

**\$281,165,000**  
**DORMITORY AUTHORITY**  
**OF THE STATE OF NEW YORK**  
**MEMORIAL SLOAN-KETTERING CANCER CENTER**  
**REVENUE BONDS, SERIES 2008A2**

**Dated:** Date of Delivery

**Due:** July 1, as shown on inside cover



**Payment and Security:** The Memorial Sloan-Kettering Cancer Center Revenue Bonds, Series 2008A2 Bonds (the "Series 2008A2 Bonds") are special obligations of the Dormitory Authority of the State of New York (the "Authority") payable from and secured by a pledge of (i) certain payments to be made under the Loan Agreement (the "2002 Loan Agreement"), dated as of December 5, 2001, as amended, between Memorial Sloan-Kettering Cancer Center (the "Center") and the Authority and Guaranties (the "Guaranties"), dated as of December 5, 2001, from the Sloan-Kettering Institute for Cancer Research and S.K.I. Realty, Inc. to the Authority (the "Revenues") and (ii) all funds and accounts (excluding the Arbitrage Rebate Fund and any fund established for the payment of the Purchase Price of Option Bonds tendered for purchase) established under the Authority's Memorial Sloan-Kettering Cancer Center Revenue Bond Resolution adopted December 5, 2001 and the Series 2008A Resolution adopted March 26, 2008 (collectively, the "Resolution"). The 2002 Loan Agreement is a general, unsecured obligation of the Center and requires the Center to pay, in addition to the fees and expenses of the Authority and the Trustee, amounts sufficient to pay the principal and Redemption Price of and interest on all Bonds issued under the Resolution, including the Series 2008A2 Bonds, as such payments become due.

**The Series 2008A2 Bonds are not a debt of the State of New York (the "State"), nor is the State liable thereon. The Authority has no taxing power.**

**Description:** The Series 2008A2 Bonds will be issued as fully registered bonds in denominations of \$5,000 and any integral multiple thereof. Interest (due July 1, 2008 and each January 1 and July 1 thereafter) will be payable by check or draft mailed to the registered owners of the Series 2008A2 Bonds at their addresses as shown on the registration books held by the Trustee or, at the option of a holder of at least \$1,000,000 in principal amount of Series 2008A2 Bonds, by wire transfer to the holder of such Series 2008A2 Bonds, each as of the close of business on the fifteenth day of the month next preceding an interest payment date. The principal or Redemption Price of the Series 2008A2 Bonds will be payable at the principal corporate trust office of The Bank of New York, New York, New York, the Trustee and Paying Agent (as defined herein) or, with respect to Redemption Price, at the option of a holder of at least \$1,000,000 in principal amount of Series 2008A2 Bonds, by wire transfer to the holders of such Series 2008A2 Bonds as more fully described herein.

The Series 2008A2 Bonds will be issued initially under a Book-Entry Only System, registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"). Individual purchases of beneficial interests in the Series 2008A2 Bonds will be made in Book-Entry form (without certificates). So long as DTC or its nominee is the registered owner of the Series 2008A2 Bonds, payments of the principal and Redemption Price of and interest on such Series 2008A2 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 2008A2 BONDS – Book-Entry Only System" herein.

**Redemption:** *The Series 2008A2 Bonds are subject to redemption or purchase prior to maturity, as more fully described herein.*

**Tax Exemption:** In the opinion of Bond Counsel, under existing law and assuming compliance with the tax covenants described herein, and the accuracy of certain representations and certifications made by the Authority and the Center described herein, interest on the Series 2008A2 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"). Bond Counsel is 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 Series 2008A2 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 is further of the opinion that, by virtue of the Act, interest and original issue discount on the Series 2008A2 Bonds is exempt from personal income taxes of the State of New York and its political subdivisions. See "PART 10 – TAX MATTERS" herein regarding certain other tax considerations.

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**MATURITY SCHEDULE – See Inside Cover Page**

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*The Series 2008A2 Bonds are offered when, as and if issued and received by the Underwriters. The offer of the Series 2008A2 Bonds may be subject to prior sale, or may be withdrawn or modified at any time without notice. The offer is subject to the approval of legality of the Series 2008A2 Bonds by Nixon Peabody LLP, New York, New York, Bond Counsel, and to certain other conditions. Certain legal matters will be passed upon for the Underwriters by their counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York; and for the Center and its related corporations by its counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York. The Authority expects to deliver the Series 2008A2 Bonds in definitive form in New York, New York, on or about May 13, 2008.*

**Goldman, Sachs & Co.**

**Citi**

**JPMorgan**

**Merrill Lynch**

**Lehman Brothers**

**Morgan Stanley**

**Sterne, Agee & Leach, Inc.**

**UBS Investment Bank**

**Loop Capital Markets, LLC**

**MR Beal & Company**

**PRINCIPAL AMOUNTS, INTEREST RATES AND YIELDS OR PRICES**

**\$281,165,000 Series 2008A2 Bonds**

<b>Maturity July 1</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield or Price</b>	<b>CUSIP <sup>1</sup></b>
2013	\$ 22,855,000	4.000%	3.290%	649903A35
2013	5,330,000	5.000	3.290	649903A43
2014	10,940,000	4.000	3.420	649903A50
2014	18,390,000	5.000	3.420	649903A68
2015	3,800,000	3.550	3.560	649903A76
2015	4,785,000	5.000	3.560	649903A84
2016	3,860,000	4.000	3.700	649903A92
2016	5,175,000	5.000	3.700	649903B26
2017	34,290,000	5.000	3.840	649903B34
2018	25,195,000	4.000	3.980	649903B42
2019	16,500,000	4.100	100.000	649903B59
2024	21,385,000	4.500	100.000	649903B67
2025	4,590,000	4.550	100.000	649903B75
2026	15,625,0000	4.600	100.000	649903B83

**\$88,445,000 5.000% Term Bonds Due July 1, 2026, Yield 4.580%\* CUSIP: 649903B91 <sup>1</sup>**

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\* Yield to first optional redemption date.

<sup>1</sup> The CUSIP number has been assigned by an independent company not affiliated with the Authority and is included solely for the convenience of the owners of the 2008A2 Bonds. The Authority is not responsible for the selection or uses of the CUSIP number, and no representation is made as to its correctness on the 2008A2 Bonds or as indicated above. The CUSIP number is subject to being changed after the issuance of the 2008A2 Bonds as a result of various subsequent actions including, but not limited to, a refunding of a portion of the 2008A2 Bonds.

No dealer, broker, salesperson or other person has been authorized by the Authority, MSKCC (defined herein) or the Underwriters to give any information or to make any representations with respect to the Series 2008A2 Bonds, other than the information and representations contained in this Official Statement. If given or made, any such information or representations must not be relied upon as having been authorized by the Authority, MSKCC or the Underwriters.

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be a sale of the Series 2008A2 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

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

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, its responsibility to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

The Center reviewed the parts of this Official Statement describing MSKCC, the Refunding Plan and Appendix B. The Center shall certify as of the date hereof and as of the date of issuance of the Series 2008A2 Bonds that such parts do not contain any untrue statements of a material fact and do not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which the statements are made, not misleading. The Center makes no representations as to the accuracy or completeness of any other information included in this Official Statement.

References in this Official Statement to the Act, the Resolution, the 2002 Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement do not purport to be complete. Refer to the Act, the Resolution, the 2002 Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement for full and complete details of their provisions. Copies of the Act, Resolution, the 2002 Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement are on file with the Authority and the Trustee.

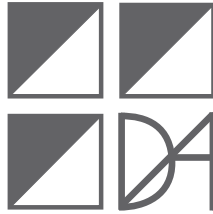
The order and placement of material in this Official Statement, including its appendices, are not to be deemed a determination of relevance, materiality or importance, and all material in this Official Statement, including its appendices, must be considered in its entirety.

Under no circumstances shall the delivery of this Official Statement or any sale made after its delivery create any implication that the affairs of the Authority or MSKCC have remained unchanged after the date of this Official Statement.

IN CONNECTION WITH THE OFFERING OF THE SERIES 2008A2 BONDS, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICES OF THE SERIES 2008A2 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**  
**DAVID D. BROWN, IV - EXECUTIVE DIRECTOR**

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

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**OFFICIAL STATEMENT RELATING TO**  
**\$281,165,000**  
**DORMITORY AUTHORITY**  
**OF THE STATE OF NEW YORK**  
**MEMORIAL SLOAN-KETTERING CANCER CENTER**  
**REVENUE BONDS, SERIES 2008A2**

**PART 1 - INTRODUCTION**

**Purpose of the Official Statement**

The purpose of this Official Statement, including the cover page, the inside cover page and appendices, is to provide information about the Authority and Memorial Sloan-Kettering Cancer Center (the “Center”) and its related corporations (collectively, “MSKCC”) in connection with the offering by the Authority of an aggregate principal amount of \$281,165,000 of its Memorial Sloan-Kettering Cancer Center Revenue Bonds, Series 2008A2 (the “Series 2008A2 Bonds”).

The following is a brief description of certain information concerning the Series 2008A2 Bonds, the Authority and MSKCC. A more complete description of such information and additional information that may affect decisions to invest in the Series 2008A2 Bonds is contained throughout this Official Statement, which should be read in its entirety. Certain terms used in this Official Statement are defined in Appendix A hereto.

**Purpose of the Issue**

The Series 2008A2 Bonds are being issued to (i) refund a portion of the Authority’s Memorial Sloan-Kettering Cancer Center Revenue Bonds, Series 2002A (the “Series 2002A Bonds”) and (ii) to pay the Costs of Issuance of the Series 2008A2 Bonds. See “PART 5 – THE REFUNDING PLAN.”

**Authorization of Issuance**

The Series 2008A2 Bonds will be issued pursuant to the Act, the Authority’s Memorial Sloan-Kettering Cancer Center Revenue Bond Resolution adopted on December 5, 2001 (the “General Resolution”), the Authority’s Memorial Sloan-Kettering Cancer Center Series 2008A Resolution (the “Series 2008A Resolution”) and the Authority’s Bond Series Certificate relating to the Series 2008A2 Bonds (the “Bond Series Certificate” and together with the General Resolution and the Series 2008A Resolution, the “Resolution”). In addition to the Series 2008A2 Bonds, the General Resolution authorizes the issuance of other Series of Bonds (i) to pay Costs of one or more Projects, (ii) to make deposits to the Debt Service Fund or the Construction Fund, (iii) to pay the Costs of Issuance of such Series of Bonds and (iv) to refund all or a portion of Outstanding Bonds or certain other notes or bonds of the Authority issued on behalf of the Center. There is no limit on the amount of additional Bonds that may be issued under the Resolution. All Bonds issued under the General Resolution will rank on a parity with each other and will be secured equally and ratably with each

other. The Series 2008A2 Bonds are the second Series of Bonds to be issued under the General Resolution. See “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A2 BONDS – Additional Bonds.”

### **The Series 2008A1 Bonds**

The Authority has authorized and will issue \$161,990,000 principal amount of its Memorial Sloan-Kettering Cancer Center Revenue Bonds, Series 2008A1 (the “Series 2008A1 Bonds”). The Series 2008A1 Bonds will be issued on a parity with the Series 2008A2 Bonds. The Series 2008A1 Bonds will be issued (i) to refund a portion of the Series 2002A Bonds and (ii) to pay the Costs of Issuance of the Series 2008A1 Bonds. See “PART 5 – THE REFUNDING PLAN.”

### **The Authority**

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

### **MSKCC**

MSKCC is the oldest and largest privately operated not-for-profit cancer center in the world. The mission of MSKCC is to provide leadership in the prevention, diagnosis, treatment and cure of cancer through excellence, vision and cost effectiveness in patient care, outreach programs, research and education. The corporations related to the Center are Memorial Hospital for Cancer and Allied Diseases (the “Hospital”), Sloan-Kettering Institute for Cancer Research (the “Institute”), and S.K.I. Realty, Inc. (“Realty”). The Center, the Hospital and the Institute currently have virtually identical officers and Boards of Managers. See “PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS’ RISKS.”

The Center is the only party obligated under the 2002 Loan Agreement. The Institute and Realty have each entered into a Guaranty (collectively, the “Guaranties”) pursuant to which they guaranty the Center’s payment obligations under the 2002 Loan Agreement. The Hospital has entered into an Inducement Agreement with the Authority (the “Inducement Agreement”) containing certain covenants of the Hospital. See “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A2 BONDS – Guaranties and Inducement Agreement.”

### **The Series 2008A2 Bonds**

The Series 2008A2 Bonds will be dated their date of delivery and will bear interest from such delivery date (payable July 1, 2008 and on each January 1 and July 1 thereafter) at the rates and will mature at the times set forth on the inside cover page of this Official Statement. See “PART 3 – THE SERIES 2008A2 BONDS.”

### **Payment of the Series 2008A2 Bonds**

The Series 2008A2 Bonds and all other Bonds issued under the General Resolution are special obligations of the Authority payable solely from the Revenues, which consist of certain payments to be made by the Center under the 2002 Loan Agreement and by the Institute and/or Realty under the Guaranties. Prior to the occurrence and continuation of a Funding Event, the 2002 Loan Agreement will be a general, unsecured obligation of the Center. Pursuant to the Resolution, the Revenues have been pledged to the Trustee for the benefit of the Bondholders. See “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A2 BONDS.”

### **Security for the Series 2008A2 Bonds**

The Series 2008A2 Bonds are secured on a parity basis with each other and with any additional Bonds which may be issued under the General Resolution by the pledge and assignment to the Trustee of the Revenues. The Series 2008A2 Bonds, and all other Bonds which have been may be issued under the General Resolution, are also secured by, and each Series 2008A Bond has an equal claim to, all funds and accounts established by the Resolution (with the exception of the Arbitrage Rebate Fund and any fund established for the payment of the Purchase Price of Option Bonds tendered for purchase). The Revenues have been pledged by the Authority to the Trustee for the benefit of the Bondholders. See “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A2 BONDS - Security for the Series 2008A2 Bonds.”

The Authority has previously issued its Memorial Sloan-Kettering Cancer Center Revenue Bonds, Series 1998 (the “Series 1998 Bonds”) under the Memorial Sloan-Kettering Cancer Center Bond Resolution adopted on August 30, 1989 (the “1989 Resolution”). The Series 1998 Bonds will remain outstanding (currently outstanding in the principal amount of \$148,400,000). The Series 1998 Bonds are secured by the funds and accounts established under the 1989 Resolution,

the payments by the Center under the related loan agreement (the “1998 Loan Agreement”) and a security interest in up to \$6,500,000 of revenues from certain residential facilities owned by MSKCC. The Series 2008A2 Bonds will not have a lien on such revenues or the other security for the Series 1998 Bonds. The Authority has covenanted in the General Resolution that it will not issue any additional bonds under the 1989 Resolution.

The Authority has also previously issued its Memorial Sloan-Kettering Cancer Center Revenue Bonds, Series 2002A (the “Series 2002A Bonds”) under the General Resolution. The Series 2002A Bonds are expected to be redeemed in their entirety (currently outstanding in the principal amount of \$450,000,000) with the proceeds of the Series 2008A2 Bonds and Series 2008A1 Bonds and other available money. See “PART 5 – THE REFUNDING PLAN”

The Authority has also previously issued its Memorial Sloan-Kettering Cancer Center Revenue Bonds, Series 2003 (the “Series 2003 Bonds”) and its Memorial Sloan-Kettering Cancer Center Revenue Bonds, 2006 Series (the “Series 2006 Bonds”) under the Memorial Sloan-Kettering Cancer Center Bond Resolution adopted on February 26, 2003 (the “2003 Resolution”). The Series 2003 Bonds will remain outstanding (currently outstanding in the principal amount of \$389,845,000) and the Series 2006 Bonds will remain outstanding (currently outstanding in the principal amount of \$215,085,000). The Series 2003 Bonds and the Series 2006 Bonds are secured equally and ratably by the funds and accounts established under the 2003 Resolution and the payments by the Center under the related loan agreement (the “2003 Loan Agreement”). The Series 2008A2 Bonds will not have a lien on the security for the Series 2003 Bonds or the Series 2006 Bonds. Additional bonds may be issued under the 2003 Resolution.

The Series 2008A2 Bonds are not secured by a pledge of any revenues or assets of MSKCC. As described in “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A2 BONDS – Payment of the Series 2008A2 Bonds – Special Covenants,” the occurrence of certain events will result in MSKCC being required to secure the Center’s obligations under the 2002 Loan Agreement with certain assets and revenues. Such events will also result in MSKCC being required to secure the Center’s obligations under the 2003 Loan Agreement (but not the 1998 Loan Agreement) with certain assets and revenues. Certain assets and revenues will secure the Center’s obligations under both the 2002 Loan Agreement and the 2003 Loan Agreement while certain revenues (i.e. a portion of the Gross Receipts of the Hospital) will secure only the Center’s obligations under the 2002 Loan Agreement and certain assets (i.e., the Research Center Property) will secure only the Center’s obligations under the 2003 Loan Agreement. Any collateral securing the Center’s obligations under both the 2002 Loan Agreement and the 2003 Loan Agreement will be pledged equally and ratably. See “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A2 BONDS – Funding Events and Collateral Requirement.”

The Series 2008A2 Bonds are not a debt of the State nor is the State liable thereon. The Authority has no taxing power.

#### **Guaranties and Inducement Agreement**

The Institute and Realty have each entered into a Guaranty in favor of the Authority pursuant to which they jointly and severally guaranty payment of the Center’s obligations under the 2002 Loan Agreement. The Authority has assigned to the Trustee the payments to be made under the Guaranties. The Guaranties are general, unsecured obligations of the Institute and Realty. The Institute and Realty entered into guaranties similar to the Guaranties with respect to the 2003 Loan Agreement but not with respect to the 1998 Loan Agreement.

The Hospital has entered into an Inducement Agreement with the Authority whereby the Hospital has agreed to certain limitations on its ability to incur debt or liens on its assets and has agreed that, under certain circumstances, it will pledge certain collateral to secure the Center’s obligations under the 2002 Loan Agreement. The Hospital entered into an inducement agreement similar to the Inducement Agreement with respect to the 2003 Loan Agreement but not with respect to the 1998 Loan Agreement. See “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A2 BONDS – Guaranties and Inducement Agreement.”

## **PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A2 BONDS**

*Set forth below is a narrative description of certain contractual provisions relating to the source of payment of and security for the Series 2008A2 Bonds and certain related covenants. These provisions have been summarized and this description does not purport to be complete. Reference should be made to the Act, the Resolution, the 2002 Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement. Copies of the Resolution, the 2002 Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement are on file with the Authority and the Trustee. See also "Appendix C – Summary of Certain Provisions of the 2002 Loan Agreement," "Appendix D – Summary of Certain Provisions of the Guaranties and the Inducement Agreement," "Appendix E – Summary of Certain Provisions of the Resolution" and "Appendix F – Summary of Certain Provisions of the Intercreditor Agreement" for a more complete statement of the rights, duties and obligations of the parties thereto.*

### **Payment of the Series 2008A2 Bonds**

The Series 2008A2 Bonds and all other Bonds which have been or may be issued under the General Resolution are or will be special obligations of the Authority. The principal, Sinking Fund Installments, if any, and Redemption Price of and interest on the Series 2008A2 Bonds, and all other Bonds which have been or may be issued under the Resolution, are payable from the Revenues. The Revenues consist of the payments required to be made by the Center under the 2002 Loan Agreement on account of the principal, Sinking Fund Installments and Redemption Price of and interest on the Bonds and the payments made by the Institute and/or Realty under the Guaranties. The Revenues and the right to receive them have been pledged by the Authority to the Trustee for the benefit of the Bondholders.

