remarketing Agent is not obligated to purchase Series 2003 Bonds, and may cease doing so at any time without notice. The Remarketing Agent may also make a market in the Series 2003 Bonds by routinely purchasing and selling Series 2003 Bonds other than in connection with an optional or mandatory tender and remarketing. Such purchases and sales may be at prices that are at or below par. However, the Remarketing Agent is not required to make a market in the Series 2003 Bonds. The Remarketing Agent may also sell any Series 2003 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 2003 Bonds. The purchase of Series 2003 Bonds by the Remarketing Agent may create the appearance that there is greater third party demand for the Series 2003 Bonds in the market than is actually the case. The practices described above also may result in fewer Series 2003 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 2003 Bonds bearing interest at the applicable interest rate at par plus accrued interest, if any, on and as of the applicable Rate Adjustment Date. The interest rate will reflect, among other factors, the level of market demand for the Series 2003 Bonds (including whether the Remarketing Agent is willing to purchase Bonds for its own account). There may or may not be Series 2003 Bonds tendered and remarketed on a Rate Adjustment Date, the Remarketing Agent may or may not be able to remarket any Series 2003 Bonds tendered for purchase on such date at par and the Remarketing Agent may sell Series 2003 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 2003 Bonds at the remarketing price. In the event the Remarketing Agent owns any Series 2003 Bonds for its own account, it may, in its sole discretion in a secondary market transaction outside the tender process, offer such Series 2003 Bonds on any date, including the Rate Adjustment Date, at a discount to par to some investors.

*The Ability to Sell the Series 2003 Bonds Other Than through Tender Process May Be Limited.* The Remarketing Agent may buy and sell Series 2003 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 2003 Bonds to do so through the Tender Agent with appropriate notice. Thus, investors who purchase the Series 2003 Bonds, whether in a remarketing or otherwise, should not assume that they will be able to sell their Series 2003 Bonds other than by tendering the Series 2003 Bonds in accordance with the tender process.

*Under Certain Circumstances, the Remarketing Agent May be Removed, Resign or Cease Remarketing the Series 2003 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 Resolution.

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

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Series 2003 Bonds. The Series 2003 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 2003 Bond certificate will be issued for each maturity of the Series 2003 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 2003 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2003 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2003 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 2003 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 2003 Bonds, except in the event that use of the book-entry system for the Series 2003 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2003 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 2003 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 2003 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2003 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 2003 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 2003 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 2003 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 2003 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 2003 Bond tendered for purchase, through its Participant, to the Tender Agent and the Remarketing Agent, and shall effect delivery of such Series 2003 Bond by causing the Direct Participant to transfer the Participant's interest in the Series 2003 Bond, on DTC's records, to the Tender Agent. The requirement for physical delivery of Series 2003 Bonds in accordance with an optional tender for purchase will be deemed satisfied when the ownership rights in the Series 2003 Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Series 2003 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 2003 Bonds registered in its name for the purposes of payment of the principal and redemption premium, if any, of, or interest on, the Series 2003 Bonds, giving any notice permitted or required to be given to registered owners under the Resolution, registering the transfer of the Series 2003 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 2003 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 2003 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 2003 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 2003 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 2003 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 2003 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 2003 BONDS.**

So long as Cede & Co. is the registered owner of the Series 2003 Bonds, as nominee for DTC, references herein to the Bondholders or registered owners of the Series 2003 Bonds (other than under the caption "PART 10 — TAX MATTERS" herein) shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Series 2003 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 2003 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 2003 Bonds if the Authority determines that (i) DTC is unable to discharge its responsibilities with respect to the Series 2003 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.

**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 2003 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 2003 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 2003 BONDS; (V) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF THE SERIES 2003 BONDS; OR (VI) ANY OTHER MATTER.**

#### **PART 4 - THE BANK**

Manufacturers and Traders Trust Company (the "Bank" or "M&T Bank") is a New York commercial bank with its headquarters in Buffalo, New York and a regional office in Baltimore, Maryland. The Bank operates under a charter granted by the State of New York in 1892, and traces the continuity of its banking business to the organization of the Manufacturers and Traders Bank in 1856. At September 30, 2008, the Bank had total



consolidated assets of \$64.2 billion, loans (net of unearned income) of \$48.3 billion, deposits of \$42.1 billion and stockholder's equity of \$7.07 billion, and operated more than 680 banking offices and more than 1,700 ATMs throughout New York, Pennsylvania, Maryland, Virginia, West Virginia, Delaware, the District of Columbia and New Jersey.

### **M&T Bank Corporation**

The Bank is a wholly owned subsidiary of M&T Bank Corporation ("M&T"). M&T is incorporated under the laws of New York and is registered as a bank holding company under the Bank Holding Company Act of 1956. Its principal subsidiary is the Bank, the assets of which accounted for approximately 99% of M&T's consolidated total assets at September 30, 2008.

The ratings of Moody's Investors Service, Inc., Standard & Poor's Rating Services and Fitch Ratings on the obligations of M&T and M&T Bank as of September 30, 2008, were as follows:

*Moody's*: Issuer rating for M&T, 'A2'; long-term deposit/short-term deposit/financial strength ratings for M&T Bank, 'A1/P1/B-', respectively.

*Standard & Poor's*: Counterparty rating for M&T, 'A-/stable/A-2'; long-term deposit/short-term deposit ratings for M&T Bank, 'A/A-1', respectively.

*Fitch Ratings*: Long-term senior debt rating for M&T, 'A-'; long-term senior debt rating/long-term deposit rating for M&T Bank, 'A-/A-'; short-term deposit rating for M&T Bank, 'F1.'

### **Regulatory Considerations**

As a state-chartered member bank of the Federal Reserve System, the Bank is primarily regulated by the Board of Governors of the Federal Reserve System (the "Fed") and by the New York Superintendent of Banking. The Fed examines the Bank and supervises numerous aspects of the Bank's business and has the authority to prohibit the Bank from engaging in any activity, which, in the Fed's judgment, constitutes an unsafe or unsound practice. In addition, the deposits of the Bank are insured up to applicable limits by the Bank Insurance Fund of the Federal Deposit Insurance Corporation (the "FDIC"), and the Bank is subject to certain regulations of the FDIC, including insurance premium assessments.

Pursuant to certain provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), if an insured depository institution becomes insolvent and the FDIC is appointed its conservator or receiver, the FDIC may, under FIRREA, disaffirm or repudiate any contract or lease to which such institution is a party, the performance of which is determined to be burdensome, and the disaffirmance or repudiation of which is determined to promote the orderly administration of the institution's affairs.

The Bank is subject to the Fed's capital adequacy guidelines. Under the guidelines, the minimum ratio of Tier 1 capital to risk-weighted assets is 4% and the minimum ratio of Tier 1 capital plus Tier 2 capital ("total capital") to risk-weighted assets is 8%. Tier 1 capital consists of common equity, retained earnings and a limited amount of non-cumulative perpetual preferred stock less goodwill and certain other adjustments. Tier 2 capital consists of other preferred stock, certain hybrid debt/equity instruments, a limited amount of term subordinated debt and a limited amount of the reserve for possible credit losses. The federal banking agencies maintain the risk-based capital standards in order to ensure that the standards take adequate account of interest rate risk, concentration of credit risk, the risk of nontraditional activities and equity investments in non-financial companies, as well as reflect the actual performance and expected risk of loss on certain multifamily housing loans. The Fed has also adopted a minimum "leverage ratio" of Tier 1 capital to average total assets of 3.0%. Applicable regulations provide that most banks will be expected to maintain the minimum leverage ratio plus an additional 100 to 200 basis-point cushion. Failure to meet applicable capital guidelines could subject the Bank to a variety of enforcement remedies available to federal regulatory authorities. As of September 30, 2008, the Bank's Tier 1 capital ratio was 7.21%, its total capital ratio was 11.33% and its leverage ratio was 6.73%, all of which exceeded the required capital ratios for classification as "well capitalized," the highest classification under the regulatory capital guidelines.

The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") subjects banks to significantly increased regulation and supervision. Among other things, FDICIA requires federal bank regulatory authorities to take "prompt corrective action" in respect of banks that do not meet minimum capital requirements. FDICIA establishes five capital tiers: well capitalized, adequately capitalized, undercapitalized, significantly

undercapitalized and critically undercapitalized. The three undercapitalized categories are based upon the amount by which a bank falls below the ratios applicable to adequately capitalized institutions.

Under FDICIA, a bank that is not well capitalized is generally prohibited from accepting brokered deposits and offering interest rates on deposits higher than the prevailing rate in its market. In addition, pass-through insurance coverage may not be available for certain employee benefit accounts. Undercapitalized banks are subject to limitations on growth and the payment of dividends and are required to submit a capital restoration plan. If a bank fails to submit an acceptable plan, it is treated as if it is significantly undercapitalized. Significantly undercapitalized banks are subject to a number of requirements and restrictions, including orders to sell sufficient voting stock to become adequately capitalized, requirements to reduce total assets, and cessation of receipt of deposits from correspondent banks. Critically undercapitalized banks (which are defined to include banks with positive net worth) are generally subject to the mandatory appointment of a conservator or receiver.

#### **Available Information**

The Bank files quarterly reports called "Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices," or "Call Reports," with the FDIC. The Call Reports are publicly available at the FDIC, 550 17th Street, N.W., Washington, D.C. 20429, and are also available through the FDIC's website at [www.fdic.gov](http://www.fdic.gov). Each Call Report consists of a balance sheet, income statement, changes in equity capital and other supporting schedules as of the end of the period to which the report relates. The Call Reports are prepared substantially in accordance with generally accepted accounting principles. While the Call Reports are supervisory and regulatory documents, not primarily accounting documents, and do not provide a complete range of financial disclosures about the Bank, they do provide important information concerning the financial condition of the Bank.

In addition, information regarding M&T's businesses, its financial condition and results of operations is contained in its Annual Report on Form 10-K, its Quarterly Reports on Form 10-Q and other filings it makes with the Securities and Exchange Commission (the "SEC") pursuant to the Securities Exchange Act of 1934, as amended. Copies of these reports are available from the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549 or over the Internet on the SEC's website at <http://www.sec.gov>.

The information contained in this section relates to and has been obtained from the Bank. The delivery of this information shall not create any implication that there has been no change in the affairs of the Bank since the date of this Reoffering Circular, or that the information contained or referred to above is correct as of any time subsequent to the date of this Reoffering Circular.

The Authority and its counsel have not independently verified any financial information furnished by the Bank, nor have they ascertained the correctness, accuracy, or completeness of such information. In addition, they have not independently determined the financial position of the Bank or whether the Bank is or will be financially capable of fulfilling its obligations under the Letter of Credit. There can be no assurance that such information is indicative of the current financial position or future financial performance or financial condition of the Bank.

THE LETTER OF CREDIT IS AN UNSECURED OBLIGATION OF THE BANK. IT IS NOT A SAVINGS ACCOUNT, CHECKING ACCOUNT OR OTHER DEPOSIT ACCOUNT OBLIGATION OF THE BANK.

IN THE EVENT OF A DEFAULT BY THE BANK UNDER THE LETTER OF CREDIT, NO INSURANCE PROCEEDS FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY, INSTRUMENTALITY OR AUTHORITY WOULD BE AVAILABLE TO PAY THE SERIES 2003 BONDS.

THE OBLIGATIONS OF THE BANK UNDER THE LETTER OF CREDIT ARE THE OBLIGATIONS OF THE BANK AND ARE NOT THE OBLIGATIONS OF THE AUTHORITY.

### **PART 5 - THE INSTITUTION**

*The Letter of Credit is the primary source of payment for the Series 2003 Bonds. Purchasers of the Series 2003 Bonds should make their decision to invest in the Series 2003 Bonds solely upon their assessment of the creditworthiness of the Bank. No attempt is made in this Reoffering Circular to describe the Institution or its operations in a manner that would enable purchasers of the Series 2003 Bonds to assess the creditworthiness of the Institution.*

Teresian House Housing Corporation d/b/a Avila is a 501(c)(3) tax exempt entity formed for the purpose of providing housing and supportive services to seniors of New York State's Capital Region. Avila provides independent living services in a supportive environment with housing, recreational activities and meal programs.

## **PART 6 - THE PROJECT**

The Project consists of the construction and equipping of a full service retirement community consisting of an approximately 271,000 total square foot project comprised of 152 independent living units consisting of 128 one and two bedroom apartments and 24 duplex cottages, and a community center, with various common areas including: administrative offices, a kitchen and dining areas, a lounge and activities area, a convenience store, a library, indoor pool, cafe, arts and hobby studio, a beauty/barber shop and supporting infrastructure located off Columbia Circle Drive in the City of Albany, Albany County, New York, on approximately 13 acres of land under a long term ground lease to the Institution. The Project was completed in August 2004.

A planned expansion incorporates an additional 44 apartments in 1 bed room, 1 bed room den and 2 bed room designs. The new apartments will be in a free standing three story building on lands to be leased from Burke Community Service Corporation. The new apartments are not being financed at this time. The Bank has issued a commitment to finance the new construction under the Construction Loan. Timing of the construction will depend on the pre-sales of the new apartments. Seven deposits have been received for unit holds, and additional presale of 28 units is required to meet the condition precedent to the construction financing.

## **PART 7 - THE AUTHORITY**

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

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

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

Hygiene, to provide for construction and modernization of municipal hospitals, to provide health facilities for municipalities, to provide health facilities for voluntary non-profit corporations, to make its services available to the State Department of Correctional Services, to make its services available to municipalities to provide for the design and construction of local correctional facilities, to provide services for the design and construction of municipal buildings, and to make loans to certain voluntary agencies with respect to mental hygiene facilities owned or leased by such agencies.

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

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

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

At December 31, 2008, the Authority had approximately \$37.7 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 December 31, 2008 were as follows:

<b>Public Programs</b>	<b>Bonds Issued</b>	<b>Bonds Outstanding</b>	<b>Notes Outstanding</b>	<b>Bonds and Notes Outstanding</b>
State University of New York				
Dormitory Facilities .....	\$ 2,250,196,000	\$ 974,760,000	\$ 0	\$ 974,760,000
State University of New York Educational and Athletic Facilities .....	12,199,467,999	5,255,462,634	0	5,255,462,634
Upstate Community Colleges of the State University of New York .....	1,431,000,000	608,320,000	0	608,320,000
Senior Colleges of the City University of New York .....	9,605,001,762	2,890,614,213	0	2,890,614,213
Community Colleges of the City University of New York .....	2,364,178,350	514,260,787	0	514,260,787
BOCES and School Districts .....	2,000,366,208	1,488,605,000	0	1,488,605,000
Judicial Facilities .....	2,161,277,717	731,557,717	0	731,557,717
New York State Departments of Health and Education and Other .....	4,793,390,000	3,258,425,000	0	3,258,425,000

Mental Health Services Facilities.....	6,368,100,000	3,823,725,000	0	3,823,725,000
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>\$ 44,932,008,036</u>	<u>\$ 20,347,960,351</u>	<u>\$ 0</u>	<u>\$ 20,347,960,351</u>

	<u>Bonds Issued</u>	<u>Bonds Outstanding</u>	<u>Notes Outstanding</u>	<u>Bonds and Notes Outstanding</u>
<b><u>Non-Public Programs</u></b>				
Independent Colleges, Universities and Other Institutions.....	\$ 16,700,711,020	\$ 8,225,813,995	\$184,725,000	\$ 8,410,538,995
Voluntary Non-Profit Hospitals .....	13,422,604,309	7,940,035,000	0	7,940,035,000
Facilities for the Aged.....	1,996,020,000	1,011,180,000	0	1,011,180,000
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>\$ 32,214,335,329</u>	<u>\$ 17,177,028,995</u>	<u>\$184,725,000</u>	<u>\$ 17,361,753,995</u>
Grand Totals Bonds and Notes.....	<u>\$ 77,146,343,365</u>	<u>\$ 37,524,989,346</u>	<u>\$184,725,000</u>	<u>\$ 37,709,714,346</u>

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

At December 31, 2008, the Agency had approximately \$381.9 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 December 31, 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	\$ 3,255,000
Insured Mortgage Programs .....	6,625,079,927	370,965,939
Revenue Bonds, Secured Loan and Other Programs.....	<u>2,414,240,000</u>	<u>7,670,000</u>
Total Non-Public Programs.....	<u>\$ 9,265,549,927</u>	<u>\$ 381,890,939</u>
Total MCFFA Outstanding Debt.....	<u>\$ 13,082,780,652</u>	<u>\$ 381,890,939</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 Board member position that is filled by an appointment from the Temporary President of the State Senate is currently vacant. 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.

JACQUES JIHA, Ph.D., Woodbury.

Jacques Jiha was appointed as a Member of the Authority by the Governor on December 15, 2008. Mr. Jiha is an Executive Vice President and the Chief Financial Officer of Earl G. Graves, Ltd., a multi-media company that includes *Black Enterprise* magazine. He is also a member of the Investment Advisory Committee of the New York Common Retirement Fund. Mr. Jiha has previously served as Deputy Comptroller for Pension Investment and Public Finance in the Office of the New York State Comptroller and as Co-Executive Director of the New York Local Government Assistance Corporation (LGAC). Prior thereto, Mr. Jiha was Nassau County Deputy Comptroller for Audits and Finances. He also worked for the New York City Office of the Comptroller in increasingly responsible positions: first as Chief Economist and later as Deputy Comptroller for Budget. Mr. Jiha has served as Executive Director of the New York State Legislative Tax Study Commission and as Principal Economist for the New York State Assembly Committee on Ways and Means. He holds a Ph.D. and a Master's degree in Economics from the New School University and a Bachelor's degree in Economics from Fordham University. His current term expires on March 31, 2010.

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. 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 expires on August 31, 2010.

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.

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.

CARRA WALLACE is the Managing Director of the Office of Executive Initiatives (OEI). In that capacity, she oversees the Authority's Communications and Marketing, Opportunity Programs, Environmental Initiatives, Client Outreach, Training, Executive Projects, and Legislative Affairs units. Ms. Wallace is responsible for strategic efforts in developing programs, maximizing the utilization of Minority and Women Owned Businesses, and communicating with Authority clients, the public and governmental officials. She possesses more than twenty years of senior leadership experience in diverse private sector businesses and civic organizations. Ms. Wallace most recently served as Executive Vice President at Telwares, a major telecommunications service firm. Prior to her service at Telwares, Ms. Wallace served as Executive Vice President of External Affairs at the NYC Leadership Academy. She holds a Bachelor of Science degree in management from the Pepperdine University Graziadio School of Business and 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 obtained the approval of the PACB for the original issuance of the Series 2003 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 8 - LEGALITY OF THE SERIES 2003 BONDS FOR INVESTMENT AND DEPOSIT**

Under New York State law, the Series 2003 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 2003 Bonds may be deposited with the State Comptroller to secure deposits of State moneys in banks, trust companies and industrial banks.

#### **PART 9 - NEGOTIABLE INSTRUMENTS**

The Series 2003 Bonds shall be negotiable instruments as provided in the Act, subject to the provisions for registration and transfer contained in the Resolution and in the Series 2003 Bonds.

#### **PART 10 - TAX MATTERS**

##### **Opinion on Original Issuance of Series 2003 Bonds**

On the date of original issuance of the Series 2003 Bonds, Nixon Peabody LLP, Bond Counsel, delivered its opinion (the "Original Opinion") that, under existing law and assuming compliance with the tax covenants described therein, and the accuracy of certain representations and certifications made by the Authority and the Institution described therein, interest on the Series 2003 Bonds is excluded from gross income for Federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and interest on the Series 2003 Bonds is not treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Interest on the Series 2003 Bonds is, however, included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations. Bond Counsel also delivered its opinion that interest on the Series 2003 Bonds is exempt from personal income taxes imposed by the State of New York and its political subdivisions. **The Original Opinion is not required to be, and has not been, updated or reissued in connection with the reoffering of the Series 2003 Bonds.**

On the date of original issuance of the Series 2003 Bonds, Bond Counsel did not undertake to advise in the future whether any events after the date of issuance and delivery of the Series 2003 Bonds might affect the tax status of interest on the Series 2003 Bonds. Bond Counsel expressed no opinion regarding any other Federal, state or local tax consequences with respect to the Series 2003 Bonds. Bond Counsel expressed no opinion as to any Federal, state or local tax law consequences with respect to the Series 2003 Bonds, or the interest thereon, if any action is taken with respect to the Series 2003 Bonds upon the advice or approval of other counsel.

##### **Federal Income Taxes**

The Internal Revenue Code of 1986, as amended (the "Code"), imposes certain requirements that must be met subsequent to the issuance and delivery of the Series 2003 Bonds for interest thereon to be and remain excluded from gross income for Federal income tax purposes. Noncompliance with such requirements could cause the interest on the Series 2003 Bonds to be included in gross income for Federal income tax purposes retroactive to the date of issue of the Series 2003 Bonds. Pursuant to the Resolution, the Loan Agreement and the Tax Certificate, the Authority and the Institution have covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the Series 2003 Bonds from gross income for Federal income tax purposes pursuant to Section 103 of the Code. In addition, the Authority and the Institution have made certain representations

and certifications in the Resolution, the Loan Agreement and the Tax Certificate. Bond Counsel also relied on the opinion of Counsel to the Institution as to all matters concerning the status of the Institution as an organization described in Section 501(c)(3) of the Code and exempt from federal income tax under Section 501(a) of the Code. Bond Counsel did not independently verify the accuracy of those representations and certifications or that opinion.

### **Ancillary Tax Matters**

Ownership of the Series 2003 Bonds may result in other federal tax consequences to certain taxpayers, including, without limitation, certain S corporations, foreign corporations with branches in the United States, property and casualty insurance companies, individuals receiving Social Security or Railroad Retirement benefits, individuals seeking to claim the earned income credit, and taxpayers (including banks, thrift institutions and other financial institutions) who may be deemed to have incurred or continued indebtedness to purchase or to carry the Series 2003 Bonds.

Commencing with interest paid in 2006, interest paid on tax-exempt obligations such as the Series 2003 Bonds is subject to information reporting to the Internal Revenue Service (the "IRS") in a manner similar to interest paid on taxable obligations. In addition, interest on the Series 2003 Bonds may be subject to backup withholding if such interest is paid to a registered owner that (a) fails to provide certain identifying information (such as the registered owner's taxpayer identification number) in the manner required by the IRS, or (b) has been identified by the IRS as being subject to backup withholding.

Bond Counsel is not rendering any opinion as to any Federal tax matters other than those described in the opinions attached as Appendix E and summarized below under Opinion on Reoffering of Series 2003 Bonds. Also attached as Appendix F is the Original Opinion of Bond Counsel that was delivered on the date of original issuance of the Series 2003 Bonds. Prospective investors, particularly those who may be subject to special rules described above, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the Series 2003 Bonds, as well as any tax consequences arising under the laws of any state or other taxing jurisdiction.

### **Changes in Law**

Legislative or administrative actions and court decisions, at either the federal or state level, could have an adverse impact on the potential benefits of the exclusion from gross income of the interest on the Series 2003 Bonds for Federal or state income tax purposes, and thus on the value or marketability of the Series 2003 Bonds. This could result from changes to Federal or state income tax rates, changes in the structure of Federal or state income taxes (including replacement with another type of tax), repeal of the exclusion of the interest on the Series 2003 Bonds from gross income for Federal or state income tax purposes, or otherwise. It is not possible to predict whether any legislative or administrative actions or court decisions having an adverse impact on the Federal or state income tax treatment of holders of the Series 2003 Bonds may occur. Prospective purchasers of the Series 2003 Bonds should consult their own tax advisers regarding such matters.

### **Opinion on Reoffering of Series 2003 Bonds**

The reoffering of the Series 2003 Bonds at a Weekly Rate is being done pursuant with the original terms of the Resolution, as amended. In the opinion of Nixon Peabody LLP, the delivery of the Substitute Credit Facility will not, in and of itself, adversely affect the exclusion of interest on the Series 2003 Bonds from gross income for federal income tax purposes.

## **PART 11 - STATE NOT LIABLE ON THE SERIES 2003 BONDS**

The Act provides that notes and bonds of the Authority shall not be a debt of the State nor shall the State be liable thereon, nor shall such notes or bonds be payable out of any funds other than those of the Authority. The Resolution specifically provides that the Series 2003 Bonds shall not be a debt of the State nor shall the State be liable thereon.

## **PART 12 - 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 13- LEGAL MATTERS**

Certain legal matters incidental to the substitution of the Original Letter of Credit with the Letter of Credit and the remarketing of the Series 2003 Bonds by the Authority are subject to the approval of Nixon Peabody LLP, Rochester, New York, Bond Counsel, whose opinion will be delivered with the remarketing of the Series 2003 Bonds. The proposed form of Bond Counsel's opinion is set forth in Appendix E hereto. Also attached as Appendix F is the Original Opinion of Bond Counsel that was delivered on the date of original issuance of the Series 2003 Bonds.

Certain legal matters will be passed upon for the Institution by its counsel, Tobin & Grifferty, P.C., Albany, New York, for the Bank by its Deputy General Counsel, Mark W. Warren, Esq. as well as by its outside counsel, Lemery Greisler LLC, Saratoga Springs, New York, and for the Remarketing Agent by its counsel, Harris Beach PLLC, Rochester, New York.

There is not now pending any litigation restraining or enjoining the remarketing of the Series 2003 Bonds or questioning or affecting the validity of the Series 2003 Bonds or the proceedings and authority under which they were issued.

## **PART 14 - REMARKETING**

Manufacturers and Traders Trust Company is serving as the Remarketing Agent for the Series 2003 Bonds and has agreed, subject to certain conditions, to remarket the Series 2003 Bonds at par. In consideration of the purchase and remarketing of the Series 2003 Bonds by the Remarketing Agent, the Institution has agreed to pay to the Remarketing Agent compensation of \$93,700.00 at the time of purchase.

## **PART 15 - CONTINUING DISCLOSURE**

So long as the Series 2003 Bonds bear interest at the Weekly Rate, the Series 2003 Bonds are exempt from Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission, and the Authority, the Institution and the Bank will not be required to provide any continuing disclosure in accordance with the Rule.

Prior to the conversion of the interest rate on the Series 2003 Bonds to the Fixed Rate, the Institution, the Authority and the Trustee are required under the Resolution to enter into an agreement which shall be executed and delivered solely to assist the Remarketing Agent in complying with the Rule, as in effect on such date, including any official interpretations thereof issued either before or after the original delivery of the Series 2003 Bonds which shall be applicable.

## **PART 16 - RATINGS**

Standard & Poor's Rating Services, a division of McGraw-Hill Companies, Inc. ("Standard & Poor's"), is expected to assign a rating of "A/A-1" to the Series 2003 Bonds, with the understanding that upon remarketing of the Series 2003

Bonds, the Letter of Credit will be issued by the Bank. Such ratings reflects only the views of such organization and any desired explanation of the significance of such ratings should be obtained from Standard & Poor's at 55 Water Street, New York, New York 10041. 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 agencies if, in the judgment of any or all of them, circumstances so warrant. Any such downward revision or withdrawal of such rating or ratings may have an adverse effect on the market price of the Series 2003 Bonds.

#### **PART 17 - MISCELLANEOUS**

References in this Reoffering Circular to the Act, the Resolution, the Series 2003 Resolution, the Letter of Credit, the Reimbursement Agreement, the Intercreditor Agreement, the Mortgage, the Gross Receipts Security Agreement, and the Loan Agreement do not purport to be complete. Copies of the Resolution, the Series 2003 Resolution, the Letter of Credit, the Reimbursement Agreement, the Intercreditor Agreement, the Loan Agreement, the Mortgage, the Gross Receipts Security Agreement, are on file with the Authority and the Trustee.

The agreements of the Authority with Holders of the Series 2003 Bonds are fully set forth in the Resolution. Neither any advertisement of the Series 2003 Bonds nor this Reoffering Circular is to be construed as a contract with purchasers of the Series 2003 Bonds.

Any statements in this Reoffering Circular 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 Institution and the Project was supplied by the Institution. The Authority believes that this information is reliable, but the Authority and the Remarketing Agent make no representations or warranties as to the accuracy or completeness of this information. The information regarding the Bank was supplied by the Bank. The Authority believes that this information is reliable, but the Authority makes no representations or warranties as to the accuracy or completeness of this information.

"Appendix A - Definitions," "Appendix B - Summary of Certain Provisions of the Loan Agreement," "Appendix C - Summary of Certain Provisions of the Resolution," "Appendix E - Form of No Adverse Impact Opinion of Bond Counsel," and "Appendix F - Form of Approving Opinion of Bond Counsel delivered upon the original issuance of the Series 2003 Bonds" have been prepared by Nixon Peabody LLP, Rochester, New York, Bond Counsel.

"Appendix D - Summary of Certain Provisions of the Reimbursement Agreement" has been prepared by Lemery Greisler LLC, Saratoga Springs, New York, Bank Counsel.

The Institution has reviewed the parts of this Reoffering Circular describing the Institution and the Project. The Institution will certify, as of the date of the remarketing of the Series 2003 Bonds, that such parts do not contain any untrue statement of a material fact and do not omit any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements were made, not misleading.