The 2002 Loan Agreement is a general, unsecured obligation of the Center and obligates the Center to make payments on account of the principal, Sinking Fund Installments and Redemption Price of and interest on all Outstanding Bonds under the Resolution. Payments for principal and Sinking Fund Installments are to be made by the Center on June 10 prior to each July 1 on which principal on the Bonds is due by maturity or Sinking Fund Redemption. Payments made by the Center in respect of interest on Outstanding Bonds are to be made on the 10th day of each June and December immediately preceding a July 1 and January 1 interest payment date. The 2002 Loan Agreement also obligates the Center to pay, at least 15 days prior to a redemption date for Bonds called for redemption, the amount, if any, required to pay the Redemption Price of such Bonds. The Authority has directed, and the Center has agreed, to make its payments directly to the Trustee.

### **Security for the Series 2008A2 Bonds**

The Series 2008A2 Bonds will be secured on a parity basis with and any additional Bonds which may be issued under the General Resolution by the pledge and assignment of the Revenues. The Series 2008A2 Bonds and all other Bonds which have been or may be issued under the General Resolution are also secured by the proceeds from the sale of Bonds (until disbursed as provided by the Resolution) and all funds and accounts established by the Resolution (with the exception of the Arbitrage Rebate Fund and any fund established for the payment of the Purchase Price of Option Bonds tendered for purchase). The Revenues have been pledged by the Authority to the Trustee for the benefit of the Bondholders. See "Additional Bonds" below.

The Authority has not assigned and is not assigning to the Trustee its rights under the 2002 Loan Agreement, other than its pledge of certain payments by the Center under the 2002 Loan Agreement. The Authority may assign such rights under the 2002 Loan Agreement to the Trustee but has no present intention to do so. Under the Resolution, the Authority is required to assign such rights to the Trustee upon the occurrence of certain events of default under the Resolution, the 2002 Loan Agreement or the Inducement Agreement or upon the occurrence of a Funding Event (described below). See "Appendix A – Certain Definitions – Assignment Events" and "Appendix E – Summary of Certain Provisions of the Resolution – Assignment of Certain Rights and Remedies."

### **Guaranties and Inducement Agreement**

The Institute and Realty have each entered into a Guaranty in favor of the Authority pursuant to which they jointly and severally guaranty payment of the Center's obligations under the 2002 Loan Agreement. The Authority has assigned to the Trustee the payments to be made under the Guaranties. The Guaranties are general, unsecured obligations of the Institute and Realty. The Institute and Realty entered into guaranties similar to the Guaranties with respect to the 2003 Loan Agreement but not with respect to the 1998 Loan Agreement.

The Hospital entered into the Inducement Agreement with the Authority whereby the Hospital has agreed that, upon the occurrence and continuation of a Funding Event (described below), it will pledge certain collateral to secure the



Center's obligations under the 2002 Loan Agreement. In addition, the Inducement Agreement includes certain financial covenants of the Hospital described below under "Special Covenants." The Hospital entered into an inducement agreement (the "2003 Inducement Agreement") similar to the Inducement Agreement with respect to the 2003 Loan Agreement but not with respect to the 1998 Loan Agreement. The material difference between the Inducement Agreement and the 2003 Inducement Agreement is that the Inducement Agreement includes as collateral a portion of the Gross Receipts of the Hospital as well as Hospital Property, while the 2003 Inducement Agreement includes as collateral only Hospital Property.

See "Appendix A – Definitions" and "Appendix D – Summary of Certain Provisions of the Guaranties and the Inducement Agreement."

### **Special Covenants**

The 2002 Loan Agreement contains several financial covenants of the Center and the Related Corporations including (i) a requirement that the Center engage a Management Consultant if MSKCC experiences certain levels of operating losses and does not maintain certain ratios of Cash and Investments to Debt; (ii) a requirement that the Center and the Related Corporations provide certain collateral to secure the Center's obligations under the 2002 Loan Agreement following the occurrence and continuation of a Funding Event; (iii) limitations on the ability of the Center and the Related Corporations to incur Liens on Property and Debt secured by Liens; and (iv) limitations on the sale of Property by the Center and the Related Corporations and the application of Sale Proceeds from such sale. The Inducement Agreement contains several financial covenants of the Hospital including (i) a requirement that the Hospital provide certain collateral to secure the Center's obligations under the 2002 Loan Agreement following the occurrence and continuation of a Funding Event; (ii) limitations on the ability of the Hospital to incur Liens on Property and Debt secured by Liens; and (iv) limitations on the sale of Hospital Property and the application of Sale Proceeds from such sale.

Definitions for defined terms used under this heading "Special Covenants" are contained in "Appendix A – Definitions." The summary set forth below does not purport to be complete. See "Appendix C – Summary of Certain Provisions of the 2002 Loan Agreement – Financial Covenants of the Center," "– Funding Events and Collateral Requirement," "– Limitations on Liens; Secured Debt" and "– Sale of Property" and "Appendix D – Summary of Certain Provisions of the Guaranties and the Inducement Agreement – The Inducement Agreement."

**Management Consultant.** The Center is required to engage a Management Consultant if either (i) the Debt Ratio on any Measurement Date is less than 1.0:1.0 or (ii) the Debt Ratio on the Measurement Date that is the last day of the fiscal year of the Center is less than 1.2:1.0 and the Adjusted Operating Loss is greater than \$50,000,000. The Adjusted Operating Loss, by which operating losses are adjusted by contributions and an assumed return on investments, is only required to be calculated if the most recently available audited financial statements of the Center and its Affiliates show a decrease in Unrestricted Net Assets of \$50,000,000 or more or the Debt Ratio on the Measurement Date that is the last day of the fiscal year of the Center is less than 1.2:1.0. On a pro forma basis, taking into account the issuance of the Series 2008A2 Bonds (and assuming that all Series 2008A2 Bonds bear interest at 5% per annum), as of December 31, 2007 the Debt Ratio would have been approximately 2.54:1.0. See PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS' RISKS – Summary of Revenues and Expenses."

**Funding Events and Collateral Requirement.** Upon the occurrence and continuation of any of the following "Funding Events," the Center and the Hospital will be required to provide or cause to be provided Collateral (described below) to secure the Center's obligations under the 2002 Loan Agreement. Funding Events include: (i) failure to pay certain amounts due under the 2002 Loan Agreement, (ii) failure to engage a Management Consultant when required or act on its recommendation as provided in the 2002 Loan Agreement, (iii) for two consecutive fiscal years, a decrease in Unrestricted Net Assets of the Center and its Affiliates of \$50,000,000 or more and an Adjusted Operating Loss in excess of \$50,000,000, (iv) the Debt Ratio on any Measurement Date is less than 0.6:1.0, (v) the senior unsecured or unenhanced Debt of the Center is rated lower than the "A" category by two Rating Services if such Debt is rated by at least three Rating Services or by one Rating Service if such Debt is rated by fewer than three Rating Services, or (vi) the occurrence of an "event of default" under the Inducement Agreement.

Within 60 days of a Funding Event, the Center and the Hospital, as applicable, are required to grant a lien, mortgage or a security interest in (i) the Shared Collateral (defined below) and (ii) the Gross Receipts of the Hospital, provided that the principal amount of the Center's Debt under the 2002 Loan Agreement secured by the Gross Receipts of the Hospital shall be limited to the Hospital Debt outstanding from time to time (approximately \$300 million of Debt of the Center under the 2002 Loan Agreement constitutes Hospital Debt); except that with respect to Hospital Property, if the approval of the Department of Health is required and cannot be obtained after reasonable effort then a mortgage on Hospital Property is not required (collectively, the "Collateral"). Collateral will be released from such pledge at such time as no

Funding Event or Event of Default (or event which with the passage of time or the giving of notice or both could become an Event of Default) is then continuing. Upon the occurrence of a Funding Event, MSKCC is also required to grant a lien, mortgage or a security interest in the Shared Collateral to the Authority to secure the Center's obligations under the 2003 Loan Agreement equally and ratably.

"Shared Collateral" means (i) the pledge of or security interest in the Gross Receipts of the Center and the Related Corporations (except as otherwise described in the succeeding paragraph), (ii) the mortgage or mortgages on Restricted Property, Unrestricted Property and Hospital Property, (iii) the security interest in the furnishings and equipment located in and used in connection with any of the Unrestricted Property and Hospital Property, (iv) the pledge of or security interest in any and all Sale Proceeds (except for Sale Proceeds resulting from the sale or other disposition of Research Center Property), (v) such other collateral security to which the Center has obtained the consent of MBIA Insurance Corporation, as insurer of certain of the Series 2003 Bonds (the "2003 Insurer") and the prior written consent of the Authority, in each case given or made by the Center or a Related Corporation pursuant to a Funding Event, and by the Hospital pursuant to the Inducement Agreement and (vi) any other pledge, security interest or mortgage given or made to the Authority pursuant to the 2002 Loan Agreement or pursuant to the Inducement Agreement.

"Shared Collateral" does not include (i) the Research Center Property together with rents, profits and issues of the Research Center Property, which will secure only the Center's obligations under the 2003 Loan Agreement (and not under the 2002 Loan Agreement) and (ii) the Hospital's Gross Receipts, a portion of which will secure only the Center's obligations under the 2002 Loan Agreement (and not under the 2003 Loan Agreement). Notwithstanding clause (i) to the contrary, receivables and other income derived by the Center or an Affiliate from its general business activities in the Research Center Property will constitute "Shared Collateral."

The Authority, The Bank of New York, as trustee under the Resolution and The Bank of New York, as trustee under the 2003 Resolution have entered into an intercreditor agreement (the "Intercreditor Agreement") regarding the application of proceeds resulting from the enforcement and exercise of remedies with respect to the Shared Collateral. The Intercreditor Agreement provides that any cash proceeds realized as a result of the sale of the Shared Collateral are to be held for the equal benefit of all parties to the Intercreditor Agreement, to be applied first to pay costs of collection and second to pay the indebtedness under the 2002 Loan Agreement and the 2003 Loan Agreement pro rata based on the unpaid principal amount of such indebtedness under the 2002 Loan Agreement and the 2003 Loan Agreement, but not in excess of the unpaid principal and interest then due and payable under the 2002 Loan Agreement and the 2003 Loan Agreement. The Intercreditor Agreement further provides that either trustee may commence a foreclosure or enforcement action or proceeding with respect to the Shared Collateral without the consent of the other trustee. In the Intercreditor Agreement, the Authority and such trustees agree that if the Authority or the trustee for the Series 2003 Bonds and Series 2006 Bonds accelerates payment of amounts due under the 2003 Loan Agreement, then the Authority or the Trustee, to the extent entitled to do so, will accelerate payment of amounts due under the 2002 Loan Agreement, and vice versa. While many of the events of default under the 2002 Loan Agreement and the 2003 Loan Agreement are the same, the occurrence of an event of default under the 2002 Loan Agreement is not, in and of itself, an event of default under the 2003 Loan Agreement and the occurrence of an event of default under the 2003 Loan Agreement is not, in and of itself, an event of default under the 2002 Loan Agreement. See "Appendix F – Summary of Certain Provisions of the Intercreditor Agreement."

The description of Shared Collateral above reflects an amendment to the Loan Agreement which will become effective on June 3, 2008. The Loan Agreement currently provides that a mortgage on the Research Center Property to secure the Center's obligations under the Loan Agreement is required following a Funding Event if either Bonds are issued to finance construction of the Research Center Property or construction of the Research Center Property is completed without the incurrence of other Debt secured by a mortgage on the Research Center Property. As described above, the amendment to the Loan Agreement will provide that a lien on the Research Center Property will not be required to be granted following a Funding Event to secure the Center's obligations under the Loan Agreement but will only secure the Center's obligations under the 2003 Loan Agreement.

**Sale of Property.** Unrestricted Property, Restricted Property, Hospital Property and Mortgaged Property may be sold, but only for fair market value or to the Center or an Affiliate. Sale Proceeds from the sale of Unrestricted Property, Restricted Property or Mortgaged Property are generally required to be held by the Center or a Related Corporation separate and apart from other funds and Sale Proceeds from the sale of Hospital Property are required to be held by the Hospital separate and apart from other funds, although for purposes of investment Sale Proceeds may be commingled with other moneys of the Center or an Affiliate similarly invested. Sale Proceeds from the sale of Unrestricted Property may, if no Funding Event is continuing, be used for any corporate purpose of the Center or a Related Corporation. Sale Proceeds from the sale of Restricted Property or Mortgaged Property may only be used to acquire title to other real

property of the Center or a Related Corporation, to pay the costs of construction on land owned by the Center or a Related Corporation, or, with the consent of the Authority, for other corporate purposes (including the payment of Bonds). Sale Proceeds from the sale of Hospital Property may only be used to acquire title to other real property of the Hospital, to pay the costs of construction on land owned by the Hospital, or, with the consent of the Authority, for other corporate purposes (including the payment of Bonds).

Restricted Property includes the Rockefeller Outpatient Pavilion, the Rockefeller Research Laboratories at the main campus of MSKCC, and property used for administrative purposes at locations in Manhattan other than the main campus. Hospital Property currently includes all property owned by the Hospital, including the patient care facilities at the main campus, except the Research Center Property. Unrestricted Property includes all other properties of MSKCC. See “PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS’ RISKS – The Facilities and Services.”

**Limitation on Liens and Secured Debt; Collateral Upon Excess Secured Debt.** The Center in the 2002 Loan Agreement agrees that it and the Related Corporations, and the Hospital in the Inducement Agreement agrees that it, will not incur Debt secured by Liens on any Property unless either the obligations of the Center under the 2002 Loan Agreement are equally and ratably secured or the Authority consents. Notwithstanding the foregoing, the 2002 Loan Agreement and the Inducement Agreement list several types of Liens which the Center, the Hospital and the Related Corporations may create or permit including the following: (i) Liens to secure Debt incurred pursuant to the 2002 Loan Agreement, (ii) Liens to secure the purchase price of furnishings or equipment or Investment Property, (iii) Liens on Property existing upon its time of acquisition, (iv) with the consent of the Authority, Liens to secure providers of Credit Facilities or Liquidity Facilities, (v) Liens on the Research Center Property, (vi) Liens on Property other than Collateral to secure other Debt to the Authority, (vii) extension of existing Liens, (viii) Liens on pledges to make gifts or bequests to secure Debt, the proceeds of which are used to acquire real property or furnishings and equipment to be used in, and in connection, with Unrestricted Property, Restricted Property, Hospital Property or Mortgaged Property and (ix) Permitted Encumbrances. Furthermore, subject to the limitations described in the next two sentences, the Center, the Hospital and the Related Corporations may create or permit (i) Liens on intangible personal property (other than accounts receivable) to secure Short-Term Debt, (ii) Liens on intangible personal property to secure obligations incurred in connection with Derivative Agreements and (iii) Liens on accounts receivable of the Center or the Related Corporations (but not those of the Hospital). First, the aggregate principal amount of such Debt and the maximum exposure under Derivative Obligations (based on certain assumptions) may not be more than 15% of the Unrestricted Net Assets of the Center and the Affiliates at the time such Debt is incurred or such Derivative Agreements are executed and delivered. Second, (i) Short-Term Debt secured by Liens on intangible personal property may not exceed 15% of Total Operating Revenues of the Center and the Affiliates and must be reduced to not more than 5% of the Total Operating Revenues of the Center and the Affiliates for a period of at least 20 consecutive days each year and (ii) Debt secured by Liens on accounts receivable may not exceed 80% of the accounts receivable subject to such Liens and the accounts receivable securing such Debt may not exceed 25% of the net accounts receivable of the Center and the Affiliates.

The Center in the 2002 Loan Agreement agrees, and the Hospital in the Inducement Agreement agrees, that if, at the time the Center, the Hospital or another Related Corporation creates a Lien to secure Derivative Obligations, the aggregate principal amount of Debt secured by Liens given to secure Short-Term Debt and accounts receivable, together with the aggregate amount of Derivative Obligations then secured, including the Derivative Obligation then to be secured (collectively, the “Limited Secured Debt”), exceeds the Secured Debt Limit, the Center or the Hospital, as applicable, as security for the Center’s obligations under the 2002 Loan Agreement, will promptly give or cause to be given to the Authority a Lien or Liens on Property reasonably acceptable to the Authority and the 2003 Insurer, the fair market value or, in the case of mortgages on real property, the appraised value of which is at the time such Liens are given at least equal to the amount by which the Limited Secured Debt exceeds the Secured Debt Limit. Notwithstanding the foregoing, no Lien or Liens otherwise described in this paragraph will be required if the obligations of the Center are then secured by Collateral given pursuant to a Funding Event.

#### **Outstanding Authority Bonds on Behalf of MSKCC**

There is currently outstanding \$148,400,000 principal amount of Series 1998 Bonds, \$450,000,000 principal amount of Series 2002A Bonds, \$389,845,000 principal amount of Series 2003 Bonds and \$215,085,000 principal amount of Series 2006 Bonds. The Series 1998 Bonds, which will remain outstanding, are secured by the funds and accounts established under the 1989 Resolution, the payments by the Center under the related loan agreement and a security interest in up to \$6,500,000 of revenues from certain residential facilities owned by the Center or its Affiliates. The Series 2002A Bonds are to be refunded in their entirety upon the issuance of the Series 2008A2 Bonds and Series 2008A1 Bonds. The Series 2003 Bonds and the Series 2006 Bonds are secured by the funds and accounts established

under the 2003 Resolution and the payments by the Center under the 2003 Loan Agreement. The Series 2008A2 Bonds will not have a lien on the revenues or the other security for the Series 1998 Bonds, the Series 2003 Bonds or the Series 2006 Bonds. The Center's obligations under the 2002 Loan Agreement and under the 2003 Loan Agreement are unsecured obligations unless a Funding Event occurs. A portion of the collateral required to be provided to secure the 2002 Loan Agreement upon the occurrence of certain Funding Events will also secure the Center's obligations under the 2003 Loan Agreement. See "PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A2 BONDS – Funding Events and Collateral Requirement." The Authority has covenanted in the General Resolution that it will not issue any additional bonds under the 1989 Resolution. The Authority may issue additional bonds under the General Resolution and the 2003 Resolution.

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

The following are events of default under the Resolution: (a) a default in the payment of the principal, Sinking Fund Installments or Redemption Price of or interest on any Bonds; (b) a default by the Authority in the due and punctual performance of its covenant not to take or omit to take or permit any action which would cause interest on the Series 2008A2 Bonds to no longer be excludable from gross income under Section 103 of the Code; (c) a default by the Authority in the due and punctual performance of any other covenant, condition, agreement or provision contained in the Bonds or in the Resolution which continues for thirty (30) days after written notice thereof is given to the Authority by the Trustee (such notice to be given at the Trustee's discretion or at the written request of Holders of not less than 25% in principal amount of Outstanding Bonds); or (d) an "event of default," as defined in the 2002 Loan Agreement, has occurred and is continuing and all sums payable by the Center under the 2002 Loan Agreement have been declared immediately due and payable (unless such declaration has been annulled). Unless all sums payable by the Center under the 2002 Loan Agreement are declared immediately due and payable, an event of default under the 2002 Loan Agreement is not an event of default under the Resolution.

The Resolution provides that if an event of default (other than as described in clause (b) of the preceding paragraph) occurs and continues, the Trustee may, and upon the written request of Holders of not less than 25% in principal amount of the Outstanding Bonds must, by written notice to the Authority, declare the principal of and interest on all the Outstanding Bonds to be due and payable immediately. At the expiration of thirty (30) days from the giving of such notice, such principal and interest shall become immediately due and payable. The Trustee may with the written consent of the Holders of not less than 25% in principal amount of the Outstanding 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.

Notwithstanding any other provision of the Resolution to the contrary, upon the Authority's failure to observe, or refusal to comply with, the covenant described in clause (b) of the first paragraph under this subheading, upon the direction of the Holders of not less than 25% in principal amount of the Outstanding Bonds affected thereby, the Trustee must exercise the rights and remedies provided to the Holders of the Bonds under the Resolution, other than the right to accelerate the maturity of the Bonds.

The Resolution provides that the Trustee is to give notice, in accordance with the Resolution, of each event of default known to the Trustee to the Center within five (5) days after knowledge of the occurrence thereof and to the Holders within thirty (30) days after knowledge of the occurrence thereof, unless such default has been remedied or cured before the giving of such notice. However, in the case of default in the payment of principal, Sinking Fund Installment or Redemption Price of, or interest on, any of the Bonds, the Trustee will be protected in withholding notice to the Holders if the Trustee in good faith determines that withholding such notice is in the best interests of the Holders of the Bonds.

#### **Additional Bonds**

In addition to the Series 2008A2 Bonds, the Resolution authorizes the issuance of other series of Bonds to pay the Costs of a Project, to make deposits to the Debt Service Fund or the Construction Fund, to pay the Costs of Issuance of Bonds, and to refund all or a portion of the Outstanding Bonds or other notes or bonds of the Authority. All Bonds issued under the Resolution will rank on a parity with each other and will be secured equally and ratably with each other, except with respect to any fund or account established under a series resolution for the benefit of the Series of Bonds authorized pursuant thereto for the payment of the Purchase Price of Option Bonds tendered for purchase. The Series 2008A2 Bonds are the second Series of Bonds issued under the Resolution. For a more complete description of conditions to issuing additional Bonds, see "Appendix E – Summary of Certain Provisions of the Resolution."

## General

The Series 2008A2 Bonds are not a debt of the State nor will the State be liable thereon. The Authority has no taxing power. The Authority has never defaulted in the timely payment of principal or sinking fund installments of or interest on its bonds or notes. See “PART 7 – THE AUTHORITY.”

## PART 3 - THE SERIES 2008A2 BONDS

### Description of the Series 2008A2 Bonds

**General.** The Series 2008A2 Bonds will be issued pursuant to the Resolution and the Series Resolution and will be dated and bear interest from their date of delivery (payable July 1, 2008 and on each January 1 and July 1 thereafter) at the rates, and will mature at the times set forth on the inside cover page of this Official Statement.

The Series 2008A2 Bonds will be issued as fully registered bonds. The Series 2008A2 Bonds will be registered in the name of Cede & Co., as nominee of DTC, pursuant to DTC’s Book-Entry Only System. Purchasers of beneficial interests in the Series 2008A2 Bonds will be made in book-entry form, without certificates. If at any time the Book-Entry Only System is discontinued for the Series 2008A2 Bonds, the Series 2008A2 Bonds will be exchangeable for other fully registered Series 2008A2 Bonds in any other authorized denominations of the same maturity without charge except for the payment of any tax, fee or other governmental charge to be paid with respect to such exchange, subject to the conditions and restrictions set forth in the Resolutions. See “Book-Entry Only System” herein and “Appendix E – Summary of Certain Provisions of the Resolution.”

Interest on the Series 2008A2 Bonds will be payable by check mailed to the registered owners thereof. The principal or redemption price of the Series 2008A2 Bonds will be payable in lawful money of the United States of America at the principal corporate trust office of The Bank of New York, the Trustee and Paying Agent. At the option of a holder of at least \$1,000,000 in principal amount of Series 2008A2 Bonds, the principal or redemption price of the Series 2008A2 Bonds will be payable by wire transfer to the holders of such Series 2008A2 Bonds. As long as the Series 2008A2 Bonds are registered in the name of Cede & Co., as nominee of DTC, such payments will be made directly to DTC. See “Book-Entry Only System” herein.

### Redemption Provisions

The Series 2008A2 Bonds are subject to optional, special and mandatory redemption as described below.

**Optional Redemption.** The Series 2008A2 Bonds are subject to redemption prior to maturity at the election of the Authority, exercised at the direction of or with the consent of MSKCC, on or after July 1, 2018, in whole or in part, at any time at a redemption price of 100% of the principal amount of 2008A2 Bonds to be redeemed, plus accrued interest to the redemption date.

**Purchase in Lieu of Optional Redemption.** The Series 2008A2 Bonds maturing after July 1, 2018 are also subject to purchase in lieu of optional redemption prior to maturity at the election of MSKCC, on or after July 1, 2018, in any order, in whole or in part at any time, at a price of 100% of the principal amount of Series 2008A2 Bonds to be purchased (the “Purchase Price”), plus accrued interest to the purchase date (the “Purchase Date”).

**Mandatory Redemption.** In addition, the Series 2008A2 Bonds maturing on July 1, 2026 are also subject to redemption, in part, on each July 1 of the years and in the respective principal amounts set forth below, at 100% of the principal amount of 2008A2 Bonds to be redeemed, plus accrued interest to the redemption date, from mandatory Sinking Fund Installments which are required to be made in amounts sufficient to redeem on July 1 of each year the principal amount of Series 2008A2 Bonds specified for each of the years shown below:

#### Term Bonds Maturing 2026

<u>July 1</u>	<u>Amount</u>
2025	\$48,425,000
2026 <sup>†</sup>	40,020,000

<sup>†</sup> Final maturity.

There will be credited against and in satisfaction of the Sinking Fund Installment payable on any date, the principal amount of Series 2008A2 Bonds entitled to such Sinking Fund Installment (A) purchased with money in the Debt Service

Fund pursuant to the Resolution, (B) redeemed at the option of the Authority, (C) purchased by MSKCC or the Authority and delivered to the Trustee for cancellation or (D) deemed to have been paid in accordance with the Resolution. Series 2008A2 Bonds purchased with money in the Debt Service Fund will be applied against and in fulfillment of the Sinking Fund Installment of the Series 2008A2 Bonds so purchased payable on the next succeeding July 1. Series 2008A2 Bonds redeemed at the option of the Authority, purchased by the Authority or MSKCC (other than from amounts on deposit in the Debt Service Fund) and delivered to the Trustee for cancellation or deemed to have been paid in accordance with the Resolution will be applied in satisfaction, in whole or in part, of one or more Sinking Fund Installments as the Authority may direct in its discretion. To the extent the Authority's obligation to make Sinking Fund Installments in a particular year is so satisfied, the likelihood of redemption through mandatory Sinking Fund Installments of a Bondholder's Series 2008A2 Bonds of the maturity so purchased will be reduced for such year.

**Selection of Series 2008A2 Bonds to be Redeemed.** In the case of redemption of Series 2008A2 Bonds, other than from Sinking Fund Installments, the Authority will select the maturity of the Series 2008A2 Bonds to be redeemed. If less than all of the Series 2008A2 Bonds of a maturity are to be redeemed, the Series 2008A2 Bonds of such maturity to be redeemed will be selected by the Trustee, by lot, using such method of selection as the Trustee considers proper in its discretion.

**Notice of Redemption.** The Trustee is to give notice of the redemption of the Series 2008A2 Bonds in the name of the Authority, by first class mail, postage prepaid, not less than 30 days nor more than 60 days prior to the redemption date, to the registered owners of any Series 2008A2 Bonds which are to be redeemed, at their last known addresses appearing on the registration books of the Authority and by certified mail to a national information service that disseminates bond redemption notices. If the Authority's obligation to redeem Series 2008A2 Bonds is subject to conditions, the notice of redemption will contain a statement to such effect that describes the conditions to such redemption. The failure of any holder to receive such notice or any defect in such notice will not affect the validity of the proceedings for the redemption of the Series 2008A2 Bonds.

If on the redemption date money for the redemption of the Series 2008A2 Bonds of like maturity to be redeemed, together with interest thereon to the redemption date, are held by the Trustee so as to be available for payment of the redemption price, then interest on the Series 2008A2 Bonds of such maturity to be redeemed will cease to accrue from and after the redemption date and such Series 2008A2 Bonds will no longer be considered to be Outstanding under the Resolution.

**Notice of Purchase in Lieu of Redemption and its Effect.** Notice of purchase of the Series 2008A2 Bonds will be given in the name of MSKCC to the registered owners of the Series 2008A2 Bonds to be purchased by first-class mail, postage prepaid, not less than 30 days nor more than 60 days prior to the Purchase Date specified in such notice. The Series 2008A2 Bonds to be purchased are required to be tendered on the Purchase Date to the Trustee. Series 2008A2 Bonds to be purchased that are not so tendered will be deemed to have been properly tendered for purchase. In the event the Series 2008A2 Bonds are called for purchase in lieu of an Optional Redemption, such purchase will not operate to extinguish the indebtedness of the Authority evidenced thereby or modify the terms of the Series 2008A2 Bonds and such Series 2008A2 Bonds need not be cancelled, but will remain Outstanding under the Resolution and continue to bear interest.

MSKCC's obligation to purchase a Series 2008A Bond to be purchased or cause it to be purchased is conditioned upon the availability of sufficient money to pay the Purchase Price for all of the Series 2008A2 Bonds to be purchased on the Purchase Date. If sufficient money is available on the Purchase Date to pay the Purchase Price of the Series 2008A2 Bonds to be purchased, the former registered owners of such Series 2008A2 Bonds will have no claim thereunder or under the Resolution or otherwise for payment of any amount other than the Purchase Price. If sufficient money is not available on the Purchase Date for payment of the Purchase Price, the Series 2008A2 Bonds tendered or deemed tendered for purchase will continue to be registered in the name of the registered owners on the Purchase Date, who will be entitled to the payment of the principal of and interest on such Series 2008A2 Bonds in accordance with their respective terms.

In the event not all of the Outstanding Series 2008A2 Bonds of a maturity are to be purchased, the Series 2008A2 Bonds to be purchased will be selected by lot in the same manner as Series 2008A2 Bonds of a maturity to be redeemed in part are to be selected.

For a description of certain other provisions relating to the Series 2008A2 Bonds, see "Appendix E – Summary of Certain Provisions of the Resolution." Also see "Book-Entry Only System" below for a description of the notices of redemption to be given to Beneficial Owners of the Series 2008A2 Bonds when the Book-Entry Only System is in effect.

## **Book-Entry Only System**

The Depository Trust Company (“DTC”), New York, New York, will act as the securities depository for the Series 2008A2 Bonds. The Series 2008A2 Bonds will be issued as fully-registered securities registered 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 2008A Bond certificate will be issued for each maturity of the Series 2008A2 Bonds, totaling in the aggregate the principal amount of the Series 2008A2 Bonds, 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 2.2 million issues of U.S. and non-U.S. equity, 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, thereby eliminating the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation and Emerging Markets Clearing Corporation (“NSCC”, “FICC” and “EMCC”, respectively, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants,” and together with Direct Participants, “Participants”). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission.

Purchases of the Series 2008A2 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2008A2 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2008A Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2008A2 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 2008A2 Bonds, except in the event that use of the book-entry system for such Series 2008A2 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2008A2 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 the Series 2008A2 Bonds with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2008A2 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such 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 will be sent to DTC. If less than all of the Series 2008A2 Bonds are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2008A2 Bonds unless authorized by a Direct Participant in accordance with DTC’s 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 2008A2 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on the Series 2008A2 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 or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal 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 is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2008A2 Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, the Series 2008A 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 2008A Bond certificates will be printed and delivered to DTC.

The information herein concerning DTC and DTC's book-entry-only system has been obtained from sources that the Authority believes to be reliable, but the Authority does not take responsibility for the accuracy thereof.

Each person for whom a Participant acquires an interest in the Series 2008A2 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 to 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 2008A2 Bonds.

So long as Cede & Co. is the registered owner of the Series 2008A2 Bonds, as nominee for DTC, references herein to the Bondholders or registered owners of the Series 2008A2 Bonds (other than under the caption "TAX MATTERS" herein) means Cede & Co., as aforesaid, and does not mean the Beneficial Owners of the Series 2008A2 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 2008A2 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 2008A2 Bonds if the Authority determines that (i) DTC is unable to discharge its responsibilities with respect to the Series 2008A2 Bonds, or (ii) a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC, is not in the best interests of the Beneficial Owners. In the event that no substitute securities depository is found by the Authority or restricted registration is no longer in effect, Series 2008A Bond certificates will be delivered as described in the Resolution.

NEITHER THE AUTHORITY 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 2008A2 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 2008A2 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 2008A2 BONDS; (V) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF THE SERIES 2008A2 BONDS; OR (VI) ANY OTHER MATTER.



## Principal and Interest Requirements

The following table sets forth the amounts, after giving effect to the issuance of the Series 2008A2 Bonds, required to be paid by the Center during each twelve month period ending June 30 of the years shown for the payment of debt service on the currently outstanding long-term indebtedness of MSKCC, the principal of and interest on the Series 2008A2 Bonds and the total debt service on all indebtedness of MSKCC, including the Series 2008A2 Bonds.

12-Month Period Ending June 30	Series 2008A2 Bonds					
	Debt Service on Outstanding Indebtedness <sup>1</sup>	Principal Payments	Interest Payments	Total Debt Service on the Series 2008A2 Bonds	Debt Service on the Series 2008A1 Bonds	Total Debt Service <sup>1</sup>
2008	\$56,355,175	\$ -	\$ 1,738,143	\$ 1,738,143	\$ 1,061,720	\$59,155,038
2009	56,404,825	-	13,036,070	13,036,070	7,962,900	77,403,795
2010	56,343,625	-	13,036,070	13,036,070	7,962,900	77,342,595
2011	56,384,625	-	13,036,070	13,036,070	7,962,900	77,383,595
2012	34,340,125	-	13,036,070	13,036,070	7,962,900	55,339,095
2013	34,271,875	28,185,000	13,036,070	41,221,070	7,962,900	83,455,845
2014	34,303,625	29,330,000	11,855,370	41,185,370	7,962,900	83,451,895
2015	56,410,125	8,585,000	10,498,270	19,083,270	7,962,900	83,456,295
2016	56,333,725	9,035,000	10,124,120	19,159,120	7,962,900	83,455,745
2017	32,190,231	34,290,000	9,710,970	44,000,970	7,962,900	84,154,101
2018	43,002,231	25,195,000	7,996,470	33,191,470	7,962,900	84,156,601
2019	52,702,231	16,500,000	6,988,670	23,488,670	7,962,900	84,153,801
2020	77,390,731	-	6,312,170	6,312,170	7,962,900	91,665,801
2021	76,008,206	-	6,312,170	6,312,170	7,962,900	90,283,276
2022	76,288,663	-	6,312,170	6,312,170	7,962,900	90,563,733
2023	76,379,038	-	6,312,170	6,312,170	7,962,900	90,654,108
2024	47,792,938	21,385,000	6,312,170	27,697,170	7,962,900	83,453,008
2025	17,128,338	53,015,000	5,349,845	58,364,845	7,962,900	83,456,083
2026	17,128,338	55,645,000	2,719,750	58,364,750	7,962,900	83,455,988
2027	52,973,338				7,962,900	60,936,238
2028	52,975,700				7,962,900	60,938,600
2029	52,977,075				7,962,900	60,939,975
2030	52,975,325				7,962,900	60,938,225
2031	53,355,175				7,962,900	61,318,075
2032	53,357,106				7,962,900	61,320,006
2033	53,355,463				7,962,900	61,318,363
2034	53,360,019				26,372,900	79,732,919
2035	4,954,800				74,779,450	79,734,250
2036	-				79,731,750	79,731,750

<sup>1</sup> Reflects debt service on the Series 1998 Bonds, Series 2003 Bonds and Series 2006 Bonds.

For a discussion of MSKCC's outstanding indebtedness, see "PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS' RISKS – Outstanding Indebtedness."

**PART 4 -ESTIMATED SOURCES AND USES OF FUNDS**

Estimated sources and uses of funds are as follows:

Sources of Funds

Principal Amount of the Series 2008A2 Bonds .....	\$281,165,000
Net Premium.....	<u>10,164,951</u>
Total Sources of Funds.....	<u>\$291,329,951</u>

Uses of Funds

Refunding Escrow .....	\$287,425,000
Costs of Issuance.....	2,577,942
Underwriters' Discount.....	<u>1,327,009</u>
Total Uses of Funds .....	<u>\$291,329,951</u>

**PART 5 -THE REFUNDING PLAN**

The proceeds of the Series 2008A2 Bonds will be used to redeem a portion of the Outstanding \$450,000,000 aggregate principal of the Authority’s Memorial Sloan-Kettering Cancer Center Revenue Bonds, Series 2002A (the “Refunded Bonds”) on the first optional redemption date that is at least 30 days after the Series 2008A2 Bonds are issued. The Series 2008A1 Bonds will refund the remaining portion of the Refunded Bonds. Such proceeds in an amount equal to the principal amount of the Refunded Bonds to be redeemed will be set aside and held in trust for payment of the principal on the Refunded Bonds due on their respective redemption dates. Interest on the Refunded Bonds due on or prior to the Redemption Date will be paid with money paid by the Center pursuant to the Loan Agreement. Until such redemption dates, such Refunded Bonds will remain outstanding under the Resolution.

**PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS’ RISKS**

**Introduction**

Memorial Sloan-Kettering Cancer Center (the “Center”), together with its related corporations (collectively, “MSKCC”), is the oldest and largest privately operated not-for-profit cancer center in the world. The mission of MSKCC is to provide leadership in the prevention, diagnosis, treatment and cure of cancer through excellence, vision and cost effectiveness in patient care, outreach programs, research and education.

The principal corporations related to the Center are Memorial Hospital for Cancer and Allied Diseases (the “Hospital”), Sloan-Kettering Institute for Cancer Research (the “Institute”), and S.K.I. Realty, Inc. (“Realty”). The Center, the Hospital and the Institute currently have virtually identical officers and Boards of Managers.

**The Clinical Enterprise**

The Hospital, a 514-bed licensed specialty hospital, traces its history to the New York Cancer Hospital, founded in 1884 as the nation’s first cancer hospital. MSKCC is the premier institution for setting the standard of care for cancer patients. Since their founding, the Hospital and the Institute have pioneered countless discoveries in clinical research that have led to standard-setting innovations in all areas of cancer diagnosis and treatment. The close collaboration between physicians and investigators gives the organization its strong ability to assure that new research findings are appropriately and rapidly transferred from the laboratory directly to improving patient care.

All inpatient activity from surgery to hospital stays takes place at the main New York City campus between 67th and 68th Streets on York Avenue, which is in midtown Manhattan. Patients with the same or similar types of cancer are located together on inpatient units, where team members have specialized expertise and training in the medical and surgical aspects of those particular cancers.

The shift of cancer treatment to the outpatient setting over the last decade required that the Hospital look beyond the immediate campus for space and convenient access to care for its patients. In response to this change, MSKCC opened and expanded several diagnostic treatment centers in Manhattan. The Evelyn H. Lauder Breast Center and the companion

Iris Cantor Diagnostic Center opened at 205 East 64th Street in 1992. The Rockefeller Outpatient Pavilion, located at 160 East 53rd Street, opened in 1999. The Sidney Kimmel Center for Prostate and Urologic Cancer located at 353 East 68th Street opened in 2002. Regional sites in the tri-state area are in Sleepy Hollow, New York; Rockville Centre, New York; Hauppauge, New York; Commack, New York; and Basking Ridge, New Jersey. The Hospital also has affiliations with several international medical centers in Europe, South America and Asia, which provide training for their staff and referrals to the Hospital.