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

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

DORMITORY AUTHORITY OF  
THE STATE OF NEW YORK

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

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**DEFINITIONS**



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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 Resolution and the Loan Agreement, the following terms have the meanings ascribed to them below:

**Accreted Value** means with respect to any Capital Appreciation Bond (i) as of any Valuation Date, the amount set forth for such date in the Series Resolution authorizing such Capital Appreciation Bond or in the Bond Series Certificate relating to such Bond, and (ii) as of any date other than a Valuation Date, the sum of (a) the Accreted Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date, calculated based on the assumption that Accreted Value accrues during any semi-annual period in equal daily amounts on the basis of a year of twelve (12) thirty-day months, and (2) the difference between the Accreted Values for such Valuation Dates;

**Act** means the Dormitory Authority Act (being Chapter 524 of the Laws of 1944 of the State, as amended, and constituting Title 4 of Article 8 of the Public Authorities Law, as amended) and the applicable provisions of the New York State Medical Care Facilities Finance Agency Act, being and constituting Chapter 6 of Title 18 of the Unconsolidated Laws, as amended;

**Affiliate** shall mean a Person who controls, is controlled by or is under common control with the Institution, as set forth below: (a) one Person shall be deemed to control another if it owns more than 50% of the outstanding voting stock of or other equity interests in the other, or it has the power to elect more than 50% of the governing body of the other; and (b) such control may be exercised by one Person over another directly, indirectly through control over a third party, or jointly with one or more controlled third parties;

**Agreement to Provide Continuing Disclosure** means an applicable agreement to provide continuing disclosure, dated as of the Issue Date of the Applicable Series of Bonds, among the Authority, the Institution and the Trustee if such agreement is required;

**Annual Administrative Fee** means the fee payable during each Bond Year for the general administrative and supervisory expenses of the Authority as more particularly described in Exhibit C attached to the Applicable Loan Agreement and made a part thereof;

**Applicable** means (i) with respect to any Construction Fund, Arbitrage Rebate Fund, Purchase Fund, Debt Service Fund and Debt Service Reserve Fund, the fund so designated and established by an Applicable Series Resolution authorizing an Applicable Series of Bonds relating to a particular Project, (ii) with respect to any Debt Service Reserve Fund Requirement, the said Requirement established in connection with a Series of Bonds by the Resolution or the Applicable Series Resolution, (iii) with respect to any Series Resolution, the Series Resolution relating to a particular Project, (iv) with respect to any Series of Bonds, the Series of Bonds issued under a Series Resolution for a particular Project; (v) with respect to any Applicable Loan Agreement, Gross Receipts Security Agreement or Mortgage, the Loan Agreement, Gross Receipts Security Agreement or Mortgage, as applicable, entered into by and between an Institution and the Authority, relating to a particular Project, (vi) with respect to a Credit Facility Provider, the Credit Facility Provider identified in the Applicable Series Resolution, or with respect to any Confirming Bank, the Confirming Bank identified in the Applicable Series Resolution, (vii) with respect to any Credit Facility or any Confirming Letter of Credit, the Credit Facility or Confirming Letter of Credit identified in the Applicable Series Resolution, (viii) with respect to a Bond Series Certificate, such certificate authorized pursuant to an Applicable Series Resolution, and (ix) with respect to a Reserve Fund Facility or a Facility Provider, a Reserve Fund Facility which constitutes all or any part of the Debt Service Reserve Fund Requirement in connection with an Applicable Series of Bonds or the Facility Provider thereof;

**Appreciated Value** means with respect to any Deferred Income Bond (i) as of any Valuation Date, the amount set forth for such date in the Series Resolution authorizing such Deferred Income Bond or in the Bond Series Certificate relating to such Bond, and (ii) as of any date other than a Valuation Date, the sum of (a) the Appreciated Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date, calculated based on the assumption that Appreciated Value accrues during any semi-annual period in equal daily amounts on the basis of a year of twelve thirty-day months, and (2) the difference between the Appreciated Values for such Valuation Dates, and (iii) as of

any date of computation on and after the Interest Commencement Date, the Appreciated Value on the Interest Commencement Date;

**Arbitrage Rebate Fund** means the fund so designated, created and established pursuant to the Resolution;

**Assignment of Rents and Leases** means the Assignment of Rents and Leases, dated July 22, 2003 from the Institution to the Authority;

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

**Authority Fee** means a fee payable to the Authority upon the issuance of a Series of Bonds in an amount set forth in the Applicable Loan Agreement as compensation for all the Authority's internal costs and overhead expenses attributable to the issuance of the Bonds and the financing and construction of a Project;

**Authorized Newspaper** means **The Bond Buyer** or any other newspaper of general circulation printed in the English language and customarily published at least once a day for at least five days (other than legal holidays) in each calendar week in the Borough of Manhattan, City and State of New York, designated by the Authority;

**Authorized Officer** means (i) in the case of the Authority, the Chair, the Vice-Chair, the Treasurer, an Assistant Treasurer, the Secretary, an Assistant Secretary, the Executive Director, the Deputy Executive Director, the Chief Financial Officer, the Managing Director of Public Finance, the Managing Director of Construction, the Managing Director of Policy and Program Development, 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 Institution, the person or persons authorized by a resolution or the by-laws of the Institution to perform any act or execute any document; (iii) in the case of the Trustee, a Vice President, an Assistant Vice President, Assistant Secretary, Assistant Treasurer, a Trust Officer and any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of the Resolution, and (iv) in the case of a Credit Facility Provider, a Vice President, a Senior Vice President, an Administrative Vice President, an Executive Vice President and the President of such Credit Facility Provider, and when used with reference to any act or document also means any other person authorized to perform any act or sign any document by or pursuant to a resolution of the Board of Directors of such Credit Facility Provider of the by-laws of such Credit Facility Provider;

**Available Moneys** means, with respect to an Applicable Series of Bonds, (i) all amounts drawn under a letter of credit, surety bond, insurance policy or other similar third party payment agreement and deposited to the credit of the Applicable Debt Service Fund or the Applicable Debt Service Reserve Fund, (ii) the proceeds of any obligations issued for the express purpose of providing for the payment of the principal of and premium, if any, and interest on the Bonds, (iii) moneys of the Institution which have been transferred to and on deposit with the Applicable Trustee, for a period of not less than one hundred twenty-three (123) days during which no general assignment for the benefit of creditors of the Authority or the Institution has been made under the State Debtor and Creditor Law (being Chapter 17 of the Laws of 1909 of the State, as amended), as amended from time to time, and no petition has been filed by or against the Authority or the Institution under the United States Bankruptcy Code of 1978 (11 U.S.C. Section 101 et seq.), as amended from time to time, or if such petition has been filed, it has been dismissed during such one hundred twenty-three (123) day period, and (iv) all other amounts on deposit in any such Fund or Account as to which the Trustee has received an opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that payment to the Bondholders of such moneys would not constitute a transfer which may be avoided under any provision of the United States Bankruptcy Code in the event of an act of bankruptcy on behalf of the Institution or the Authority;

**Bank Rate** means the rate of interest per annum borne by amounts drawn under the Applicable Credit Facility in respect of tendered Bonds.

**Beneficial Owner** means the purchaser of an ownership interest in any Bond through such purchaser's purchase of a participation interest through a Participant with DTC.

**Bond or Bonds** means any of the bonds of the Authority authorized and issued pursuant to the Loan Agreement and the Resolution;

**Bond Series Certificate** means the 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 the Series Resolution authorizing the issuance of such Bonds;

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

**Bond Year** means a period of twelve (12) consecutive months beginning July 22 in any calendar year and ending on July 21 of the succeeding calendar year;

**Bondholder, Holder of Bonds or Holder** or any similar term, when used with reference to a Bond or Bonds, means the registered owner of any Bond;

**Bondholders' Election Notice** means the written notice to the Tender Agent described in the Resolution;

**Bondholders' Purchase Date** means any date that the owner of a bond bearing interest at the Weekly Rate may require the Tender Agent to arrange for the purchase of such Bond under the Resolution;

**Book Entry Bond** means a Bond authorized to be issued, and issued to and registered in the name of, a Depository for the participants in such Depository;

**Business Day** means any day other than a Saturday, Sunday, or a legal holiday in the State or any other day on which banking institutions in the city in which the principal corporate office of the Trustee is located are authorized or required by law to close or a day on which the New York Stock Exchange, the principal office of the Remarketing Agent, the office of the Credit Facility Provider at which drafts are to be presented under the Credit Facility, the Tender Agent or the Trustee is authorized to be closed;

**Capital Appreciation Bond** means any Bond as to which interest is compounded on each Valuation Date therefor and is payable only at the maturity or prior redemption thereof;

**Capitalized Interest Account** means the Capitalized Interest Account within an Applicable Construction Fund authorized to be established pursuant to the Resolution and the Applicable Series Resolution with respect to a Series of Bonds;

**Code** means the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder;

**Collateral** shall mean the Mortgage, the Gross Receipts Security Agreement, the Assignment of Rents and Leases, the funds and accounts held by the Trustee under the Resolution (except the Arbitrage Rebate Fund and the Credit Facility Provider Repayment Fund) and all amounts received or receivable under the Loan Agreement;

**Collateral Assignment of Gross Receipts Security Agreement** means the Collateral Assignment of Gross Receipts Security Agreement, dated July 22, 2003, from the Authority to the Trustee and the Bank;

**Collateral Assignment of Mortgage** means the Collateral Assignment of Mortgage, dated July 22, 2003, from the Authority to the Trustee and the Bank;

**Collateral Assignment of Rents and Leases** means the Collateral Assignment of Rents and Leases, dated July 22, 2003, from the Authority to the Trustee and the Bank;

**Confirming Bank** means the issuer of any Confirming Letter of Credit or the issuer of any Substitute Confirming Letter of Credit;

**Confirming Letter of Credit** means any confirming letter of credit or other Credit Facility confirming the Credit Facility then in effect with respect to the Bonds;

**Construction Fund** means each fund so designated and established pursuant to the Resolution;

**Contract Documents** means any general contract or agreement for the construction of the Series 2003 Project, notice to bidders, information for bidders, form of bid, general conditions, supplemental general conditions, general requirements, supplemental general requirements, bonds, plans and specifications, addenda, change orders, and any other documents entered into or prepared by or on behalf of the Institution relating to the construction of the Series 2003 Project, and any amendments to the foregoing;

**Cost or Costs of Issuance** means the items of expense incurred in connection with the authorization, sale and issuance of a Series of Bonds, which items of expense shall include, but not be limited to, document printing and reproduction costs, filing and recording fees, costs of credit ratings, initial fees and charges of the Trustee and any Credit Facility Provider, legal fees and charges, professional consultants' fees, fees and charges for execution, transportation and safekeeping of such Series of Bonds, premiums, fees and costs in connection with obtaining any Credit Facility, fees and charges for commitment fees or similar charges relating to a Liquidity Facility or Remarketing Agent, costs and expenses of refunding Bonds or other bonds or notes of the Authority, costs and expenses incurred pursuant to a Mortgage, 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 necessary in connection with the Project, including, but not limited to, (i) costs and expenses of the acquisition of the title to (including premiums and other charges in connection with obtaining title insurance) 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 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, test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction of the Project, (v) costs and expenses required for the acquisition and installation of equipment or machinery, (vi) all other costs which the Institution shall be required to pay or cause to be paid for the acquisition, construction, reconstruction, rehabilitation, repair, improvement and equipping of the Project, (vii) any sums required to reimburse the Institution or the Authority for advances made by them for any of the above items or for other costs incurred and for work done by them in connection with a Project (including interest on moneys borrowed from parties other than the Institution), (viii) interest on the Bonds prior to, during and for a reasonable period after completion of the acquisition, construction, reconstruction, rehabilitation, repair, improvement or equipping of the Project, and (ix) fees, expenses and liabilities of the Authority incurred in connection with the Project, the issuance of the Bonds or pursuant to the Resolution or to the Applicable Loan Agreement, a Mortgage, a Liquidity Facility, a Remarketing Agreement or a Reserve Fund Agreement;

**Credit Facility** means (i) an irrevocable letter of credit, a confirming letter of credit, surety bond, loan agreement, Standby Purchase Agreement or other agreement, facility or insurance or guaranty arrangement issued or extended by 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, a saving and loan association, an insurance company or association chartered or organized under the laws of any state of the United States of America, 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, pursuant to which the Authority is entitled to obtain moneys to pay the principal, purchase price or Redemption Price of Bonds due in accordance with their terms or tendered for purchase or redemption, plus accrued interest thereon to the date of payment, purchase or redemption thereof, in accordance with the Resolution and with the Series Resolution authorizing such Bonds or the Bond Series Certificate relating thereto; and (ii) upon the issuance of a Substitute Credit Facility, such Substitute Credit Facility;

**Credit Facility Provider** means, so long as a Credit Facility in connection with a Series of Bonds issued by a Credit Facility Provider has not expired or been terminated, such Credit Facility Provider and any Confirming Bank and, following the issuance of a Substitute Credit Facility, the issuer of a Substitute Credit Facility and following the issuance of a Substitute Confirming Letter of Credit, the issuer of a Substitute Confirming Letter of Credit;

**Credit Facility Provider Repayment Fund** means each fund so designated and established pursuant to the Resolution;

**Custody Bonds** means any Bond during the period from and including the date of its purchase with amounts realized under a Credit Facility to but excluding the date on which such Bond is purchased and a Credit Facility is fully reinstated with respect to the drawings with which the Custody Bonds were purchased;

**Debt Service Fund** means each fund so designated and established pursuant to the Resolution;

**Debt Service Reserve Fund** means each fund so designated and established pursuant to the Resolution;

**Debt Service Reserve Fund Requirement** means, for each Series of Bonds, the Debt Service Reserve Fund Requirement determined pursuant to the Series Resolution authorizing the issuance of such Series of Bonds; provided, however, in no event shall the Debt Service Reserve Fund Requirement for any Series of Bonds exceed the maximum amount permitted under the Code to be deposited in the Debt Service Reserve Fund for such Series of Bonds from the proceeds of such Series of Bonds;

**Defeasance Securities** means a direct obligation of the United States of America, an obligation to which the full faith and credit of the United States of America are pledged (other than an obligation the payment of the principal of which is not fixed as to amount or time of payment) and a certificate or other instrument which evidences the ownership of, or the right to receive all or a portion of the payment of the principal of or interest on, direct obligations of the United States of America, which, in each case, is not subject to redemption prior to maturity other than at the option of the holder thereof or which have been irrevocably called for redemption on a stated future date;

**Deferred Income Bond** means any Bond as to which interest accruing thereon prior to the Interest Commencement Date of such Bond is compounded on each Valuation Date for such Deferred Income Bond, and as to which interest accruing after the Interest Commencement Date is payable semi-annually on January 1 and July 1 of each Bond Year;

**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 and its successor or successors, or any other person, firm, association or corporation designated in the Series Resolution authorizing a Series of Bonds or a Bond Series Certificate relating to a Series of Bonds to serve as securities depository for Book Entry Bonds of such Series;

**Disbursement Agreement** means the Disbursement Agreement, dated as of July 22, 2003, by and between the Institution and the Bank;

**DTC** shall have the meaning set forth in the Resolution;

**DTC Representation Letter** means a letter of representation from the Authority to DTC with respect to DTC acting as the Depository with respect to any Series of Bonds;

**Entrance Fees** means the entrance fees initially paid by the residents of the Series 2003 Project to the Institution in connection with the residents' lifetime residency agreements of units of the Series 2003 Project;

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

**Exempt Obligation** means 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, 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 "-" or numerical notation, in the highest rating category, by Moody's and S&P (provided both are then rating the Bonds), or, if such obligation is not rated by Moody's and S&P, in the highest rating category by Moody's or S&P (provided either one of such agencies is then rating the Bonds), or, if such obligation is rated by neither Moody's nor S&P, has been assigned a comparable rating by another nationally recognized rating agency acceptable to the Authority;

**Expiration Date** means the date an Applicable Credit Facility shall expire as set forth in such Applicable Credit Facility or any other agreement pursuant to which a Substitute Credit Facility is issued pursuant to the Resolution;

**Extraordinary Redemption** means a redemption pursuant to the Resolution;

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

**Favorable Opinion of Bond Counsel** means an opinion of Bond Counsel, addressed to the Authority, the Institution and the Trustee, to the effect that the action proposed to be taken will not adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation under Section 103 of the Code, in form and substance acceptable to the Authority and the Trustee;

**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 wholly comprised of any of the foregoing obligations.

**Fixed Interest Rate Period** means (i) the period following a Fixed Rate Conversion Date when the Bonds of a particular Series bear interest at a Fixed Rate, or (ii) the period following the Issue Date with respect to a Series of Bonds initially issued bearing interest at a Fixed Rate pursuant to the Applicable Series Resolution authorizing the issuance of such Series of Bonds;

**Fixed Rate** means the interest rate or rates on the Bonds calculated and determined by the Remarketing Agent as set forth in the Resolution unless otherwise provided in the Series Resolution authorizing a particular Series of Bonds;

**Fixed Rate Conversion Date** means any day on which the Bonds are converted to Bonds bearing interest at a Fixed Rate in accordance with the Resolution unless otherwise provided in the Series Resolution authorizing a particular Series of Bonds;

**Fixed Rate Credit Support** shall have the meaning set forth in the Resolution;

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

**Gross Proceeds** means, unless inconsistent with the provisions of the Code, (i) amounts received by the Authority from the sale of a Series of Bonds (other than amounts used to pay underwriters' fees and other expenses of issuing such Series of Bonds), (ii) amounts treated as transferred proceeds of a Series of Bonds in accordance with the Code, (iii) amounts treated as proceeds under the provisions of the Code relating to invested sinking funds; (iv) securities or obligations pledged by the Authority or the Institution as security for payment of debt service on a Series of Bonds, (v) amounts received with respect to obligations acquired with Gross Proceeds, (vi) amounts used to pay debt service on a Series of Bonds, and (vii) amounts received as a result of the investment of Gross Proceeds at a yield equal to or less than the yield on a Series of Bonds as such yield is determined in accordance with the Code;

**Governmental Requirements** means any present and future laws, rules, orders, ordinances, regulations, statutes, requirements and executive orders applicable to the Series 2003 Project or the Mortgaged Property, of the United States, the State and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them, now existing or after the Resolution is created, and having or asserting jurisdiction over the Series 2003 Project or the Mortgaged Property or any part of either;

**Gross Receipts Security Agreement** means the Gross Receipts Security Agreement, from the Institution to the Authority, in connection with the issuance of an Applicable Series of Bonds;

**Ground Lease** means the 99 year ground lease between Burke Community Services Corporation as Landlord and the Institution as Tenant by which the Institution has the right to occupy the lands upon which the Project is to be constructed;

**Institution** means Teresian House Housing Corporation, a corporation organized and existing under the not-for-profit corporation law of the State of New York, or its permitted successors and assigns;

**Institution Bonds** means any Bonds owned by or on behalf of the Institution;

**Intercreditor Agreement** means any intercreditor agreement among the Credit Facility Provider with respect to any Series of Bonds issued under the Resolution, the Trustee and the Authority, together with their successors and assigns, in connection with the rights and remedies of such parties in respect of the Mortgage, the Mortgaged Property, the Pledged Revenues and certain other moneys held under the Resolution, as from time to time amended or supplemented;

**Interest Commencement Date** means with respect to any Capital Appreciation Bond and any Deferred Income Bond the date following a Valuation Date that such Bond shall commence bearing interest payable semi-annually at a Fixed Rate in accordance with the Applicable Series Resolution authorizing the issuance of such Series of Bonds;

**Interest Payment Date** means: (i) when used with reference to any Bond bearing interest at the Weekly Rate, the first Thursday of each calendar month; (ii) when used with reference to any Bond bearing interest at the Fixed Rate, each January 1 and July 1 after the Fixed Rate Conversion; and (iii) when used with reference to any Custody Bond, the first Thursday of each calendar month and, on any date on which such Bond has been remarketed to a Person other than the Credit Facility Provider pursuant to the Resolution, such date of that remarketing;

**Interest Period** means: (i) when used with reference to any Bond bearing interest at the Weekly Rate, the period from and including a Rate Adjustment Date to but excluding the immediately succeeding Rate Adjustment Date; and (ii) when used with reference to any Bond bearing interest at the Fixed Rate, the period from and including the Fixed Rate Conversion Date to but excluding the final maturity of the Bonds;

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

**Issue Date** means the date on which a Series of Bonds are first issued and delivered to purchasers thereof in accordance with the Resolution;

**Lease Agreements or Residency Agreements** means certain residency and lifetime agreements entered into between the Institution and residents of the Series 2003 Project, which agreements are not in the nature of leases of interests in real property, but which grant the right of occupancy, subject to certain conditions, in accommodations consisting of cottage units, independent living apartments and assistive living apartments, as the same may be amended from time to time;

**Letter of Credit** means (i) the irrevocable direct-pay letter of credit issued by Sovereign Bank with respect to the Series 2003 Bonds on the date of issuance of the Series 2003 Bonds, and (ii) upon the issuance of a Substitute Letter of Credit (a "Substitute Letter of Credit") such Substitute Letter of Credit, each of which constitutes a "Credit Facility" under the Resolution.

**Liens** means any mortgage, pledge, lien, charge, security interest or lease in the nature thereof (including any conditional sale agreement, equipment trust agreement or other title retention agreement) or other encumbrance of whatsoever nature;

**Liquidity Facility** means an irrevocable letter of credit, surety bond, loan agreement, Standby Purchase Agreement, line of credit or other agreement or arrangement issued or extended by 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, a savings and loan association, an insurance company or association chartered or organized under the laws of any state of the United States of America, 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, pursuant to which moneys are to be obtained upon the terms and conditions contained therein for the purchase of Bonds tendered for purchase in accordance with the terms in the Resolution and of the Series Resolution authorizing such Bonds or a Bond Series Certificate;

**Loan Agreement** means a Loan Agreement, by and between the Authority and the Institution in connection with the issuance of an Applicable Series of Bonds, as the same shall have been amended, supplemented or otherwise modified as permitted by the Resolution and by the Applicable Loan Agreement;



## *Appendix A*

**Mandatory Purchase Date** means the date on which any Bonds are subject to Mandatory Purchase pursuant to the Resolution or, if any such date is not a Business Day, the immediately succeeding Business Day;

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

**Minimum Interest Rate** means, with respect to any particular Series of Variable Interest Rate Bonds, a numerical rate of interest, if any, set forth in the Series Resolution authorizing such Series of Bonds or the Bond Series Certificate relating to such Series of Bonds, that shall be the minimum rate at which such Series of Bonds may bear interest at any time;

**Moody's** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, or its successors and assigns;

**Mortgage** means a mortgage or modification or amendment thereto granted by the Institution to the Authority pursuant to an Applicable Loan Agreement, in form and substance satisfactory to the Authority and the Applicable Credit Facility Provider, on the Mortgaged Property mortgaged in connection therewith, as security for the performance of the Institution's obligations under an Applicable Loan Agreement and under the Applicable Reimbursement 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 Institution and now or hereafter located therein or thereon, as from time to time amended, supplemented or otherwise modified;

**Notice Address** means: as to the Authority, the Institution, the Credit Facility Provider, the Remarketing Agent, the Tender Agent, and the Trustee, the address given in the Resolution;

**Official Statement** means an official statement or other offering document relating to and in connection with the sale of Bonds;

**Option Bond** means any Bond which by its terms may be tendered by and at the option of the Holder thereof 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;

**Optional Redemption** means a redemption pursuant to the Resolution;

**Outstanding**, when used in reference to Bonds, means, as of a particular date, all Bonds authenticated and delivered under the Resolution, including Custody Bonds except: (i) any Bond cancelled by the Trustee at or before such date; (ii) any Bond deemed to have been paid in accordance with 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 Bond tendered or deemed tendered in accordance with the provisions of the Resolution in lieu of which or in substitution for which another Bond shall have been authenticated and delivered pursuant to the Resolution, provided that the Purchase Price of such Bond, together with interest thereon through the date of purchase thereof, shall have been paid or moneys are available for such payment; Custody Bonds will be deemed to be Outstanding and pledged to the Credit Facility Provider, and the purchase thereof with the proceeds of a drawing on the Credit Facility shall not result in an extinguishment of the debt represented by such Bonds. For purposes of giving consents or directions or making requests to the Trustee, Bonds owned by or on behalf of the Institution (other than Custody Bonds) shall not be deemed to be Outstanding, and Custody Bonds shall be deemed to be Outstanding for such purposes and owned by the Credit Facility Provider. Bonds purchased upon tender and for the purchase of which sufficient funds are held by the Tender Agent, which Bonds are not delivered to the Tender Agent for purchase, are not Outstanding, but there will be Outstanding Bonds authenticated and delivered in lieu of such undelivered Bonds as provided in the Resolution;

**Participant** means a security broker and dealer, bank, trust company, clearing corporation and certain other organizations and entities acting on behalf of a Beneficial Owner to provide a participation interest in a Bond through DTC;

**Paying Agent** means, with respect to the Bonds of any Series, 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 the Series of Bonds for which such 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 Obligations, (ii) Federal Agency Obligations described in clauses (i) or (ii) of the definition of Federal Agency Obligations, (iii) commercial paper that (a) matures within two hundred seventy (270) days after its date of issuance, (b) is rated in the highest short term rating category by at least one nationally recognized rating service and (c) is issued by a domestic corporation whose unsecured senior debt is rated by at least one nationally recognized rating service no lower than in the second highest rating category or (iv) financial guaranty agreements, surety or other similar bonds or other instruments of an insurance company that has an equity capital of at least \$125,000,000 and is rated by Bests Insurance Guide or a nationally recognized rating service in the highest rating category.

**Permitted Encumbrances** means (1) the Mortgage, (2) the Reimbursement Agreement, (3) the Resolution, the Series 2003 Resolution and any other Series Resolution, (4) the Collateral Assignment of Mortgage, (5) the Gross Receipts Security Agreement (6) the Collateral Assignment of Gross Receipts Security Agreement, (7) the Assignment of Rents and Leases, (8) the Collateral Assignment of Rents and Leases, (9) the Land Lease, (10) those matters referred to in any title insurance policy described in the Resolution and accepted by the Authority and by the Credit Facility Provider, (11) any other encumbrances or matters in connection with the Bonds or approved in writing by an Authorized Officer of the Authority or as set forth in the aforementioned documents and (12) any liens and encumbrances permitted under the Reimbursement Agreement;

**Permitted Investments** means any of the following:

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

**Person** means an individual, corporation, partnership, trust or unincorporated organization or any agency or political subdivision of a governmental unit;

**Pledged Revenues** means Gross Receipts (as such term is defined in an Applicable Gross Receipts Security Agreement), and the right to receive the same and the proceeds thereof;

**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 Bonds, as more particularly described in a Series Resolution authorizing the issuance of Bonds in connection with such Project;

**Provider Payments** means the amount, certified by a Facility Provider to the Trustee, payable to such Facility Provider by the Institution on account of amounts paid by it under a Reserve Fund Facility, including interest on amounts paid and fees and charges with respect thereto;

**Purchase Date** means a Bondholders’ Purchase Date or a Mandatory Purchase Date.

**Purchase Price** means 100% of the principal amount of any Bond plus accrued and unpaid interest, if any, payable in connection with a purchase of such Bond pursuant to the Resolution;

**Qualified Financial Institution** means any of the following entities that has an equity capital of at least \$125,000,000 or whose obligations are unconditionally guaranteed by an affiliate or parent having an equity capital of at least \$125,000,000:

(i) a securities dealer, the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation, and (a) that is on the Federal Reserve Bank of New York list of primary government securities dealers and (b) whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one nationally recognized rating service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one nationally recognized 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 summarized 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;

(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 nationally recognized rating service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one nationally recognized 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 summarized 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;

(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 nationally recognized rating service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one nationally recognized 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 summarized 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;

(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 moneys held purchased under the Resolution from such corporation, are insured by an insurer that meet the applicable rating requirements set forth above;

**Rate Adjustment Date** means: (i) when used with reference to a Bond bearing interest at a Fixed Rate, the Fixed Rate Conversion Date; and (ii) when used with reference to a Bond bearing interest at the Weekly Rate, Thursday of each week (or the date of issuance of the Bonds, in the case of the initial Weekly Rate);

**Rating Agency** means S&P, Moody's or any other nationally recognized rating service which shall have assigned a rating on any Bonds Outstanding as requested by or on behalf of the Authority and which rating is currently in effect;

**Reasonably Allowed Amounts** means any amounts which are reasonably allowed under the Code to remain on deposit in a bona fide debt service fund for more than one year.