Approximately 40.9% of the Hospital's patients come from New York City, 45.8% come from other New York State areas and New Jersey, 12.2% come from other parts of the country and 1.1% from foreign countries. The Hospital, according to its analysis of New York State Health Department year-to-date June 2007 data, had a 14.4% market share of the cancer discharges in New York City. According to such analysis, this market share was the highest market share of any individual hospital provider in New York City for inpatient cancer services. In addition, according to this analysis, the Hospital had significantly lower mortality rates in cancer inpatients as compared to other institutions offering these services. Management attributes this to the quality of its physicians and its high volume of patients and the fact that in their specialties, each doctor treats significantly more patients than most other physicians in the same fields at other hospitals. The Hospital uses an interdisciplinary, multi-modality approach to cancer care through its Disease Management Teams ("DMT") in which specialists from diverse clinical areas combine their expertise in a certain type of cancer, with each team specializing in one or more related diseases or cancer prevention and with standards of care and treatment pathways developed for each type and stage of cancer. The Disease Management Teams target cancer by site and formalize the process of involving clinicians from different disciplines combining their expertise. Each of the DMTs may include surgical oncologists, medical oncologists, radiation oncologists, diagnostic radiologists, pathologists, oncology nurses, and other health professionals with expertise in a particular area. These teams of specialists treat various aspects of a patient's disease, with one physician on the team coordinating care. The multidisciplinary approach was further facilitated by a physical restructuring of the hospital's inpatient floors so that each patient with a specific kind of cancer receives all their treatment on one floor from the appropriate DMT.

In addition to MSKCC's focus on providing cancer care, is an emphasis on cancer prevention and screening. MSKCC has developed a multifaceted cancer prevention and screening program that is tailored to the individual patient. The purpose is three-fold: to detect disease in its earliest, most curable stage; to provide dietary and lifestyle information that might improve an individual's chances of decreasing the risk of developing cancer; and to identify and monitor those who are at risk of developing cancer. MSKCC has developed a Cancer Prevention and Wellness Program to assist in accommodating these needs. MSKCC also provides services in the areas of Pain Management, rehabilitation and supportive care, including an Integrative Medicine program that is designed to enhance patients' and family members' quality of life through healing regimens that address the body, mind and spirit.

### **The Research Enterprise**

The Institute, created in 1945, is the primary laboratory research arm of the Center. The Institute employs approximately 80 laboratory heads and is organized into the following major fields of study: Molecular Biology, Cell Biology, Immunology, Cancer Biology and Genetics, Developmental Biology, Structural Biology, Computational Biology, and Molecular Pharmacology and Chemistry.

To address the shortage of research space for both current and future programs, a new 692,000 square foot research facility was substantially completed in 2007, with the remainder currently under construction. The needs of the investigators were paramount in the design of the facility. The structure is designed to facilitate interactions among investigators. Glass enclosed staircases link one floor with the next and at the base of each set of stairs is a common area (dubbed the "interaction zone") which allows investigators to mingle and share ideas. The laboratory space is more open than the traditional research facility, giving scientists the flexibility to customize their labs in ways that enable them to be most productive and communicative with their colleagues.

The new facility is a "green building" which employs energy-saving technologies and strategies. Natural light streams into the laboratories and offices throughout the facade, with specially treated glass controlling the amount of light that enters. The new research facility further strengthens the connections among structural biologists, cell biologists, chemists, computer scientists and clinicians, all of whom have joined forces to search for new molecular drug targets.

The new facility is expected to accommodate all anticipated growth through 2015 for laboratory and laboratory support space and vivarium space. The first phase of the building, 557,000 gross square feet of wet bench research space in a 23-story building, has most floors occupied. The second phase of the facility, 135,000 gross square feet in a contiguous eight-story building with two basement levels, is scheduled to be occupied in 2009.

One of the greatest strengths of MSKCC is that clinical research programs collaborate closely with related basic science research programs. As a result, Hospital and Institute investigators work together to improve the diagnosis and

treatment of specific human cancers. Cancer research at MSKCC is integral with cancer treatment; consequently, research laboratories must be immediately adjacent to patient care. This co-location of research and clinical facilities is essential in order to: foster interaction between scientists, clinical investigators and clinicians; expedite the translation of basic science discoveries into clinical applications; and apply the knowledge learned from human treatment into the laboratory setting.

The Institute is the recipient of National Institutes of Health funding, which represents approximately 33% of the Institute's operating revenues. MSKCC staff is currently the recipient of more than \$100 million a year in competitive grants and contracts. Remaining operating revenues of the Institute consist of grants from other public and private agencies and foundations, philanthropy, royalties and other fees from the commercial use of the Institute's scientific discoveries. MSKCC anticipates that during the initial several year phase-in period of the new research facility, the Institute will experience additional operating losses. These losses are projected to stabilize as investigators are hired and external funding is realized during the phase-in period. Other significant research collaborations include MSKCC's participation in the New York City structural biology center and a new imaging facility at Cornell University.

### **Academic Environment**

MSKCC's academic faculty includes 662 full-time employee-attending physicians of the Hospital and 129 scientists in the Institute, 34 of whom also hold Hospital appointments. The Hospital and the Institute benefit from the interplay among disciplines, particularly because laboratory research is shaped by the focus on cancer. The cultivation of scientific excellence cannot be separated from the mission of educating and training tomorrow's investigators. Institute faculty members act as research mentors for approximately 160 PhD and MD-PhD candidates; both Institute and Hospital faculty members provide research mentorship for 466 postdoctoral Research Fellows and Associates. These graduate programs are run in collaboration with Weill Medical College of Cornell University, Rockefeller University, and other academic medical centers and include a broad range of programs of graduate medical education in the areas of cancer and related diseases and disciplines. In addition, degree-granting authority has been granted to the Institute, which opened the Louis V. Gerstner, Jr. Graduate School of Biomedical Sciences in 2006. Currently, there are 19 students in the program, and the program is expected to grow to 60 students by 2012. Each year the Hospital trains approximately 1,700 interns, residents, and fellows including rotators (equivalent to 419 FTEs) in 60 M.D. training programs. The Hospital is the significant cancer-training site for programs jointly sponsored with other academic medical centers.

### **The Center**

The Center was organized in 1960 primarily to promote a more intimate exchange between the clinical and research programs, and to provide general administrative, financial management and other services to the clinical and research enterprises. The clinical and research enterprises share in the cost of these support services with the exception of its fund raising and certain administrative services. The fund raising activities of the Center generate funds in support of the research, clinical and training needs of MSKCC.

### **S.K.I. Realty, Inc.**

S.K.I. Realty, Inc. was organized in 1986 to develop and manage staff housing.

### **Governance**

Each of the Center, the Institute and the Hospital is governed by a Board of Managers. The By-Laws of each entity provide that the three Boards of Managers should be identical, except to the extent that a person who is a member of the Board of Managers of the Center is precluded by employment or otherwise from being on the Board of Managers of the Institute or the Hospital. Each Board of Managers is to consist of not more than 30 members, and the current membership is 29 for the Center, and 28 each for the Hospital and the Institute. The Board of Managers of the Center is selected by the Board of Overseers, a body of not more than 60 people whose function is to elect the members of the Center's Board of Managers. The Boards of Managers of the Institute and the Hospital select their successors. Approximately one-third of the members of the Board of Overseers is elected each year for a three-year term. The Boards of Managers are elected each year and meet periodically during the year. The current members of the Boards of Managers and their principal occupations are:

Richard I. Beattie, Esq. (2) (5) (7) (10) (11)

Chairman, Simpson Thacher and Bartlett

Peter O. Crisp

Retired Founder and Managing Partner,  
Venrock Associates

Stanley F. Druckenmiller	Duquesne Capital Management, L.L.C.
Richard N. Foster (5)	Investment & Advisory Services
Stephen Friedman (5)	Chairman, Stone Point Capital
Ellen V. Futter	President, American Museum of Natural History
Philip H. Geier, Jr.	Chairman, The Geier Group
Louis V. Gerstner, Jr. (3) (5) (7) (10) (11)	Chairman, The Carlyle Group
Jonathan N. Grayer	Chairman and CEO, Kaplan, Inc.
John R. Gunn (1)	Executive Vice President, Memorial Sloan Kettering Cancer Center
William B. Harrison, Jr. (5)	Former Chairman and CEO, J.P. Morgan Chase & Co.
Benjamin W. Heineman, Jr.	Retired, Former Senior Vice President for Law and Public Affairs, General Electric Company
Mrs. Peter D. Jones	President, The Society of Memorial Sloan Kettering Cancer Center
David H. Koch	Executive Vice President, Koch Industries, Inc.
Marie-Josée Kravis (5)	Senior Fellow, The Hudson Institute, Inc.
James G. Niven (5) (11)	Vice Chairman (North and South America), Sotheby's
Bruce C. Ratner	President & CEO, Forest City Ratner Companies
Clifton S. Robbins (5) (11)	CEO, Blue Harbour Group, L.P.
James D. Robinson III (5) (9) (11)	General Partner, RRE Ventures
Benjamin M. Rosen (4)	Retired, Former Chairman, Compaq Computer Corp.
Jack Rudin (5)	Chairman, Rudin Management Company, Inc.
Norman C. Selby (5)	Senior Managing Director, Perseus LLC
Stephen C. Sherrill	Managing Director, Bruckmann, Rosser, Sherrill & Co., Inc.
William C. Steere, Jr.	Chairman Emeritus, Pfizer Inc
Scott M. Stuart	Co-Founder, Sageview Capital
Harold Varmus, M.D. (5)	President and CEO, Memorial Sloan Kettering Cancer Center
Lucy R. Waletzky, M.D.	Physician in Private Practice
Douglas A. Warner III (5) (6) (8) (11)	Former Chairman of The Board, J.P. Morgan Chase & Co.
Deborah C. Wright	Chairman and CEO, Carver Bancorp, Inc.

- (1) Only a member of the Board of Managers of the Center Corporation
- (2) Chairman of the Board, Memorial Hospital

- (3) Chairman of the Board, Sloan-Kettering Institute
- (4) Vice Chairman of the Board, Memorial Hospital
- (5) Member of the Executive Committee
- (6) Chairman of the Executive Committee
- (7) Vice Chairman of the Executive Committee
- (8) Chairman of the Board, Center Corporation
- (9) Honorary Chairman of the Board, Center Corporation
- (10) Vice Chairman of the Board, Center Corporation
- (11) Member of the Board of Directors, S.K.I. Realty, Inc.

The Boards of Managers of the Center, the Institute and the Hospital have established joint committees. The committees of the Boards of Managers include the Executive Committee, the Joint Audit Committee, the Joint Human Resources Committee, the Joint Finance and Funding Committee, and the Joint Nominating Committee.

S.K.I. Realty, Inc. is governed by a Board of Directors consisting of six people (see footnote 11 above).

MSKCC, in the course of its business, engages in transactions and does business with firms with which Board members may be affiliated. Such business arrangements are made on an arms-length basis and, in the opinion of the management of MSKCC, on terms not less favorable to MSKCC than those that could be obtained through arms-length transactions with unaffiliated third parties.

### **Management**

MSKCC is managed by the officers of MSKCC, who are elected at each annual meeting of the Board of Managers and who hold office until the next annual meeting of the Board, which is generally held in April of each year, or until their respective successors have been elected. The officers have general and active management responsibilities for operations, see that the policies and resolutions approved or adopted by the Board of Managers are carried out and are charged with and are responsible for all executive, administrative and financial matters. The current officers of MSKCC are:

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James D. Robinson III  
Honorary Chairman of the Board

Douglas A. Warner III  
Chairman of the Board

Richard I. Beattie, Esq.  
Vice Chairman of the Board

Louis V. Gerstner, Jr.  
Vice Chairman of the Board

Harold Varmus, M.D.  
President and Chief Executive Officer

Clifton S. Robbins  
Treasurer

Peter O. Crisp  
Secretary

Paul A. Marks, M.D.  
President Emeritus

John R. Gunn  
Executive Vice President

Thomas J. Fahey, Jr., M.D.  
Senior Vice President, Clinical Program  
Development

Michael P. Gutnick  
Senior Vice President, Finance and Assistant  
Treasurer

Kathryn Martin  
Senior Vice President and Hospital Administrator

Roger N. Parker, Esq.  
Senior Vice President and General Counsel

Eric M. Cottingham, Ph. D.  
Vice President, Research Resources Management

Dennis Dowdell, Jr.  
Vice President, Human Resources

Kathy Lewis  
Vice President, Public Affairs

Edward J. Mahoney  
Vice President, Facilities Management

Richard K. Naum  
Vice President, Development

Patricia C. Skarulis  
Chief Information Officer and Vice President,  
Information Systems

Ellen Miller Sonet  
Vice President, Marketing

Carolyn Bonheur  
Assistant Secretary

The principal full-time executive officers of MSKCC and its related entities are Harold Varmus, M.D., John R. Gunn, Thomas J. Fahey, Jr., M.D., Michael P. Gutnick, Thomas Kelly M.D., Ph.D, Kathryn Martin, Roger N. Parker, and Robert E. Wittes, MD.

**Harold Varmus, M.D.** (age 68), has been President and Chief Executive Officer of MSKCC since 1999. He was Director of the National Institutes of Health (NIH) from 1993 through 1999. Prior to his position at NIH, he spent much of his professional career as an investigator and teacher at the University of California Medical Center in San Francisco. He is a member of the National Academy of Sciences and the Institute of Medicine and has received numerous awards for his work on genetics and cancer, including the Alfred P. Sloan Prize, Armand Hammer Cancer Prize and the Nobel Prize in Physiology or Medicine in 1989. In 2002 he was awarded the National Medal of Science.

**John R. Gunn** (age 65), has been Executive Vice President of MSKCC since 1987. In this capacity, he is responsible for all administrative matters relating to MSKCC. Mr. Gunn joined MSKCC in 1982 as Vice President for Finance and in 1985 was appointed Senior Vice President. Prior to his appointment at MSKCC, Mr. Gunn was Chief Fiscal Officer at Michael Reese Hospital and Medical Center; Chicago, Illinois. He is a Fellow of the Institute of Chartered Accountants of Great Britain.

**Thomas J. Fahey, Jr., M.D.** (age 73), has been Senior Vice President, Clinical Program Development of MSKCC since February 1996. Prior to this appointment he served as Deputy Physician-in-Chief of Memorial Hospital for Cancer and Allied Diseases for fifteen years. He is currently also Chairman of the Board of Calvary Hospital in New York City, a terminal care hospital exclusively devoted to cancer patients, and was Chairman of the New York State Attorney General's Commission on Quality Care at the End of Life.

**Michael P. Gutnick** (age 61), is Senior Vice President, Finance and Assistant Treasurer of MSKCC. Mr. Gutnick joined MSKCC in 1977. In 1981 he was appointed Controller and in 1987 became Vice President, Finance and Assistant Treasurer. In March 1989 he was appointed to his current position. Prior to his employment at MSKCC, Mr. Gutnick was an Audit Manager with a major international public accounting firm. He is a Certified Public Accountant.

**Thomas Kelly, M.D., Ph.D.** (age 66), is Director of Sloan-Kettering Institute. Prior to assuming this position in 2002, he spent most of his career at the Johns Hopkins University School of Medicine where he was Boury Professor and Chairman of the Department of Molecular Biology and Genetics. He was also the founding Director of the Institute for Basic Biomedical Sciences whose mission is to promote the development of multidisciplinary research at Johns Hopkins. Dr. Kelly's research has focused on the mechanisms that control the duplication of the genes in normal and cancer cells. He is a member of the National Academy of Sciences and the Institute of Medicine.

**Kathryn Martin** (age 52), is Senior Vice President of MSKCC and Memorial Hospital Administrator. In this capacity she is responsible for running the day-to-day operations of Memorial Hospital. Prior to joining the Center in 1999, Mrs. Martin served as Senior Vice President for Operations at New York-Presbyterian Hospital and in a variety of senior administrative positions at The New York Hospital, the Medical Care Facilities Finance Agency, and the New York City Health and Hospitals Corporation.

**Richard Naum** (age 62), has been Vice President for Development at MSKCC since 2002. Over the past thirty years he has held leadership positions in development at various educational and scientific institutions. He served as Director of Development for the New York Zoological Society, Assistant Dean of the New York University School of Law, Associate Dean of the Columbia School of Law and for ten years as Vice President for Development and Alumni Affairs of Columbia University.

**Roger N. Parker** (age 66), B.S. (nursing), M.A., J.D., is Senior Vice President and General Counsel of MSKCC. Mr. Parker joined the Hospital as Director of Nursing Practice in July 1975. He was appointed Chairman of Nursing and Assistant Vice President (1978); Associate Hospital Administrator for Clinical Services (1982); Vice President, Hospital Administration (1984); and Senior Vice President (1989); and General Counsel (1998).

**Robert E. Wittes, MD** (age 64), is Physician-in-Chief of Memorial Hospital, Memorial Sloan-Kettering Cancer Center. He graduated from Harvard College in 1964 and from Harvard Medical School in 1968. He was Director of the Division of Cancer Treatment and Deputy Director for Extramural Science at the National Cancer Institute (NCI) from 1995 to 2002. Prior to 1995, he served as Associate Director, Division of Cancer Treatment, NCI, 1983 to 1988; Senior Vice President for Cancer Research, Bristol Myers, 1988 to 1990; Chief of the Medicine Branch, Division of Cancer Treatment, NCI, 1990 to 1995.

## **The Facilities and Services**

### **Main Campus**

MSKCC's main campus (approximately three million square feet) occupies the entire square block from 67th to 68th Streets between York and First Avenues in Manhattan as well as several buildings in the immediate vicinity. This property is divided among Inpatient Operations, Ambulatory Services and Research facilities.

The inpatient operations consist of ten medical/surgical units, a pediatrics unit and an Intensive Care Unit (ICU). Construction of an additional medical/surgical unit will begin in 2008. The ICU is comprised of 20 patient beds and two treatment rooms. All 20 beds are enclosed isolation rooms including two negative pressure rooms. This design reduces the risk of nosocomial spread of infection and affords greater patient privacy.

In addition to the inpatient care unit of the Hospital, the main campus also houses several other clinical activities which includes the Urgent Care Center, which is MSKCC's "emergency room", where patients undergoing outpatient cancer treatment can come for immediate attention 24 hours a day. The Enid A. Haupt Pavilion houses doctors' offices, support facilities, diagnostic and treatment suites equipped with the most advanced medical technology and the Radiation Oncology Center. Radiation services include 3-D tumor imaging, intensity-modulated radiation therapy, brachytherapy and stereotactic radiotherapy. The Surgical Day Hospital offers a variety of diagnostic procedures, as well as reconstructive plastic surgery.

In 2006, a five-story addition (the "Infill") to the main campus was completed. This addition represents the first major new construction at the main campus since the Hospital building was built in 1973. The new addition houses three distinct programs: Pediatrics, Pathology and Operative Services, which includes 21 new operating rooms.

The Claire Tow Pediatric Pavilion contains the 33-bed inpatient unit and the outpatient Pediatric Day Hospital. In addition, there is also a three-bed Laura Rosenberg Pediatric Observation Unit for more intensive inpatient care. The facility has an activity center which serves as the hub for inpatient recreation while the family lounge is a quiet space where families can spend time together. The Pediatric Day Hospital provides care for young patients who need intensive treatment, such as blood transfusions and minor prolonged chemotherapy procedures, but do not require overnight hospitalization. More than 24,000 pediatric outpatient visits are handled at this facility. The Pediatric Day Hospital also includes a school program with five full-time teachers that is certified by the New York City Board of Education.



The increased space provided by the completion of the Infill for the Pathology labs, offices and support services has allowed the necessary expansion and modernization of the department to accommodate the increased demand from increased surgical volume and new outpatient visits. The space has been designed to facilitate and improve current workflow processes, levels of staffing and the introduction of new equipment and technologies.

The 21 state-of-the-art operating rooms are contiguous to the Pathology labs and the new larger rooms allow for new technologies plus additional staff, both of which require additional space to ensure an optimally safe and aseptic environment. The remodeled platform optimizes the workflow process especially in the areas of pre and post operative care. One of the new operating rooms houses the Brain Suite Integration System, a fully integrated intraoperative imaging neurosurgical suite, which fully integrates relevant surgical and diagnostic tools, including intraoperative MRI, magnification and navigation equipment.

The second floor and a portion of the third floor of the main hospital building are currently being reconstructed to house the Center for Image-Guided Intervention and an expanded Surgical Day Hospital and Endoscopy unit. The Center for Image-Guided Intervention will be a multidisciplinary facility where image-guided treatments and interventions, including minimally invasive surgery, interventional radiologic procedures and interventional endoscopy procedures are consolidated into a single program. The guidance modalities of computerized tomography (CT) and angiography will be placed within the same room, equipped for fiberoptic endoscopic procedures, so that flexible endoscopy, laparoscopy, thoracoscopy, cystoscopy and brachytherapy may be performed in an environment that also allows CT or angiographic guidance. Management foresees that such a program may potentially result in the emergence of innovative approaches to diagnosis and treatment, reductions in operating room time, shorter hospital stays, minimization of risks and complications, improvement in patient outcomes, decreases in costs and facilitation of the translation of advanced technologies to the community setting.

#### Other Ambulatory Facilities in Manhattan

**The Rockefeller Outpatient Pavilion** located at 160 East 53rd Street delivers outpatient cancer care offering state-of-the-art diagnostic imaging, chemotherapy, pharmacy services, pre admission testing, medical consultation, cardiology, pulmonary and laboratory services. Outpatient diagnostic and treatment programs include gastrointestinal medical and surgical oncology, gynecology, thoracic medical and surgical oncology, plastics and reconstructive surgery, clinical immunology, dermatology and radiology. Programs in patient education, women's health, cancer prevention and wellness (including early detection services), and integrative medicine are also available. Each employee at the pavilion functions as part of a multidisciplinary team and works responsibly to advance the goals of the disease-management system, facilitating both quality as well as cost effective cancer care. A separate and privately owned hotel located on the building's upper floors is available to accommodate patients who need to stay in New York City overnight or longer.

**The Guttman Diagnostic Center** located at 55 Fifth Avenue offers mammography, clinical breast examinations, breast self-examination instruction, and cervical-cancer screening for women; skin-cancer screening for women and men; and prostate cancer screening for men.

**Evelyn H. Lauder Breast Center and the Iris Cantor Diagnostic Center** located at 205 East 64th Street offer centralized services of many health-care professionals, enabling breast-cancer patients to draw on services that include medical and surgical consultations, chemotherapy services, and psychological and genetic counseling. The Special Surveillance Breast Program is for women who have a family history of breast cancer or have other high-risk factors for breast cancer. Participants visit the clinic as often as every three months so they can be carefully monitored for signs of cancer. The Iris Cantor Diagnostic Center provides technologically advanced diagnostic-imaging services including CT scanning, digital mammography, sonography and standard radiography. In 2006, construction began on a new breast and diagnostic imaging center to be located at 320 East 66<sup>th</sup> Street. All breast cancer patient activity will transfer to this state-of-the-art facility in 2009. In addition, the facility will house three additional MRIs, one additional CT Scanner and two additional PET/CT machines. This additional diagnostic imaging equipment will help to alleviate the strain on the current imaging capacity of the Hospital.

**Breast Examination Center of Harlem (BECH)** located at 163 West 125th Street provides free breast and cervical cancer screenings, counseling, support groups, and referral services to women in Harlem and the surrounding community. This center provides educational programs in breast self-examination techniques and brings other women's health issues into the community by sponsoring video presentations, workshops and seminars in churches, senior-citizen centers, schools, businesses and street fairs.

**Memorial Sloan-Kettering Counseling Center** located at 641 Lexington Avenue (7<sup>th</sup> floor) is an outpatient facility designed to help cancer patients and their families cope emotionally with their disease and treatment, and later to adjust to life after cancer. The counseling center consists of ten consult offices and two group therapy/family therapy rooms. The

center offers: diagnostic assessment and evaluation of psychiatric disorders; pharmacological treatment of psychiatric disorders/complications in cancer patients; individual, family and group psychotherapy interventions, as well as behavioral approaches to stress management; and smoking cessation.

**Integrative Medicine Outpatient Center** located at 1429 First Avenue is an outpatient facility offering complementary therapies to manage patients' symptoms and to improve quality of life to both the patients and their families. A full range of services is available at this location, including many types of massage, hypnotherapy, meditation, acupuncture, guided imagery and visualization, yoga, qui gong, a variety of fitness classes, nutritional counseling, and more. Services at this location are also open to non-MSKCC patients and their families.

**The Sidney Kimmel Center for Prostate and Urologic Cancer** located at 353 East 68th Street, was opened in April 2002 and offers comprehensive, multidisciplinary care of genitourinary cancers under one roof. This approach, while convenient to patients seeking diagnosis and treatment for cancers of the prostate, testes, kidney and bladder, also fosters valuable research collaborations that are expected to advance the standard of care for these cancers. A portion of the Series 2002 Bonds was utilized for this project.

**The Outpatient Rehabilitation Center** is currently being planned and is expected to open in early 2010. The facility will be located in rental space within the vicinity of the Rockefeller Outpatient Pavilion. This facility will provide outpatient physical medicine services to all MSKCC patients who experience musculoskeletal/neurological impairments, and/or pain management issues. Treatment plans will focus on enhancing the quality of life of cancer survivors by reducing/eliminating common symptoms such as weakness, functional deficits, pain, fatigue and depression, through education, exercise and other evidence based therapeutic modalities.

### **MSKCC Regional Sites**

MSKCC's network of regional programs brings MSKCC's high-quality cancer care to communities outside New York City at sites that it leases or owns. MSKCC physicians provide the patient care at the regional facilities and operate using the same quality standards that are found at the main campus. While several of these facilities are located on the campus of other hospitals, the patients served at these facilities are patients of MSKCC, are treated by physicians and other professionals employed by MSKCC, and the revenues and expenses of these facilities are those of MSKCC.

**Memorial Sloan-Kettering at Phelps Memorial Hospital Center** in Sleepy Hollow, New York, provides outpatient radiation and medical oncology care to residents of Westchester, Rockland and Putnam Counties. This facility is located on the campus of Phelps Memorial Hospital Center, which is a community hospital, not related to MSKCC.

**Memorial Sloan-Kettering at Mercy Medical Center** in Rockville Centre, Long Island, provides outpatient radiation oncology and medical oncology services. Memorial Sloan-Kettering has established this program with Mercy Medical Center. Mercy Medical Center is a community hospital that is not related to MSKCC. Medical oncology services are provided in a state-of-the-art facility located in the same building as radiation oncology.

**Memorial Sloan-Kettering at Suffolk** in Hauppauge, Long Island, was renovated in the fall of 2002 to become the MSKCC Skin Cancer Center in Suffolk. This center is a state-of-the-art technological facility for dermatologic oncology services.

**Memorial Sloan-Kettering at Suffolk** in Commack, Long Island was opened in June of 2002. A full range of services is offered at this 50,000 gross square foot facility, including cancer diagnosis, chemotherapy, radiotherapy, and surgical consultations, as well as cancer screening. Imaging technology includes a CT scanner, MRI, digital x-ray, mammography and stereotactic mammography, and ultrasound. Plans are underway for the expansion of current services. The expansion is planned for completion in 2011.

**Memorial Sloan-Kettering at Basking Ridge** in New Jersey opened in September, 2006. Phase I of this complex is an 85,000 square foot facility, located on 26 acres of lush wooded landscape and is designed to double its square footage. The expansion is planned for completion in 2012. A full range of services is offered at the facility, including cancer diagnosis, chemotherapy, radiotherapy, and surgical consultations as well as cancer screening. The full range of dermatologic oncology services including Moh's surgery is also available at this facility. Imaging technology includes CT scanner, PET/CT, MRI, digital x-ray, digital and stereotactic mammography, and ultrasound. Four ambulatory surgery suites and supporting services will be added in 2010.

### **Capital Spending**

During the five-year period ended December 31, 2007, MSKCC spent \$1.5 billion for property, plant and equipment in order to maintain and improve the quality of facilities and information systems necessary to support and expand

clinical, research and educational programs. A portion of these expenditures (\$657 million) were financed through the issuance of the Series 2002 Bonds and Series 2003 Bonds with the balance funded through philanthropy and internal resources. Management projects capital spending of approximately \$1.8 billion for the five years 2008 through 2012 and is currently projecting the utilization of \$115 million of Series 2006 proceeds and \$300 million in additional tax exempt financing.

### Fund Raising And Development

MSKCC's fund raising generates significant funds in support of its research, training and clinical needs. MSKCC's development unit includes a full-time professional staff of approximately 40 people organized to solicit contributions from individuals (through direct mail and individual solicitation in all fifty states), corporations and foundations. MSKCC also relies heavily on unpaid volunteers, members of the Board of Managers and the Board of Overseers and friends of MSKCC in its fund raising programs. A summary of the combined fund raising history for MSKCC for the last five years by donor type is presented below:

<b>Memorial Sloan-Kettering Cancer Center Combined Philanthropic History (in Thousands of Dollars)</b>					
<b>Year Ended December 31,</b>					
	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Individuals	\$80,677	\$92,438	\$104,462	\$110,237	\$143,084
Corporations	8,359	13,328	12,859	14,035	12,836
Foundations	47,675	22,639	25,819	54,115	66,940
Bequests	28,879	32,769	38,358	49,005	34,562
Total Cash Basis	<u>\$165,590</u>	<u>\$161,174</u>	<u>\$181,498</u>	<u>\$227,392</u>	<u>\$257,422</u>
Total Accrual Basis	<u>\$169,215</u>	<u>\$206,528</u>	<u>\$198,683</u>	<u>\$298,728</u>	<u>\$239,020</u>
Fundraising Cost	<u>\$28,657</u>	<u>\$25,697</u>	<u>\$29,631</u>	<u>\$28,390</u>	<u>\$33,523</u>
% of Cost to Accrual Basis Philanthropy	<u>16.9%</u>	<u>12.4%</u>	<u>14.9%</u>	<u>9.5%</u>	<u>14.0%</u>

During 2006, the Institution received a one-time pledge from an individual (that has been discounted for the time value of money) of approximately \$73 million. The accrual basis philanthropic history for each of the five years ended December 31, 2007 is presented in the audited combined financial statements for each of those years. The cash basis philanthropic history is representative of the moneys available for use by MSKCC. The cash and accrual bases differ primarily for two reasons: the annual change in the value of Trusts and Estates until they are ultimately settled and payments on pledges.

### Investment Management

Investment policy is determined by the Investment Subcommittee of the Joint Finance and Funding Committee of the Board of Managers.

MSKCC currently utilizes the services of several independent custodians for substantially all conventional equity and fixed income investment portfolios. The services of multiple domestic and foreign investment advisors are utilized for equity, fixed income and cash equivalent investments.

MSKCC receives detailed reports of investment activities and security positions which are reviewed by MSKCC's management on a periodic basis and detailed performance reports on a quarterly basis. These reports are supplemented periodically by the evaluation of an independent investment consultant.

The Investment Subcommittee of the Joint Finance and Funding Committee of the Board of Managers meets quarterly to review investment performance and to evaluate investment policy options, such as the allocation of funds between equity and fixed income advisors. The Investment Subcommittee of the Joint Finance and Funding Committee has the authority to replace or add investment advisors.

MSKCC also invests in a series of alternative investments that include equity hedge funds, distressed securities, event arbitrage, leveraged buyouts, private equity and venture capital. These investments are valued at market value or fair value (for non-publicly traded securities). At December 31, 2007, these investments were valued at approximately \$1.0 billion. The value of MSKCC's restricted and unrestricted investments may be negatively affected by adverse events in the financial markets.

As of December 31, 2007, MSKCC's investment asset allocation (excluding employee benefit funds) was as follows:

Cash and Short Term Fixed Income	23%
U.S. Equity	18%
International Equity	17%
Fixed Income	11%
Alternative Investments	<u>31%</u>
Total	<u>100%</u>

The value of the combined investments in securities for MSKCC at year-end for each of the past five years by type of fund is presented below:

	<b>Memorial Sloan-Kettering Cancer Center Combined Investments in Securities (at Market Value, includes Cash) (in Thousands of Dollars)</b>				
	<b>Year Ended December 31,</b>				
	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>Assets Whose Use is Limited</b>	\$ 418,612	\$ 278,819	\$ 178,098	\$ 245,900	\$ 255,175
<b>Donor Permanently Restricted *</b>	195,044	205,072	232,157	290,882	386,767
<b>Unrestricted</b>	<u>1,674,321</u>	<u>2,078,782</u>	<u>2,502,030</u>	<u>2,681,785</u>	<u>2,876,304</u>
<b>Total</b>	<u>\$ 2,287,977</u>	<u>\$ 2,562,673</u>	<u>\$ 2,912,285</u>	<u>\$ 3,218,567</u>	<u>\$ 3,518,246</u>

\*Represents permanently restricted funds that have been received under arrangements stipulated by the donor that prohibit spending the original gift.

### **Outstanding Indebtedness**

The following schedule shows (i) the outstanding principal amount of long-term debt of MSKCC and the ratio of such debt to capitalization at December 31, 2007 and (ii) the outstanding principal amount of long-term debt of MSKCC and the ratio of debt to capitalization.

**Actual Capitalization as of December 31, 2007**  
**(\$ in thousands)**

	Actual	Pro Forma
Dormitory Authority of the State of New York 2008A1 Bonds	\$ 0	\$ 161,990 <sup>1</sup>
Dormitory Authority of the State of New York 2008A2 Bonds	0	281,165 <sup>1</sup>
Dormitory Authority of the State of New York 2006 Bonds	215,085	215,085
Dormitory Authority of the State of New York 2003 Bonds	389,845	389,845
Dormitory Authority of the State of New York 2002 Bonds	450,000	0 <sup>1</sup>
Dormitory Authority of the State of New York 1998 Bonds	148,400	148,400
Capitalized Lease	2,897	2,897
	<hr/>	<hr/>
Total Long-Term Debt	\$ 1,206,227	\$ 1,199,382
Unrestricted Net Assets	3,289,079	3,289,079
	<hr/>	<hr/>
Total	\$ 4,495,306	\$ 4,488,461
Total Long-Term Debt as a percentage of Capitalization	26.8%	26.7%

<sup>1</sup> The pro forma numbers assume the refunding of the Series 2002 Bonds by the Series 2008A2 Bonds and the Series 2008A1 Bonds.

**Summary of Revenues and Expenses**

The following Combined Summary of Revenues and Expenses of MSKCC for each of the five years ended December 31, 2007 has been derived from the audited combined financial statements. The information should be read in conjunction with the audited combined financial statements for the years 2007 and 2006 together with the Report of Independent Auditors, which is included in Appendix B "COMBINED FINANCIAL STATEMENTS MEMORIAL SLOAN-KETTERING CANCER CENTER AND AFFILIATED CORPORATIONS." There has been no material adverse change in the financial condition of MSKCC since December 31, 2007.

**Memorial Sloan-Kettering Cancer Center**  
**Combined Statements of Activities**  
(Dollars in Thousands)

	Year Ended December 31,				
	2003	2004	2005	2006	2007
<b>Operating Revenues</b>					
Patient Care Revenue	\$ 963,190	\$ 1,094,797	\$ 1,249,379	\$ 1,398,393	\$ 1,531,639
Grants and Contracts	118,462	119,396	117,428	129,693	149,275
Contributions Allocated to Operations	66,550	69,114	74,277	83,538	95,481
Royalty Income	78,484	61,128	46,297	44,558	38,302
Other Income	32,372	64,780	34,294	39,439	39,902
Investment Return Allocated to Operations	54,183	70,635	88,664	116,143	113,131
Transfer of Board-Designated Annual Royalty Annuitization	0	10,599	17,163	26,083	29,440
	<b>1,313,241</b>	<b>1,490,449</b>	<b>1,627,502</b>	<b>1,837,847</b>	<b>1,997,170</b>
<b>Operating Expenses</b>					
Compensation & Fringe Benefits	749,467	813,584	880,565	966,034	1,061,946
Purchased Supplies & Services	412,987	464,147	525,120	594,671	659,488
Provision for Bad Debts & Assessments	34,942	34,274	40,506	41,978	13,387
Depreciation & Amortization	121,568	130,974	135,143	139,402	157,494
Interest Expense	21,102	20,808	24,205	45,463	54,872
Less Fund Raising Expenses					
Transferred to Non-Operating Income (Expenses)	(28,657)	(25,697)	(29,631)	(28,390)	(33,523)
	<b>1,311,409</b>	<b>1,438,090</b>	<b>1,575,908</b>	<b>1,759,158</b>	<b>1,913,664</b>
	<b>1,832</b>	<b>52,359</b>	<b>51,594</b>	<b>78,689</b>	<b>83,506</b>
<b>Income from Operations</b>					
<b>Non-Operating Income (Expenses)</b>					
Contributions Net of Fundraising Expenses and Amount					
Allocated to Operations	21,252	3,136	917	10,863	(35,096)
Net Assets Released from Restrictions - Pledge Payments	47,927	54,515	55,910	70,747	78,333
Investment Return Net of Allocation to Operations	103,768	64,570	91,836	133,873	166,834
	<b>172,947</b>	<b>122,221</b>	<b>148,663</b>	<b>215,483</b>	<b>210,071</b>
<b>Board-Designated</b>					
Investment Income and Other Additions	3,121	992	5,358	4,974	6,410
Transfer of Annual Royalty Annuitization	-	(10,599)	(17,163)	(26,083)	(29,440)
Gain on Sale of Royalty Rights	244,819	-	132,167	-	-
	<b>247,940</b>	<b>(9,607)</b>	<b>120,362</b>	<b>(21,109)</b>	<b>(23,030)</b>
Benefit Obligation to be Recognized in Future Periods	-	-	-	-	45,720
Provision for Asset Retirement Obligation	-	-	-	(19,427)	-
Effect of Adoption of Recognition and Measurement Date					
Provisions of FASB Statement No. 158	-	-	-	(85,549)	-
	<b>422,719</b>	<b>164,973</b>	<b>320,619</b>	<b>168,087</b>	<b>316,267</b>
<b>Increase in Total Unrestricted Net Assets</b>	<b>\$ 422,719</b>	<b>\$ 164,973</b>	<b>\$ 320,619</b>	<b>\$ 168,087</b>	<b>\$ 316,267</b>

**Management's Discussion and Analysis of Combined Summary of Revenues and Expenses**

The financial information contained in this section reflects the combined revenues and expenses and assets and liabilities of the Center, the Hospital, the Institute and Realty. As described above, only the Center is obligated under the Loan Agreement and the Institute and Realty are jointly and severally liable under the Guaranties. The Hospital will not be obligated to make any payments with respect to the Series 2002 Bonds, although the ability of the Hospital to incur debt or to permit liens on its property is limited under the Inducement Agreement and the revenues of the Hospital may be pledged to secure the Center's obligations under the Loan Agreement under certain circumstances described herein. While the Center, the Institute, the Hospital and Realty are four separate corporations, the four entities are managed as an enterprise and the revenues and assets of each supports the operation of the enterprise as a whole. Patient Care Revenue is primarily revenues of the Hospital, while Grants and Contracts and Royalty Income are primarily revenues of the Institute.