**Record Date** means the Business Day immediately preceding an Interest Payment Date, for a Bond bearing interest at the Weekly Rate or the fifteenth day of the month immediately preceding the month of an Interest Payment Date for a Bond bearing interest at the Fixed Rate; provided that, if sufficient funds for the payment of

interest on any Interest Payment Date are not available on such date, but are thereafter received by the Trustee, the Trustee shall establish a special “Record Date” for the payment of the overdue interest upon not less than 10 days’ written notice to the Bondholders;

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

**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 any agreement pursuant to which a Credit Facility Provider agrees to issue its Credit Facility or Substitute Credit Facility and the Institution agrees to reimburse the Credit Facility Provider or cause the Credit Facility Provider to be reimbursed for draws on the Credit Facility or Substitute Credit Facility;

**Related Agreements** means each Remarketing Agreement and agreement entered into in connection with a Credit Facility or Liquidity Facility, to which the Institution is a party;

**Remarketing Agent** means with respect to an Applicable Series of Bonds, the firm, association or corporation, acceptable to the Authority, having the duties, responsibilities and rights provided in the Resolution and in the Remarketing Agreement, and its successor or successors, and any other person which may at any time be substituted in its place pursuant to the Resolution;

**Remarketing Agreement** means a Remarketing Agreement between the Remarketing Agent, the Authority and the Institution in connection with the issuance of an Applicable Series of Bonds and any successor agreement thereto which provides for performance of the duties and responsibilities of a Remarketing Agent under the Resolution;

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

**Resolution** means the Teresian House Housing Corporation Revenue Bond Resolution, adopted June 25, 2003, as from time to time amended or supplemented by Supplemental Resolutions or Series Resolutions in accordance with the terms and provisions of the Resolution;

**Revenues** means all payments received or receivable by the Authority pursuant to the Applicable Loan Agreement which are to be paid to the Trustee (except payments to the Trustee for the administrative costs and expenses or fees of the Trustee and payments to the Trustee for deposit to the Arbitrage Rebate Fund);

**S&P** means Standard & Poor’s Ratings Group, a Division of McGraw Hill, Inc., a corporation organized and existing under the laws of the State of New York, or its successors and assigns;

**Securities** means (i) moneys, (ii) Government Obligations, (iii) Exempt Obligations, (iv) any bond, debenture, note or preferred stock or other similar obligation of any corporation incorporated in the United States, which security, at the time an investment therein is made or such security is deposited in any fund or account under the Resolution, is rated, without regard to qualification of such rating by symbols such as “+” or “-” or numerical notation, “Aa” or better by Moody’s or “AA” or better by S&P or is rated with a comparable rating by any other nationally recognized rating agency acceptable to the Authority and (v) common stock of any corporation incorporated in the United States which, at the time an investment therein is made or such stock is deposited in any fund or account under the Resolution, is rated “A-” or better by S&P or Moody’s or whose senior debt, if any, is rated without regard to qualification of such rating by symbols such as “+” or “-” or numerical notation, “Aa” or better by Moody’s or “AA” or better by S&P or is rated with a comparable rating by any other nationally recognized rating agency acceptable to the Authority;

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

**Series** means all of the Bonds authenticated and delivered on original issuance and pursuant to the Resolution and to the Series Resolution authorizing such Bonds as a separate Series of Bonds, and any Bonds 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 2003 Bonds** means the Authority's \$40,265,000 Teresian House Housing Corporation Revenue Bonds, Series 2003, issued pursuant to the Resolution and the Series 2003 Resolution.

**Series 2003 Project** means the construction and equipping of Teresian House Housing Corporation, a full service retirement community consisting of an approximately 271,000 total square foot project comprised of 152 independent living units, consisting of 128 one and two bedroom apartments and 24 duplex cottages, and a community center, with various common areas including: administrative offices, a kitchen and dining areas, a lounge and activities area, a convenience store, library, indoor pool, café, arts and hobby studio, a beauty/barber shop and supporting infrastructure located on approximately 13 acres of land under a long term ground lease to the Institution located off Columbia Circle Drive in the City of Albany, Albany County, New York. The Series 2003 Project shall not include the chapel or any portion thereof;

**Series 2003 Resolution** means the Authority's Teresian House Housing Corporation Series 2003 Resolution authorizing up to \$42,200,000 Series 2003 Bonds adopted June 25, 2003.

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

**Sinking Fund Installment** means, as of any date of calculation, when used with respect to any Bonds of a Series, other than Option Bonds or Variable Rate Bonds, so long as such Bonds are Outstanding, the amount of money required by the Resolution or by the Series Resolution pursuant to which such Bonds were issued or by the Bond Series Certificate relating to such Bonds, 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 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 Series Resolution pursuant to which such Bonds were issued or by the Bond Series Certificate relating to such Bonds, to be paid on a single future date for the retirement of any Outstanding Option Bonds or Variable Interest Rate 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 are deemed to be Bonds entitled to such Sinking Fund Installment;

**Standby Purchase Agreement** means an agreement by and between the Authority and another person or by and among the Authority, the Institution or another person, or by and between the Institution and another person pursuant to which such person is obligated to purchase an Option Bond or a Variable Interest Rate Bond tendered for purchase;

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

**Substitute Confirming Letter of Credit** means an irrevocable direct-pay letter of credit issued and delivered to the Trustee in accordance with the Resolution, if any, upon the expiration or earlier termination of a Confirming Letter of Credit or at the option of the Authority pursuant to the Resolution, by one or more of a bank, 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, or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, or an insurance policy or any other instrument of credit enhancement issued and delivered to the Trustee in accordance with the Resolution upon the expiration or earlier termination of a Confirming Letter of Credit, to replace such Confirming Letter of Credit or at the option of the Authority pursuant to the Resolution;

**Substitute Credit Facility** means an irrevocable direct-pay letter of credit issued and delivered to the Trustee in accordance with the Resolution upon the expiration or earlier termination of a Credit Facility, by one or more of a bank, 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, or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, or an insurance policy or any other instrument of

credit enhancement issued and delivered to the Trustee in accordance with the Resolution upon the expiration or earlier termination of a Credit Facility, to replace such Credit Facility;

**Substitution Date** shall mean (i) any date on which the Credit Facility or the Confirming Letter of Credit then in effect is replaced with a Substitute Credit Facility or a Substitute Confirming Letter of Credit, respectively, as provided in the Resolution, or (ii) any date on which a Substitute Confirming Letter of Credit is delivered at the option of the Authority as provided in the Resolution;

**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 and Agreement** means a Tax Certificate and Agreement concerning certain matters pertaining to the use of proceeds of each Series of Bonds executed by and delivered to the Authority, the Institution and the Trustee on the date of issuance of such Series of Bonds, including any and all exhibits attached thereto;

**Tender Agent** means the bank or trust company appointed as Tender Agent for the Bonds pursuant to the Resolution and having the duties, responsibilities and rights provided for in the Resolution, and its successor or successors and any other bank or trust company which may at any time be substituted in its place pursuant to the Resolution;

**Term Bonds** means the Bonds so designated in a Series Resolution or a Bond Series Certificate and payable from Sinking Fund Installments;

**Trustee** means the bank or trust company appointed as Trustee for the Bonds pursuant to the Resolution and having the duties, responsibilities and rights provided for in the Resolution, and its successor or assigns and any other bank or trust company which may at any time be substituted in its place pursuant to the Resolution;

**Valuation Date** means (i) with respect to any Capital Appreciation Bond, the date or dates set forth in the Series Resolution authorizing such Bond or in the Bond Series Certificate relating to such Bond on which specific Accreted Values are assigned to such Capital Appreciation Bond, and (ii) with respect to any Deferred Income Bond, the date or dates prior to the Interest Commencement Date set forth in the Series Resolution authorizing such Bond or in the Bond Series Certificate relating to such Bond on which specific Appreciated Values are assigned to such Deferred Income Bond;

**Variable Interest Rate** means a variable interest rate or rates to be borne by a Series of Bonds or any one or more maturities within a Series of Bonds, the method of computing such variable interest rate is specified in the Series Resolution authorizing such Bonds or a Bond Series Certificate and 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) or a function of such objectively determinable interest rate or rates which may be in effect from time to time or at a particular time or times; provided that such variable interest rate may be subject to a Maximum Interest Rate and a Minimum Interest Rate and that there may be an initial rate specified, in each case as provided in such Series Resolution or a Bond Series Certificate or (ii) a stated interest rate that may be changed from time to time as provided in the Series Resolution authorizing such Bonds or a Bond Series Certificate; and **provided, further**, that such Series Resolution or Bond Series Certificate shall also specify either (i) the particular period or periods of time or manner of determining such period or periods of time for which such variable interest rate shall remain in effect or (ii) the time or times upon which any change in such variable interest rate shall become effective; and

**Variable Interest Rate Bond** means any Bond which bears a Variable Interest Rate, provided 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 Interest Rate Period** means the period following the Issue Date with respect to a particular Series of Bonds initially issued bearing interest at a Weekly Rate pursuant to the Applicable Series Resolution authorizing the issuance of such Series of Bonds, and ending on a Fixed Rate Conversion Date.

**Weekly Rate** means the interest rate, from time to time, borne by the Bonds calculated and determined by the Remarketing Agent, as set forth in the Resolution.

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



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

The following is a summary of certain provisions of the Loan Agreement pertaining to the Bonds and the Project. This summary does not purport to be complete and reference is made to the Loan Agreement for a full and complete statements of its provisions. Defined terms used in this Appendix B have the meanings ascribed to them in Appendix A.

**Construction of the Series 2003 Project**

The Institution agrees that, whether or not there are sufficient moneys available to it under the provisions of the Resolution and under the Loan Agreement, the Institution shall complete the acquisition, design, construction, reconstruction, rehabilitation and improving or otherwise providing and furnishing and equipping of the Series 2003 Project, substantially in accordance with the Contract Documents relating thereto and as described in Exhibit A to the Loan Agreement. Subject to the terms and conditions of the Loan Agreement, the Authority will, to the extent of moneys available in the Construction Fund, cause the Institution to be reimbursed for, or pay, any costs and expenses incurred by the Institution which constitute Costs of the Series 2003 Project, provided such costs and expenses are approved in writing by the Credit Facility Provider with a Credit Facility issued and existing with respect to the Series 2003 Bonds and the Authority. The Authority shall have no obligation to issue Additional Bonds or provide additional funds other than the moneys available to the Institution under the provisions of the Resolution or under the Loan Agreement.

To the extent that moneys are available therefor and subject to the terms and conditions of the Resolution and the Series 2003 Resolution, moneys in the applicable account of the Construction Fund shall be disbursed as construction of the Series 2003 Project progresses, but not more frequently than once a month, unless otherwise agreed to in writing by the Authority and the Credit Facility Provider, in amounts as shall be requested by the Institution pursuant to a request for disbursement as provided in the Loan Agreement, but not in excess of that needed, in the reasonable judgment of the Authority, to reimburse the Institution for, or to pay, any costs and expenses constituting Costs of the Series 2003 Project previously paid or then due; provided that the Authority may, in its sole discretion, withhold or delay making any advance in connection with the Series 2003 Project or part thereof at any time there is pending an action or proceeding, judicial or administrative, challenging the Institution's right to undertake the Series 2003 Project or part thereof, or in which there is in issue: (i) the validity of any governmental permit, consent or authorization, or the issuance thereof, necessary in connection with the Series 2003 Project or part thereof, or (ii) the due authorization or validity of the Bonds issued in connection with the Series 2003 Project or such part thereof, unless, with regard to (i) or (ii) of the Loan Agreement, the Institution has provided the Authority with security in such form and amount as may be reasonably required by the Authority. Notwithstanding anything to the contrary in the Loan Agreement, or in the Resolution or the Series 2003 Resolution, no amounts shall be disbursed from the Construction Fund to pay costs of the Series 2003 Project, except for Costs of Issuance of the Series 2003 Bonds, until the Credit Facility Provider with respect to the Series 2003 Bonds has certified to the Authority and the Trustee that the Institution has paid or invested in the Series 2003 Project the amount of equity required by the Reimbursement Agreement.

Prior to making and delivering any certificate required pursuant to the Resolution and the Series 2003 Resolution to be delivered to the Trustee in connection with payments to be made pursuant to the Resolution and the Series 2003 Resolution, the Institution shall deliver to the Authority the following:

- (i) a list of invoices, whether paid or unpaid, including, with respect to each invoice, the name of the vendor, a brief description of the goods or services, the amount of the invoice, a description of the building or buildings to which such payment relates, and, if such invoice has been paid, the date paid, the check number and the amount of the payment, copies of front and back of cancelled check, if any;
- (ii) copies of architect's certification(s), if any, relating to the invoices listed pursuant to subsection (i) above;
- (iii) a reconciliation of the approved budget with funds already disbursed together with funds requested for disbursement currently; all enclosed with

## ***Appendix B***

- (iv) a certificate executed by two Authorized Officers of the Institution certifying that
  - (A) The enclosed architect's certification(s) is (are) a true and correct copy of the architect's certification(s) received by the University of the work to which it relates.
  - (B) The enclosed reconciliation of the approved budget with funds already disbursed together with funds requested for disbursement currently is true and correct.
  - (C) Expenses or monies for which payment is requisitioned have been incurred or expended for items which constitute Costs of the Series 2003 Project, which Series 2003 Project has not been modified except as permitted by the Loan Agreement.
  - (D) Each amount contained therein has not been the basis of any prior disbursement from the Construction Fund.
  - (E) The payments being requisitioned are within the project budget submitted to and approved by the Authority in accordance with the provisions of in this summarized section, and to the best of the Authorized Officers' knowledge, the Series 2003 Project can be completed within budget, and,
  - (F) The Institution has complied with all provisions of the Loan Agreement and the Tax Certificate and Agreement, including, but not limited to those related to the use of the Series 2003 Project and certain prohibitions against use for sectarian religious instruction or religious worship and certain non tax-exempt purposes.; and
- (v) the written consent of the Credit Facility Provider to such payments from the Construction Fund.

The Institution will receive the disbursements of moneys in the Construction Fund to be made under the Loan Agreement, and will hold the right to receive the same, as a trust fund for the purpose of paying the Costs of the Series 2003 Project for which each disbursement was made, and will apply the same first to such payment before using any part thereof for any other purposes.

The Institution shall permit the Authority and its authorized representatives, at any time, to enter upon the property of the Institution, the Series 2003 Project and the Mortgaged Property to inspect the Series 2003 Project and the Mortgaged Property and all materials, fixtures and articles used or to be used in construction of the Series 2003 Project, and to examine all Contract Documents. The Institution shall furnish to the Authority, the Credit Facility Provider and their respective authorized representatives, when requested, copies of such Contract Documents. In the event that, after such inspection or examination, after consultation with the Institution, the Authority, in its sole and absolute discretion, decides to engage an independent consultant, such as an accounting firm, or to implement or increase its project management oversight, such action may be taken at the Institution's expense. The Institution agrees to retain all documentation of expenditures for items which constitute Costs of the Series 2003 Project for at least seven (7) years after the date of completion of the Series 2003 Project.

An Authorized Officer of the Authority, in his sole and absolute discretion, may waive, from time to time, any of the conditions set forth in this summarized section. Any such waiver shall not be deemed a waiver by the Authority of its right to thereafter require compliance with any such condition. The Institution acknowledges and agrees that disbursements from the Construction Fund are to be made by the Trustee and shall be made in accordance with the Resolution and the Series 2003 Resolution only upon receipt by the Trustee of the documents required by the Resolution to be executed and delivered in connection with such disbursements.

The Series 2003 Project shall be deemed to be complete upon delivery to the Authority, the Credit Facility Provider and the Trustee of a certificate signed by an Authorized Officer of the Institution which certificate shall be delivered as soon as practicable after the completion of the Series 2003 Project, or upon delivery to the Trustee, the Credit Facility Provider and the Institution of a certificate signed by the Authority and delivered at any time after completion of the Series 2003 Project. Any such certificate shall comply with the requirements of the Resolution and the Series 2003 Resolution. The Authority agrees that it will not execute and deliver any such certificate unless the Authority has notified the Institution and the Credit Facility Provider in writing that, in the Authority's judgment, the Series 2003 Project has been completed substantially in accordance with the plans and specifications therefor and the Institution has failed to execute and deliver the certificate provided for in the Loan Agreement within thirty (30) days after such notice is given. The moneys, if any, remaining in the Construction Fund for the

Series 2003 Project after the Series 2003 Project has been deemed to be complete shall be paid as provided in the Resolution and the Series 2003 Resolution.

*(Section 5)*

**Amendment of the Series 2003 Project; Cost Increases; Additional Bonds**

The Institution, with the prior written consent of the Authority, which consent will not be unreasonably withheld, may amend the definition of the Series 2003 Project or any other 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 Series 2003 Project or any other Project which the Authority is authorized to undertake. The Institution shall deliver to the Authority copies of such changes orders as the Authority may from time to time request. The Institution shall provide such moneys as in the reasonable judgment of the Authority may be required for the cost of completing the Series 2003 Project or any other Project in excess of the moneys in the Applicable Construction Fund established for such Project, whether such moneys are required as a result of an increase in the scope of such Project or otherwise. Such moneys shall be paid to the Trustee for deposit in the Applicable Construction Fund within fifteen (15) days after receipt by the Institution of written notice from the Authority that such moneys are required.

The Authority, upon the request of the Institution, may, but shall not be required to, issue Bonds to provide moneys required for the cost of completing the Series 2003 Project or any other Project in excess of the moneys in the Applicable Construction Fund. Nothing contained in the Loan Agreement or in the Resolution shall be construed as creating any obligation upon the Authority to issue Bonds for such purpose, it being the intent of the Loan Agreement and the Resolution to reserve to the Authority full and complete discretion to decline to issue such Bonds. The proceeds of any additional Bonds shall be deposited and applied as specified in the Series Resolution authorizing such Bonds or the Bond Series Certificate relating to such Series of Bonds.

*(Section 6)*

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

Except to the extent that Available Moneys (excluding any moneys from a draw under the Credit Facility) are available therefor under the Series 2003 Resolution or under the Loan Agreement, including moneys in the Debt Service Fund, and excluding interest accrued but unpaid on investments held in the Debt Service Fund, the Institution by the Loan Agreement unconditionally agrees to pay, so long as Bonds are Outstanding, to or upon the order of the Authority, from its general funds or any other moneys legally available to it:

(a) On or before the date of delivery of the Series 2003 Bonds, such amount, if any, as in the reasonable judgment of an Authorized Officer of the Authority is necessary to pay the Costs of Issuance of the Series 2003 Bonds, and other costs in connection with the issuance of the Series 2003 Bonds, to the extent not otherwise funded from proceeds of the Bonds of such Series;

(b) During any Interest Period other than a Fixed Rate Interest Period, on the date which is three (3) Business Days immediately preceding each Interest Payment Date for any Series 2003 Bond, an amount in immediately available funds equal to the interest payable on such Interest Payment Date;

(c) During the Fixed Rate Interest Period, on the tenth (10th) day of each month commencing on the tenth (10th) day of the month in which the Series 2003 Bonds commenced to bear interest at the Fixed Rate, one-sixth (1/6) of the interest coming due on the immediately succeeding Interest Payment Date; provided, however, that, if there are less than six (6) such payment dates prior to the first Interest Payment Date after the Fixed Rate Conversion Date, on each payment date prior to such Interest Payment Date the Institution shall pay with respect to the Series 2003 Bonds an amount equal to the interest coming due 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 such first Interest Payment Date;

(d) Commencing on July 10, 2006 and continuing thereafter on the tenth (10th) day of each month one-twelfth (1/12) of the principal and Sinking Fund Installment coming due on the immediately succeeding July 1;

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(e) During the Weekly Rate Interest Period, on the Business Day on which any tendered Series 2003 Bonds which have not been remarketed pursuant to the Resolution are to be purchased, an amount equal to the Purchase Price of such Bonds; provided, however, the Institution shall be deemed to have paid the Purchase Price of such Bonds if the Credit Facility Provider has honored a draw on the Credit Facility to pay such Purchase Price;

(f) On or before any date on which the Redemption Price of Series 2003 Bonds previously called for redemption is to be paid, the amount required to pay the Redemption Price of such Series 2003 Bonds, and to the extent such amount need be Available Moneys as required by the Resolution or the Series 2003 Resolution to effect any such action, such payment shall be made and be on deposit as necessary to effect a redemption of such Series 2003 Bonds;

(g) [Reserved];

(h)(i) From the Issue Date of the Series 2003 Bonds to the date that no Series 2003 Bonds are Outstanding, the Authority's Annual Administrative Fee as set forth in Exhibit C to the Loan Agreement. Such Annual Administrative Fee shall be payable semiannually commencing on the first June 10 or December 10 after delivery of the Series 2003 Bonds and on every June 10 and December 10 thereafter through the final maturity date or earlier date of redemption in full of such Bonds;

(ii) Upon the conversion of the Series 2003 Bonds to the Fixed Rate Interest Period, all reasonable internal expenses allocable to such conversion and all out-of-pocket expenses of the Authority;

(i) Promptly after notice from the Authority, but in any event not later than fifteen (15) days after such notice is given, the amount set forth in such notice as payable to the Authority (i) to reimburse the Authority for payments made by it pursuant to this summarized section and any expenses or liabilities incurred by the Authority pursuant to the sections entitled "Covenant as to Insurance", "Taxes and Assessments" and "Indemnity by Institution" of the Loan Agreement, (ii) to reimburse the Authority for any external costs or expenses incurred by it attributable to the issuance of a Series of Bonds or the financing of the Series 2003 Project, (iii) for the costs and expenses incurred by the Authority to compel full and punctual performance by the Institution of all the provisions of the Loan Agreement, or the Resolution in accordance with the terms of the Loan Agreement and thereof, and (iv) for the fees and expenses of the Trustee and any Paying Agent in connection with performance of their duties under the Resolution;

(j) Promptly upon demand by an Authorized Officer of the Authority (a copy of which shall be furnished to the Trustee), all amounts required to be paid by the Institution as a result of an acceleration pursuant to the section entitled "Defaults and Remedies" of the Loan Agreement;

(k) On the Issue Date of the Series 2003 Bonds, the Authority Fee, as set forth in Exhibit D of the Loan Agreement;

(l) Promptly upon demand by an Authorized Officer of the Authority, the difference between the amount on deposit in the Arbitrage Rebate Fund available to be rebated in connection with the Series 2003 Bonds of a Series or otherwise available therefor under the Resolution or the Series 2003 Resolution for the payment of any rebate required by the Code to be made 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 the Series 2003 Bonds;

(m) Notwithstanding anything to the contrary contained in the Loan Agreement, on the Business Day prior to the final maturity date of the Series 2003 Bonds or the date of the final Sinking Fund Installment on the Series 2003 Bonds, an amount equal to the principal of the Outstanding Series 2003 Bonds.

Subject to the provisions of the Loan Agreement and of the Resolution or the Series 2003 Resolution, the Institution shall receive a credit against the amount required to be paid by the Institution during a Bond Year pursuant to paragraph (d) above of this summarized section on account of a Sinking Fund Installment if, prior to the date notice of redemption is given pursuant to the Resolution with respect to the Series 2003 Bonds to be redeemed through a Sinking Fund Installment payable on the next succeeding July 1, the Institution delivers to the Trustee for

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cancellation one or more Bonds of the maturity to be so redeemed on such July 1. The amount of the credit shall be equal to the principal amount of the Bonds so delivered.

The Authority directed the Institution in the Loan Agreement, and the Institution agreed, to make the payments required by paragraph (a) above of this summarized section directly to the Trustee for deposit and application in accordance with the Resolution, to make the payments required by paragraphs (b), (c), (d), (e), (f), (j) and (m) of this summarized section directly to the Trustee for deposit and application in accordance with the Resolution and the Series Resolution, the payments required by paragraph (l) of this summarized section directly to the Trustee for deposit in the Arbitrage Rebate Fund, the payments required by paragraphs (h) and (k) of this summarized section directly to the Authority.

Notwithstanding any provisions in the Loan Agreement or in the Resolution to the contrary (except as otherwise specifically provided for in this summarized section), (i) all moneys paid by the Institution to the Trustee pursuant to paragraphs (b), (c), (d), (e), (f) (j), (l) and (m) of this summarized section (other than moneys received by the Trustee pursuant to the section entitled "Compensation" of the Resolution which shall be retained and applied by the Trustee for its own account) shall be received by the Trustee as agent for the Authority in satisfaction of the Institution's indebtedness to the Authority with respect to the interest on and principal, Redemption Price or Purchase Price of the Bonds to the extent of such payment and (ii) the deposit and application by the Trustee of any moneys (other than moneys described in paragraph (i) of this summarized section above) to the payment of the principal, Redemption Price or Purchase Price of the Outstanding Series 2003 Bonds, in accordance with the applicable provisions of the Loan Agreement or of the Resolution and the Series 2003 Resolution, shall be deemed, upon such deposit and application, receipt from the Institution of a payment in satisfaction of that portion of the Institution's indebtedness to the Authority with respect to principal of the Series 2003 Bonds to the extent of the amount of moneys so applied. Immediately after receipt of such moneys by the Trustee, 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 Bondholders and the Credit Facility Provider, regardless of the actual due date or applicable payment date of any payment to the Bondholders, except in respect to the payment to the Institution by the Trustee as provided for in the Resolution.

As further consideration for the issuance of the Bonds and the loan of the proceeds of the Bonds, the Institution agreed in the Loan Agreement to cause a Credit Facility to be issued in the name of and delivered to the Trustee concurrently with, or prior to, the authentication and delivery of the initial Series of Bonds.

The obligations of the Institution to make payments or cause the same to be made under the Loan Agreement shall be complete and unconditional and the amount, manner and time of making such payments shall not be decreased, abated, postponed or delayed for any cause or by reason of the happening or non-happening of any event, irrespective of any defense or any right of set-off, recoupment or counterclaim which the Institution may otherwise have against the Authority, the Trustee or any Bondholder for any cause whatsoever including, without limiting the generality of the foregoing, failure of the Institution to complete the Series 2003 Project or the completion of the Loan Agreement with defects, failure of the Institution to occupy or use the Series 2003 Project, any declaration or finding that the Bonds or any Series of Bonds, are or the Resolution is invalid or unenforceable or any other failure or default by the Authority or the Trustee; provided, however, that nothing in the Loan Agreement shall be construed to release the Authority from the performance of any agreements on its part contained in the Loan Agreement or any of its other duties or obligations, and in the event the Authority shall fail to perform any such agreement, duty or obligation, the Institution may institute such action as it may deem necessary to compel performance or recover damages for non-performance. Notwithstanding the foregoing, the Authority shall have no obligation to perform its obligations under the Loan Agreement to cause advances to be made up to reimburse the Institution for, or to pay, the Costs of the Series 2003 Project beyond the extent of moneys in the Construction Fund available therefor.

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

An Authorized Officer of the Authority, for the convenience of the Institution, shall furnish to the Institution statements of the due date, purpose and amount of payments to be made pursuant to the Loan Agreement (other than with respect to interest due prior to the Fixed Rate Conversion Date). The failure to furnish such statements shall not excuse nonpayment of the amounts payable under the Loan Agreement at the time and in the manner provided by the Loan Agreement. The Institution shall notify the Authority as to the amount and date of each payment made to the Trustee by the Institution.

The Authority shall have the right in its sole discretion to make on behalf of the Institution any payment required pursuant to this summarized section which has not been made by the Institution when due. No such payment by the Authority shall limit, impair or otherwise affect the rights of the Authority under the section entitled "Defaults and Remedies" of this summarized section arising out of the Institution's failure to make such payment and no payment by the Authority shall be construed to be a waiver of any such right or of the obligation of the Institution to make such payment.

The Institution, 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 accordance with the directions of an Authorized Officer of the Authority in the Debt Service Fund or held by the Trustee for the payment of Bonds in accordance with the Resolution or for reimbursement of a Credit Facility Provider in accordance with the Resolution. Upon any voluntary payment by the Institution or any deposit in the Debt Service Fund made pursuant to paragraph (f) of this summarized section, the Authority agrees, if and to the extent the amount so paid constitutes Available Moneys, to direct the Trustee to purchase or redeem Bonds in accordance with the Resolution or to give the Trustee irrevocable instructions in accordance with the Resolution; provided, however, that in the event such voluntary payment is in the sole judgment of the Authority sufficient to pay all amounts then due under the Loan Agreement and under the Resolution, including the purchase or redemption of all Bonds Outstanding, or to pay or provide for the payment of all Bonds Outstanding in accordance with the Resolution, the Authority agrees, in accordance with the instructions of the Institution, to direct the Trustee to purchase or redeem all Bonds Outstanding, or to cause all Bonds Outstanding to be paid or to be deemed paid in accordance with the Resolution.

*(Section 9)*

### **Reserve Funds**

Except to the extent a deposit is made to the applicable account of the Debt Service Reserve Fund upon the issuance of a Series of Bonds from the proceeds of the sale of such Bonds, simultaneously with the issuance of a Series of Bonds the Institution shall deliver to the Trustee for deposit in the Debt Service Reserve Fund, moneys, Government Obligations or Exempt Obligations the value of which is at least equal to the Debt Service Reserve Fund Requirement for such Series of Bonds.

The Institution shall at all times maintain on deposit in the Debt Service Reserve Fund money and securities permitted under the Resolution the value of which is not less than the Debt Service Reserve Fund Requirement; provided that the Institution shall be required to deliver additional securities permitted under the Resolution to the Trustee for deposit in the Debt Service Reserve Fund as a result of a deficiency therein only upon receipt of a notice thereof given pursuant to the Resolution. Deposits, withdrawals and substitutions of such securities in the Debt Service Reserve Fund shall be made in accordance with the Loan Agreement and with the Resolution.