**For the Five-Year Period (2003 – 2007)**

During the period 2003 to 2007, operating revenues have increased at an average annual rate of 11%. MSKCC has a policy of supporting operations and routine capital spending with a portion of investments and philanthropy.

**Operating Revenues:** Patient Care Revenues average approximately 75% of combined operating revenues. Hospital admissions increased 14% during the five-year period 2003 through 2007 and ambulatory care utilization increased 20% during this period.

**Memorial Sloan-Kettering Cancer Center  
Key Patient Statistics and Other Data**

	Year Ended December 31,				
	2003	2004	2005	2006	2007
Licensed Beds	514	514	514	514	514
Admissions	19,254	20,064	21,156	21,179	21,868
Discharges	19,224	20,097	21,131	21,189	21,866
Average Length of Stay	6.8	6.8	6.6	6.5	6.3
Occupancy Rate (1)	84.1%	87.3%	88.3%	88.1%	87.4%
Patient Days	131,089	135,762	139,301	136,920	137,787
Total Outpatient Visits:	371,237	400,968	421,622	431,160	443,831
Manhattan	312,255	340,179	351,452	363,458	368,200
Regional Network	58,982	60,789	70,170	67,702	75,631
Screening Visits	34,186	29,425	31,383	31,198	30,200
Surgical Cases	14,536	15,431	16,043	16,329	16,951
Radiation Treatments & Implants:	113,735	109,220	110,505	103,544	101,922
Manhattan	63,761	63,240	62,754	59,369	57,307
Regional Network	49,974	45,980	47,751	44,175	44,615
X-ray Examinations & Special Procedures	255,768	274,124	291,127	305,404	329,329
Full Time Equivalents	8,367.5	8,526.3	9,119.9	9,449.1	9,951.2

(1) Based on adjusted bed count

Approximately 41% of the Hospital's patient care revenue is from managed care organizations with which the Hospital has contracts. These contracts encompass either a full relationship or a Center of Excellence program. The Hospital has also developed and is expanding its relationships with other health insurance organizations for the provision of oncology related services and bone marrow transplantation. The Hospital continues to negotiate with those companies with which it does not currently have contracts and bills the patients directly.

### MSKCC's Patient Payor Revenue Distribution 2007:

Medicare	27%
Medicaid	4%
Managed Care (non-contracted), Commercial & Self Pay	28%
Managed Care (contracted)	<u>41%</u>
Total	<u>100%</u>

Approximately 27% of the Hospital's patient care revenue is generated from Medicare. The Hospital is exempt from the Medicare Prospective Payment System (PPS) under what is known as the "cancer exemption." Payment from Medicare is made on a cost-based system subject to an annual rate of increase limit. Under this method, a Medicare operating cost per discharge was established at December 31, 1998. This cost per discharge excludes approved direct medical education costs and capital-related costs, which are currently reimbursed on a per-resident amount for Graduate Medical Education and on an actual basis for capital-related costs.

Grants and Contracts revenue has increased from 2003 to 2007 despite the fact that the growth rate in federal funds for research labs has declined.

**Operating Expenses:** Operating Expenses have grown each year in response to program and facility changes, increases in clinical volume and health care inflation.

**Non-Operating Income (Expenses):** Non-Operating Revenues are subject to significant year-to-year variation. The majority of the liquid assets of MSKCC are invested in marketable securities, and the returns on investments have fluctuated each year depending, in large measure, on the performance of the markets in which the funds are invested.

The level of unrestricted contributions and bequests varies depending on economic conditions, timing of major gifts, and other factors. Unconditional promises to give cash and other assets are reported at fair value at the date the promise is received. The gifts are reported as either temporarily or permanently restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires (i.e., when a purpose restriction is accomplished or a time restriction ends), restricted net assets are reclassified as unrestricted net assets and reported in the statement of activities as net assets released from restriction.

MSKCC experiences recurring operating losses and relies on fund raising and investment income to offset such losses. As a result, a reduction in contributions or in investment income could adversely affect the financial condition of MSKCC.

#### **For the Two Year Period (2006 and 2007)**

For the year ended December 31, 2007, MSKCC had Income from Operations of approximately \$84 million, as compared to approximately \$79 million for the year ended December 31, 2006. MSKCC also had net Non-Operating Income of \$210 million, as compared to \$215 million for the year ended December 31, 2006.

**Operating Revenues** increased by 8.7% in 2007 and 12.9% in 2006. The increases can be attributed to increases in Patient Care Revenue as well as a growing base of investments that is providing a 5% income stream to support operations. The 2007 increase in Patient Care Revenue of 9.5% is due to outpatient volume increases and improved pricing.

**Operating Expenses** increased by 8.8% in 2007 and 11.6% in 2006. The increase in operating costs is primarily attributable to revenue generating activities which included expanded ancillary services, the introduction of new drugs and the hiring of new physicians.

**Non-Operating Income** for both 2007 and 2006 reflect continued strong philanthropy and investment returns.

MSKCC's Balance Sheet strengthened during fiscal years 2007 and 2006. Net Assets increased 11% from 2006 to 2007. At December 31, 2007, MSKCC's Net Assets were \$4.0 billion compared with total liabilities of \$2.1 billion.

MSKCC's broadly diversified investment portfolio increased to \$3.5 billion at December 31, 2007. See "Investment Management."

#### **Budgeting and Financial Control**

MSKCC operates under a Board-mandated budget guideline that provides support for operational and routine capital needs. The objective of the guideline is to procure a stabilized source of support and to preserve MSKCC's investments against inflation and poor economic conditions.



The budget is prepared at the departmental level after overall budget objectives are prepared by management. Each departmental budget is reviewed by the appropriate Divisional Vice President or Director. Divisional Budgets are then reviewed and approved by Executive Management. Combined Divisional Budgets are then reviewed by the Budget Subcommittee of the Joint Finance and Funding Committee, next by the Joint Finance and Funding Committee, and ultimately by the Board of Managers for final approval.

Monthly financial statements are prepared comparing budget and actual performance. These financial statements are reviewed by management and with the Joint Finance and Funding Committee at each meeting. Significant departmental variances are reviewed with responsible supervisory personnel and corrective action is taken where appropriate.

### **Insurance**

MSKCC carries policies covering property damage and loss, and liability for directors, officers and employees in amounts that MSKCC believes to be appropriate for institutions of its size and character.

Malpractice liability insurance and other lines of commercial insurance are provided by two captive insurance companies, MSK Insurance, Ltd. and MSK Insurance US, Inc. They fully reserve for risks retained and reinsure excess exposures with several highly-rated reinsurance companies. See Note 8 to the combined financial statements of Memorial Sloan-Kettering Cancer Center and Affiliated Corporations attached as Appendix B hereto.

### **Litigation**

MSKCC has no litigation or proceedings pending or, to its knowledge, threatened against any of the corporations, which, in the opinion of management, would materially adversely affect MSKCC's results of operations or financial condition.

### **Bondholders' Risks**

MSKCC is subject to risks relating not only to the provision of health care services, but also to the performance of charitable giving and its investment portfolio performance. MSKCC's non-operating revenues are highly dependent on charitable giving and the performance of the investment portfolio. Significant changes in these factors could adversely affect MSKCC's revenues and its ability to conduct its operations in its current configuration. In addition, MSKCC is subject to many changing developments in the health care environment which could adversely affect its financial performance, including, without limitation, changes in federal and state laws relating to reimbursement of costs, changes in reimbursement of costs by private insurance companies and managed care companies, cost overruns in its capital expenditures program, reductions in existing grant programs, increased costs of inpatient and outpatient care, physician fees and costs of graduate medical education. The discussion of risks to holders of the Series 2002 Bonds contained in this section is not intended to be exhaustive, but rather to summarize certain matters that could adversely affect payment of the Series 2002 Bonds, in addition to other risks described throughout this Official Statement.

### **General**

The Series 2002 Bonds are not a debt or liability of the State of New York or any political subdivision thereof, but are special and limited obligations of the Authority payable solely from the Revenues, which consist of payments payable by MSKCC pursuant to the Loan Agreement, the funds and accounts held by the Trustee pursuant to the Resolution (except the Arbitrage Rebate Fund) and certain investment income thereon. The Authority has no taxing power. No representation or assurance can be made that Revenues will be realized from MSKCC in amounts sufficient to provide funds for payment of debt service on the Series 2002 Bonds when due and to make other payments necessary to meet the obligations of MSKCC. Further, there is no assurance that the revenues of MSKCC can be increased sufficiently or in the proper time period to match increased costs that may be incurred.

A significant amount of MSKCC's non-operating revenues is derived from contributions, investment income and gains on investments. The level of contributions and bequests varies depending on economic conditions, timing of major gifts, and other factors. Adverse economic conditions could adversely affect the level of contributions and bequests received by MSKCC. The majority of the liquid assets of MSKCC are invested in marketable securities, the value of and returns on which are largely dependent on the performance of the financial markets in which such funds are invested. A downturn in the economy or the financial markets could adversely affect the magnitude of investment income and the value of investments. A portion of the investment portfolio is in alternative investments, which may not be readily marketable. A decrease in the value of investments and investment income could adversely affect the financial condition of MSKCC.

The receipt of future revenues by MSKCC, if any, is subject to, among other factors, federal and state regulations and policies affecting the healthcare industry and the policies and practices of managed care providers, private insurers and other third-party payors, and private purchasers of healthcare services. The effect on MSKCC of recently enacted

statutes and recent and proposed regulatory changes and of future changes in federal, state and private policies cannot be determined at this time. Loss of established managed care contracts by MSKCC could also adversely affect the future revenues of MSKCC.

Although management believes that MSKCC's quality, highly skilled professional staff and strong financial resources place it in a position to respond to changes in the evolving health care market, there is no assurance that MSKCC will be successful. In addition, management cannot necessarily anticipate all events and circumstances that could occur. These unforeseen events and circumstances could cause material variations in future financial results.

Approximately 45% of the Institute's operating revenues in fiscal year 2007 resulted from grants and contracts. The Institute is a direct and pass-through recipient of National Cancer Institute ("NCI") funding, which represented approximately 23% of the Institute's operating revenues. NCI is an Institute of the National Institutes of Health under the auspices of the United States' Department of Health and Human Services. The Institute is also the recipient of other grants and contracts from the National Institutes of Health and other agencies of the U.S. Government. Grants and contracts support basic, translational and clinical research. As described above, the Institute is in the final stages of significantly expanding its research facilities and programs. The Institute has no assurance that it will continue to receive funding at current levels and the near-term prospects for significant increases in U.S. Government grants and contracts are doubtful. If these near term prospects do not improve over the longer term and the Institute does not increase its share of awards, or obtain other funds to support these activities, the operating losses associated with the research activities will materially increase.

Future economic conditions, which may include an inability to control expenses in periods of inflation, and other conditions such as demand for healthcare services, the capability of the management of MSKCC, the receipt of grants and contributions, referring physicians' and self-referred patients' confidence in MSKCC, increased use of health maintenance organizations ("HMOs") and preferred provider organizations ("PPOs") with discounted payment schedules, economic and demographic developments in the United States and in the service areas in which facilities of MSKCC are located, competition from other healthcare institutions and changes in rates, costs, third-party payments and governmental regulations concerning payment, are among other factors which may adversely affect revenues and expenses and, consequently MSKCC ability to make payments pursuant to the Loan Agreement and to make payments under the Series 2002 Bonds.

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

The healthcare industry is heavily regulated by the federal and state governments. A substantial portion of revenue of healthcare providers is derived from governmental sources. Governmental revenue sources are subject to statutory and regulatory changes, administrative rulings, interpretations of policy, determinations by fiscal intermediaries, and government funding restrictions, all of which may materially increase or decrease the rates of payment and cash flow to hospitals. In the past, there have been frequent and significant changes in the methods and standards used by government agencies to reimburse and regulate the operation of hospitals. There is no reason to believe that substantial additional changes will not occur in the future or that payments made under such programs will remain at levels comparable to the present levels or that they will be sufficient to cover all existing costs.

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

#### **Managed Care and Other Private Initiatives**

Managed care programs, which include various payment methodologies and utilization controls through the use of primary care physicians, are increasingly being offered by traditional insurance companies and managed care organizations in the State. Payment methodologies include per diem rates, per discharge rates, discounts from established charges, fee schedules and capitation payments. Enrollment in managed care programs has increased, and managed care programs are expected to have a greater influence on the manner in which healthcare services are delivered and paid for in the future. Managed care programs are expected to reduce significantly the utilization of healthcare services generally, and inpatient services in particular. In addition, some managed care organizations have been delaying reimbursements to hospitals thereby affecting institutional cash flows. The financial condition of MSKCC may be adversely affected by these trends.

## **Medicare and Medicaid Managed Care**

Medicare is encouraging and facilitating the development of managed care products for Medicare beneficiaries. Enrollment in a Medicare managed care product is voluntary and enrollees may disenroll and reenroll in the traditional Medicare fee-for-service system at specified times. Commercial insurers and HMOs typically offer managed care products for the Medicare population. The Balanced Budget Act of 1997 established Medicare+Choice, a program that allows healthcare providers (hospitals and physicians) to contract directly with the United States Centers for Medicare and Medicaid Services, formerly known as the Centers for Medicare and Medicaid Services (“CMS”), to form networks for the purpose of directly serving and insuring Medicare beneficiaries through the assumption of financial risk. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108-173) renamed the program “Medicare Advantage” and provided for additional products and new private drug plans that were implemented in January 2006.

Medicare enrollees in managed care products have their healthcare managed and paid for by the applicable insurer, HMO or PSO (the “managed care plan”). The managed care plan is reimbursed by the Medicare program on a monthly per-beneficiary amount for each Medicare enrollee; the payment amount generally includes either a per diem or DRG payment, plus a risk-sharing arrangement. The managed care plan is at full financial risk for cost overruns that exceed the per-beneficiary amounts paid to it by Medicare. Consequently, the managed care plan and its participating hospitals, physicians and other providers seek to reduce utilization and otherwise control the costs of providing care to Medicare beneficiaries. These financial considerations may contribute to reduced per patient revenues for MSKCC Medicare patients. Enrollment in Medicare managed care plans is expected to continue increasing and substantial numbers of Medicare beneficiaries are expected to enroll in such plans.

Future actions by the federal and state governments are expected to continue the trend toward more restrictive limits on reimbursement for hospital services. The management of MSKCC cannot assess or predict the ultimate effect of any such legislation or regulation, if enacted or adopted, on its operations.

MSKCC also participates in the Federal and New York State Medicaid program. In order to control Medicaid expenditures, the State has sought to mandate the enrollment of most Medicaid patients into managed care programs because experience in other states has shown that inpatient utilization decreases for Medicaid recipients who are enrolled in such programs.

## **Department of Health Regulations**

MSKCC is subject to regulations of the New York State Department of Health. Compliance with such regulations may require substantial expenditures for administrative or other costs. MSKCC’s ability to add services or beds and to modify existing services materially is also subject to Department of Health review and approval. Approvals can be highly discretionary, may involve substantial delay, and may require substantial changes in the proposed request. Accordingly, MSKCC’s ability to make changes to its service offerings and respond to changes in the environment may be limited.

## **Other Governmental Regulation**

MSKCC is subject to regulatory actions and policy changes by those governmental and private agencies that administer the Medicare and Medicaid programs and actions by, among others, the National Labor Relations Board and professional and industrial relations of staff and employees, applicable professional review organizations, the Joint Commission on Accreditation of Healthcare Organizations, the various federal, state and local agencies created by the National Health Planning and Resources Development Act, the Occupational Safety Health Act, the act creating the Environmental Protection Agency, the Internal Revenue Service and other federal, state and local governmental agencies.

MSKCC, as are many other medical centers throughout the nation, is frequently subject to audits and other investigations relating to various segments of its operations. The management of MSKCC does not believe that any such audits or investigations will result in a liability, which would have a material adverse impact on the business, operations or financial condition of MSKCC.

## **Competition**

The healthcare industry is in the process of rapid and fundamental change, triggered by the deregulation of the acute care hospital reimbursement system and the growing national strength of managed care plans. The growth of the managed care industry is being driven in part by increasing pressures from employers and other purchasers that are seeking to reduce their healthcare premium costs. In New York, integrated delivery systems are developing in order to provide adequate geographical coverage for major purchasers of healthcare and to provide a system through which potential cost savings may become available. These factors may further increase competitive pressures on acute care hospitals, including MSKCC.

MSKCC faces and will continue to face competition from other hospitals and integrated delivery systems. According to the New York State Department of Health, the number of inpatient beds in the State as a whole exceeds the demand for such beds. In addition, alternative modes of healthcare delivery offering lower priced services to the same population — such as ambulatory surgery centers, private laboratories, private radiology services, skilled and specialized nursing facilities, and home care — compete with MSKCC.

Management believes that sustained growth in patient volume, together with firm cost controls, and continued superior outcomes will be increasingly important as the healthcare environment becomes more competitive. There are many limitations on the ability of a hospital to increase volume and control costs, and there can be no assurance that volume increases or expense reductions needed to maintain the financial stability of MSKCC will occur.

MSKCC also competes for trained staff. Historically, MSKCC has been successful in recruiting and retaining skilled professional staff. However, MSKCC's ability to continue to recruit and retain skilled staff will be dependent on the availability, changing economic dynamics and other events which may be beyond the control of MSKCC.

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

Management projects significant capital spending over the next five years (see Capital Spending). MSKCC's long term capital spending projects include items which will not be financed with the proceeds of the Series 2002 Bonds. Some or all of MSKCC's future capital expenditures may be financed with the issuance of new tax-exempt bonds.

The Loan Agreement permits MSKCC to incur additional indebtedness, including additional bonds. Such indebtedness if incurred would increase MSKCC's debt service and repayment requirements and may adversely affect debt service coverage on the Series 2002 Bonds. It is also possible that changes in the financial markets, including changes in interest rates or developments in the municipal bond market could significantly increase the cost to MSKCC of issuing new debt. Some or all of the new debt that may be issued will be on a parity or equal basis to the Series 2002 Bonds, thereby potentially resulting in a dilution of the security for the Series 2002 Bonds.

MSKCC is currently evaluating the establishment of a \$300 million revolving line of credit with a commercial bank. While it is not anticipated that this capacity will be routinely used, the line may be established to provide a source of funds in lieu of liquidating investments to pay for certain expenditures.

#### **Increased Costs and State-Regulated Reimbursement**

In recent years, substantial cutbacks in personnel and other cost-cutting measures have been instituted at hospitals throughout the State. Generally, these cutbacks have been instituted to address the disparity between rising medical costs and State-regulated reimbursement formulas, including those for Medicaid, Blue Cross and Blue Shield and other third-party payors. Rising healthcare costs resulted from, among other factors, increased salaries for nurses, employee benefits, greater depreciation and interest expense associated with plant modernization, new medical equipment, and modernizing of buildings. MSKCC has been affected by such rising costs, and there can be no assurance that MSKCC would not be similarly affected by additional unreimbursed costs in the future.

#### **Affiliation, Merger, Acquisition and Divestiture**

As part of its ongoing planning and property management functions, MSKCC reviews the use, compatibility and financial viability of many of its operations and, from time to time, may pursue changes in the use of, or disposition of, its facilities. Likewise, MSKCC may receive offers from or conduct discussions with third parties about the potential acquisition of operations or properties that may become part MSKCC in the future, or about the potential sale of some of MSKCC operations and properties. Discussions with respect to affiliation, merger, acquisition, disposition, or change of use, including those that may affect MSKCC, are held on an intermittent, and usually confidential, basis. As a result, it is possible that the assets currently owned by MSKCC may change from time to time, subject to the provisions in the financing documents that apply to merger, sale, disposition or purchase of assets.

#### **Private Third-Party Reimbursement**

A significant portion of the patient service revenue of the Hospital is received from private entities, such as insurance companies that provide third-party reimbursement for patient care on the basis of negotiated payments or make payments based on the charges MSKCC. Renegotiations of such negotiated payments and changes in such reimbursement systems and methods may reduce this category of revenue or prevent MSKCC from receiving adequate reimbursement for its costs.

#### **Accreditation**

The Hospital is subject to periodic review by the JCAHO and various federal, state, local and voluntary agencies. The Hospital received full accreditation from the JCAHO in November 2007. No assurance can be given as to the effect

on future operations of existing laws, regulations and standards for certification or accreditation or of any future changes in such laws, regulations and standards.

### **Federal “Fraud And Abuse” Laws And Regulations**

Federal “Fraud And Abuse” Laws And Regulations A section of the Social Security Act known as the Anti-Kickback Statute (the “Anti-Kickback Statute”) makes it a felony knowingly and willfully to offer, pay, solicit or receive remuneration in return for referring or recommending services or items payable under a federal healthcare program, including Medicare and Medicaid. Convictions under the Anti-Kickback Statute can lead to criminal penalties, including fines of up to \$25,000 and five years imprisonment, substantial civil monetary penalties, and mandatory exclusion from Medicare, Medicaid, and other federal healthcare programs. The scope of prohibited activity under the Anti-Kickback Statute is broad and, depending on whether an individual or the parties have an unlawful intent, potentially could include many economic arrangements involving hospitals, physicians and other healthcare providers. In addition, federal case law and the Office of Inspector General (“OIG”) of the U.S. Department of Health and Human Services (“HHS”) have interpreted the language of the Anti-Kickback Statute very broadly to cover any arrangement where even one purpose of the remuneration is to induce referrals.

Because the language of the Anti-Kickback Statute is so broad, Congress enacted, and the OIG implemented in regulations, safe harbors that describe certain arrangements that are deemed not to pose a significant risk of fraud and abuse, and are therefore conclusively protected from prosecution under the Anti-Kickback Statute. These safe harbors, as described in the regulations, are narrow and do not cover a wide range of economic relations that many health industry participants consider to be legitimate business arrangements permitted under the Anti-Kickback Statute.

Significantly, failure to satisfy the conditions of a safe harbor does not necessarily result in a violation of the Anti-Kickback Statute. Activities that fall outside of the safe harbors potentially include a wide range of activities frequently engaged in between and among hospitals, physicians, and other third parties. Activities that potentially implicate the Anti-Kickback Statute include hospital-physician joint ventures, purchases of physician practices, physician recruitment activities, various forms of hospital assistance to individual physicians and medical practices or physician contracting entities, physician referral services, hospital-physician personal services and management contracts, and space or equipment rentals between hospitals and physicians. MSKCC conducts activities of these general types or similar activities.

MSKCC believes that its current practices comply with the Anti-Kickback Statute. However, because of the breadth of the Anti-Kickback Statute and the government’s interpretation of the statute, the foregoing activities pose varying degrees of risk. Much of that risk cannot be assessed with certainty in light of the narrowness of the safe harbors and the relatively limited body of case law interpreting the Anti-Kickback Statute. Thus, there can be no assurance that MSKCC will not be found to have violated the Anti-Kickback Law, nor, if so, that any sanction imposed would not have a material adverse effect on the operations or the financial condition of MSKCC. In addition, while MSKCC is not aware of any governmental investigation or investigations concerning it with respect to such matters, there can be no assurance that one or more is not occurring or will not occur in the future.

The federal False Claims Act prohibits anyone from submitting or causing to be submitted a false or recklessly incorrect claim for payment from a federal program, including federal healthcare programs such as Medicare and Medicaid. A violation of the False Claims Act can result in civil penalties of \$5,500 to \$11,000 for each claim filed, plus three times the actual damages found to have been sustained by the government. With thousands of claims submitted by hospitals like Memorial each year, potential liabilities for violations of the False Claims Act can be enormous. Other federal and state laws also prohibit false, reckless or fraudulent billing to non-governmental third-party payors for medical services, and can impose civil and/or criminal penalties for such activities.

In certain instances, private individuals, known as “relators” or “whistleblowers,” may bring suit under the qui tam provisions of the False Claims Act and may be eligible for incentive payments for providing information that leads to recoveries or sanctions. Memorial, through its compliance program, routinely monitors institutional billing practices to assure compliance with applicable law. Nonetheless, if determined adversely to MSKCC, a False Claims Act enforcement or qui tam action could have a materially adverse effect.

### **Limitations on Certain Arrangements Imposed by Federal Ethics in Patient Referrals Act**

The Federal Ethics in Patient Referrals Act (known as the “Stark Law”) prohibits a physician (or an immediate family member of such physician) with a financial relationship with an entity, from referring a Medicare or Medicaid patient to such entity for the furnishing of designated health services, and prohibits such entity from presenting or causing to be presented a claim for payment under the Medicare or Medicaid program for designated health services furnished pursuant to a prohibited referral. The designated health services subject to these prohibitions are clinical laboratory

services, physical and occupational therapy services, radiology (including magnetic resonance imaging, computerized tomography and ultrasound) services, radiation therapy services, durable medical equipment, parenteral and enteral nutrients (including equipment and supplies), orthotic and prosthetic devices, home health services, outpatient prescription drugs and inpatient and outpatient hospital services. Under the Stark Law, physician is defined to include a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state in which he or she performs that function or action. The definition also includes a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, and a chiropractor.

The New York Health Care Practitioner Referral Law (the “State Provisions”) is similar to the Stark Law; however, it covers all patients (irrespective of payor) and prohibits practitioners from referring a patient to a healthcare provider for clinical laboratory services, x-ray imaging services, radiation therapy services, or pharmacy services, if the referring practitioner (or an immediate family member) has a financial interest in the healthcare provider. Under the State Provisions, a “practitioner” is defined as a licensed or registered physician, dentist, podiatrist, chiropractor, nurse, midwife, physician assistant or special assistant, physical therapist or optometrist.

A financial relationship, for purposes of the Stark Law and State Provisions (the Stark Law and State Provisions are hereinafter collectively referred to as “Stark”) is defined as either an ownership or investment interest in the entity or a compensation arrangement between the physician (or immediate family member) and the entity. An ownership or investment interest may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in an entity providing the designated health services.

The Stark provisions provide certain exceptions to these restrictions. If the physician has a financial relationship with an entity that provides one of the designated health services, the Stark prohibitions will apply unless one of the specified exceptions are available. Unlike the anti-kickback safe harbors discussed above (where the failure to meet a safe harbor does not necessarily mean the referral is prohibited), failure to satisfy an exception to the Stark provisions means (i) that the referral itself is prohibited, and (ii) the entity receiving the referral is prohibited from seeking payment for such service. However, the mere existence of a financial relationship does not violate the Stark provisions. Stark is only violated if (i) a financial relationship exists, (ii) a referral for designated services is made, and (iii) no relevant exception is available. To the extent a relationship is found to exist, an applicable exception under Stark is necessary in order for the entity receiving the referral to accept such referral (for a designated service) and to bill for the designated service generated by such referral.

The exceptions under the Stark provisions can be broken down into three categories, based upon the nature of the financial relationship between the referring provider and the referral entity. The three categories of exception include: (i) exceptions to ownership arrangements, (ii) exceptions to compensation arrangements, and (iii) exceptions to both compensation and ownership arrangements.

If a financial relationship (which would include, for example, an employment or other professional services relationship) between a physician/practitioner and the hospital cannot be made to fit within one or more exceptions, the hospital would not be permitted to accept referrals for designated health services from the physician/practitioner. As with the anti-kickback provisions discussed above, failure to comply with the Stark Law can potentially result in substantial liability in connection with business relationships between the hospital and physicians or other practitioners. In addition to being required to refund Medicare or Medicaid overpayments resulting from prohibited referrals, an entity found to have violated the Stark Law could be held liable for civil and criminal penalties and possible exclusion from the Medicare and Medicaid programs. Also, billing Medicare or Medicaid for designated health services provided as a result of prohibited referrals could result in a violation of the federal False Claims Act, which itself would potentially entail additional substantial penalties and possible exclusion from federal health care programs. Acting through the Centers for Medicare and Medicaid Services, the Secretary of HHS has issued final regulations implementing the requirements of the Stark Law. These regulations may be subject to varying interpretations, the government’s interpretation for enforcement purposes is constantly evolving, and case law interpreting the Stark Law and regulations may be limited. Thus, there can be no assurance that a third party reviewing the existing activities of MSKCC would find such activities to be in full compliance with the Stark provisions and related regulations.

### **Regulation of Patient Transfer**

Federal laws prohibit hospitals from transferring a patient who is medically unstable or is in labor, unless the patient asks to be transferred or a physician certifies that the benefits of the transfer outweigh the risks. The receiving hospital must agree to accept the transfer. Hospitals that violate the ban on inappropriate transfers may be expelled from the Medicare and/or Medicaid programs and are subject to fines of up to \$50,000 per violation. Management of the MSKCC believes that MSKCC is currently in compliance with these requirements.

### **Internal Revenue Code Limitations**

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

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

Revocation of the tax-exempt status of MSKCC under Section 501(c)(3) of the Code could subject the interest paid to Bondholders to federal income tax retroactively to the date of the issuance of the Series 2002 Bonds. Section 501(c)(3) of the Code specifically conditions the continued exemption of all Section 501(c)(3) organizations upon the requirement, among others, that no part of the net earnings of the organization inure to the benefit of any private individual. While management believes that MSKCC's arrangements with private persons and entities are generally consistent with guidance by IRS and do not constitute private inurement, there can be no assurance concerning the outcome of an audit or other investigation given the lack of clear authority interpreting the range of activities undertaken by MSKCC.

Intermediate sanctions legislation enacted in 1996 impose excise taxes in cases where an exempt organization is found to have engaged in an "excess benefit transaction" with a "disqualified person," defined generally to include directors and senior management. The tax is imposed both on the disqualified person receiving such excess benefit and on any officer, director, trustee or other person having similar powers or responsibilities who participated in the transaction willfully or without reasonable cause, knowing it will involve "excess benefit," but it is not imposed on the exempt organization. "Excess benefit transactions" include transactions in which a disqualified person receives unreasonable compensation for services or receives other economic benefit from the organization that either exceeds fair market value or, to the extent provided in regulations yet to be promulgated, is determined in whole or in part by the revenues of one or more activities of such organization. The legislative history sets forth Congress' intent that compensation of disqualified persons shall be presumed to be reasonable if certain procedures are followed.

The imposition of excise tax based upon a finding that an exempt organization engaged in an excess benefit transaction could result in negative publicity and other consequences that could have a material adverse effect on the operations, property, or assets of the organization or on the market for its debt obligations.

### **Antitrust**

Enforcement of the antitrust laws against healthcare providers is becoming more common. Antitrust liability may arise in a wide variety of circumstances including medical staff privilege disputes, payor contracting, physician relations, joint ventures, merger, affiliation and acquisition activities, and certain pricing and salary setting activities. Actions can be brought by federal and state enforcement agencies seeking criminal and civil penalties and, in some instances, by private litigants seeking damages for harm from allegedly anticompetitive behavior. Common areas of potential liability include joint action among providers with respect to payor contracting, medical staff credentialing, and issues relating to market share. Liability in any of these or other trade regulation areas may be substantial, depending on the facts and circumstances of each case. With respect to payor contracting, MSKCC may, from time to time, be involved in joint contracting activity with hospitals or other providers. The degree to which these or similar joint contracting activities may expose a participant to antitrust risk from governmental or private sources are dependent on a myriad of factors, which may change from time to time. If any provider with which MSKCC is or becomes affiliated is determined to have violated the antitrust laws MSKCC may be subject to liability as a joint actor.

Some judicial decisions have permitted physicians who are subject to disciplinary or other adverse actions by a hospital at which they practice, including denial or revocation of medical staff privileges, to seek treble damages from the hospital under the federal antitrust laws. The Federal Health Care Quality Improvement Act of 1986 provides immunity

from liability for discipline of physicians by hospitals under certain circumstances, but courts have differed over the nature and scope of this immunity. In addition, hospitals occasionally indemnify medical staff members who incur costs as defendants in lawsuits involving medical staff privilege decisions. Some court decisions have also permitted recovery by competitors claiming harm from a hospital's use of its businesses. Antitrust liability in any of these contexts can be substantial, depending upon the facts and circumstances involved.

#### **Environmental Matters**

Healthcare providers are subject to a wide variety of federal, state and local environmental and occupational health and safety laws and regulations. These requirements govern medical and toxic or hazardous waste management, air and water quality control, notices to employees and the public and training requirements for employees. Healthcare operators and employers such as MSKCC are subject to potentially material liability for costs of investigating and remedying the releases of any such substances either on their properties or that have migrated from their property or have been improperly disposed of off-site and the harm to person or property that such releases may cause. At the present time, management of MSKCC is not aware of any pending or threatened environmental claim, investigation or enforcement action, which, if determined adversely to MSKCC, would have material adverse consequences.

#### **Provider-Specific Taxes**

The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 established standards that govern how states can impose and use provider-specific taxes. In general, states are allowed to impose broad-based, provider-specific taxes that are redistributive and do not contain "hold harmless" provisions.

#### **Secondary Market**

There can be no assurance that there will be a secondary market for the purchase or sale of the Series 2002 Bonds. From time to time there may be no market for the Series 2002 Bonds depending upon prevailing market conditions, including the financial condition or market position of firms who may make the secondary market, the evaluation MSKCC's capabilities and the financial conditions and results of operations of MSKCC.

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

The effectiveness of any security interest that may be granted, following a Funding Event, in the Gross Receipts of the Center, the Institute or SKI Realty may be limited by a number of factors, including: (i) provisions prohibiting the direct payment of amounts due to healthcare providers from Medicare, Medicaid and certain other programs to persons other than such providers; (ii) present or future prohibitions against assignments contained in any applicable statutes or regulations; (iii) commingling of proceeds of Gross Receipts with other monies which are not subject to the security interests in Gross Receipts; (iv) statutory liens; (v) rights arising in favor of the United States or any agency thereof, (vi) federal bankruptcy laws which may affect the enforceability of the Loan Agreement, the Guaranties or the Inducement Agreement or the security interest in the Gross Receipts; (vii) rights of third parties converted to cash and not in the possession of the Trustee or the Authority and (viii) claims that might arise if appropriate financing or continuation statements are not filed or extended in accordance with the applicable Uniform Commercial Code in effect from time to time.

#### **Certain Matters Affecting the Enforceability of the Loan Agreement, the Guaranties and the Inducement Agreement**

Counsel to MSKCC will deliver an opinion concurrently with the delivery of the Series 2003 Bonds that the Loan Agreement, the Guaranties and the Inducement Agreement are enforceable in accordance with their terms. Such opinion will be qualified, however, as to enforceability by limitations imposed by bankruptcy, insolvency, fraudulent conveyance, reorganization or other laws affecting the enforceability of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

The state of insolvency, fraudulent conveyance and bankruptcy laws relating to the enforceability of guaranties or obligations issued by related corporations for the benefit of each other is somewhat unsettled.

There is no clear precedent in the law as to whether the giving of collateral or the making of payments by one corporation (i.e., the Hospital, Realty or the Institute) on behalf of another (i.e., the Center) may be voided by a trustee in bankruptcy in the event of a bankruptcy of such corporation or by other third-party creditors in an action brought pursuant to state fraudulent conveyance statutes. Under the United States Bankruptcy Code a trustee in bankruptcy and, under state fraudulent conveyance statutes, a creditor of a related guarantor, may avoid any obligation incurred by a related guarantor if, among other reasons, (i) the guarantor has not received fair consideration or reasonably equivalent value in exchange for the guarantee and (ii) the guarantee renders the guarantor "insolvent," as defined in the United States Bankruptcy Code or state fraudulent conveyance statutes, or (iii) the guarantor is undercapitalized. Application by



courts of the tests of “insolvency,” “reasonably equivalent value” and “fair consideration” has resulted in a conflicting body of case law. It is possible that, in an action to enforce the guaranties against the Institute or SKI Realty or the obligation to provide collateral pursuant to the Guaranties or the Loan Agreement or to force the Hospital to provide collateral pursuant to the Inducement Agreement, a court might not enforce such a provision in the event it is determined that sufficient consideration for such entity’s obligation was not received or that the incurrence of such obligation has rendered or will render such entity insolvent.

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

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

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

## **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 March 31, 2008, the Authority had approximately \$35.2 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 March 31, 2008 were as follows:



The total amounts of the Agency's bonds (which indebtedness was assumed by the Authority on September 1, 1995) outstanding at March 31, 2008 were as follows:

<u>Public Programs</u>	<u>Bonds Issued</u>	<u>Bonds Outstanding</u>
Mental Health Services Improvement Facilities.....	\$ 3,817,230,725	\$ 0

<u>Non-Public Programs</u>	<u>Bonds Issued</u>	<u>Bonds Outstanding</u>
Hospital and Nursing Home Project Bond Program.....	\$ 226,230,000	\$ 3,605,000
Insured Mortgage Programs .....	6,625,079,927	389,564,927
Revenue Bonds, Secured Loan and Other Programs .....	<u>2,414,240,000</u>	<u>8,255,000</u>
Total Non-Public Programs.....	\$ 9,265,549,927	\$ 401,424,927
Total MCFFA Outstanding Debt.....	\$ 13,082,780,652	\$ 401,424,927

### Governance

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

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

The current members of the Authority are as follows:

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

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

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

John B. Johnson, Jr. was appointed as a Member of the Authority by the Governor on April 26, 2004. Mr. Johnson is Chairman of the Board and Chief Executive Officer of the Johnson Newspaper Corporation, which publishes the Watertown Daily Times, Batavia Daily News, Malone Telegram, Catskill Daily Mail, Hudson Register Star, Ogdensburg Journal, Massena-Potsdam Courier Observer, seven weekly newspapers and three shopping newspapers. He is director of the New York Newspapers Foundation, a member of the Development Authority of the North Country and the Fort Drum Regional Liaison Committee, a trustee of Clarkson University and president of the Bugbee Housing Development Corporation. Mr. Johnson has been a member of the American Society of Newspaper Editors since 1978, and was a

Pulitzer Prize juror in 1978, 1979, 2001 and 2002. He holds a Bachelor's degree from Vanderbilt University, and Master's degrees in Journalism and Business Administration from the Columbia University Graduate School of Journalism and Business. Mr. Johnson was awarded an Honorary Doctor of Science degree from Clarkson University. Mr. Johnson's term expires on March 31, 2010.

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

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

BRIAN RUDER, Scarsdale.

Mr. Ruder was appointed as a Member of the Authority by the Governor 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-1980's. Mr. Ruder is Vice Chairman of the New York State Board of Science, Technology and Academic Research (NYSTAR), and also serves on the board of the Adirondack Council, the Scarsdale United Way, the New York Metro Chapter of the Young Presidents' Organization and PNC Private Client Advisors. Mr. Ruder earned a Bachelor of Arts degree in American History in 1976 from Washington University in St. Louis, Mo., and a Master of Business Administration degree in Marketing in 1978 from the Tuck School at Dartmouth College. His current term expires on March 31, 2009.

ANTHONY B. MARTINO, CPA, Buffalo.

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

SANDRA M. SHAPARD, Delmar.

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

ROMAN B. HEDGES, Delmar.