Notwithstanding the foregoing, the Institution may, subject to the Reimbursement Agreement, deliver to the Trustee for deposit to the Debt Service Reserve Fund, letters of credit, surety bonds, or insurance policies for all or any part of the Debt Service Reserve Fund Requirement in accordance with and to the extent permitted by the Resolution.

The delivery to the Trustee of Government Obligations, Exempt Obligations and other Securities from time to time made by the Institution pursuant to this summarized section shall constitute a pledge thereof, and shall create a security interest therein, for the benefit of the Authority to secure performance of the Institution's obligations under the Loan Agreement and for the benefit of the Trustee to secure the performance of the obligations of the Authority under the Resolution. The Institution authorizes the Authority pursuant to the Resolution to pledge such Government Obligations, Exempt Obligations and other Securities to secure payment of the principal, Sinking Fund Installments, if any, and Redemption Price of, and interest on, the Bonds, whether at maturity, upon acceleration or otherwise, and the fees and expenses of the Trustee, and to make provisions for and give directions with respect to the custody, reinvestment and disposition thereof in any manner not inconsistent with the terms of the Loan Agreement and of the Resolution.

All Government Obligations, Exempt Obligations and other Securities deposited with the Trustee pursuant to this summarized section, other than United States Treasury Certificates of Indebtedness State and Local Government Series ("SLGS"), (subject to provisions for registration thereof) shall be fully negotiable and the

principal thereof and the interest, dividends or other income payable with respect thereto shall be payable to bearer or to the registered owner. All such Government Obligations, Exempt Obligations and other Securities in registered form shall be registered in the name of the Trustee (in its fiduciary capacity) or its nominee. Record ownership of all such Government Obligations, Exempt Obligations and other Securities shall be transferred promptly following their delivery to the Trustee into the name of the Trustee (in its fiduciary capacity) or its nominee. The Institution appointed the Trustee its lawful attorney-in-fact for the purpose of effecting such registrations and transfers pursuant to the Loan Agreement.

The Institution agreed in the Loan Agreement that upon each delivery to the Trustee of Government Obligations, Exempt Obligations or other Securities, whether initially or upon later delivery or substitution, the Institution shall deliver to the Authority and the Trustee a certificate of an Authorized Officer of the Institution to the effect that the Institution warrants and represents that the Government Obligations, Exempt Obligations or other Securities delivered by the Institution (i) are on the date of delivery thereof free and clear of any lien, pledge, charge, security interest or other encumbrance or any statutory, contractual or other restriction that would be inconsistent with or interfere with or prohibit the pledge, application or disposition thereof as contemplated by the Loan Agreement or by the Resolution and (ii) are pledged under the Loan Agreement pursuant to appropriate corporate action of the Institution duly had and taken.

Prior to the initial delivery of Government Obligations, Exempt Obligations or other Securities (other than moneys) to the Trustee pursuant to this summarized section, and upon any later delivery or substitution, the Institution will, at its cost and expense, provide to the Authority and the Trustee a written opinion of counsel satisfactory to the Authority to the effect that the Institution has full corporate power and authority to pledge such Government Obligations, Exempt Obligations and other Securities as security in accordance with the Loan Agreement, such Government Obligations, Exempt Obligations and other Securities have been duly delivered by the Institution to the Trustee, such delivery creates a valid and binding pledge and security interest therein in accordance with the terms of the Loan Agreement and of the Resolution, and nothing has come to the attention of such counsel that would lead it to believe that the Government Obligations, Exempt Obligations and other Securities delivered by the Institution are not free and clear of all liens, pledges, encumbrances and security interests or are subject to any statutory, contractual or other restriction which would invalidate or render unenforceable the pledge and security interest therein, or the application or disposition thereof, contemplated by the Loan Agreement or by the Resolution. In lieu of providing a written opinion of counsel to the Institution as required in the Loan Agreement after every substitution of Government Obligations, Exempt Obligations or other Securities in the Debt Service Reserve Fund, the Institution may provide such written opinion of counsel after the first substitution provided that it shall furnish to the Authority and the Trustee, once in every calendar quarter (in the first week of each January, April, July and October) thereafter in which a substitution is made, a further written opinion of counsel to the Institution to the effect that all Government Obligations, Exempt Obligations or other Securities deposited into any fund or account established under the Resolution, to and including the date of such opinion of counsel, comply with the requirements of this paragraph.

*(Section 10)*

#### **Security Interest in Pledged Revenues and Entrance Fees**

As security for the payment of all liabilities and the performance of all obligations of the Institution pursuant to the Loan Agreement, the Institution, in the Loan Agreement, does continuously pledge, grant a security interest in, and assign to the Authority the Pledged Revenues and Entrance Fees, together with the Institution's right to receive and collect the Pledged Revenues and Entrance Fees and the proceeds of the Pledged Revenues and Entrance Fees and of such right.

The Institution represents and warrants that no part of the Pledged Revenues or Entrance Fees or any right to receive or collect the same or the proceeds thereof is subject to any lien, pledge, security interest or assignment except in the case of Entrance Fees rights of the residents under the Residency Agreement, and that the Pledged Revenues and Entrance Fees assigned pursuant to the Loan Agreement are legally available to provide security for the Institution's performance under the Loan Agreement. Except as otherwise provided in the section entitled "Additional Parity Indebtedness" in the Loan Agreement, the Institution agrees, except as set forth in the section entitled "Additional Parity Indebtedness" in the Loan Agreement, that it shall not after the Loan Agreement create or permit the creation of any pledge, assignment, encumbrance, restriction, security interest in or other commitment of or with respect to the Pledged Revenues which is prior or equal to the pledge made by this paragraph.



*(Section 11)*

**Collection of Pledged Revenues**

Commencing on the date on which Bonds are first issued and delivered and continuing until no Bonds are Outstanding, the Institution shall deliver to the Trustee for deposit in accordance with the Resolution all Pledged Revenues within ten (10) days following the Institution's receipt thereof unless and until there is on deposit in the Debt Service Fund an amount at least equal to the principal and Sinking Fund Installments of and interest on Outstanding Bonds, assuming that Variable Interest Rate Bonds will, from and after the next succeeding date on which the rates at which such Variable Interest Rate Bonds bear interest are to be determined, bear interest at a rate per annum equal to the rate per annum at which such Variable Interest Rate Bonds then bear interest, plus one percent (1%) per annum, payable on and prior to the dates required therefor pursuant to paragraphs (b), (c), (d) and (f) of the section entitled "Financial Obligations of the Institution; General and Unconditional Obligation; Voluntary Payments" in the Loan Agreement, and the Redemption Price or purchase price of Outstanding Bonds theretofore called for redemption or contracted to be purchased (other than Option Bonds tendered or deemed to have been tendered for purchase or redemption), and accrued interest thereon to the date of redemption or purchase. In the event that, pursuant to the second paragraph (f) of the section entitled "Defaults and Remedies" of the Loan Agreement, the Authority notifies the Institution that account debtors are to make payments directly to the Authority or to the Trustee, such payments shall be made directly to the Authority or the Trustee notwithstanding anything contained in this summarized paragraph, but the Institution shall continue to deliver to the Trustee for deposit in accordance with the Resolution any payments received by the Institution with respect to the Pledged Revenues.

Notwithstanding anything to the contrary in the summarized paragraph immediately above, the Institution shall not be required, by virtue of the summarized paragraph immediately above to deliver Pledged Revenues to the Trustee for the benefit of Series 2003 Bondholders at any time that there are no amounts on account of interest, principal or Sinking Fund Installments with respect to the Series 2003 Bonds currently due and payable by the Institution under the Loan Agreement after giving effect to any grace periods.

Any Pledged Revenues collected by the Institution that are not required to be paid to the Trustee pursuant to this summarized section or the section entitled "Defaults and Remedies" in the Loan Agreement, including any amounts to make up any deficiencies in any funds or accounts established pursuant to the Resolution or any Bond Series Certificate, may be disposed of by the Institution for any of its corporate purposes, provided that no Event of Default (as defined in the section entitled "Defaults and Remedies" in the Loan Agreement), nor any event which but for the passage of time or the giving of notice, or both, would be an Event of Default, has occurred and is continuing.

*(Section 12)*

**The Mortgage; Lien on Fixtures, Furnishings and Equipment**

At or before the delivery by the Authority of the Series 2003 Bonds, the Institution shall execute and deliver to the Authority, the Mortgage, in recordable form, mortgaging the Mortgaged Property, which Mortgage shall constitute a first lien on the Mortgaged Property, subject only to the Permitted Encumbrances. Concurrently with the delivery of Bonds, the Authority will assign all of its rights under the Mortgage to the Trustee for the benefit of the Bondholders and to the Credit Facility Provider (the "Assignment"). The Trustee, with the consents of the Credit Facility Provider and the Authority, but without the consent of the Holders of the Bonds, may consent to the amendment, modification or termination of the Assignment or the amendment, modification, termination, subordination or satisfaction of the Mortgage and of any security interest in fixtures, furnishings or equipment located in or on the Mortgaged Property, and the Mortgaged Property or such security interest may be released from the lien of the Mortgage, all upon such terms and conditions as the Authority and the Credit Facility Provider may reasonably require. As a condition to such approval, the Authority may require that the Institution pay to the Trustee for deposit in the Debt Service Fund an amount not to exceed the aggregate principal amount of the Bonds Outstanding at the date of such transfer, sale or conveyance, as such amount is determined by the Authority. Subject to said Mortgage and the Assignment, the Institution may remove equipment, furniture or fixtures from the Mortgaged Property provided that the Institution substitutes equipment, furniture or fixtures having a value and utility at least equal to the equipment, furniture or fixtures removed or replaced.

*(Section 13)*

**Warranty as to Title; Encumbrances; Title Insurance**

The Institution warrants and represents to the Authority that (i) it has good and marketable title to the Series 2003 Project and all Mortgaged Property, 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 Institution's programs and (ii) the Institution has such rights of way, easements or other rights in land as may be reasonably necessary for ingress and egress to and from the Series 2003 Project and all Mortgaged Property, for proper operation and utilization of the Series 2003 Project and the Mortgaged Property and for utilities required to serve the Series 2003 Project and the Mortgaged Property, together with such rights of way, easements or other rights in, to and over land as may be necessary for construction by the Institution of the Series 2003 Project.

The Institution covenants that title to the Series 2003 Project and all Mortgaged Property 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 Trustee.

The Institution agrees to provide or reimburse the Authority for providing at the sole option of the Authority (i) a title insurance policy in form and substance, and by insurer(s), acceptable to the Authority, in the amount of the aggregate principal amount of Bonds issued or such other amount as is acceptable to the Authority, insuring the Mortgage to be a valid first lien on the Mortgaged Property, free and clear of liens and encumbrances except Permitted Encumbrances, and (ii) a current survey or surveys, including a metes and bounds description, of the Mortgaged Property, certified to the Authority and the issuer of the title insurance policy and showing any easements to which the Mortgaged Property is subject.

The Institution warrants, represents and covenants that (i) the Series 2003 Project and Mortgaged Property are and shall 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, the Series 2003 Project and Mortgaged Property shall have its own separate and independent means of access, apart from any other property owned by the Institution or others. Such access, however, may be through common roads or walks owned by the Institution used also for other parcels owned by the Institution.

*(Section 14)*

**Covenants, Representations and Warranties of the Institution**

The Institution consents to and authorizes the assignment, transfer or pledge by the Authority to the Trustee and the Credit Facility Provider of the Authority's rights under the Mortgage to secure any payment or the performance of any obligation of the Institution under the Loan Agreement or arising out of the transactions contemplated by the Loan Agreement whether or not the right to enforce such payment or performance shall be specifically assigned by the Authority to the Trustee and the Credit Facility Provider. The Institution further agrees that the Authority upon the occurrence and continuation of an Event of Default under the Resolution, may pledge and assign to the Trustee and the Credit Facility Provider any and all of the Authority's rights and remedies under the Loan Agreement. Upon any pledge and assignment by the Authority to the Trustee and the Credit Facility Provider authorized by this summarized section, the Trustee and such Credit Facility Provider shall be fully vested with all of the rights of the Authority so assigned and pledged and may thereafter exercise or enforce, by any remedy provided therefor by the Loan Agreement or by law, any of such rights directly in its own name. Any such pledge and assignment shall be limited to securing the Institution's obligation to make all payments required by the Loan Agreement and to performing all other obligations required to be performed by the Institution under the Loan Agreement and under the Reimbursement Agreement. Any realization upon the Mortgaged Property, and any pledge made or security interest granted by the Loan Agreement, shall not, by operation of law or otherwise, result in cancellation or termination of the Loan Agreement or the obligations of the Institution under the Loan Agreement.

The Institution covenants, warrants and represents that it is duly authorized by all applicable laws, its charter and by-laws to enter into the Loan Agreement, to incur the indebtedness contemplated by the Loan Agreement, to make and deliver the Mortgage, and to pledge, grant a security interest in and assign to the Authority and the Trustee, for the benefit of the Bondholders and the Credit Facility Provider, the Pledged Revenues, the Entrance Fees and the Government Obligations and Exempt Obligations in the manner and to the extent provided in the Loan Agreement and in the Resolution. The Institution 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 Provider, granted or made pursuant to the Loan Agreement or to the Mortgage are and shall

be free and clear of any pledge, lien, charge, security interest or encumbrance prior to the Loan Agreement, or of equal rank therewith, other than the Permitted Encumbrances, and that all corporate action on the part of the Institution to that end has been duly and validly taken. The Institution further covenants that the provisions of the Loan Agreement are and shall be valid and legally enforceable obligations of the Institution in accordance with their terms. The Institution 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 the Government Obligations, Exempt Obligations and all of the rights of the Authority and the Bondholders under the Loan Agreement and under the Resolution, any Series Resolution, any Bond Series Certificate and the Mortgage against all claims and demands of all persons whomsoever. The Institution further covenants, warrants and represents that the execution and delivery of the Loan Agreement, and of the Mortgage, and the consummation of the transaction contemplated by the Loan Agreement and thereby and compliance with the provisions of the Loan Agreement and thereof, including, but not limited to, the assignment as security or the granting of a security interest in the Government Obligations and Exempt Obligations do not violate, conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, the charter or by-laws of the Institution or any indenture or mortgage, or any trusts, endowments or other commitments or agreements to which the Institution is party or by which it or any of its properties are bound, or any existing law, rule, regulation, judgment, order, writ, injunction or decree of any governmental authority, body, agency or other instrumentality or court having jurisdiction over the Institution or any of its properties.

The Institution covenanted in the Loan Agreement to (i) maintain a Credit Facility in place in accordance with the terms of the Resolution, the Series 2003 Resolution and the Bond Series Certificate relating to a Series of Bonds so long as such Series of Bonds is Outstanding and (ii) obtain the prior approval of the Authority for any Substitute Credit Facility for any Series of Bonds. The Institution covenants to take all actions necessary to obtain a rating on each Series of Bonds of at least investment grade, including, but not limited to, obtaining a Substitute Credit Facility with respect thereto, in the event that (i) the rating of such Series of Bonds or the related Credit Facility Provider's claims-paying ability is withdrawn or is reduced below investment grade and (ii) the Authority requires the Institution to take such action; provided, however, that such Substitute Credit Facility is available (a) at commercially reasonable rates and (b) without imposing on the Institution or the Authority conditions, tests, covenants and restrictions materially more restrictive than those then contained in the Loan Agreement or in the Resolution. In the event the Institution is unable to obtain a rating on any Series of Bonds of at least investment grade pursuant to the terms of the Loan Agreement, the Authority may cause a redemption prior to maturity of such Series of Bonds at par pursuant to the Bond Series Certificate relating to such Series of Bonds.

*(Section 15)*

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

The Institution represents that it (i) is an organization described in Section 501(c)(3) of the Code, or corresponding provisions of prior law, and not a "private foundation," as such term is defined under Section 509(a) of the Code, (ii) has received a letter or other notification from the Internal Revenue Service to that effect and such letter or other notification has not been modified, limited or revoked, (iii) is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification and 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 (iv) is exempt from federal income taxes under Section 501(a) of the Code. The Institution agrees that it (a) shall not perform any act or enter into any agreement which would adversely affect such federal income tax status and shall conduct their operations in the manner which conforms to the standards necessary to qualify the Institution as a charitable organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law and (b) shall not perform any act, enter into any agreement or use or permit the Series 2003 Project to be used in any manner, or for any trade or business or other non-exempt use unrelated to the purposes of the Institution or the Related Corporations (as defined in the Tax Certificate and Agreement), which would adversely affect the exclusion of interest on the Bonds from federal gross income pursuant to Section 103 of the Code.

On the date on which the Bonds are issued, the Institution shall certify that the principal amount of Bonds and other obligations issued by or for the benefit of the Institution or any Affiliate, the interest on which is excluded from gross income for such purposes of federal income taxes, and which are treated as outstanding for such purposes of the Code, does not exceed the limitation thereon imposed by Section 145(b) of the Code. In addition, the Institution shall promptly notify the Authority upon the issuance of any notes, bonds or other obligations (other than

those issued by the Authority) by or for the benefit of the Institution or any Affiliate, the interest on which is excluded from gross income for the purposes of federal income taxes.

*(Section 16)*

### **Maintenance of Corporate Existence**

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

*(Section 18)*

### **Use of the Series 2003 Project; Restrictions on Religious Use**

The Institution agrees that (i) the Series 2003 Project shall be maintained and operated as a “facility for the aged,” as defined in the Act, and (ii) unless in the opinion of Bond Counsel the Series 2003 Project may be used or occupied other than as required by this summarized section, at least ninety-five percent (95%) of the Series 2003 Project shall be used only by or for qualified residents of the Series 2003 Project, or, on a temporary basis, persons connected with other activities incidental to the operations of the Institution subject to and consistent with the requirements of the last paragraph of this summarized section.

Subject to the rights, duties and remedies of the Authority under the Loan Agreement, the Institution shall have sole and exclusive control of, possession of and responsibility for (i) the Series 2003 Project and all Mortgaged Property, (ii) the operation of the Series 2003 Project and all Mortgaged Property and supervision of the activities conducted therein or in connection with any part thereof, and (iii) the maintenance, repair and replacement of the Series 2003 Project and all Mortgaged Property.

The Institution agrees that with respect to the Series 2003 Project or portion thereof, so long as the Series 2003 Project or portion thereof exists and unless and until the Series 2003 Project or portion thereof is sold for the fair market value thereof, the Series 2003 Project or any portion thereof shall not be used for sectarian religious purposes 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; and, further provided, however, that if at any time after the Loan Agreement, in the opinion of Bond Counsel, the then applicable law would permit the Series 2003 Project or a portion thereof to be used without regard to the above stated restriction, said restriction shall not apply to the Series 2003 Project and each portion thereof. The chapel has not been financed in whole or in part with the proceeds of the Series 2003 Bonds and shall not be deemed to be part of the Series 2003 Project; therefore, the restrictions on religious use above shall

not apply to the chapel. The Authority and its agents may conduct such inspections as the Authority deems necessary to determine whether the Series 2003 Project or any portion or real property thereof financed by Bonds is being used for any purpose proscribed by the Loan Agreement. The Institution further agreed in the Loan Agreement that prior to any disposition of any portion of the Series 2003 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 the Series 2003 Project to the restriction that (i) so long as such portion of the Series 2003 Project (and, if included in the Series 2003 Project, the real property on or in which such portion of the Series 2003 Project is situated) shall exist and (ii) until such portion of the Series 2003 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 the Series 2003 Project shall not be used for sectarian religious purposes 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 Series 2003 Project, or, if included in the Series 2003 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 this summarized section an involuntary transfer or disposition of the Series 2003 Project or a portion thereof, upon foreclosure or otherwise, shall be considered a sale for the fair market value thereof.

*(Sections 20 and 21)*

#### **Covenant as to Insurance**

The Institution shall procure and maintain, or cause to be procured and maintained, to the extent reasonably obtainable, from responsible insurers, insurance of the type and in the amounts customarily maintained by institutions providing services similar to those provided by the Institution. All policies of insurance required by this section shall be primary to any insurance maintained by the Authority.

The Institution shall, with respect to the Project and the Mortgaged Property, at the times specified in the following paragraphs, procure and maintain, or cause to be procured and maintained, to the extent reasonably obtainable, from responsible insurers acceptable to the Authority, the following insurance:

(a) with respect to any building or the Mortgaged Property the construction of which shall not have been completed (and until insurance is procured pursuant to summarized paragraph (b) immediately below), all risk builders' risk insurance against direct physical loss or damage, or with respect to the acquisition and installation of equipment or machinery, in lieu of all risk builders' risk, an installation floater on an all risk basis. The amount of such insurance shall be on a one hundred per cent (100%) completed value basis on the insurable portion;

(b) at all times (except during a period when builders' risk insurance is in effect as required by summarized paragraph (a) immediately above), all risk property insurance against direct physical loss or damage to the Project or the Mortgaged Property in an amount not less than one hundred per cent (100%) of the replacement value thereof (such replacement value to be determined on the basis of replacement costs without allowance for depreciation), exclusive of excavations and foundations and similar property normally excluded under New York standard forms; provided, however, that the inclusion of the Project or the Mortgaged Property under a blanket insurance policy or policies of the Institution insuring against the aforesaid hazards in an amount aggregating at least one hundred per cent (100%) of the insurable value of the insured property, exclusive of excavations and foundations and similar property normally excluded under New York standard forms, shall constitute complete compliance with the provisions of this summarized paragraph with respect to the Project or the Mortgaged Property; provided further, that in any event, each such policy shall be in an amount sufficient to prevent the Institution and the Authority from becoming co-insurers under the applicable terms of such policy;

(c) at all times, statutory workers' compensation insurance, covering loss resulting from injury, sickness, disability or death of employees and employer's liability insurance with limits of at least \$1,000,000 for each accident, each sickness, and aggregate occupational illness or sickness;

(d) at all times, statutory disability benefits;

## ***Appendix B***

(e) at all times, commercial general liability insurance protecting the Authority and the Institution against loss or losses from liabilities arising from bodily injury of persons or damage to the property of others caused by accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of injury to persons or property damage with \$2,000,000 policy aggregate, excluding liability imposed upon the Authority or the Institution by any applicable workers' compensation law;

(f) commencing with the date on which the Project or any improvement on the Mortgaged Property or any part thereof is completed or first occupied, or any equipment, machinery, fixture or personal property covered by comprehensive boiler and machinery coverage is accepted, whichever occurs earlier, insurance providing comprehensive boiler and machinery coverage in an amount considered adequate by the Authority, which insurance may include deductible provisions approved by the Authority;

(g) Professional Liability or medical malpractice insurance providing protection for loss resulting from legal obligations caused or allegedly caused by malpractice or alleged malpractice, with limits of at least in the amount in effect at the time of execution of the Loan Agreement but in any event not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate;

(h) each other form of insurance which the Institution is required by law to provide and such other kinds of insurance in such amounts as from time to time may be reasonably required by the Authority.

Any insurance procured and maintained by the Authority or the Institution pursuant to this summarized section, including any blanket insurance policy, may include deductible provisions reasonably satisfactory to the Authority and the Institution. In determining whether or not any insurance required by this summarized section is reasonably obtainable or if the deductible on any such insurance is a reasonable deductible, the Authority may rely solely and exclusively upon the advice and judgment of any insurance consultant chosen by the Institution and approved by the Authority, and any such decision by the Authority, based upon such advice and judgment, shall be conclusive.

No provision of this summarized section shall be construed to prohibit the Institution from self-insuring against any risk at the recommendation of any insurance consultant chosen by the Institution and approved by the Authority provided, however, that self insurance plans shall not cover property, plant and equipment. The Institution shall also cause an annual evaluation of such self-insurance plans to be performed by an independent insurance consultant. The Institution shall provide adequate funding of such self-insurance if and to the extent recommended by such insurance consultant and approved by the Authority.

Each policy maintained pursuant to this summarized section shall provide that the insurer writing such policy shall give at least thirty (30) days notice in writing to the Authority, the Trustee and each Applicable Credit Facility Provider of the cancellation or non-renewal or material change in the policy unless a lesser period of notice is expressly approved in writing by the Authority. The Institution, not later than July 15 of each year, shall provide to the Authority, the Trustee and each Applicable Credit Facility Provider certificate(s) of insurance describing all policies of insurance maintained as of June 30 by the Institution pursuant to this summarized section stating with respect to each such policy (i) the insurer, (ii) the insured parties or loss payees, (iii) the level of coverage, and (iv) such other information as the Authority may have reasonably requested.

All policies of insurance shall be open to inspection by the Authority, the Trustee and each Applicable Credit Facility Provider or their respective representatives at all reasonable times. If any change shall be made in any such insurance, a description and notice of such change shall be furnished to the Authority, the Trustee and each Applicable Credit Facility Provider at the time of such change. The Institution covenants and agrees not to make any change in any policy of insurance which would reduce the coverages or increase the deductible thereunder without first securing the prior written approval of the Authority, the Trustee and each Applicable Credit Facility Provider.

All policies of insurance required pursuant to the second paragraph of this summarized section, other than policies of workers' compensation insurance, shall include the Authority and the Institution, and, upon assignment of a Mortgage pursuant to the Resolution, the assignees of the Authority, including, without limitation, the Trustee and each Applicable Credit Facility Provider as additional insureds or as mortgagee or as loss payee as appropriate.

In the event the Institution fails to provide the insurance required by the second paragraph of this summarized section, the Authority may elect at any time thereafter to procure and maintain the insurance required by this summarized section at the expense of the Institution. The policies procured and maintained by the Authority

shall be open to inspection by the Institution at all reasonable times, and, upon request of the Institution, a complete list describing such policies as of the June 30 preceding the Authority's receipt of such request shall be furnished to the Institution by the Authority.

*(Section 23)*

**Damage or Condemnation**

In the event of a taking of the Series 2003 Project or the Mortgaged Property or any portion thereof by eminent domain or of condemnation, damage or destruction affecting all or part of the Series 2003 Project or Mortgaged Property, then and in such event the entire proceeds of any insurance, condemnation or eminent domain award shall be paid upon receipt thereof by the Institution or the Authority, and subject to the terms of the Intercreditor Agreement, to the Trustee for deposit in the Construction Fund established in connection with the Series 2003 Project, and

(a) if within 120 days from the receipt by the Authority of actual notice or knowledge of the occurrence, the Institution, the Authority and the Credit Facility Provider agree in writing that the Series 2003 Project, the Mortgaged Property or the affected portion thereof shall be repaired, replaced or restored, the Institution shall proceed to repair, replace or restore the Series 2003 Project, the Mortgaged Property 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 Institution and approved in writing by the Authority and the Credit Facility Provider. The funds required for such repair, replacement or restoration shall be paid from time to time as the work progresses, subject to such conditions and limitations as the Authority and the Credit Facility Provider may reasonably 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 Institution; or

(b) if no agreement for the repair, restoration or replacement of the Series 2003 Project, the Mortgaged Property or the affected portion thereof shall be reached by the Authority, the Institution and the Credit Facility Provider within such 120 day period, all respective proceeds (other than the proceeds of builders' risk insurance which shall be deposited pursuant to the Resolution and the Series Resolution or Bond Series Certificate) shall be transferred from the Construction Fund in which such proceeds were deposited to the Debt Service Fund for the redemption at par, at the option of the Authority, of Bonds on any future interest payment date; provided, however, that if the Institution and the Credit Facility Provider so agree, the Institution shall proceed to repair, replace or restore the Series 2003 Project, the Mortgaged Property or the affected portion thereof with the proceeds of any insurance, condemnation or eminent domain award on deposit in the Construction Fund.

*(Section 24)*

**Defaults and Remedies**

As used in the Loan Agreement the term "Event of Default" shall mean:

(a) the Institution shall default in the timely payment of any amount payable, or in the delivery of any Securities required, pursuant to the sections entitled "Financial Obligations of the Institution; General and Unconditional Obligation; Voluntary Payments" and "Reserve Funds" of the Loan Agreement or the payment of any other amounts required to be delivered or paid in accordance with the Loan Agreement or with the Resolution, and such default continues for a period in excess of seven (7) days;

(b) the Institution defaults in the due and punctual performance of any other covenant in the Loan Agreement contained and such default continues for thirty (30) days after written notice requiring the same to be remedied shall have been given to the Institution by the Authority or the Trustee; provided, however, in the event the breach of the covenant is of such a nature that it cannot be remedied, in the judgment of the Authority within thirty (30) days, there shall be no default so long as the Institution is diligently pursuing all possible remedial actions;

(c) as a result of any default in payment or performance required of the Institution under the Loan Agreement or any 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

## *Appendix B*

default or event of default shall remain uncured or the Trustee or Holders of the Bonds shall be seeking the enforcement of any remedy under the Resolution as a result thereof;

(d) the Institution shall be in default under the Mortgage or an Event of Default shall have occurred under the Mortgage and such default or Event of Default continues beyond any applicable grace period;

(e) the Institution shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, other than an order of a court related to acts permitted under the section entitled "Maintenance of Corporate Existence in the Loan Agreement, (iii) make a general assignment for the benefit of its general creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (v) be adjudicated insolvent or be liquidated or (vi) take corporate action for the purpose of any of the foregoing;

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

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

(h) a petition to dissolve the Institution or revoke its license to operate its facilities shall be filed by the Institution with the legislature of the State or other governmental authority having jurisdiction over the Institution;

(i) an order of dissolution of the Institution shall be made by the State or other governmental authority having jurisdiction over the Institution, which order is not dismissed or stayed for an aggregate of thirty (30) days;

(j) a petition, other than a petition related to acts permitted under the section entitled "Maintenance of Corporate Existence" in the Loan Agreement, shall be filed with a court having jurisdiction for an order directing the sale, disposition or distribution of all or substantially all of the property belonging to the Institution, which petition is not dismissed or stayed for an aggregate of ninety (90) days;

(k) an order of a court having jurisdiction, other than an order of a court related to acts permitted under the section entitled "Maintenance of Corporate Existence" in the Loan Agreement, shall be made directing the sale, disposition or distribution of all or substantially all of the property belonging to the Institution, which order is not dismissed or stayed for an aggregate of thirty (30) days;

(l) giving of notice by the Credit Facility Provider to the Authority and the Trustee of the occurrence of an Event of Default under certain sections of the Reimbursement Agreement, as more fully provided therein; or

(m) a final judgment for the payment of money which in the judgment of the Authority will adversely affect the rights of the Bondholders shall be rendered against the Institution and at any time after thirty (30) days from the entry thereof, (i) such judgment shall not have been discharged or (ii) the Institution shall not have taken and be diligently prosecuting an appeal therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, and shall not have caused, within thirty (30) 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.

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

(a) declare all sums payable by the Institution under the Loan Agreement immediately due and payable;

(b) direct the Trustee to withhold any and all payments, advances and reimbursements from the proceeds of Bonds or any Construction Fund or otherwise to which the Institution may otherwise be entitled under the Loan Agreement and in the Authority's sole discretion apply any such proceeds or moneys for such purposes as



## *Appendix B*

are authorized by the Resolution; provided, that the Credit Facility Provider shall be given a reasonable opportunity in the judgment of the Authority to cure any such default giving rise to any such direction other than a default which in the Authority's judgment results in either a violation of the statutory purposes under the Act pursuant to which the Bonds were issued or threatens to cause the interest on the Bonds to be includable in the gross income of holders of such Bonds;

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

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

(e) permit, direct or request the Trustee to liquidate all or any portion of the assets of the Debt Service Reserve Fund by selling the same at public or private sale in any commercially reasonable manner and apply the proceeds thereof and any dividends or interest received on investments thereof to the payment of the principal or Redemption Price and interest on the Bonds, or any other obligation or liability of the Institution or the Authority arising from the Loan Agreement or from the Resolution;

(f) 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 sections entitled "Security Interest in Pledge Revenues and Entrance Fees" and "Collection of Pledged Revenues and Entrance Fees" in the Loan Agreement, by any one or more of the following actions: (i) enter the Institution and examine and make copies of the financial books and records of the Institution 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 Institution 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 2003 Bonds on the next January 1 and July 1, subject to the Prior Pledges and of acceleration to the extent of Pledged Revenues, and may continue to do so commencing on each January 1 and July 1 to the extent of amounts due to the Authority under the Loan Agreement on the next July 1 and January 1, with respect to Pledged Revenues, until such amounts are fully collected; provided, however, that written notice of such notification shall be mailed to the Institution five (5) days prior to mailing or otherwise making such notification to account debtors; and provided further that until the Institution 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 Institution's account debtors by suit or other means and give a full acquittance therefor and receipt therefor in the name of the Institution whether or not the full amount of any such account receivable or contract right owing shall be paid to the Authority; (iv) require the Institution 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 Institution 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 Institution 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 Institution when all Events of Default under the Loan Agreement by the Institution have been cured; (v) forbid the Institution 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 Institution any checks or other orders for the payment of money representing any unpaid assigned Pledged Revenues or the proceeds thereof;

(g) to the extent permitted by law, (i) enter upon the Series 2003 Project and complete the construction of the Series 2003 Project in accordance with the plans and specifications with such changes therein as the Authority may deem appropriate and employ watchmen to protect the Series 2003 Project, all at the risk, cost and expense of the Institution, consent to such entry being by the Loan Agreement given by the Institution, (ii) at any time discontinue any work commenced in respect of the construction of the Series 2003 Project or change any

course of action undertaken by the Institution and not be bound by any limitations or requirements of time whether set forth in the Loan Agreement or otherwise, (iii) assume any construction contract made by the Institution, to the extent possible, in any way relating to the construction of the Series 2003 Project and take over and use all or any part of the labor, materials, supplies and equipment contracted for by the Institution, whether or not previously incorporated into the construction of the Series 2003 Project, and (iv) in connection with the construction of the Series 2003 Project undertaken by the Authority pursuant to the provisions of this summarized paragraph, (x) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment in connection with the construction of the Series 2003 Project, (y) pay, settle or compromise all bills or claims which may become liens against the Series 2003 Project or the Mortgaged Property, or against any moneys of the Authority applicable to the construction of the Series 2003 Project, or which have been or may be incurred in any manner in connection with completing the construction of the Series 2003 Project or for the discharge of liens, encumbrances or defects in the title to the Series 2003 Project or the Mortgaged Property, or against any moneys of the Authority applicable to the construction of the Series 2003 Project, and (z) take or refrain from taking such action under the Loan Agreement as the Authority may from time to time determine. The Institution shall be liable to the Authority for all sums paid or incurred for construction of the Series 2003 Project whether the same shall be paid or incurred pursuant to the provisions of this summarized paragraph or otherwise, and all payments made or liabilities incurred by the Authority under the Loan Agreement of any kind whatsoever shall be paid by the Institution to the Authority upon demand. The Institution irrevocably constituted and appointed the Authority its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Institution for the purpose of exercising the rights granted to the Authority by this summarized paragraph during the term of the Loan Agreement;

(h) take any action necessary to enable the Authority to realize on its liens under the Loan Agreement, under the Mortgage and the Gross Receipts Security Agreement, or by law, including foreclosure of the Mortgage, and any other action or proceeding permitted by the terms of the Loan Agreement, by the Mortgage and the Gross Receipts Security Agreement, or by law; and

(i) realize upon any security interest in the fixtures, furnishings and equipment, including any one or more of the following actions: (i) enter the Series 2003 Project or the Mortgaged Property and take possession of any such fixtures, furnishings and equipment; (ii) sell, lease or otherwise dispose of any such fixtures, furnishings and equipment either together with a sale, lease or other disposition of the Mortgaged Property pursuant to the Loan Agreement or to the Mortgage, or separately, whether or not possession has been secured; provided, however, that if sold, leased or otherwise disposed of separately, such sale, lease or other disposition shall be in commercially reasonable manner and upon five (5) days prior written notice to the Institution of the time and place of such sale.

All rights and remedies in the Loan Agreement given or granted to the Authority are, to the extent permitted by law, 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 the second paragraph (a) of this summarized section and its consequences if such Events of Default shall be cured. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereto.

*(Section 29)*

### **Arbitrage**

The Institution covenants that it shall not take any action or inaction, nor fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds under Section 103 of the Code. Without limiting the generality of the foregoing, the Institution covenants that it will comply with the instructions and requirements of a Tax Certificate and Agreement, which is incorporated in the Loan Agreement as if set forth fully in the Loan Agreement. The Institution shall not, pursuant to an arrangement, formal or informal, purchase Bonds in an amount related to the amount of any obligation to be acquired from the Institution by the Authority. The Institution will, on a timely basis, provide the Authority with all necessary information and, with respect to the Institution's Rebate

Requirement or Yield Reduction Payments required to be paid, funds not in the Authority's possession, to enable the Authority to comply with the arbitrage and rebate requirements of the Code as identified in the Resolution.

*(Section 34)*

**Rebate Calculation**

The Authority shall retain in its possession, so long as required by the Code, copies of all documents, reports and computations made by it in connection with the calculation of Excess Earnings and the rebate of all or a portion thereof to the Department of the Treasury of the United States of America, which shall be subject at all reasonable times to the inspection of the Institution and its agents and representatives, any of whom may make copies thereof. Upon written request from the Institution, the Authority shall as soon as practicable provide the Institution with a copy of such documents, reports and computations.

*(Section 35)*

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

The Loan Agreement may be amended only in accordance with the Resolution and the Intercreditor Agreement and each amendment shall be made by an instrument in writing signed by an Authorized Officer of the Institution and of the Authority, an executed counterpart of which shall be filed with the Trustee. The Institution also covenants that (i) it shall not execute a reimbursement agreement to provide for a Substitute Credit Facility without the prior written consent of the Authority, which consent the Authority shall grant in its sole and absolute discretion and (ii) it shall promptly provide a copy of any amendment or supplement to any Reimbursement Agreement to the Authority and the Trustee.

The Institution shall use its best efforts to obtain an extension of any Credit Facility or a Substitute Credit Facility or a Substitute Confirming Letter of Credit not later than the 60th day prior to the expiration date of any Credit Facility or any Confirming Letter of Credit.

*(Section 41)*

**Termination**

The Loan Agreement shall remain in full force and effect until no Bonds are Outstanding and until all other payments, expenses and fees payable under the Loan Agreement by the Institution shall have been made or provision made for the payment thereof in accordance with the terms of the Loan Agreement; provided, however, that the liabilities and the obligations of the Institution under paragraph (j) of the section entitled "Financial Obligations of the Institution; General and Unconditional Obligation; Voluntary Payments" of the Loan Agreement and to provide reimbursement for or indemnification against expenses, costs or liabilities made or incurred pursuant to the sections entitled "Covenant as to Insurance", "Taxes and Assessments" and "Indemnity by Institution" of the Loan Agreement shall nevertheless survive any such termination. Upon termination, the Authority shall promptly deliver such documents as may be reasonably requested by the Institution to evidence such termination and the discharge of the Institution's duties under the Loan Agreement, including the satisfaction of the Mortgage and the release or surrender of any security interests granted by the Institution to the Authority pursuant to the Loan Agreement.

*(Section 43)*

**Additional Parity Indebtedness**

The Institution may incur additional indebtedness secured equally and ratably with respect to the lien on the Mortgaged Property and the Pledged Revenues with the prior written consent of the Authority and the Credit Facility Provider, each acting in its sole discretion.

*(Section 50)*

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**SUMMARY OF CERTAIN  
PROVISIONS  
OF THE RESOLUTION**

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## **SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION**

The following is a summary of certain provisions of the Resolution pertaining to the Bonds and the Project. Except as noted in the Resolution, the provisions described in such summary are identical to the Resolution. In all cases the discussion of the various funds, accounts, and credit facilities are to the ones applicable to each issue of Bonds and the funds, accounts and credit facilities relating to or supporting one issue of Bonds do not relate to or purport to be complete and reference is made to the Resolution for full and complete statement of their provisions. Defined terms used in this Appendix C shall have the meanings ascribed to them in Appendix A.

### **Resolution, Series Resolutions 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 revenue bonds in one or more Series, each such Series to be authorized by a separate Applicable Series Resolution and, inter alia to be separately secured from each other Series of Bonds; provided, however, that each Series of Bonds shall be equally and ratably secured by the Pledged Revenues and the Mortgaged Property. Each such Series of Bonds shall be separate and apart from any other Series of Bonds authorized by a different Series Resolution and the Holders of Bonds of such Series shall not be entitled to the rights and benefits conferred upon the Holders of Bonds of any other Series of Bonds by the respective Series Resolution authorizing such Series of Bonds. With respect to each Applicable Series of Bonds, in consideration of the purchase and acceptance of any and all of the Bonds of an Applicable Series authorized to be issued under the Resolution and under the Applicable Series Resolution by those who shall hold or own the same from time to time, the Resolution and the Applicable 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 the Bonds of an Applicable Series, and the pledge and assignment made in the Resolution and the covenants and agreements set forth to be performed by or on behalf of the Authority 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 a Series over any other Bonds of such Series except as expressly provided by the Resolution or by the Applicable Series Resolution.

*(Section 1.03)*

### **Collateral Assignment of Certain Rights and Remedies to the Trustee and the Credit Facility Provider.**

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 Credit Facility Provider pursuant to the Applicable Reimbursement Agreement and for the performance of any other obligations of the Institution thereunder, the Authority assigned to the Trustee and to the Applicable Credit Facility Provider all of the Authority's estate, right, title, interest and claim in, to and under the Applicable Mortgage and the Applicable Gross Receipts Security Agreement, subject to the 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 with the Resolution) all insurance proceeds, sale proceeds and other payments and other security now or after the Resolution payable to or receivable by the Authority under the Mortgage and the Gross Receipts Security 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 Mortgage and the Gross Receipts Security Agreement, 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 Applicable Gross Receipts Security 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 Credit Facility Provider as permitted by the Resolution 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 Institution made with respect to the Applicable Mortgage and the Applicable Gross Receipts Security Agreement pursuant to this summarized paragraph shall secure only the payment of amounts payable under the Applicable Mortgage and the Applicable Loan Agreement and the amounts payable under the Applicable Reimbursement Agreement; provided, further, that the Authority shall retain its parity interest in the proceeds of any remedial action

with respect to the Gross Receipts Security Agreement in an amount equal to the Institution'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 Substitute 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.

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 Credit Facility Provider with respect to such Series of Bonds to the effect that the Intercreditor Agreement among the Authority, such Credit Facility Provider and the Trustee is in form and substance satisfactory to them (which may be evidenced by the execution thereof by the Authority and such Credit Facility Provider), 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 Credit Facility Provider such Intercreditor Agreement. In addition, an Authorized Officer of the Trustee shall execute and deliver to the Authority and such Credit Facility Provider such amendments to or supplements of such Intercreditor Agreement as may be requested by an Authorized Officer of the Authority.

In addition, the Trustee acknowledges that the Authority has the right under the Loan Agreement to declare an "event of default" thereunder and that under certain circumstances may be prohibited from so doing by the Intercreditor Agreement, notwithstanding the provisions of the sections entitled "Acceleration of Maturity" and "Enforcement of Remedies" of the Resolution

*(Section 1.04)*

#### **Refunding Bonds and Additional Obligations**

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 one or more maturities of a Series of Outstanding Bonds. The Authority may issue Refunding Bonds in an aggregate principal amount sufficient, together with other moneys available therefor, to accomplish such refunding and to make such deposits required by the provisions of this summarized section 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 section entitled "Provisions for Issuance of Bonds" in 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 section entitled "Defeasance" in the Resolution to the Holders of the Bonds being refunded;

(c) Either (i) moneys in an amount sufficient to effect payment at 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 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 section entitled "Defeasance" in the Resolution, which Defeasance Securities and moneys shall be held in trust and used only as provided in said section; 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 this summarized section.



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.

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, entitled to a charge or lien or right prior or equal to the charge or lien created by the Resolution, or prior or equal to the rights of the Authority and Holders of Bonds provided by the Resolution or with respect to the moneys pledged under the Loan Agreement.

*(Section 2.05 and 2.06)*

### **Pledge of Revenues**

The proceeds from the sale of an Applicable Series of Bonds, the Applicable Revenues, the Authority's security interest in the Pledged Revenues and all funds established by the Resolution and by an Applicable Series Resolution, other than the Applicable Credit Facility Provider Repayment Fund and the Applicable Arbitrage Rebate Fund, are by the Resolution pledged and assigned to the Trustee as security for the payment of the principal, Sinking Fund Installments, if any, and Redemption Price of and interest on the Applicable Series of Bonds and as security for the performance of any other obligation of the Authority under the Resolution and under an Applicable Series Resolution and, together with the Applicable Credit Facility Provider Repayment Fund, to each Applicable Credit Facility Provider as security for the Institution's performance of its obligations under the Applicable Reimbursement Agreement, all in accordance with the provisions of the Resolution and thereof; provided, however, that all Bonds shall be equally and ratably secured with respect to the Pledged Revenues and the Mortgaged Property. The pledge of the Applicable Revenues shall also be for the benefit of each Applicable Facility Provider as security for the payment of any amounts payable to such Facility Provider under the Resolution; **provided, however**, that such pledge shall, in all respects, be subject and subordinate to the rights and interest therein of the Bondholders and the Applicable Credit Facility Provider. The pledge made by the Resolution is valid, binding and perfected from the time when the pledge attaches and the proceeds from the sale of the Applicable Series of Bonds, the Applicable Revenues, the Authority's security interest in the Applicable Pledged Revenues and all funds and accounts established by the Resolution and by an Applicable Series Resolution which are pledged by the Resolution shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge 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 of the Resolution. No instrument by which such pledge is created nor any financing statement need be recorded or filed. The Bonds shall be special obligations of the Authority payable solely from and secured by a pledge of the proceeds from the sale of the Applicable Series of Bonds, the Applicable Revenues, the Authority's security interest in the Applicable Pledged Revenues and the funds and accounts established by the Resolution and which are pledged by the Resolution as provided in the Resolution, which pledge shall constitute a first lien thereon.

*(Section 5.01)*

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

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

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

Accounts and sub-accounts within each of the foregoing funds may from time to time be established in accordance with an Applicable Series Resolution, an Applicable Bond Series Certificate or upon the direction of the Authority. All moneys at any time deposited in any fund created by the Resolution, other than the Applicable

Arbitrage Rebate Fund and the Credit Facility Provider Repayment Fund, shall be held in trust for the benefit of the Holders of the Applicable Series of Bonds, but shall nevertheless be disbursed, allocated and applied solely in connection with Applicable Series of Bonds for the uses and purposes provided in the Resolution.

*(Section 5.02)*

The following funds and accounts are established and created under the Series 2003 Resolution and shall be held by the Trustee:

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

Within the Debt Service Fund there is created and established a Credit Facility Account and within the Construction Fund there is created and established a Capitalized Interest Account.

All moneys at any time deposited in any fund, account or sub-account created and pledged under the Resolution or under the Series 2003 Resolution or required by the Resolution or the Series 2003 Resolution to be created, other than the Credit Facility Provider Repayment Fund and the Arbitrage Rebate Fund, shall be held in trust for the benefit of the Holders of Series 2003 Bonds, but shall nevertheless be disbursed, allocated and applied solely for the uses and purposes provided in the Resolution and the Series 2003 Resolution; **provided, however**, that the proceeds derived from the remarketing of Series 2003 Bonds which are optionally tendered, mandatorily tendered or deemed to have been tendered for purchase in accordance with the Resolution and the Series 2003 Resolution shall be deposited in the Purchase Fund (as defined below) established by and created the Series 2003 Resolution for the payment of the Purchase Price of Option Bonds so tendered or deemed to have been tendered, shall be held in trust solely for the benefit of the person or entity which has delivered such moneys until the Series 2003 Bonds purchased with such moneys have been delivered to such person or entity and thereafter solely for the person tendering such Series 2003 Bonds.

There is created and established under the Series 2003 Resolution a fund (hereinafter the "Purchase Fund") to be held by the Trustee in its capacity as Tender Agent (or any successor Tender Agent) and within such Purchase Fund there is created a Remarketing Proceeds Account and a Credit Facility Proceeds Account. In accordance with the provisions of the section entitled "Purchase of Bonds" of the Resolution, the Tender Agent shall deposit in the Remarketing Proceeds Account all remarketing proceeds from the remarketing of Series 2003 Bonds and shall disburse such amount to (i) pay the Purchase Price of tendered Series 2003 Bonds, or (ii) to reimburse the Credit Facility Provider for a draw on the Letter of Credit to pay the Purchase Price of Tendered Bonds. The Tender Agent shall deposit in the Credit Facility Proceeds Account the proceeds of all draws, if any, or the Letter of Credit to pay the Purchase Price of tendered Series 2003 Bonds for which the Remarketing Agent has failed to notify the Tender Agent, pursuant to the section entitled "Remarketing of Bonds" of the Resolution, were successfully remarketed and the Tender Agent shall then use the amounts on deposit in the Credit Facility Proceeds Account to pay the Purchase Price of such tendered Series 2003 Bonds. The Trustee shall not commingle the amounts on deposit in the Remarketing Proceeds Account or the Credit Facility Proceeds Account.

*(Series Resolution Section 2.05)*

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

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

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

*(Section 5.03)*

The Trustee shall on the date of delivery of a Series 2003 Bond apply the proceeds of the sale of the Series 2003 Bonds as follows: (a) the amount representing accrued interest, if any, on the Series 2003 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Debt Service Fund, and (b) the balance thereof shall be deposited in accordance with the written instructions of an Authorized Officer of the Authority.

*(Series Resolution Section 4.01)*

**Application of Moneys in the Construction Fund**

As soon as practicable after the delivery of each Series of Bonds, the Trustee shall deposit in the applicable account in the Applicable Construction Fund the amount required to be deposited therein pursuant to the Applicable Series Resolution or in the Applicable Bond Series Certificate relating to such Series. In addition, the Authority shall pay over to the Trustee and the Trustee shall deposit in the Applicable Construction Fund any moneys paid to the Authority pursuant to the section entitled "Deposit of Certain Moneys in the Construction Fund" in the Resolution.

Except as otherwise provided in the Resolution and in the Applicable Series Resolution or Applicable Bond Series Certificate, moneys deposited in the Applicable Construction Fund shall be used only to pay the Costs of Issuance of such Series of Bonds and the Costs of the Project. For purposes of internal accounting, the Applicable Construction Fund may combine one or more further accounts or subaccounts, as the Authority or the Trustee may deem proper. The Applicable Series Resolution authorizing the issuance of a Series of Bonds shall provide for the establishment of a Capitalized Interest Account in the Applicable Construction Fund to pay or provide the payment of interest on such Series of Bonds during the construction of a Project and for a reasonable time after the completion of such Project.

Payments for Costs of Issuance of a Series of Bonds shall be made by the Trustee upon receipt of, and in accordance with, a certificate or certificates of the Authority stating the names of the payees, the purpose of each payment in terms sufficient for identification, and the respective amounts of each such payment. Payments for Costs of the Project shall be made by the Trustee upon receipt of, and in accordance with, a certificate or certificates of the Authority, substantiated by a certificate filed with the Authority signed by an Authorized Officer of the Institution, naming the Applicable Project in connection with which such payment is to be made and approved by the Applicable Credit Facility Provider in writing describing in reasonable detail the purpose for which moneys were used and the amount thereof, and further stating that such purpose constitutes a necessary part of the Costs of the Applicable Project except that payments to pay interest on Bonds, Credit Facility Provider Fees and Remarketing Agent Fees shall be made by the Trustee upon receipt of, and in accordance with, the direction of the Authority directing the Trustee to transfer such amounts from the Applicable Construction Fund to the Applicable Debt Service Fund or to pay such fees to the Applicable Credit Facility Provider or the Applicable Remarketing Agent. No such Institution certificate shall be necessary in connection with the Costs of Issuance.

Unless the Applicable Mortgage, the Intercreditor Agreement or the Applicable Reimbursement Agreement requires otherwise, any proceeds of insurance, condemnation or eminent domain awards received by the Trustee, the Authority or the Institution with respect to the Project or any Mortgaged Property shall be deposited in the Applicable 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 Applicable Debt Service Fund for the redemption of Bonds in connection with the section entitled "Application of Moneys in the Debt Service Fund for Redemption of Bonds" in the Resolution.

A Project shall be deemed to be complete upon delivery to the Authority, the Applicable Credit Facility Provider and the Trustee of a certificate signed by an Authorized Officer of the Institution, which certificate shall be delivered as soon as practicable after the date of completion of the Project, or upon delivery to the Institution, the Applicable Credit Facility Provider and the Trustee of a certificate of the Authority which certificate may be delivered at any time after completion of the Project, all in accordance with the terms of the Applicable Loan Agreement. Such certificate shall state that the Project has been completed substantially in accordance with the plans and specifications, if any, applicable to the Project and that the Project is ready for occupancy, and, in the case of a certificate of an Authorized Officer of the Institution, shall specify the date of completion.

Upon receipt by the Trustee of a certificate relating to the completion of a Project, the moneys, if any, then remaining in the Applicable Construction Fund relating to such Project, after making provision in accordance with

the direction of the Authority for the payment of any Costs of Issuance and Costs of the 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 the Authority, to the Applicable Arbitrage Rebate Fund, the amount set forth in such direction;

Second: To the Applicable Debt Service Reserve Fund, such amount as shall be necessary to make the amount on deposit in the applicable account of the Applicable Debt Service Reserve Fund equal to the Applicable Debt Service Reserve Fund Requirement for such Series of Bonds; and

Third: To the Applicable Debt Service Fund to be applied to the redemption of such Series of Bonds as provided in the section entitled "Application of Moneys in the Debt Service Fund for Redemption of Bonds" in the Resolution, any balance remaining.

*(Section 5.04)*

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

The Revenues and any other moneys, which, by any of the provisions of the Applicable Loan Agreement, are required to be paid to the Trustee, shall upon receipt thereof be deposited or paid by the Trustee as follows and in the following order of priority:

First: To the Applicable Debt Service Fund (i) in the case of Revenues received during the period from the beginning of each Bond Year until December 31 thereof, the amount, if any, necessary to make the amount in the Applicable Debt Service Fund equal to (a) the interest on Outstanding Bonds payable on or prior to the next succeeding January 1, including the interest estimated by the Authority to be payable on Variable Interest Rate Bonds on and prior to the next succeeding January 1, assuming that such Variable Interest Rate Bonds will bear interest, from and after the next date on which the rate at which such Variable Interest Rate Bonds 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, (b) the Sinking Fund Installments of Outstanding Option Bonds and Variable Interest Rate Bonds becoming due and payable on or prior to the next succeeding January 1, and (c) the purchase price or Redemption Price of Outstanding Bonds theretofore contracted to be purchased or called for redemption pursuant to the section entitled "Debt Service Fund" of the Resolution on or prior to the next succeeding January 1, plus accrued interest thereon to the date of purchase or redemption; and (ii) in the case of Revenues received thereafter and until the end of such Bond Year, the amount, if any, necessary to make the amount in the Applicable Debt Service Fund equal to (a) the interest on and the principal and Sinking Fund Installments of Outstanding Bonds becoming due and payable on or prior to the next succeeding July 1, including the interest estimated by the Authority to be payable on Variable Interest Rate Bonds on and prior to the next succeeding July 1, assuming that such 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 (b) the purchase price or Redemption Price of Outstanding Bonds theretofore contracted to be purchased or called for redemption pursuant to the section entitled "Debt Service Fund" of the Resolution on or prior to the next succeeding July 1, plus accrued interest thereon to the date of purchase or redemption;

Second: To reimburse, pro rata, each Applicable Credit Facility Provider for any unreimbursed amounts under each Applicable Reimbursement Agreement, in proportion to the respective amounts then unpaid to each Applicable Credit Facility Provider.

Third: To reimburse, pro rata, each Applicable Facility Provider for Provider Payments which are then unpaid, in proportion to the respective Provider Payments then unpaid to each Applicable Facility Provider;

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

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

Sixth: To the Authority, unless otherwise paid, such amounts as are payable to the Authority for: (i) any expenditures of the Authority for fees and expenses of auditing, and fees and expenses of the Trustee and Paying Agents, all as required by the Resolution, (ii) all other expenditures reasonably and necessarily incurred by the

Authority in connection with the financing of the Projects, including expenses incurred by the Authority to compel full and punctual performance of all the provisions of the Applicable Loan Agreement or Mortgages in accordance with the terms thereof, and (iii) any fees of the Authority; but only upon receipt by the Trustee of a certificate signed by an Authorized Officer of the Authority, stating in reasonable detail the amounts payable to the Authority pursuant to this paragraph.

After making the payments required by the above paragraphs of this summarized section, any balance of Revenues remaining on the immediately succeeding July 1 shall be paid by the Trustee to the Institution upon and in accordance with the direction of the Authority in the respective amounts set forth in such direction, free and clear of any pledge, lien, encumbrance or security interest created by the Resolution or by the Applicable Loan Agreement. The Trustee shall notify the Authority and the Institution promptly after making the payments required by the above paragraphs of this summarized section of any balance of Revenues remaining on the immediately succeeding July 1.

*(Section 5.05)*

#### **Applicable Credit Facility; Credit Facility Provider Repayment Fund**

Unless otherwise provided in a Series Resolution with respect to an Applicable Credit Facility for a particular Series of Bonds and except for a draw pursuant to the section entitled “Purchase of Bonds” of the Resolution with respect to the Purchase Price of tendered Bonds, the Trustee shall draw on the Applicable Credit Facility in accordance with its terms at such times as are necessary in order to allow the Trustee to make the payments required under the section entitled “Debt Service Fund” of the Resolution with respect to such Series of Bonds for which such Credit Facility was issued on the date such payments are due. The Trustee shall establish, under the Applicable Series Resolution, an Applicable Credit Facility Account under the Applicable Debt Service Fund for each Series of Bonds issued under the Resolution and under any Series Resolution. The Trustee shall deposit all amounts drawn under each Applicable Credit Facility in the Credit Facility Account in the Applicable Debt Service Fund. Only amounts drawn under the Applicable Credit Facility and any investment earnings thereon shall be deposited in the Applicable Credit Facility Account or any subaccount thereof. All other moneys deposited in the Applicable Debt Service Fund shall be held separate and apart from the Applicable Credit Facility Account. Amounts drawn under a Credit Facility shall be held by the Trustee in the Applicable Credit Facility Account and shall not be commingled with any other moneys held by the Trustee. Amounts drawn under any Credit Facility shall not be deemed the property of the Authority or the Institution. Notwithstanding anything to the contrary contained in the Resolution if at any time the Applicable Credit Facility Provider fails for any reason to timely honor a draw on an Applicable Credit Facility or if the Applicable Credit Facility has been repudiated, the Trustee shall immediately draw on the Applicable Confirming Letter of Credit in accordance with the terms and provisions of such Applicable Confirming Letter of Credit in order to allow the Trustee to make the payments required under the section entitled “Debt Service Fund” in the Resolution with respect to such Series of Bonds.

The Applicable Credit Facility Provider Repayment Fund shall be held for the exclusive benefit of each Applicable Credit Facility Provider. Unless otherwise provided in a Series Resolution with respect to a Credit Facility for a particular Series of Bonds, subject to the succeeding sentence, by 2:00 P.M., New York City time, on the day on which the Trustee has received amounts drawn under a Credit Facility, the Trustee shall withdraw from the Applicable Credit Facility Provider Repayment Fund an amount sufficient to reimburse the Credit Facility Provider under whose Credit Facility funds were drawn for the amount of such draw and shall transfer such amount to such Credit Facility Provider. The Trustee shall not transfer moneys from the Applicable Debt Service Fund or any other fund to reimburse a Credit Facility Provider for amounts drawn on such Credit Facility Provider’s Credit Facility until after the amounts drawn on such Credit Facility shall have been deposited into the Applicable Credit Facility Account. The Trustee shall notify the Institution in writing promptly following each payment to a Credit Facility Provider with amounts in the Applicable Credit Facility Provider Repayment Fund.

*(Section 5.06)*

#### **Debt Service Fund**

The Trustee shall pay and permit the withdrawal of amounts on deposit in the Applicable Debt Service Fund on an Interest Payment Date and scheduled redemption date as follows:

## *Appendix C*

- (a) the interest due and payable on all Outstanding Bonds of the Applicable Series on such Interest Payment Date;
- (b) the principal amount due and payable on all Outstanding Bonds of the Applicable Series on such interest payment date;
- (c) the Sinking Fund Installments, if any, due and payable on all Outstanding Bonds of the Applicable Series on such interest payment date; and
- (d) moneys required for the redemption of Bonds of the Applicable Series in accordance with the section entitled “Application of Moneys in the Debt Service Fund for Redemption of Bonds” in the Resolution.

The amounts paid out pursuant to this summarized section shall be irrevocably pledged to and applied to such payments.

In the event that on the fourth Business Day, with respect to any Series of Bonds bearing interest at the Fixed Rate, or on the second Business Day, with respect to any Series of Bonds bearing interest at a Weekly Rate, preceding any Interest Payment Date the amount of moneys in the Applicable Debt Service Fund shall be less than the amount required for payment of the interest on and the principal and Sinking Fund Installments of the Outstanding Bonds of the Applicable Series due and payable on such Interest Payment Date or for the payment of the Redemption Price of such Outstanding Bonds of the Applicable Series theretofore called for redemption, plus accrued interest thereon to the date of redemption, the Trustee shall withdraw from the Applicable Debt Service Reserve Fund and deposit to the Applicable Debt Service Fund such amounts as will increase the amount in the Applicable Debt Service Fund to an amount sufficient to make such payments and apply the proceeds thereof in accordance therewith. The Trustee shall notify each Facility Provider of a withdrawal from the Applicable Debt Service Reserve Fund.

The Trustee shall make the payments required to be made pursuant to this summarized section with amounts on deposit in the Applicable Credit Facility Account. If the amounts on deposit in the Applicable Credit Facility Account, including the proceeds of a draw on any Confirming Letter of Credit, are insufficient to make such payments, then the Trustee shall use other Available Moneys on deposit in the Applicable Debt Service Fund. On the day that amounts drawn under the Applicable Credit Facility are received by the Trustee and deposited in the Applicable Credit Facility Account, the Trustee shall withdraw from the Applicable Debt Service Fund (other than the Applicable Credit Facility Account) an amount sufficient to reimburse the Applicable Credit Facility Provider for the amount of such draw under such Credit Facility Provider’s Credit Facility and shall transfer such amount to the Applicable Credit Facility Provider Repayment Fund.

In the event that the moneys on deposit in the applicable subaccount of the Credit Facility Account, other Available Moneys in the Applicable Debt Service Fund and amounts transferred to the Applicable Debt Service Fund from the Applicable Debt Service Reserve Fund are insufficient to make the payments required to be made pursuant this summarized section, then the Trustee shall use any other moneys on deposit in the Applicable Debt Service Fund.

Amounts drawn on the Applicable Credit Facility and the earnings thereon shall not be paid to the Authority or the Institution pursuant to any provision of the Resolution or the Applicable Loan Agreement, notwithstanding anything in the Resolution, any Series Resolution, any Bond Series Certificate or the Applicable Loan Agreement to the contrary. Notwithstanding any other provisions of the Resolution to the contrary, neither the Trustee nor the Paying Agent shall have a lien on any Available Moneys, amounts being held to become Available Moneys, amounts drawn under any Credit Facility or the investment earnings thereon nor shall the Trustee or the Paying Agent apply such amounts to pay any amounts other than principal, redemption price or purchase price of or interest on Bonds.

*(Section 5.07)*

### **Debt Service Reserve Fund**

The Trustee shall deposit to the credit to the Applicable Debt Service Reserve Fund such proceeds of the sale of each Series of Bonds, as shall be prescribed in the Series Resolution authorizing the issuance of such Series of Bonds or the Bond Series Certificate relating to such Series, and any Revenues, moneys, Government Obligations

and Exempt Obligations as are delivered to the Trustee by the Institution or a Qualified Financial Institution for the purposes of the Applicable Debt Service Reserve Fund.

In lieu of or in substitution for moneys, Government Obligations or Exempt Obligations, the Authority may deposit or cause to be deposited with the Trustee a Reserve Fund Facility for the benefit of the Holders of any Series of Bonds for all or any part of the Applicable Debt Service Reserve Requirement with respect to such Series of Bonds; provided (i) that any such surety bond or insurance policy shall be issued by an insurance company or association duly authorized to do business in the State and either (A) the claims paying ability of such insurance company or association is rated in the highest rating category accorded by a nationally recognized insurance rating agency or (B) obligations insured by a surety bond or an insurance policy issued by such company or association are rated, without regard to qualification of such rating by symbols such as “+” or “-” or numerical notation, in the highest rating category at the time such surety bond or insurance policy is issued by Moody’s and S&P or, if Outstanding Bonds are not rated by both Moody’s and S&P, by whichever of said rating agencies that then rates Outstanding Bonds and (ii) that any letter of credit shall be issued by a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provision of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provision of law, or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, the unsecured or uncollateralized long term debt obligations of which, or long term obligations secured or supported by a letter of credit issued by such person, are rated at the time such letter of credit is delivered, without regard to qualification of such rating by symbols such as “+” or “-” or numerical notation, in at least the second highest rating category by Moody’s and S&P or, if Outstanding Bonds are not rated by Moody’s and S&P, by whichever of said rating agencies that then rates Outstanding Bonds; provided further that the written consent of each Applicable Credit Facility Provider to the delivery of such Reserve Fund Facility shall have been obtained.

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

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

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

For the purposes of this summarized section and the section entitled “Computation of Assets of Certain Funds” in the Resolution, in computing the amount on deposit in the Applicable Debt Service Reserve Fund, a Reserve Fund Facility shall be valued at the amount available to be paid thereunder on the date of computation; provided that, if the unsecured or uncollateralized long term debt of such Facility Provider, or the long term debt

obligations secured or supported by a surety bond, insurance policy or letter of credit of said Facility Provider has been reduced below the ratings required by the first paragraph of this summarized section, said Reserve Fund Facility shall be valued at the lesser of (i) the amount available to be paid thereunder on the date of calculation, and (ii) the difference between the amount available to be paid thereunder on the date of issue thereof and an amount equal to a fraction of such available amount the numerator of which is the aggregate number of July 1st's and January 1st's which has elapsed since such ratings were reduced and the denominator of which is ten.

Moneys held for the credit of the Applicable Debt Service Reserve Fund shall be withdrawn by the Trustee and applied at the times and in the amounts required to comply with the provisions of the section entitled "Debt Service Fund" of the Resolution; provided that no payment under a Reserve Fund Facility shall be sought unless and until moneys are not available in the Applicable Debt Service Reserve Fund and the amount required to be withdrawn from the Applicable Debt Service Reserve Fund pursuant to this subdivision can not be withdrawn therefrom without obtaining payment under such Reserve Fund Facility; provided further, that, if more than one Reserve Fund Facility is held for the credit of the Applicable Debt Service Reserve Fund at the time moneys are to be withdrawn therefrom, the Trustee shall obtain payment under each such Reserve Fund Facility, pro rata, based upon the respective amounts then available to be paid thereunder.

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

Moneys and investments held for the credit of the Applicable Debt Service Reserve Fund in excess of the Applicable Debt Service Reserve Fund Requirement shall be withdrawn by the Trustee and deposited, upon direction of the Authority, in the Applicable Arbitrage Rebate Fund, the Applicable Debt Service Fund (but not in the Applicable Credit Facility Account) and the Applicable Construction Fund or applied to the redemption of the Applicable Series of Bonds (or to reimburse a Credit Facility Provider for amounts paid by it for the redemption of the applicable Series of Bonds) in accordance with such direction.

If, upon a valuation, the value of all moneys, Government Obligations and Exempt Obligations and Reserve Fund Facilities held for the credit of any account of the Applicable Debt Service Reserve Fund is less than the Applicable Debt Service Reserve Fund Requirement with respect to such Series of Bonds, the Trustee shall immediately notify the Authority, each Applicable Credit Facility Provider and the Institution of such deficiency. The Institution shall, as soon as practicable, but in no event later than five (5) days after receipt of such notice, deliver to the Trustee moneys, Government Obligations or Exempt Obligations and Reserve Fund Facilities the value of which is sufficient to increase the amount in such account of the Applicable Debt Service Reserve Fund to the Applicable Debt Service Reserve Fund Requirement with respect to such Series of Bonds.

*(Section 5.08)*

So long as the Letter of Credit is in place, the Debt Service Reserve Fund Requirement for the Series 2003 Bonds shall be \$2,155,571.99; provided, however, at such time as when at least \$20,000,000 of Bonds have been redeemed and the Letter of Credit is still in effect, the Debt Service Reserve Fund Requirement for the Series 2003 Bonds shall be reduced to \$1,555,571.99. Upon the delivery of a Substitute Letter of Credit or other Substitute Credit Facility or upon the delivery of a Fixed Rate Credit Support on a Fixed Rate Conversion Date the Authority may establish a different Debt Service Reserve Fund Requirement for the Series 2003 Bonds. However, in no event may the Debt Service Reserve Fund Requirement for the Series 2003 Bonds exceed the maximum amount permitted under the Code to be deposited in the Debt Service Reserve Fund from the proceeds of the Series 2003 Bonds.

*(Series Resolution Section 2.06)*

**Arbitrage Rebate Fund**

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

Moneys on deposit in the Applicable Arbitrage Rebate Fund shall be applied by the Trustee in accordance with the direction of the Authority to make payments to the Department of the Treasury of the United States of



America at such times and in such amounts as the Authority shall determine to be required by the Code to be rebated to the Department of the Treasury of the United States of America. Moneys which the Authority determines to be in excess of the amount required to be so rebated shall be deposited to the Applicable Debt Service Fund in accordance with the directions of the Authority.

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

*(Section 5.10)*

**Application of Moneys in the Debt Service Fund for Redemption of Bonds**

Moneys delivered to the Trustee, which by the provisions of the Applicable Loan Agreement, the Applicable Series Resolution or the Resolution are to be applied for redemption of the Applicable Series of Bonds (or to reimburse a Credit Facility Provider for amounts drawn on the applicable Credit Facility to make such payments), shall upon receipt by the Trustee be deposited to the credit of the appropriate account in the Applicable Debt Service Fund for such purpose.

In the event that on any Interest Payment Date the amount in the Applicable Debt Service Fund, exclusive of amounts therein deposited for the redemption of an Applicable Series of Bonds, shall be less than the amounts respectively required for payment of interest on Outstanding Bonds of such Series, for the payment of principal of such Outstanding Bonds of such Series or for the payment of Sinking Fund Installments of such Outstanding Bonds of such Series due and payable on such interest payment date, the Trustee shall apply moneys in the Applicable Debt Service Fund deposited therein for the redemption of such Bonds (other than moneys required to pay the Redemption Price of any such Outstanding Bonds theretofore called for redemption, including accrued interest on such Bonds to the date of redemption), in the following order of priority, to pay (or to reimburse a Credit Facility Provider for amounts drawn on the applicable Credit Facility to pay) interest on, principal of or Sinking Fund Installments of such Bonds, respectively.

Subject to the provisions of the summarized paragraph immediately above, Available Moneys in the Applicable Debt Service Fund to be used for redemption of Bonds of an Applicable Series shall be applied by the Trustee to the purchase of Outstanding Bonds of such Series at purchase prices not exceeding the Redemption Price applicable on the next Interest Payment Date on which such Bonds are redeemable, plus accrued interest to such date, at such times, at such purchase prices and in such manner as the Authority shall direct.

Notwithstanding the provisions of the summarized paragraph immediately above, if the amount in the Applicable Debt Service Fund at any time (other than moneys required to pay (or to reimburse a Credit Facility Provider for amounts drawn on the applicable Credit Facility to pay) the Redemption Price of any Outstanding Series of Bonds theretofore called for redemption, including accrued interest on such Bonds to the date of redemption) is sufficient to make provision pursuant to the section entitled “Defeasance” of the Resolution for the payment of such Outstanding Bonds at the maturity or redemption date thereof, the Authority may request the Trustee to take such action consistent with the section entitled “Defeasance” of the Resolution as is required thereby to deem certain of such Bonds to have been paid within the meaning of the section entitled “Defeasance” of the Resolution. The Trustee, upon receipt of such request, the irrevocable instructions required by the section entitled “Defeasance” of the Resolution and irrevocable instructions of the Authority to purchase direct obligations of the United States of America sufficient to make any deposit required thereby, shall comply with such request.

*(Section 5.11)*

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

Moneys delivered to the Trustee, which by the provisions of the Applicable Loan Agreement, the Applicable Series Resolution or the Resolution are to be applied for redemption of the Applicable Series of Bonds (or to reimburse a Credit Facility Provider for amounts drawn on the applicable Credit Facility to make such

payments), shall upon receipt by the Trustee be deposited to the credit of the appropriate account in the Applicable Debt Service Fund for such purpose.

In the event that on any Interest Payment Date the amount in the Applicable Debt Service Fund, exclusive of amounts therein deposited for the redemption of an Applicable Series of Bonds, shall be less than the amounts respectively required for payment of interest on Outstanding Bonds of such Series, for the payment of principal of such Outstanding Bonds of such Series or for the payment of Sinking Fund Installments of such Outstanding Bonds of such Series due and payable on such interest payment date, the Trustee shall apply moneys in the Applicable Debt Service Fund deposited therein for the redemption of such Bonds (other than moneys required to pay the Redemption Price of any such Outstanding Bonds theretofore called for redemption, including accrued interest on such Bonds to the date of redemption), in the following order of priority, to pay (or to reimburse a Credit Facility Provider for amounts drawn on the applicable Credit Facility to pay) interest on, principal of or Sinking Fund Installments of such Bonds, respectively.

Subject to the provisions of the summarized paragraph immediately above, Available Moneys in the Applicable Debt Service Fund to be used for redemption of Bonds of an Applicable Series shall be applied by the Trustee to the purchase of Outstanding Bonds of such Series at purchase prices not exceeding the Redemption Price applicable on the next Interest Payment Date on which such Bonds are redeemable, plus accrued interest to such date, at such times, at such purchase prices and in such manner as the Authority shall direct.

Notwithstanding the provisions of the summarized paragraph immediately above, if the amount in the Applicable Debt Service Fund at any time (other than moneys required to pay (or to reimburse a Credit Facility Provider for amounts drawn on the applicable Credit Facility to pay) the Redemption Price of any Outstanding Series of Bonds theretofore called for redemption, including accrued interest on such Bonds to the date of redemption) is sufficient to make provision pursuant to the section entitled "Defeasance" in the Resolution for the payment of such Outstanding Bonds at the maturity or redemption date thereof, the Authority may request the Trustee to take such action consistent with the section entitled "Defeasance" in the Resolution as is required thereby to deem certain of such Bonds to have been paid within the meaning of the section entitled "Defeasance" in the Resolution. The Trustee, upon receipt of such request, the irrevocable instructions required by the section entitled "Defeasance" in the Resolution and irrevocable instructions of the Authority to purchase direct obligations of the United States of America sufficient to make any deposit required thereby, shall comply with such request.

*(Section 5.12)*

### **Transfer of Investments**

Whenever moneys in any fund or account established under the Resolution or under an Applicable Series Resolution are to be paid in accordance with the Resolution 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 moneys, if any, to be transferred, is at least equal to the amount of the payment then to be made, provided that no such transfer of investments would result in a violation of any investment standard or guideline applicable to such fund.

*(Section 5.13)*

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

The Trustee, as promptly as practicable (i) after the end of each calendar month, (ii) upon the request of the Authority, (iii) upon the request of the Institution, but not more frequently than once a calendar month, and (iv) at such other times as may be necessary in connection with a withdrawal and deposit made pursuant to the section entitled "Application of Moneys in the Construction Fund" in the Resolution or pursuant to the sections entitled "Deposit of Revenues and Allocation Thereof", "Debt Service Reserve Fund" and "Application of Moneys in the Debt Service Fund for Redemption of Bonds" in the Resolution, shall compute the value of the assets in the Applicable Debt Service Reserve Fund. Such value shall be computed in the case of the requirement under (i) above, on the last Business Day or the next succeeding calendar day of each such month, in the case of a request pursuant to clause (ii) or (iii) above, at the date of such request, or, in the case of a withdrawal and deposit, at the date of such withdrawal and deposit. The Trustee shall notify the Authority, the Applicable Credit Facility Provider and the Institution as to the results of such computation and the amount by which the value of the assets in the

Applicable Debt Service Reserve Fund exceeds or is less than the Applicable Debt Service Reserve Fund Requirement.

*(Section 5.14)*

**Draw Upon a Credit Facility**

In addition to draws upon the Applicable Credit Facility or any Applicable Confirming Letter of Credit pursuant to the section entitled “Applicable Credit Facility; Credit Facility Provider Repayment Fund” in the Resolution, the Trustee shall immediately draw upon the applicable Credit Facility upon the occurrence of: (i) a special mandatory redemption of the Bonds of the applicable Series pursuant to the terms of the applicable Series Resolution or Bond Series Certificate or (ii) an acceleration of the Bonds of the applicable Series pursuant to the section entitled “Acceleration of Maturity” in the Resolution. The amount to be drawn under the applicable Credit Facility shall be the full extent of the amounts available thereunder necessary to pay the principal, Sinking Fund Installments or Redemption Price of (as and to the extent that any premium is provided for under the terms of the Credit Facility), and up to 51 days for Bonds bearing interest at a Weekly Rate or up to 210 days for Bonds bearing interest at a Fixed Rate (or such number of days as may be provided in an Applicable Series Resolution with respect to an Applicable Credit Facility for such Series of Bonds) of interest on, all Outstanding Bonds of the applicable Series on the date on which the same shall be due, including upon the declaration that the principal of and interest on all Outstanding Bonds of the applicable Series is immediately due and payable in accordance with the section entitled “Acceleration of Maturity” in the Resolution.

The Trustee shall immediately draw on the applicable Credit Facility in accordance with its terms and is authorized by the Resolution to do all acts necessary to comply with such terms. At such time as the Trustee is required to draw on a Credit Facility pursuant to this summarized section, the Trustee shall present the documents required by such Credit Facility.

Notwithstanding any other provision of the Resolution, amounts drawn under a Credit Facility shall be used solely to make payments with respect to the Series of Bonds in respect of which such Credit Facility was issued and shall not be used for any other purpose.

*(Section 6.01)*

**Amendments to Credit Facility**

The Trustee shall not consent to any amendment, supplement, modification or waiver to a Credit Facility or a Confirming Letter of Credit which, in the Trustee’s reasonable judgment, would materially adversely affect the interest of the Holders of the Outstanding Bonds of the applicable Series.

For the purposes of this summarized section, the Bonds of a Series shall be deemed to be adversely affected by an amendment, change, modification, alteration or termination of the Applicable Credit Facility or an Applicable Confirming Letter of Credit if the same adversely affects or diminishes the rights of the Holders of such Bonds. The Trustee may in its discretion, and without any liability to the Authority or Bondholders, determine whether or not, in accordance with the foregoing provisions, Bonds of a Series would be adversely affected by any amendment, change, modification, alteration or termination, and any such determination shall be binding and conclusive on the Authority and the Holders of all such Bonds.

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

*(Section 6.02)*

**Reduction or Termination of Credit Facility**

The Trustee shall, in accordance with the applicable provisions of the Applicable Credit Facility or an Applicable Confirming Letter of Credit, take such action (including filing of certificates of reduction), if any, as shall be required to reduce the amount available to be drawn thereunder in respect of the principal, Sinking Fund

Installments, and Redemption Price of and interest on the Series of Bonds to which such Credit Facility or a Confirming Letter of Credit relates to reflect any reduction in the amount of Bonds Outstanding of such Series; provided, however, that unless otherwise provided in the Resolution, the amount available to be drawn under any Credit Facility or any Confirming Letter of Credit shall at all times be not less than the principal amount of the Outstanding Bonds of a Series to which the particular Credit Facility or any Confirming Letter of Credit relates, plus 51 days for Bonds bearing interest at a Weekly Rate or up to 210 days for Bonds bearing interest at a Fixed Rate (or such number of days as may be provided in an Applicable Series Resolution with respect to an Applicable Credit Facility or an Applicable Confirming Letter of Credit for such Series of Bonds) of interest thereon and the amount, if any, provided therein with respect to the premium due in connection with the redemption of the Bonds of such Series. Any calculation of a Credit Facility Amount (as defined in any Credit Facility) required of the Trustee in connection with a reduction of a Credit Facility shall be prepared by the Authority, in conjunction with the Trustee, and submitted by the Trustee pursuant to the terms of the Applicable Credit Facility or the Applicable Confirming Letter of Credit.

*(Section 6.03)*

### **Cancellation Upon Defeasance**

In the event the Bonds of a Series are no longer Outstanding for the reason that such Bonds have been paid or deemed to have been paid in accordance with the section entitled “Defeasance” of the Resolution, then the Trustee shall surrender the Applicable Credit Facility to the issuer of such Credit Facility or the Applicable Confirming Letter of Credit for cancellation as provided in such Credit Facility.

*(Section 6.04)*

### **Substitute Credit Facility**

The Authority may, at any time, at its option, upon written notice to a Credit Facility Provider or a Confirming Bank, deliver or cause to be delivered to the Trustee a Substitute Credit Facility and/or a Substitute Confirming Letter of Credit provided by the Institution. No such Substitute Credit Facility or such Substitute Confirming Letter of Credit shall be or become effective for purposes of the Resolution unless, (a) the terms thereof are in all material respects the same as or more favorable to the Holders of the Bonds of such Series for which such Substitute Credit Facility or such Substitute Confirming Letter of Credit will be issued than the then existing Applicable Credit Facility or the Applicable Confirming Letter of Credit, if any, and the amount of such Substitute Credit Facility or such Substitute Confirming Letter of Credit is not less than the sum of the principal amount of Bonds Outstanding, including, without limitation, any Custody Bonds of such Series plus interest thereon for 51 days for Bonds bearing interest at a Weekly Rate or up to 210 days for Bonds bearing interest at a Fixed Rate (or such number of days as may be provided in an Applicable Series Resolution with respect to an Applicable Credit Facility or an Applicable Confirming Letter of Credit for such Series of Bonds) and such Substitute Credit Facility shall provide for the payment in full of all Custody Bonds, if any, at par plus accrued interest at the Applicable Bank Rate, (b) on or prior to the date of issuance thereof, the Authority shall have furnished to the Trustee (i) a Favorable Opinion of Bond Counsel which opinion shall state that the delivery of such Substitute Credit Facility or such Substitute Confirming Letter of Credit is authorized under the Resolution and complies with the terms of the Resolution, and (ii) an opinion or opinions of counsel to the Credit Facility Provider or a Confirming Bank issuing such Substitute Credit Facility or such Substitute Confirming Letter of Credit, satisfactory in form and substance to the Authority and the Trustee, to the effect that such Substitute Credit Facility or such Substitute Confirming Letter of Credit has been duly authorized, executed and delivered by such Credit Facility Provider and constitutes the legal, valid and binding obligation of such Credit Facility Provider or such Confirming Bank enforceable against such Credit Facility Provider or such Confirming Bank in accordance with its terms; except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally or as to the availability of any particular remedy and as to general principles of equity, and (c) written evidence from each Applicable Rating Agency then assigning ratings to the Applicable Series of Bonds of the rating that will be assigned to such Series of Bonds as a result of the delivery of such Substitute Credit Facility or such Substitute Confirming Letter of Credit. The Trustee shall give written notice of the delivery of any such Substitute Credit Facility or such Substitute Confirming Letter of Credit to each Applicable Rating Agency.

Any Credit Facility Provider or any Confirming Bank issuing a Substitute Credit Facility shall have a combined capital stock, surplus and undivided profits of at least \$125,000,000; provided, however, that with respect

## *Appendix C*

to a branch or an agency of a foreign bank, the combined capital stock, surplus and undivided profits of both the branch or the agency and the foreign bank shall be utilized in order to fulfill this requirement as long as a favorable opinion of counsel is received by the Trustee, in form and substance satisfactory to the Trustee, as to the enforceability of a judgment rendered in an American court with respect to the obligations of such Credit Facility Provider or Confirming Bank under the Substitute Credit Facility or such Substitute Confirming Letter of Credit in the jurisdiction of organization of such foreign bank. Any such Credit Facility Provider or any such Confirming Bank shall be authorized by law to perform all the duties and obligations thereof under the Resolution. Any Substitute Credit Facility Provider or such Substitute Confirming Bank shall have a minimum of an investment grade rating for its long term credit rating and short term credit rating issued by a Rating Agency. Each Substitute Credit Facility Provider or such Substitute Confirming Bank shall be acceptable to the Authority in its sole discretion. A Substitute Credit Facility shall be effective and moneys shall be available to be drawn thereunder not later than the date on which the existing Credit Facility or Confirming Letter of Credit expires or is terminated, or, in the case of a Substitute Confirming Letter of Credit delivered in accordance with the following summarized section of the Resolution, no later than thirty (30) days after the delivery thereof.

Except to the extent that a Credit Facility Provider is the holder of custody bonds, a Substitute Credit Facility and/or a Substitute Confirming Letter of Credit shall be delivered to the Trustee not less than sixty (60) days prior to the Expiration Date of the Applicable Credit Facility or the Applicable Confirming Letter of Credit, provided, however, that such Substitute Credit Facility or such Substitute Confirming Letter of Credit may provide that amounts may not be drawn thereunder prior to the expiration or termination date of the then existing Applicable Credit Facility or the Applicable Confirming Letter of Credit; and; provided, further, that, in the case of a Substitute Confirming Letter of Credit delivered in accordance with following summarized section of the Resolution, such Substitute Letter of Credit shall be delivered to the Trustee not less than thirty (30) days prior to the effective date thereof. As soon as practicable following the delivery of a Substitute Credit Facility or a Substitute Confirming Letter of Credit to the Trustee but not less than twenty (20) days prior to the Expiration Date of the Credit Facility or such Confirming Letter of Credit to be replaced by the Substitute Credit Facility or not less than twenty (20) days prior to the effective date of any Substitute Confirming Letter of Credit delivered in accordance with following summarized section of the Resolution, the Trustee shall give notice to the Holders of the Outstanding Bonds of such Series for which such Substitute Credit Facility or such Substitute Confirming Letter of Credit has been delivered, which notice shall state (i) that the Outstanding Bonds of such Series for which such Substitute Credit Facility or such Substitute Confirming Letter of Credit has been delivered are subject to mandatory purchase pursuant to the section entitled "Purchase of Bonds" of the Resolution; (ii) the date on which such Series of Bonds are subject to mandatory purchase; and (iii) all other information required pursuant to the section entitled "Purchase of Bonds" of the Resolution. Such notice shall be sent by first-class mail, postage prepaid, or, at the option of the Trustee, by certified mail return receipt requested, to the registered owners of the Bonds of such Series to which such Substitute Credit Facility or such Substitute Confirming Letter of Credit relates, at their last known addresses, if any, appearing on the registration books. 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 of such Series in the manner provided in the Resolution. Such certificate shall be conclusive evidence that such notice was given in the manner required by the Resolution. The failure of any Holder of a Bond of such Series to receive such notice shall not affect the validity of the proceedings in connection with the effectiveness of such Substitute Credit Facility or such Substitute Confirming Letter of Credit. If directed in writing by the Authority, the Trustee shall also give such notice by publication thereof once in an Authorized Newspaper, such publication to be made contemporaneously with the mailing of such notice, but such publication shall not be a condition precedent to the effectiveness of such Substitute Credit Facility or such Substitute Confirming Letter of Credit, and failure to so publish any such notice or a defect therein or in the publication thereof shall not affect the validity of the proceedings in connection with the effectiveness of such Substitute Credit Facility or such Substitute Confirming Letter of Credit.

Beginning from and after the date upon which any Substitute Credit Facility or such Substitute Confirming Letter of Credit shall have become effective, the Trustee shall, by endorsement or otherwise, affix on each Bond of such Series to which such Substitute Credit Facility or such Substitute Confirming Letter of Credit relates which shall be delivered for registration or transfer thereof (or any Bond authenticated in substitution or replacement therefor) a legend containing (i) the name of the Credit Facility Provider or Credit Facility Providers or such Substitute Confirming Bank issuing such Substitute Credit Facility or such Substitute Confirming Letter of Credit, (ii) the date upon which such Substitute Credit Facility or such Substitute Confirming Letter of Credit shall have become effective and (iii) the Expiration Date of such Substitute Credit Facility or such Substitute Confirming Letter of Credit.

In the event a Substitute Credit Facility or such Substitute Confirming Letter of Credit is delivered to the Trustee, the Trustee shall, on the date on which moneys may be drawn under such Substitute Credit Facility or such Substitute Confirming Letter of Credit for the payment of the principal, Sinking Fund Installments, and Redemption Price of, and interest on, the Bonds of such Series to which such Substitute Credit Facility or such Substitute Confirming Letter of Credit relates, take such action as shall be required to surrender to the issuer thereof for cancellation the Credit Facility or Confirming Letter of Credit, if any, that was replaced by such Substitute Credit Facility or such Substitute Confirming Letter of Credit.

*(Section 6.05)*

#### **Confirming Letter of Credit**

Notwithstanding anything in the Resolution to the contrary, the Authority shall not be required to maintain a Confirming Letter of Credit under the Resolution. During any period in which the Authority has elected not to maintain a Confirming Letter of Credit in accordance with the provisions of the preceding sentence, all references in the Resolution to a “Confirming Letter of Credit” or the “Confirming Bank” shall be ineffective and the Resolution shall be read as though such references did not appear. The Authority shall have the option, at the request of the Institution, at any time while no Confirming Letter of Credit is in effect, to deliver or cause to be delivered to the Trustee a Substitute Confirming Letter of Credit provided by the Institution in accordance with the provisions of the Resolution.

*(Section 6.06)*

#### **Fixed Rate Credit Support**

Notwithstanding any other provision contained in the Resolution, the Institution shall cause to be delivered to the Trustee an irrevocable direct pay letter of credit, bond insurance, a standby bond purchase agreement or other credit support for any Series of Bonds (the “Fixed Rate Credit Support”), which Fixed Rate Credit Support shall be effective on a date (the “Effective Date”) occurring on the Fixed Rate Conversion Date, provided that (a) such Fixed Rate Credit Support (i) shall provide for an amount sufficient to pay the principal of the Outstanding Bonds of such Series when due at stated maturity or upon redemption or acceleration plus an amount equal to 210 days (or such lesser number of days as may be provided in the Applicable Series Resolution with respect to an Applicable Credit Facility for such Series of Bonds) interest on the Outstanding Bonds of such Series at the Fixed Rate to pay interest accrued on the Bonds of such Series on or prior to the expiration of such Applicable Fixed Rate Credit Support, or (ii) shall be in the form of a bond insurance policy insuring the regularly scheduled payment of principal (including sinking fund redemption) and interest on such Series of Bonds; (b) such Fixed Rate Credit Support shall have administrative provisions reasonably satisfactory to the Trustee; (c) such Fixed Rate Credit Support shall be satisfactory to the Authority; (d) such Fixed Rate Credit Support shall have a term of not less than one year and fifteen days and shall expire at least fifteen (15) days after an Interest Payment Date; (e) the Trustee received the Favorable Opinion of Bond Counsel and the opinion of counsel to the Fixed Rate Credit Support set forth in the section entitled “Substitute Credit Facility” of the Resolution; (f) such Fixed Rate Credit Support provider shall have a minimum of an investment grade rating for its long term credit rating issued by a Rating Agency and (g) the Institution shall have furnished to the Trustee not fewer than forty-five (45) days prior to the Effective Date, information sufficiently to permit the Trustee to give the Rating Agency and the Owners of such Series of Bonds the notice of Mandatory Purchase required by the section entitled “Purchase of Bonds” in the Resolution.

*(Section 6.07)*

#### **Security for Deposits**

All moneys held under the Resolution by the Trustee shall be continuously and fully secured, for the benefit of the Authority and the Holders of the 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 moneys 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 moneys with them pursuant to the section entitled “Applicable Credit Facility; Credit Facility

Provider Repayment Fund” in the Resolution or the section entitled “Defeasance” in the Resolution and held in trust for the payment of the principal, Sinking Fund Installments, if any, or Redemption Price of or interest on any Bonds, or for the Trustee to give security for any moneys which shall be represented by obligations purchased or other investments made under the provisions of the Resolution as an investment of such moneys.

*(Section 7.01)*

**Investment of Funds Held by the Trustee**

Moneys 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, Exempt Obligations, and, if not inconsistent with the investment guidelines of an Applicable Credit Facility Provider or a Rating Service which investment guidelines are applicable to funds held under the Resolution; provided; however, that each such investment shall permit the moneys so deposited or invested to be available for use at the times at which the Authority reasonably believes such moneys will be required for the purposes of the Resolution; provided, further, that (x) any Permitted Collateral required to secure any Permitted Investment shall have a market value, determined by the Trustee or its agent periodically, but no less frequently than weekly, at least equal to the amount deposited or invested including interest accrued thereon, (y) the Permitted Collateral shall be deposited with and held by the Trustee or an agent 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 and, provided, furthermore, that, unless otherwise provided in a Series Resolution, moneys derived from drawings under a Credit Facility or a Confirming Letter of Credit shall be invested only in Government Obligations described in clauses (i), (ii) or (iii) of the definition of Government Obligations which mature within thirty (30) days or when needed.

In lieu of the investments of moneys in obligations authorized in the summarized paragraph immediately above, the Trustee shall, to the extent permitted by law, upon direction of the Authority given or confirmed in writing, invest moneys in the Applicable Construction Fund, in (i) interest-bearing time deposits, certificates of deposit or other similar investment arrangements including, but not limited to, written repurchase agreements relating to Government Obligations, with banks, trust companies, savings banks, savings and loan associations, or securities dealers approved by the Authority the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation; or (ii) Investment Agreements; provided that (w) each such investment shall permit the moneys so deposited or invested to be available for use at the times at, and in the amounts in, which the Authority reasonably believes such moneys will be required for the purposes of the Resolution, (x) all moneys in each such interest-bearing time deposit, certificate of deposit or other similar investment arrangement shall be continuously and fully secured by ownership of or a security interest in Government Obligations of a market value determined by the Trustee or its agent on a daily valuation equal to the amount deposited or invested including interest accrued thereon, (y) the obligations securing such interest-bearing time deposit or certificate of deposit or which are the subject of such other similar investment arrangement shall be deposited with and held by the Trustee or an agent of the Trustee approved by the Authority, and (z) the Government Obligations securing such time deposit or certificate of deposit or which are the subject of such other similar investment arrangement shall be free and clear of claims of any other person.

Permitted Investments purchased or other investments made as an investment of moneys in any fund 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, obligations purchased as an investment of moneys therein or held therein shall be valued at par or the market value thereof, plus accrued interest[, whichever is lower, except that investments held in the Applicable Debt Service Reserve Fund shall be valued at the market value thereof, plus accrued interest].

Notwithstanding anything to the contrary contained 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 this summarized section. 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 moneys 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 Institution in writing, on or before the fifteenth (15th) day of each calendar month, of the amounts required to be on deposit in each fund and account under the Resolution and of the details of all investments held for the credit of each fund 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 three summarized paragraphs immediately above. 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 any Series of Bonds or any other funds of the Authority shall be used directly or indirectly to acquire any securities or investments the acquisition of which would cause any Bond to be an “arbitrage bond” within the meaning of Section 148(a) of the Code.

Amounts drawn under a Credit Facility and Available Moneys and amounts being held to become Available Moneys and the earnings thereon shall not be invested in any obligation of the Authority or the Institution.

*(Section 7.02)*

### **Liability for Investments**

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 the Resolution, in the manner provided in the Resolution, for any depreciation in value of any such investment, or for any loss, direct or indirect, resulting from any such investment.

*(Section 7.03)*

### **Creation of Liens**

Except as permitted by the Resolution, the Authority shall not create or cause to be created any lien or charge prior or equal to that of the Bonds of an Applicable Series on the proceeds from the sale of such Bonds, the Applicable Revenues, the rights of the Authority to receive payments to be made under the Applicable Loan Agreement that are to be deposited with the Trustee, the Applicable Pledged Revenues of the Institution or the funds and accounts established by the Resolution which are pledged by the Resolution; provided, however, that each Series of Bonds shall be equally and ratably secured by the Pledged Revenues and the Mortgaged Property and provided, further, that nothing contained in the Resolution shall prevent the Authority from issuing bonds, notes or other obligations under another and separate resolution which are equally and ratably secured with respect to the Pledged Revenues and Mortgaged Property; provided further, however, that no such charge or lien shall be created without each Credit Facility Provider’s consent.

*(Section 8.06)*

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

To the extent the Authority retains an interest in an Applicable Loan Agreement, the Authority shall take all legally available action to cause the Institution to perform fully all duties and acts and comply fully with the covenants of the Institution required by the Applicable Loan Agreement in the manner and at the times provided in the Applicable Loan Agreement; provided, however, that the Authority may waive, delay or defer enforcement of one or more provisions of the Applicable Loan Agreement (other than provisions requiring the payment of moneys and the time of payment thereof to the Trustee for deposit to any fund or account established under the Resolution) if the Authority determines such waiver, delay or deferment will not materially adversely affect the interests of the Holders of the Bonds or the Applicable Credit Facility Provider.

*(Section 8.07)*



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

In addition to the proceeds of Bonds of an Applicable Series to be deposited in the Applicable Construction Fund, any moneys paid to the Authority for the acquisition, construction, reconstruction, renovation or equipment of any Project and any moneys received by the Authority in respect of damage to or condemnation of any Project, if not inconsistent with an Applicable Mortgage, an Applicable Reimbursement Agreement or any agreement made by the Authority with the holders of bonds of such Series issued prior to the Issue Date, shall be deposited in the applicable account of the Applicable Construction Fund.

*(Section 8.08)*

**Amendment of Applicable Loan Agreement**

A Loan Agreement may not be amended, changed, modified, altered or terminated so as to materially adversely affect the interest of the Holders of the Outstanding Bonds of the Applicable Series without the prior written consent of the Applicable Credit Facility Provider of at least a majority in aggregate principal amount of the Bonds of the Applicable Series then Outstanding and the Holders of at least a majority in aggregate principal amount of such Bonds then Outstanding; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any Applicable Series remain Outstanding, the consent of the Applicable Credit Facility Provider or the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds of the Applicable Series under this summarized section; provided, further, that no such amendment, change, modification, alteration or termination will reduce the percentage of the aggregate principal amount of Outstanding Bonds of such 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 Institution under the Loan Agreement that is to be deposited with the Trustee or extend the time of payment thereof. Except as otherwise provided in this summarized section or in the Intercreditor Agreement, a Loan Agreement may be amended, changed, modified or altered without the consent of the Credit Facility Provider, the Holders of Outstanding Bonds of the Applicable Series or the Credit Facility Provider Trustee. Specifically, and without limiting the generality of the foregoing, a Loan Agreement may be amended, changed, modified or altered without the consent of the Credit Facility Provider, the Trustee and the Holders of Outstanding Bonds of such Series to provide changes in connection with the acquisition, construction, reconstruction, rehabilitation, renovation and improvement or otherwise, the providing, furnishing and equipping of any facilities constituting a part of the Applicable Project or which may be added to such Project or the issuance of Bonds of an Applicable Series, to cure any ambiguity, or to correct or supplement any provisions contained in the Loan Agreement, which may be defective or inconsistent with any other provisions contained in the Resolution or in such Loan Agreement. Upon execution by the Authority of any amendment, a copy thereof certified by the Authority shall be filed with each Credit Facility Provider and the Trustee.

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

For all purposes of this summarized section, the Trustee shall be entitled to rely upon an opinion of counsel, which counsel shall be satisfactory to the Trustee and any Applicable Credit Facility Provider, with respect to whether any amendment, change, modification or alteration adversely affects the interests of any Holders of Bonds and any Applicable Credit Facility Provider of an Applicable Series then Outstanding.

*(Section 8.11)*

**Tax Covenant**

The Authority covenants that it shall not take any action or inaction, or fail to take any action, or permit any action to be taken on its behalf or cause or permit any circumstance within its control to arise or continue, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds under Section 103 of the Code. Without limiting the generality of the foregoing, the

Authority covenants that it will comply with the instructions and requirements of the Tax Certificate and Agreement, which is incorporated in the Resolution as if fully set forth in the Resolution. This covenant shall survive payment in full or defeasance of the Bonds.

In the event that at any time the Authority is of the opinion that for purposes of this summarized section it is necessary or helpful to restrict or limit the yield on the investment of any moneys held by the Trustee under the Resolution, the Authority shall so instruct the Trustee under the Resolution in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions.

Notwithstanding any provisions of this summarized section, if the Authority shall provide to the Trustee an opinion of Bond Counsel that any specified action required under this summarized section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Bonds, the Trustee may conclusively rely on such opinion in complying with the requirements of this summarized section and of the Tax Certificate and Agreement, and the covenants under the Resolution shall be deemed to be modified to that extent.

*(Section 8.13)*

### **Modification and Amendment Without Consent**

Notwithstanding any other provisions of the Resolution, and subject to the consent of each Credit Facility Provider with a Credit Facility then in effect, the Authority may adopt at any time or from time to time Applicable Supplemental Resolutions for any one or more of the following purposes, and any such Applicable Supplemental Resolutions shall become effective in accordance with its terms upon the filing with the Trustee of a copy thereof certified by 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, 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 provide for additional security for the payment of the Bonds, including, but not limited to, provisions to allow a Credit Facility Provider to confirm its obligations under an existing Credit Facility; or

(d) To prescribe further limitations and restrictions upon the issuance of Bonds and the incurring of indebtedness by the Authority which are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect;

(e) 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;

(f) To confirm, as further assurance, any pledge under the Resolution, and the subjection to any lien, claim or pledge created or to be created by the provisions of the Resolution, of the Revenues, or any pledge of any other moneys, funds or Securities; or

(g) To modify any of the provisions of the Resolution or of any previously adopted Applicable 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; or

(h) With the consent of the Trustee and each Credit Facility Provider with a Credit Facility then in effect, to cure any ambiguity or defect or inconsistent provision in the Resolution or to insert such provisions clarifying matters or questions arising under the Resolution as are necessary or desirable, provided that any such modifications are not contrary to or inconsistent with the Resolution as theretofore in effect, or to modify any of the provisions of the Resolution or of any previously adopted Series Resolution or Supplemental Resolution in any other respect, provided that such modification shall not adversely affect the interests of the Bondholders or any Credit Facility Provider in any material respect.

The Authority shall give each Applicable Credit Facility Provider notice of each such Supplemental Resolution adopted pursuant to this summarized section amending the Resolution and each Supplemental Resolution amending an Applicable Series Resolution.

*(Section 11.01)*

**Supplemental Resolutions Effective With Consent of Bondholders and Credit Facility Providers**

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

*(Section 11.02)*

**General Provisions Relating to Supplemental Resolutions**

The 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 section entitled "Further Assurance" 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 provided in the Resolution or permitted to be delivered to the Trustee or any Paying Agent.

A copy of every Series Resolution and Supplemental Resolution adopted by the members of 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 by the Resolution and is valid and binding upon the Authority and enforceable in accordance with its terms. The Authority shall transmit a copy of such Supplemental Resolution to the Institution, each Applicable Credit Facility Provider and each Applicable Facility Provider upon its becoming effective.

The Trustee is 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 in the Resolution, 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 or of any Paying Agent or of any Credit Facility Provider or of any Facility Provider shall become effective without the written consent of the Trustee, Paying Agent, Credit Facility Provider or Facility Provider affected thereby.

*(Section 11.03)*

**Powers of Amendment**

Any modification or amendment of the Resolution and of the rights and obligations of the Authority, or any Credit Facility Provider which modification or amendment shall be deemed to apply to an Applicable Series of Bonds and of the Holders of the Bonds of such Applicable Series under the Resolution, in any particular, may be made by an Applicable Supplemental Resolution, with the written consent of each Credit Facility Provider with a Credit Facility then in effect with respect to an Applicable Series then Outstanding and the written consent given as hereinafter provided in section entitled "Consent of Bondholders" in the Resolution, (i) of the Holders of at least two-thirds (2/3) in principal amount of the Bonds Outstanding of such Applicable Series at the time such consent is given, or (ii) in case the modification or amendment changes the amount or date of any Sinking Fund Installment, of the Holders of at least two-thirds (2/3) in principal amount of the Bonds of the particular Series, maturity and interest rate entitled to such Sinking Fund Installment, Outstanding at the time such consent is given; provided,

however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified like Series, maturity and tenor remain Outstanding, the consents of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this summarized section. No such modification or amendment shall permit a 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 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 this summarized section, 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 any 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. 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 Authority shall transmit a copy of such Supplemental Resolution to the Institution upon its becoming effective.

*(Section 12.01)*

**Consent of Bondholders**

The Authority may at any time adopt a Supplemental Resolution making a modification or amendment permitted by the provisions of the section entitled “Powers of Amendment” in the Resolution to take effect when and as provided in this summarized section. 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 Applicable Credit Facility Providers and the Holders of the Applicable Series of Bonds for their consent thereto in form satisfactory to the Trustee, shall promptly after adoption be mailed by the Trustee at the direction of the Authority to such Bondholders and the Applicable Rating Agency (but failure to mail such copies and request to any particular Bondholder shall not affect the validity of the Supplemental Resolution when consented to as in this summarized section provided). Such Supplemental Resolution shall not be effective unless and until there shall have been filed with the Trustee (a) the written consent of the Credit Facility Providers with a Credit Facility then in effect with respect to a majority of the Bonds then Outstanding of such Applicable Series, (b) the written consent of the Holders of the percentages of Outstanding Bonds specified in the section entitled “Powers of Amendment” in the Resolution and (c) 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 by the Resolution, and is valid and binding upon the Authority and enforceable in accordance with its terms. Each such consent of a Bondholder shall be effective only if accompanied by proof of the holding or owning at the date of such consent, of the Bonds with respect to which such consent is given, which proof shall be such as is permitted by the section entitled “Evidence of Signatures of Bondholders and Ownership of Bonds” in the Resolution. A certificate or certificates by the Trustee that it has examined such proof and that such proof is sufficient in accordance with the section entitled “Evidence of Signatures of Bondholders and Ownership of Bonds” in the Resolution shall be conclusive proof that the consents has been given by the Applicable Credit Facility Providers and the Holders of the Bonds described in the certificate or certificates of the Trustee. Any consent given by a Credit Facility Provider or Bondholder shall be binding upon such Credit Facility Provider or Bondholder giving such consent and, anything in the section entitled “Evidence of Signatures of Bondholders and Ownership of Bonds” in the Resolution to the contrary notwithstanding, upon any subsequent Credit Facility Provider or Bondholder and of any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by such Credit Facility Provider or the Bondholder giving such consent or a subsequent Credit Facility Provider or Holder thereof by filing such revocation with the Trustee, prior to the time when the written statement of the Trustee hereinafter in this summarized section provided for is filed. 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 Credit Facility Providers with a Credit Facility then in effect with respect to a majority of the Bonds then Outstanding or the Holders of the required percentages of Bonds 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 the Credit Facility Providers of Credit Facilities and the Holders of such required percentages of Bonds have filed such consents. Such written statement shall be conclusive

evidence 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 Credit Facility Providers of Credit Facilities with respect to such required percentage of Bonds and the Holders of the required percentages of Bonds and will be effective as provided in this summarized section, shall be given to the Credit Facility Providers and the Bondholders by the Trustee at the direction of the Authority by mailing or causing the mailing of such notice to the Credit Facility Providers and the Bondholders (but failure to mail such notice shall not prevent such Supplemental Resolution from becoming effective and binding as in this summarized section provided) and, in the sole discretion of the Authority, by publishing the same at least once not more than ninety (90) days after the Credit Facility Providers of Credit Facilities with respect to such required percentage of Bonds and the Holders of the required percentages of Bonds shall have filed their consents to the Supplemental Resolution and the written statement of the Trustee provided above in the Resolution for is filed (but failure to publish such notice shall not prevent such Supplemental Resolution from becoming effective and binding as in this summarized section provided). If such notice is published, the Authority shall file with the Trustee proof of the publication thereof, and, if the same shall have been mailed to the Holders of such Bonds, of the mailing thereof. A transcript, consisting of the papers required or permitted by this summarized section 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, each Applicable Credit Facility Provider and the Holders of all Bonds 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. The Trustee, in determining whether any amendments or supplements to the Resolution may be made without the consent of the Holders of the Bonds, or, in determining whether any other discretionary action should be taken, shall consider the effect of such action on the rights of such Holders as if a Credit Facility with respect to the Bonds was not in effect.

For the purposes of the Resolution, the purchasers of the Bonds of a Series, whether purchasing as underwriters, for resale or otherwise, upon such purchase from the Authority, may consent to a modification or amendment permitted by the sections entitled “Powers of Amendment” and “Modifications by Unanimous Consent” in 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 for resale, the nature of the modification or amendment 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 primary offering or reoffering of the Bonds of such Series.

*(Section 12.02)*

#### **Modifications by Unanimous Consent**

The terms and provisions of the Resolution and the rights and obligations of the Authority, each Credit Facility Provider and of the Holders of the Bonds 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 the Authority and the consent of each Applicable Credit Facility Provider of a Credit Facility then in effect and the Holders of all of the Bonds then Outstanding of an Applicable Series, such consent to be given as provided in the section entitled “Consent of Bondholders” in the Resolution, except that no notice to the Bondholders either by mailing or publication shall be required.

*(Section 12.03)*

#### **Consent of Facility Provider**

Whenever by the terms of the Resolution the consent of any of the Holders of the Bonds 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 Facility Provider has been obtained; provided that the consent of an Applicable Facility Provider which has provided a Liquidity Facility shall not be required unless the modification or amendment requires the consent of the Holders of any percentage in principal amount of Outstanding Bonds of an Applicable Series or of the Holders of any percentage in principal amount of the Bonds of an Applicable Series in connection with which such Liquidity Facility was provided. No modification or amendment of the Resolution which adversely affects a Facility Provider shall be made without the written consent thereto of the Facility 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 Facility Provider by mail at the times and in the manner provided in the Resolution with respect to notices thereof required to be given to an Insurer. Notice thereof shall also be given to each Applicable Rating Agency as soon as practical after adoption of such Supplemental Resolution and of the effectiveness thereof.

*(Section 12.04)*

#### **Events of Default**

An event of default shall exist under the Resolution and under each Series Resolution (in the Resolution called “event of default”) if:

(a) Payment of the principal, Sinking Fund Installments, Redemption Price, Purchase Price or installment of interest of any Bond, other than a Custody Bond or a Bond held for or registered in the name of the Institution, or a designee thereof, 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) The Authority shall default in the due and punctual performance of the covenants contained in the section entitled “Tax Covenant” in the Resolution 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

(c) The Authority shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions for the benefit of the holders of such Bonds contained in the Resolution or in the Bonds or in any Series Resolution on the part of the Authority to be performed and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Authority by the Trustee, 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; or

(d) An “Event of Default,” as defined in a Loan Agreement, shall have occurred and be continuing and all sums payable by the Institution under such Applicable Loan Agreement shall have been declared to be immediately due and payable, which declaration shall not have been annulled.

*(Section 13.02)*

#### **Acceleration of Maturity**

Upon the happening and continuance of any event of default specified in the section entitled “Events of Default” in the Resolution, other than an event of default specified in paragraph (b) of the section entitled “Events of Default” 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 Applicable Series of Outstanding Bonds, shall declare the principal and interest on the Applicable Series of Outstanding Bonds to be due and payable. The Trustee shall give notice of the acceleration of Bonds to the Holders of the Bonds not less than two (2) nor more than five (5) Business Days of receipt of the written notice to accelerate the Bonds from the Applicable Credit Facility Provider. At the expiration of thirty (30) days from the giving of notice of acceleration with respect to paragraphs (a), (c) and (d) of the section entitled “Events of Default” in the Resolution, such principal and interest shall become and be immediately due and payable, and interest on such Bonds shall cease to accrue on such date, anything in the Resolution or in any Series Resolution to the contrary notwithstanding. If such notice shall be given with respect to the section entitled “Events of Default” in the Resolution, the Bonds shall not be subject to mandatory purchase as provided in the section entitled “Purchase of Bonds” of the Resolution. At any time after the principal of the 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 may, with the written consent of the Credit Facility Provider and the Holders of not less than twenty-five per centum (25%) in principal amount of such Bonds not then due by their terms and then Outstanding, by written notice to the Authority, annul such declaration and its consequences if: (i) Available Moneys shall have accumulated in the Applicable 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) and principal, Redemption Price or Purchase Price on such Bonds then due and payable; (ii) moneys shall have accumulated and be available sufficient to pay the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee and any Paying Agent incurred in connection with such Bonds; (iii) all other amounts then payable by the Authority under the Resolution or under each Series Resolution in connection with such Bonds shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee; (iv) every other default known to the Trustee in the observance or performance of such covenant, condition or agreement contained in the Resolution or in any 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 this summarized section) shall have been remedied to the satisfaction of the Trustee and (v) one or more Credit Facility Providers shall have deposited with the Trustee an amount drawn under the applicable Credit Facility or Credit Facilities sufficient to pay the principal of and interest on the Outstanding Bonds then due and payable and such Credit Facility Provider or Credit Facility Providers has or have given its or their prior written consent to such annulment. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon. If one or more Credit Facility Providers direct the annulment, then the annulment shall only be effective if all Credit Facilities will be in effect after the annulment in an amount at least equal to a principal amount of and maximum amount of interest to accrue between Interest Payment Dates on Bonds to be Outstanding.

*(Section 13.03)*

#### **Enforcement of Remedies**

Upon the happening and continuance of any event of default specified in the section entitled “Events of Default” in the Resolution, then and in every such case, the Trustee may proceed, and upon the written request of an Applicable Credit Facility Provider or Applicable Credit Facility Providers of not less than twenty-five per centum (25%) of the aggregate principal amount of Reserve Fund Facilities, or of the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds or, in the case of a happening and continuance of an event of default specified in paragraph (c) of the section entitled “Events of Default” in the Resolution, upon the written request of the Holders of not less than a majority in principal amount of the Outstanding Bonds of the Series affected thereby, shall proceed (subject to the provisions of the section entitled “Compensation” in the Resolution), to protect and enforce its rights and the rights of the Bondholders or of such Credit Facility Provider under the Resolution or under any 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 any 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 Mortgages assigned to the Trustee.

In the enforcement of any remedy under the Resolution and under each 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 any Series Resolution or of the Bonds, with interest on overdue payments of the principal of or interest on the Bonds at the rate or rates of interest specified in such Bonds, together with any and all costs and expenses of collection and of all proceedings under the Resolution and under any 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 any Series Resolution, and in such Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect in any manner provided by law, the moneys adjudged or decreed to be payable.

*(Section 13.04)*

**Credit Facility Provider's and Bondholder's Direction of Proceedings**

Anything in the Resolution to the contrary notwithstanding, the Credit Facility Provider, or, if the Credit Facility Provider shall have failed to honor a draft presented to it under the Credit Facility, which draft was presented in strict compliance with the Credit Facility, and such failure shall not have been cured by the Credit Facility Provider, then the Holders of a majority in principal amount of the Outstanding Bonds, or, in the case of an event of default specified in paragraph (b) of the section entitled "Events of Default" in the Resolution, the Holders of a majority in principal amount of the Bonds affected thereby, shall have the right by an instrument in writing executed and delivered to the Trustee, to direct all remedial proceedings to be taken by the Trustee under the Resolution, provided, such direction shall not be otherwise than in accordance with law or the provisions of the Resolution, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Bondholders not parties to such direction, if such direction is from Holders of Bonds.

*(Section 13.07)*

**Limitation of Rights of Individual Bondholders**

The Holder of any of the Bonds shall not 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, or, in the case of an event of default specified in paragraph (c) of the section entitled "Events of Default" in the Resolution, the Holders of not less than a majority in principal amount of the Outstanding Bonds of the 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 by the Resolution or to institute such action, suit or proceeding in its or their name, and unless, also, there shall have been offered to the Trustee security and indemnity reasonably satisfactory to it against the costs, expenses, and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time. Such notification, request and offer of indemnity are by the Resolution declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts 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 secured by the Resolution shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Resolution or to enforce any right under the Resolution except in the manner provided, and that all proceedings at law or in equity shall be instituted and maintained for the benefit of all Holders of the Outstanding Bonds. Notwithstanding any other provisions of the Resolution, the Holder of any Bond shall have the right which is absolute and unconditional to receive payment of the principal of (or Redemption Price, if any) and interest on such Bond on the stated maturity expressed in such Bond (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

*(Section 13.08)*

**Waiver and Non-Waiver of Default**

No delay or omission of the Trustee, the Credit Facility Provider or any Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein. Every power and remedy given by the Resolution to the Trustee, any Credit Facility Provider and the Bondholders, respectively, may be exercised from time to time and as often as may be deemed expedient.

The Trustee may, upon written consent of the Credit Facility Providers with a Credit Facility then in effect with respect to a majority of the Bonds then Outstanding, and shall, upon written consent of such Credit Facility Providers and written request of the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds, or, in the case of a default specified in paragraph (c) of the section entitled "Events of Default" in the Resolution, the Holders of a majority in principal amount of the Outstanding Bonds of the Series affected thereby, waive any default before the entry of final judgment or decree in any suit, action or proceeding



instituted by it under the provisions of the Resolution or before the completion of the enforcement of any other remedy under the Resolution so long as the applicable Credit Facility remains in full force and effect, and provided that the Trustee shall receive written confirmation from the Credit Facility Provider that the interest component of the Credit Facility has been reinstated; but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

*(Section 13.11)*

**Notice of Event of Default**

The Trustee shall give notice of each event of default under the Resolution known to the Trustee to each Credit Facility Provider, each Facility Provider and the Institution within five (5) days after knowledge of the occurrence thereof and to the Holders of Bonds within thirty (30) days after knowledge of the occurrence of the Resolution, unless such event of default shall have been remedied or cured before the giving of such notice; provided, however, that, except in the case of default in the payment of the principal, Sinking Fund Installments or Redemption Price of, or interest on, any of the Bonds, the Trustee shall be protected in withholding notice thereof to the Holders of Bonds if and so long as the Trustee in good faith determines that the withholding of such notice is in the best interests of the Holders of the Bonds. Each such notice of event of default shall be given by the Trustee by mailing written notice thereof: (i) to the registered Holders of Bonds, as the names and addresses of such Holders appear on the books for registration and transfer of Bonds as kept by the Trustee, (ii) to each Credit Facility Provider, (iii) to each Facility Provider, (iv) to the Institution and (v) to such other persons as is required by law. Any such notice required to be mailed to Holders of Bonds may, in the sole discretion of the Authority, be published by the Trustee in an Authorized Newspaper.

*(Section 13.12)*

**Intercreditor Agreement**

Notwithstanding anything to the contrary contained in the Resolution, the provisions regarding the exercise of rights and remedies under the Resolution are subject to the terms of the Intercreditor Agreement.

*(Section 13.13)*

**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, and all amounts due and owing to the Applicable Credit Facility Provider under the Applicable Reimbursement Agreement, then the pledge of the Applicable Revenues or other moneys and Securities pledged to such Bonds and all other rights granted by the Resolution to such Bonds shall be discharged and satisfied. In such event, the Bonds of such Series shall not be subject to purchase as provided in the section entitled "Purchase of Bonds" in the Resolution, and 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 moneys 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 not theretofore surrendered for such payment or redemption shall be paid or delivered by the Trustee as follows: first, to the Applicable Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of the Authority; second, to the Applicable Credit Facility Provider all amounts due and owing to such Applicable Credit Facility Provider under the Applicable Reimbursement Agreement; third, to each Applicable Facility Provider the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Facility Provider; fourth, to the Authority the amount certified by the Authority to be then due or past due pursuant to the Applicable Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, fifth, the balance thereof to the Institution. Such moneys and Securities so paid or delivered shall be released from any trust, pledge, lien, encumbrance or security interest created by the Resolution or by the Applicable Loan Agreement. Notwithstanding anything to the contrary in the Resolution, if any Series of Bonds bearing interest at a Weekly Rate are to be defeased, the Authority shall have received notice from the Applicable Rating Agency that the rating then in effect with respect to such Series of Bonds shall not be withdrawn.

## *Appendix C*

Bonds for the payment or redemption of which Available Moneys shall have been set aside and shall be held in trust by the Trustee (through deposit of moneys for such payment or redemption or otherwise) at the maturity, purchase date or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this summarized section. All Outstanding Bonds of any Series or any maturity within a Series or a portion of a maturity within a Series shall prior to the maturity, purchase date or redemption date of the Resolution be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this summarized section if (a) in case any of said Bonds of any Series 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, (b) there shall have been deposited with the Trustee either Available Moneys in an amount which shall be sufficient, or Defeasance Securities acquired with Available Moneys the principal of and interest on which when due shall provide moneys which, together with the Available Moneys, if any, deposited with the Trustee and/or Tender Agent at the same time shall be sufficient to pay when due the principal, Sinking Fund Installments, if any, Purchase Price or Redemption Price, if applicable, and interest due and to become due on said Bonds on and prior to the purchase date, redemption date or maturity date thereof, as the case may be, together with an opinion of nationally recognized counsel acceptable to the Trustee that such payments to Bondholders would not be subject to the avoidable preference or stay provisions of Sections 544, 547 and 550 of the Bankruptcy Code in a case commenced thereunder by or against the Authority, the Institution or an Affiliate; provided that with respect to all Bonds other than Bonds bearing interest at the Fixed Rate, the calculation of the amount required to be deposited pursuant to this clause (b) shall be made assuming that such Bonds bear interest at the Maximum Interest Rate to the first possible redemption or tender date, and (c) the Trustee shall have received the written consent of each Applicable Facility Provider which has given written notice to the Trustee and the Authority that amounts advanced under a Liquidity Facility or Reserve Fund Facility issued by it or the interest thereon have not been repaid to such Facility Provider, and (d) 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, by first class mail, postage prepaid, to the registered owners of the Bonds to be redeemed, at their last known addresses appearing on the registration books and, if directed by the Authority, by publication, as soon as practicable, at least twice, at an interval of not less than seven (7) days between publications, in an Authorized Newspaper, a notice to the Holders of such Bonds that the deposit required by (b) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this summarized section and stating the first such maturity, purchase date or redemption date upon which moneys are to be available for the payment of the principal, Sinking Fund Installments, if any, Purchase Price 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 maturity payment of which shall be made in accordance with this summarized section. The Trustee shall select the Bonds of like maturity payment of which shall be made in accordance with this summarized section in the manner provided in the section entitled "Selection of Bonds to be Redeemed" in the Resolution. Neither Defeasance Securities nor Available Moneys deposited with the Trustee pursuant to this summarized section 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 and pledged to, the payment of the principal, Sinking Fund Installments, if any, Purchase Price or Redemption Price, if applicable, of and interest on said Bonds; provided that any moneys received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, 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, Purchase Price or Redemption Price, if applicable, of and interest to become due on said Bonds on and prior to such redemption date or maturity date of the Resolution, as the case may be. Any income or interest earned by, or increment to, the investment of any such moneys so deposited, shall, to the extent certified by the Trustee to be in excess of the amounts required in the Resolution above to pay the principal, Sinking Fund Installments, if any, Purchase Price or Redemption Price, if applicable, of and interest on such Bonds, as realized, be paid by the Trustee as follows: first, to the Applicable Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of the Authority; second, to the Applicable Credit Facility Provider the amount certified by an Authorized Officer of the Applicable Credit Facility Provider to be due and owing to the Applicable Credit Facility Provider under the Applicable Reimbursement Agreement; third, to each Applicable Facility Provider the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Facility Provider; fourth, to the Authority the amount certified by the Authority to be then due or past due pursuant to the Applicable Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, fifth, the balance thereof to the Institution, and any such moneys so paid by the Trustee shall be released of any trust, pledge, lien, encumbrance or security interest created by the

Resolution or by the Applicable Loan Agreement. The Trustee shall give written notice of such defeasance to the Applicable Rating Agency.

For purposes of determining whether Variable Interest Rate Bonds shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, by the deposit of Available Moneys, or Defeasance Securities and Available Moneys, if any, in accordance with clause (b) of the second sentence of the second paragraph of this summarized section, 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 Available Moneys and Defeasance Securities on deposit with the Trustee for the payment of interest on such Variable Interest Rate Bonds is in excess of the total amount which would have been required to be deposited with the Trustee on such date in respect of such Variable Interest Rate Bonds in order to satisfy clause (b) of the second sentence of the second paragraph of this summarized section, 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 the Applicable Credit Facility Provider all amounts due and owing to such Applicable Credit Facility Provider under the Applicable Reimbursement Agreement; third, to each Facility Provider the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Facility Provider; fourth, 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, fifth, the balance thereof to the Institution, and any such moneys so paid by the Trustee shall be released from trust, pledge, lien, encumbrance or security interest created by the Resolution or by the Agreement.

Option Bonds shall be deemed to have been paid in accordance with clause (b) of the second sentence of the second paragraph of this summarized section only if, in addition to satisfying the requirements of clauses (a) and (c) of such sentence, there shall have been deposited with the Trustee Available Moneys 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 second paragraph of this summarized section, 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 summarized paragraph. If any portion of the Available Moneys 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 Applicable Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to the Applicable Credit Facility Provider all amounts due and owing to such Applicable Credit Facility Provider under the Applicable Reimbursement Agreement; third, to each Applicable Facility Provider the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Facility Provider; fourth, 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, fifth, the balance thereof to the Institution, and any such moneys so paid by the Trustee shall be released of any trust, pledge, lien, encumbrance or security interest created by the Resolution or by the Applicable Loan Agreement.

Anything in the Resolution to the contrary notwithstanding, any moneys held by the Trustee, the Tender Agent or a Paying Agent in trust for the payment and discharge of any of the Bonds which remain unclaimed for three (3) years after the date when all of the Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption or at the purchase date of the Resolution, if such moneys were held by the Trustee, the Tender Agent or Paying Agent at such date, 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, the Tender Agent 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

## ***Appendix C***

be published in an Authorized Newspaper a notice that such moneys remain unclaimed and that, after a date named in such notice, which date shall be not less than forty (40) nor more than ninety (90) days after the date of publication of such notice, the balance of such moneys then unclaimed shall be returned to the Authority.

*(Section 14.01)*

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

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

The Bank will agree to issue the Letter of Credit pursuant to the terms of the Reimbursement Agreement with the Institution. Reference is made to the Letter of Credit and the Reimbursement Agreement for the complete details of the terms thereof. The following is a brief outline of certain provisions of the Reimbursement Agreement and should not be considered a full statement thereof.

Issuance of Letter of Credit

The Bank will agree, subject to the terms and conditions set forth in the Reimbursement Agreement and at the request of and for the account of the Institution, to issue the Letter of Credit in favor of the Trustee.

Payments

The Institution will agree to pay the Bank on demand, a sum (together with interest thereon) equal to the amount of any draw on the Letter of Credit, plus all reasonable charges and expenses which the Bank may pay or incur relative to the Letter of Credit at a fluctuating rate of interest equal to the Libor Rate (as defined in the Reimbursement Agreement) plus four percent (4.00%) per annum.

Cross Defaults

The Bank has issued a commitment letter for a construction loan to the Borrower in an amount not to exceed \$10,600,000 (the "Construction Loan") to provide funding for the construction of 44 independent living units representing an expansion of the Project. It is anticipated that the Borrower will grant a second priority mortgage lien on the Project subordinate to the lien of the Mortgage to secure the Construction Loan. A default by the Borrower under the Construction Loan would constitute an Event of Default under the Reimbursement Agreement.

Events of Default

The following events constitute "Events of Default" under the Reimbursement Agreement:

(a) Failure by the Institution pay when due the principal or interest of or any installment of the principal or interest on the Bonds or of any Loans (as defined in the Reimbursement Agreement), or failure to pay any Letter of Credit fee or other fee required under the Reimbursement Agreement when due; or

(b) If any representation or warranty or statement made or deemed made by the Institution in the Reimbursement Agreement or which is contained in any certificate, document, financial or other statement furnished at any time under or in connection with the Reimbursement Agreement shall prove to have been false or misleading in any material respect when made; or

(c) Default by the Institution in the observance or performance of any of the covenants or agreements contained in the Reimbursement Agreement; or

(d) Any breach or default with respect to any indebtedness or guaranty of the Institution when due or the performance of any other obligation of the Institution incurred in connection with any indebtedness for borrowed money including, but not limited to, the occurrence of an event of default under the Construction Loan (as defined in the Reimbursement Agreement) or under any other credit facility outstanding from the Bank or any affiliate thereof to the Institution;

(e) The Institution or the Liquidity Support Provider (as defined in the Reimbursement Agreement) shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of any of its assets, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated bankrupt or insolvent, or (v) file a voluntary petition in bankruptcy, or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency,

## *Appendix D*

readjustment of debt, dissolution or liquidation by law or statute, or an answer admitting the material allegations of a petition filed against the Institution in any proceeding under any such law or the filing of an involuntary bankruptcy against the Institution or the Liquidity Support Provider, as applicable, or if corporate action shall be taken by Institution or the Liquidity Support Provider, as applicable, for the purpose of effecting any of the foregoing, or

(f) An order, judgment or decree shall be entered, without the application, approval or consent of the Institution, or by any court of competent jurisdiction, approving a petition seeking reorganization of the Institution, or of all or a substantial part of any of its respective properties or assets or appointing a receiver, trustee or liquidator of the Institution, and such order, judgment or decree shall continue unstayed and in effect for a period of 60 days; or

(g) There shall be entered against the Institution one or more judgments or decrees in excess of \$25,000 in the aggregate and the same remain undischarged or unbonded for thirty (30) days; or

(h) The Institution shall become an “investment Institution” within the meaning of the Investment Institution Act of 1940, as the same may be amended from time to time; or

(i) A Reportable Event (as defined in the Reimbursement Agreement) shall occur under ERISA; or

(j) An Event of Default occurs with respect to any of the Related Documents (as defined in the Reimbursement Agreement); or;

(k) The Institution shall cease to conduct business, or shall be dissolved; or

(l) There shall occur a “material citing” by the United States Environmental Protection Agency or any other recognized governmental agency regarding a violation of any law, rule or regulation regarding Hazardous Material; or

(m) The liens created by any of the Bank Documents (as defined in the Reimbursement Agreement) shall for any reason cease to be valid, perfected security interests or mortgage liens of the required priority in favor of the Bank (except with respect to UCC filings that have lapsed because the Bank has failed to timely file a continuation statement).

If any Event of Default occurs under the Reimbursement Agreement, the Bank may (1) declare the obligations of the Institution under the Reimbursement Agreement to be forthwith due and payable and the same shall thereupon become immediately due and payable without demand, presentment, protest or further notice of any kind, all of which are expressly waived and/or (2) demand the immediate deposit of cash collateral in an amount equal to the full amount then available or which may subsequently become available under the Letter of Credit, and the same shall thereupon become due and payable and/or (3) proceed to enforce all other applicable legal and/or equitable remedies available to it and/or (4) exercise any rights provided to the Bank under the Reimbursement Agreement or under the Financing Documents. Upon any such Event of Default, the Bank shall be entitled to notify the Trustee with the effect contemplated by the Resolution.



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**FORM OF NO ADVERSE IMPACT  
OPINION OF BOND**

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**FORM OF NO ADVERSE IMPACT OPINION OF  
BOND COUNSEL**

February 26, 2009

Dormitory Authority of the State of New York  
Albany, New York

The Bank of New York Mellon, as Trustee  
New York, New York

Manufacturers and Traders Trust Company  
Buffalo, New York

Standard & Poor's  
New York, New York

Re: Dormitory Authority of the State of New York  
Teresian House Housing Corporation Revenue Bonds, Series 2003

Ladies and Gentlemen:

We acted as Bond Counsel to the Dormitory Authority of the State of New York (the "Authority") in connection with the issuance by the Authority on July 22, 2003 of its Teresian House Housing Corporation Revenue Bonds, Series 2003 (the "Series 2003 Bonds") in the original aggregate principal amount of \$40,265,000 pursuant to the terms of the Authority's Teresian House Housing Corporation Revenue Bond Resolution (the "General Resolution") adopted on June 25, 2003 and its Teresian House Housing Corporation Series 2003 Resolution (the "Series 2003 Resolution"). Reference is made to our approving opinion as Bond Counsel dated July 22, 2003 delivered in connection with the original issuance of the Series 2003 Bonds, where we opined, among other things, that interest on the Series 2003 Bonds was excluded from gross income for Federal income tax purposes.

On July 22, 2003 the Authority issued the Series 2003 Bonds in the principal amount of \$40,265,000 in a weekly variable rate mode, the proceeds of which were used to finance the construction of the Teresian House Housing Corporation's project located in the City of Albany, Albany County, New York (the "2003 Project").

The proceeds of the Series 2003 Bonds were loaned by the Authority to the Institution pursuant to a Loan Agreement, dated as of June 25, 2003 (the "Loan Agreement").

The General Resolution required that the 2003 Bonds be secured and payable as to principal, interest, Sinking Fund Installments and Purchase Price by a Credit Facility. Sovereign Bank (the "Credit Facility Provider") issued, for the benefit of the trustee for the holders of the Series 2003 Bonds (the "Trustee"), a direct-pay letter of credit (the "Letter of Credit") in an amount equal to the principal amount of Series 2003 Bonds issued, plus up to 51 days' interest on the Series 2003 Bonds while the Series 2003 Bonds bear interest at a Weekly Rate. In addition, to satisfy the requirements of the Public Authority Control Board ("PACB") that the Bank issuing the Credit Facility have a long term rating of at least "A", Lloyds Bank TSB, plc (the "Confirming Bank") issued to the Trustee a Confirming Letter of Credit (the "Confirming Letter of Credit") which allowed the Trustee to draw on the Confirming Letter of Credit if the Credit Facility Provider failed to honor a draw on the Letter of Credit.

The Confirming Letter of Credit expired on October 18, 2008 and the Credit Facility Provider and the Institution were not able to secure a Substitute Confirming Letter of Credit. All of the outstanding Series 2003 Bonds were subject to a mandatory tender on October 18, 2008 and were not remarketed. The unremarketed Series 2003 Bonds became Custody Bonds in accordance with the provisions of the General Resolution and are currently registered in the name of the Credit Facility Provider and remain outstanding.

The PACB Resolution requires that the rating on the bonds immediately following the delivery of a

Substitute Credit Facility shall not be less than investment grade. The General Resolution requires that any Substitute Credit Facility Provider have a minimum of an investment grade rating for its long term debt and a short term rating issued by a rating agency.

The Authority adopted on January 25, 2009 a First Supplemental Resolution (the “First Supplemental Resolution”); and, together with the General Resolution and the Series Resolution, the “Resolution”) which supplemented and amended the General Resolution to clarify that a Substitute Confirming Letter of Credit is not required when the ratings requirements of the PACB Resolution and the General Resolution have been satisfied.

The Institution has now arranged for the delivery to the Trustee of a Substitute Credit Facility to be issued by Manufacturers and Traders Trust Company (the “Substitute Credit Facility Provider”) that satisfies such ratings requirements. Therefore, it will not be necessary to have a Substitute Confirming Letter of Credit in place in order to remarket the Series 2003 Bonds.

Upon delivery of the Substitute Credit Facility, the Series 2003 Bonds will be remarketed by Manufacturers and Traders Trust Company, as Remarketing Agent (the “Remarketing Agent”), pursuant to a Firm Remarketing Agreement, dated February 25, 2009 (the “Firm Remarketing Agreement”), among the Authority, the Remarketing Agent and the Institution.

The Substitute Credit Facility is dated February 26, 2009 and has been issued by the Substitute Credit Facility Provider pursuant to the terms of a certain Reimbursement Agreement, dated February 26, 2009 (the “Substitute Reimbursement Agreement”). The Credit Facility Provider and the Substitute Credit Facility Provider have entered into an Assignment and Assumption Agreement, dated February 26, 2009 (the “Assignment and Assumption Agreement”), from the Credit Facility Provider to the Substitute Credit Facility Provider, with consent of the Authority and the Institution, to provide for, among other things, the holding of certain collateral for the benefit of the Authority, The Bank of New York Mellon, as trustee (the “Trustee”) and the Substitute Credit Facility Provider and the exercise of certain remedies by such parties.

Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Resolution. This opinion of Bond Counsel is being delivered to you pursuant to Section 6.05 and Section 12.02 of the Resolution. In delivering this opinion we have not been requested to and we have not made any investigation into the tax status of the Series 2003 Bonds and we have, with your permission, assumed that interest on the Series 2003 Bonds has remained excluded from gross income for Federal income tax purposes since the date of original issuance. In rendering the opinions below we have relied upon, among other things, certain representations and covenants of Substitute Credit Facility Provider and the Institution contained in the Substitute Reimbursement Agreement and in certificates of the Substitute Credit Facility Provider and the Institution dated the date hereof. We have also relied upon the opinions of counsel to the Substitute Credit Facility Provider, Lemery Greisler LLC, Saratoga Springs, New York, and counsel to the Institution, Tobin and Grifferty, P.C., Albany, New York.

We have examined originals or copies, certified or otherwise authenticated to our satisfaction, of the Resolution, the Loan Agreement, the Substitute Credit Facility, the Substitute Reimbursement Agreement, and the Firm Remarketing Agreement and such other documents and instruments, and have made such investigations of law, as we have deemed necessary or advisable for the purpose of rendering this opinion.

Based upon and subject to the foregoing, we are of the opinion that:

1. The delivery of the Substitute Credit Facility is authorized under the Resolution and the Substitute Credit Facility complies with the provisions of the Resolution.
2. The delivery of the Substitute Credit Facility will not, in and of itself, adversely affect the exclusion of interest on the Series 2003 Bonds from gross income for Federal income tax purposes.
3. The First Supplemental Resolution has been duly and lawfully adopted and filed by the Authority in accordance with the provisions of the General Resolution, is authorized or permitted by the General Resolution and is valid and binding upon the Authority and enforceable in accordance with its terms, except to the extent that the enforceability of the First Supplemental Resolution may be limited by bankruptcy, insolvency, moratorium, reorganization or other laws affecting creditors’ rights generally and as to the availability of any particular remedy.

*Appendix E*

This opinion is delivered to you for your use only and may not be relied upon by, or published or communicated to, any third party for any purpose whatsoever without our prior written approval in each instance.

Very truly yours,

**FORM OF ORIGINAL APPROVING  
OPINION OF BOND COUNSEL**

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**FORM OF ORIGINAL APPROVING  
OPINION OF BOND COUNSEL**

July 22, 2003

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

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance of \$40,265,000 aggregate principal amount of Teresian House Housing Corporation Revenue Bonds, Series 2003 (the "Bonds") 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, including the Dormitory Authority Act, being Title 4 of Article 8 of the Public Authorities Law of the State of New York, as amended to the date hereof, including, without limitation, by the Healthcare Financing Consolidation Act, being Title 4-B of the Public Authorities Law of the State of New York, as amended to the date hereof (the "Act"). We have also examined such certificates, documents, records and matters of law as we have deemed necessary for the purpose of rendering the opinions hereinafter set forth.

The Bonds are issued under and pursuant to the Act, the Teresian House Housing Corporation Revenue Bond Resolution of the Authority, adopted June 25, 2003 (the "Resolution") and the Teresian House Housing Corporation Series 2003 Resolution Authorizing Up To \$42,200,000 Teresian House Housing Corporation Revenue Bonds Series 2003, adopted by the Authority on June 25, 2003 (the "Series 2003 Resolution", and together with the Resolution, the "Resolutions"). Capitalized terms used and not otherwise defined herein have the respective meanings given to them in the Resolutions.

The Bonds are part of an issue of bonds of the Authority which the Authority has established and created under the terms of the Resolutions and is authorized to issue for the purposes authorized by the Act and the Resolutions, as in effect, and without limitation as to amount except as provided in the Resolutions or as may be limited by law. The Bonds are being issued for the purposes set forth in the Resolutions.

The Bonds shall mature on July 1, 2033. The Bonds are dated their date of delivery and shall bear interest from such date payable thereafter on each Interest Payment Date.

The Bonds are being issued in fully registered form in the denomination of \$100,000 or \$100,000 plus integral multiples of \$5,000. The Bonds are lettered R- followed by the number of Bonds. The Bonds are numbered consecutively from one upward in order of issuance.

Initially, the Bonds will bear interest at the Weekly Rate and may be converted to a Fixed Interest Rate. The Bonds are payable, subject to redemption prior to maturity and subject to optional and mandatory tender, and are exchangeable, transferable and secured upon such terms and conditions as are contained in the Resolutions.

The Bonds are subject to redemption, commencing on July 1, 2007, and on each July 1 thereafter prior to maturity, in part, as provided in the Resolution, through application of Sinking Fund Installments in the amounts set forth in the Bond Series Certificate, at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest, if any, to the date of redemption.

The Bonds bearing interest at the Weekly Rate are subject to redemption prior to maturity, at the option of the Authority, in whole or in part on any Interest Payment Date, at a redemption price equal to the principal amount of the Bonds to redeemed plus accrued interest, if any, to the date of redemption. The Bonds bearing interest at the Fixed Rate are subject to redemption prior to maturity, at the option of the Authority, in whole on any date or in part on any Interest Payment Date on and after the Fixed Rate Conversion Date, as provided in the Bond Series Certificate. The Bonds are subject to Mandatory Purchase prior to maturity as provided in the Resolution.

The Authority and Teresian House Housing Corporation (the "Institution") have entered into a Loan Agreement, dated as of June 25, 2003 (the "Agreement"), providing, among other things, for loans to the Institution for the purposes permitted thereby and by the Resolution. Pursuant to the Agreement, the Institution is required to

make payments sufficient to pay the principal and Sinking Fund Installments of and interest on the Bonds, as well as part of the Authority's annual administrative expenditures and costs, as the same become due.

Based on 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 of New York, with the right and lawful authority and power to adopt the Resolution and to issue the Bonds thereunder.

2. The Resolutions have been duly and lawfully adopted by the Authority in accordance with the provisions of the Act and are authorized and permitted by the Act. The Resolutions are legal, valid and binding obligations of the Authority enforceable in accordance with their terms.

3. The Bonds have been duly and validly authorized and issued in accordance with the Constitution and statutes of the State of New York, including the Act, and in accordance with the Resolution. The Bonds are legal, valid and binding special obligations of the Authority payable as provided in the Resolution, are enforceable in accordance with their terms and the terms of the Resolution, and are entitled to the equal benefits of the Resolution and the Act.

4. The Authority has the right and lawful authority and power to enter into the Agreement. The Agreement has been duly authorized, executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms.

5. The Internal Revenue Code of 1986, as amended (the "Code"), imposes certain requirements which must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be and remain excluded from gross income for Federal income tax purposes. Noncompliance with such requirements could cause the interest on the Bonds to be included in gross income for Federal income tax purposes retroactive to the date of issuance of the Bonds. Pursuant to the Resolution, the Loan Agreement and the Tax Certificate the Authority and the Institution have covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the Bonds from gross income for Federal income tax purposes pursuant to Section 103 of the Code. In addition, the Authority and the Institution have made certain representations and certifications in the Resolution, the Loan Agreement and the Tax Certificate. We will also rely on the opinion of Counsel to the Institution as to all matters concerning the status of the Institution as an organization described in Section 501(c)(3) of the Code and exempt from Federal income tax under Section 501(a) of the Code. We will not independently verify the accuracy of those representations and certifications or that opinion.

Under existing law and assuming compliance with the aforementioned covenants, and the accuracy of certain representations and certifications made by the Authority and the Institution described above, interest on the Bonds is excluded from gross income for Federal income tax purposes under Section 103 of the Code. We are also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Interest on the Bonds is, however, included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations.

6. The interest on the Bonds under the Act is exempt from personal income taxes of the State of New York and its political subdivisions.

Except as stated in paragraphs 5 and 6 above, we express no opinion as to any other Federal or state tax consequences of the ownership or disposition of the Bonds. Furthermore, we express no opinion as to any Federal, state or local tax law consequences with respect to the Bonds, or the interest thereon, if any action is taken with respect to the Bonds or the proceeds thereof upon the advice or approval of other counsel.

We have examined an executed Bond and, in our opinion, the form of said bond and its 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 Agreement and the Bonds may be limited by bankruptcy, insolvency, moratorium, reorganization or other laws affecting creditors' rights generally and as to the availability of any particular remedy.

In connection with the delivery of this opinion, we are not passing upon, the authorization, execution and delivery of the Agreement by the Institution. We have assumed the due authorization, execution and delivery of the Agreement by the Institution.

Very truly yours,  
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