Dr. Hedges was appointed as a Member of the Authority by the Speaker of the State Assembly on February 24, 2003. Dr. Hedges is the former Deputy Secretary of the New York State Assembly Committee on Ways and Means. Dr. Hedges served on the Legislative Advisory Task Force on Demographic Research and Reapportionment. He has also served as the Director of Fiscal Studies of the Assembly Committee on Ways and Means where he was responsible for the preparation of studies of the New York State economy and revenues of local government, tax policy and revenue

analyses, and for negotiating revenue and local government legislation for the Assembly. Dr. Hedges was an Associate Professor of Political Science and Public Policy at the State University of New York at Albany where he taught graduate and undergraduate courses in American politics, research methodology, and public policy. Dr. Hedges holds a Doctor of Philosophy and a Master of Arts degree from the University of Rochester and a Bachelor of Arts degree from Knox College.

KEVIN R. CARLISLE, Averill Park.

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

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

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

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

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

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

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

The principal staff of the Authority is as follows:

DAVID D. BROWN, IV is the Executive Director and chief administrative and operating officer of the Authority. Mr. Brown is responsible for the overall management of the Authority’s administration and operations. He previously served as Chief of the Investment Protection Bureau in the Office of the New York State Attorney General, supervising investigations of the mutual fund and insurance industries. From 2000 to 2003, Mr. Brown served as Vice President and

Associate General Counsel at Goldman, Sachs & Co., specializing in litigation involving equities, asset management and brokerage businesses. Prior to that, he held the position of Managing Director at Deutsche Bank, where he served as the senior litigation attorney, managing major litigations and customer disputes. From 1994 to 1998, Mr. Brown was Managing Director and Counsel and senior litigation attorney for Bankers Trust Corporation. He holds a Bachelor's degree from Harvard College and a Juris Doctor degree from Harvard Law School.

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

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

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

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

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

### **Claims and Litigation**

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

### **Other Matters**

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

The New York State Public Authorities Control Board (the "PACB") has authority to approve the financing and construction of any new or reactivated projects proposed by the Authority and certain other public authorities of the

State. The PACB approves the proposed new projects only upon its determination that there are commitments of funds sufficient to finance the acquisition and construction of the projects. The Authority has obtained the approval of the PACB for the issuance of the Series 2008A2 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, 2007. Copies of the most recent audited financial statements are available upon request at the offices of the Authority.

### **PART 8 - LEGALITY OF THE SERIES 2008A2 BONDS FOR INVESTMENT AND DEPOSIT**

Under New York State law, the Series 2008A2 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 2008A2 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**

As provided in the Act, the Series 2008A2 Bonds are negotiable instruments subject to the provisions for registration and transfer contained in the Resolution and in the Series 2008A2 Bonds.

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

#### **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 2008A2 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 2008A2 Bonds to be included in gross income for Federal income tax purposes retroactive to the date of issue of the Series 2008A2 Bonds. Pursuant to the Resolution, the 2002 Loan Agreement and the Tax Certificates, the Authority and the Center have covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the Series 2008A2 Bonds from gross income for Federal income tax purposes pursuant to Section 103 of the Code. In addition, the Authority and the Center have made certain representations and certifications in the Resolution, the Loan Agreement and the Tax Certificate. Bond Counsel will also rely on the opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York, 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 will not independently verify the accuracy of those representations and certifications or that opinion.

In the opinion of Nixon Peabody LLP, Bond Counsel, under existing law and assuming compliance with the aforementioned covenant, and the accuracy of certain representations and certifications made by the Authority and the



Center described above, interest on the Series 2008A2 Bonds is excluded from gross income for Federal income tax purposes under Section 103 of the Code. Bond Counsel is 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 Series 2008A2 Bonds is, however, included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations.

### **State Taxes**

Bond Counsel is also of the opinion that, by virtue of the Act, interest and original issue discount on the Series 2008A2 Bonds is exempt from personal income taxes of the State of New York and its political subdivisions.

### **Original Issue Discount**

Bond Counsel is further of the opinion that the difference between the principal amount of the Series 2008A2 Bonds maturing on July 1, 2015 at a rate of 3.550%; (the “Discount Bonds”) and the initial offering price to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of such Discount Bonds of the same maturity was sold constitutes original issue discount which is excluded from gross income for federal income tax purposes to the same extent as interest on the Series 2008A2 Bonds. Further, such original issue discount accrues actuarially on a constant interest rate basis over the term of each Discount Bond and the basis of each Discount Bond acquired at such initial offering price by an initial purchaser thereof will be increased by the amount of such accrued original issue discount. The accrual of original issue discount may be taken into account as an increase in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Discount Bonds, even though there will not be a corresponding cash payment. Owners of the Discount Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Discount Bonds.

### **Original Issue Premium**

The Series 2008A2 Bonds maturing on July 1, 2013 through and including July 1, 2014, the Series 2008A2 Bonds maturing on July 1, 2015 at a rate of 5.000%, the Series 2008A2 Bonds maturing on July 1, 2016 through and including July 1, 2018 and the Series 2008A2 Bonds maturing on July 1, 2026 at a rate of 5.000% (collectively, the “Premium Bonds”) are being offered at prices in excess of their principal amounts. An initial purchaser with an initial adjusted basis in a Premium Bond in excess of its principal amount will have amortizable bond premium which is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of each Premium Bond based on the purchaser’s yield to maturity (or, in the case of Premium Bonds callable prior to their maturity, over the period to the call date, based on the purchaser’s yield to the call date and giving effect to any call premium). For purposes of determining gain or loss on the sale or other disposition of a Premium Bond, an initial purchaser who acquires such obligation with an amortizable bond premium is required to decrease such purchaser’s adjusted basis in such Premium Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning such Bonds. Owners of the Premium Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Premium Bonds.

### **Ancillary Tax Matters**

Ownership of the Series 2008A2 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 2008A2 Bonds.

Commencing with interest paid in 2006, interest paid on tax-exempt obligations such as the Series 2008A2 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 2008A2 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 under the caption "Tax Matters". 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 2008A2 Bonds, as well as any tax consequences arising under the laws of any state or other taxing jurisdiction.

#### **Changes in Law and Post Issuance Events**

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 2008A2 Bonds for Federal or state income tax purposes, and thus on the value or marketability of the Series 2008A2 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 2008A2 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 2008A2 Bonds may occur. Prospective purchasers of the Series 2008A2 Bonds should consult their own tax advisers regarding such matters.

On November 5, 2007, the U.S. Supreme Court heard oral argument on *Davis v. Kentucky Dep't Of Revenue of The Finance and Admin. Cabinet*, 197 S.W.3d 557 (2006), a case that has questioned the permissibility under the U.S. Constitution of the Commonwealth of Kentucky providing for a state income tax exemption for interest on obligations issued by Kentucky or its subdivisions while taxing interest on obligations of other states or their subdivisions. The laws of New York currently result in such differing treatment, by exempting interest on obligations of New York and its subdivisions and instrumentalities while taxing the interest on obligations issued by other states or their subdivisions or instrumentalities.

Bond Counsel has not undertaken to advise in the future whether any events after the date of issuance and delivery of the Series 2008A2 Bonds may affect the tax status of interest on the Series 2008A2 Bonds. Bond Counsel expresses no opinion as to any Federal, state or local tax law consequences with respect to the Series 2008A2 Bonds, or the interest thereon, if any action is taken with respect to the Series 2008A2 Bonds or the proceeds thereof upon the advice or approval of other counsel.

#### **PART 11 - STATE NOT LIABLE ON THE SERIES 2008A2 BONDS**

The Act provides that notes and bonds of the Authority are not a debt of the State, that the State will not be liable on them, and that such notes or bonds are not payable out of any funds other than those of the Authority. The Resolution specifically provides that the Series 2008A2 Bonds are not a debt of the State and that the State is not liable on them.

#### **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 - UNDERWRITING**

Goldman, Sachs & Co., as representative of the underwriters (the “Underwriters”), has agreed, subject to certain conditions, to purchase the Series 2008A2 Bonds from the Authority at an aggregate purchase price of \$290,002,941.93, and to make a public offering of the Series 2008A2 Bonds at prices that are not in excess of the public offering prices stated on the inside cover page of this Official Statement. The Underwriters will be obligated to purchase all the Series 2008A2 Bonds if any are purchased. The purchase of the Series 2008A2 Bonds is not conditioned on the purchase of the Series 2008A1 Bonds.

The Series 2008A2 Bonds may be offered and sold to certain dealers at prices lower than such public offering prices, and such public offering prices may be changed, from time to time, by the Underwriters.

## **PART 14 - LEGAL MATTERS**

Certain legal matters incidental to the authorization and issuance of the Series 2008A2 Bonds by the Authority are subject to the approval of Nixon Peabody LLP, New York, New York, Bond Counsel, whose approving opinion will be delivered with the Series 2008A2 Bonds. The proposed forms of Bond Counsel’s opinions are set forth in Appendix G hereto.

Certain legal matters will be passed upon for MSKCC by its special counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York, and for the Underwriters by their Counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York.

There is not now pending any litigation restraining or enjoining the issuance or delivery of the Series 2008A2 Bonds or questioning or affecting the validity of the Series 2008A2 Bonds or the proceedings and authority under which they are to be issued.

## **PART 15 - CONTINUING DISCLOSURE**

In order to assist the Underwriters in complying with Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 as amended (“Rule 15c2-12”), the Center, on behalf of MSKCC, will undertake in a written agreement (the “Continuing Disclosure Agreement”) for the benefit of the Bondholders to provide to Digital Assurance Certification LLC (“DAC”), on behalf of the Authority as the Authority’s disclosure dissemination agent, on or before 165 days after the end of each fiscal year, commencing with the fiscal year ending December 31, 2008, for filing by DAC with each Nationally Recognized Municipal Securities Information Repository designated by the Securities and Exchange Commission in accordance with Rule 15c2-12 (each a “Repository”), and if and when one is established, the New York State Information Depository (the “State Information Depository”), on an annual basis, operating data and financial information of the type hereinafter described which is included in “PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS’ RISKS” of this Official Statement (the “Annual Information”), together with the MSKCC’s combined financial statements prepared in accordance with accounting principles generally accepted in the United States of America and audited by an independent firm of certified public accountants in accordance with auditing standards generally accepted in the United States of America; provided, however, that if audited financial statements are not then available, unaudited financial statements shall be delivered to DAC for delivery to each Repository and to the State Information Depository when they become available.

If, and only if, and to the extent that it receives the Annual Information and annual financial statements described above from the Center, DAC has undertaken in the Continuing Disclosure Agreement, on behalf of and as agent for the Center and the Authority, to file such information and financial statements, as promptly as practicable, but no later than three business days after receipt of the information by DAC from the Center, with each such Repository and to the State Information Depository.

The Center also will undertake in the Continuing Disclosure Agreement to provide to the Authority, the Trustee and DAC, in a timely manner, the notices required to be provided by Rule 15c2-12 and described below (the “Notices”). In addition, the Authority has undertaken, for the benefit of the Bondholders, to provide such Notices to DAC, should the Authority have actual knowledge of the occurrence of a Notice Event (as hereinafter defined). Upon receipt of Notices from the Center, the Trustee or the Authority, DAC will file the Notices with each such Repository or with the Municipal

Securities Rulemaking Board (the “MSRB”), and with the State Information Depository, in a timely manner. With respect to the Series 2008A2 Bonds, DAC has only the duties specifically set forth in the Continuing Disclosure Agreement. DAC’s obligation to deliver the information at the times and with the contents described in the Continuing Disclosure Agreement is limited to the extent the Center has provided such information to DAC as required by the Continuing Disclosure Agreement. DAC has no duty with respect to the content of any disclosure or Notices made pursuant to the terms of the Continuing Disclosure Agreement and DAC has no duty or obligation to review or verify any information contained in the Annual Information, Audited Financial Statements, Notices or any other information, disclosures or notices provided to it by the Center, the Trustee or the Authority and shall not be deemed to be acting in any fiduciary capacity for the Authority, the Center, MSKCC, the Holders of the Series 2008A2 Bonds or any other party. DAC has no responsibility for the failure of the Authority to provide to DAC a Notice required by the Continuing Disclosure Agreement or duty to determine the materiality thereof. DAC shall have no duty to determine or liability for failing to determine whether the Center, the Trustee or the Authority has complied with the Continuing Disclosure Agreement and DAC may conclusively rely upon certifications of the Center and the Authority with respect to their respective obligations under the Continuing Disclosure Agreement. In the event the obligations of DAC as the Authority’s disclosure dissemination agent terminate, the Authority will either appoint a successor disclosure dissemination agent or, alternatively, assume all responsibilities of the disclosure dissemination agent for the benefit of the Bondholders.

The Annual Information will consist of the following: (a) operating data and financial information of MSKCC which includes: (1) fundraising data of the type included herein under “PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS’ RISKS – Fund Raising and Development”; (2) information on investments of the type included herein under “PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS’ RISKS - Investment Management”; (3) information of the outstanding indebtedness of MSKCC of the type included herein under “PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS’ RISKS - Outstanding Indebtedness”; (4) a summary of annual revenues of and expenses of the type included herein under “PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS’ RISKS - Summary of Revenues and Expenses” and (5) information on patient statistics and payor revenues and a comparison of annual revenues and expenses of the type included herein under “PART 6 – MEMORIAL SLOAN-KETTERING CANCER CENTER AND BONDHOLDERS’ RISKS – Management’s Discussion and Analysis of Combined Summary of Revenues and Expenses,” except to the extent such information is included in the audited financial statements of MSKCC, together with (b) such narrative explanation as may be necessary to avoid misunderstanding, and to assist the reader in understanding the presentation of financial and operating data concerning MSKCC and in judging the financial and operating condition of MSKCC.

The Notices include notices of any of the following events (the “Notice Events”) with respect to the Series 2008A2 Bonds, if material: (1) principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the Series 2008A2 Bonds; (7) modifications to the rights of holders of the Series 2008A2 Bonds; (8) bond calls; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Series 2008A2 Bonds; (11) rating changes; and (12) failure to provide annual financial information as required. In addition, DAC will undertake to provide to each Repository or the MSRB and to the State Information Depository, in a timely manner, notice of any failure by the Center to provide the Annual Information and annual financial statements by the date required in the undertaking described above.

The sole and exclusive remedy for breach or default under the Continuing Disclosure Agreement described above is an action to compel specific performance of the undertaking of DAC, the Center, the Trustee and/or the Authority, and no person, including any Holder of the Series 2008A2 Bonds, may recover monetary damages thereunder under any circumstances. The Authority or the Center may be compelled to comply with their respective obligations under the Continuing Disclosure Agreement (i) in the case of enforcement of their obligations to provide information required thereunder, by any Holder of Outstanding Series 2008A2 Bonds or by the Trustee on behalf of the Holders of Outstanding Series 2008A2 Bonds, or (ii) in the case of challenges to the adequacy of the information provided, by the Trustee on behalf of the Holders of the Series 2008A2 Bonds. However, the Trustee is not required to take any enforcement action except at the direction of the Holders of not less than 25% in aggregate principal amount of Series 2008A2 Bonds at the time Outstanding. A breach or default under the Continuing Disclosure Agreement will not constitute an Event of Default under the Resolution, the Series 2008A Resolution or the 2002 Loan Agreement. In addition, if all or any part of Rule 15c2-12 ceases to be in effect for any reason, then the information required to be

provided under the Continuing Disclosure Agreement, insofar as the provision of Rule 15c2-12 no longer in effect required the providing of such information, will no longer be required to be provided.

The foregoing undertaking is intended to set forth a general description of the type of financial information and operating data that will be provided; the description is not intended to state more than general categories of financial information and operating data; and where an undertaking calls for information that no longer can be generated or is no longer relevant because the operations to which it related have been materially changed or discontinued, a statement to that effect will be provided. The Continuing Disclosure Agreement, however, may be amended or modified without consent of the Holders of the Series 2008A2 Bonds under certain circumstances set forth therein. Copies of the Continuing Disclosure Agreement are on file at the principal office of the Authority.

## **PART 16 - RATINGS**

Moody's Investors Service ("Moody's") has assigned a rating of "Aa2" to the long-term obligations of the Center, Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc. ("Standard & Poor's") has assigned a rating of "AA" to the long-term obligations of the Center and FitchRatings has assigned a rating of "AA" to the long-term obligations of the Center. Such ratings reflect only the views of such organizations and any desired explanation of the significance of such ratings should be obtained from the rating agencies at the following addresses: Standard & Poor's, 55 Water Street, New York, New York 10041; Moody's, 7 World Trade Center, 250 Greenwich Street, New York, New York 10007; and FitchRatings, One State Street Plaza, New York, New York 10004. 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 2008A2 Bonds.

## **PART 17 - MISCELLANEOUS**

Reference in this Official Statement to the Act, the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement do not purport to be complete. Refer to the Act, the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement for full and complete details of their provisions. Copies of the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement are on file with the Authority and the Trustee.

The agreements of the Authority with Holders of the Series 2008A2 Bonds are fully set forth in the Resolution. Neither any advertisement of the Series 2008A2 Bonds nor this Official Statement is to be construed as a contract with purchasers of the Series 2008A2 Bonds.

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

The information regarding MSKCC was supplied by the Center. The Authority believes that this information is reliable, but the Authority makes no representations or warranties whatsoever as to the accuracy or completeness of this information.

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

"Appendix A – Definitions," "Appendix C – Summary of Certain Provisions of the Loan Agreement," "Appendix D – Summary of Certain Provision of the Guaranties and the Inducement Agreement," "Appendix E – Summary of Certain Provisions of the Resolution," "Appendix F – Summary of Certain Provisions of the Intercreditor Agreement" and "Appendix G – Form of Approving Opinion of Bond Counsel" have been prepared by Nixon Peabody LLP, Bond Counsel.

"Appendix B – Combined Financial Statements of Memorial Sloan-Kettering Cancer Center and Affiliated Corporations and Report of Independent Auditors" contains combined financial statements of MSKCC for the years ended December 31, 2007 and 2006 and the report of the independent auditors on such combined financial statements.

The Center has reviewed the parts of this Official Statement describing MSKCC, the Refunding Plan and Appendix B. The Center shall certify as of the date of delivery of the Series 2008A2 Bonds that such parts of this Official

Statement 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 are made, not misleading.

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

In the Loan Agreement the Center has agreed to furnish, or cause to be furnished, among other things, to (1) the Authority, (2) each Repository and (3) the Trustee, no later than sixty (60) days subsequent to the last day of each of the first three quarters in each fiscal year, the following information: the interim, comparative cumulative combined financial statements of the Center and the Affiliates, including therein, without limitation, a balance sheet, a statement of changes in net assets and a statement of activities.

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

DORMITORY AUTHORITY OF  
THE STATE OF NEW YORK

By /s/ David D. Brown, IV  
Authorized Officer

## **DEFINITIONS**

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## DEFINITIONS

The following are definitions of certain terms used in this Official Statement.

*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 the Bond Series Certificate relating thereto 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 semiannual 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 and Title 4-B of the Public Authorities Law of the State, as amended.

*Adjusted Operating Loss* means for any Fiscal Year of the Center an amount equal to the loss from operations of the Center and the Affiliates for such Fiscal Year, less the sum of (i) any unrestricted contributions, pledges and bequests to the Center or the Affiliates for such Fiscal Year, and (ii) eight percent (8%) of the average of the aggregate unrestricted investments of the Center and the Affiliates for the three immediately preceding Fiscal Years of the Center, calculated in accordance with generally accepted accounting principle applicable to the Center in effect on the date here, which calculation shall be made substantially as set forth in the Loan Agreement.

*Affiliate* means each of the Related Corporations and the Hospital, their respective successors and assigns, and all entities now existing or hereafter formed or acquired whose financial statements are required under generally accepted accounting principles to be combined with those of the Center.

*Ambac* means Ambac Assurance Corporation, a Wisconsin domiciled stock insurance company, or any successors or assigns of its obligations under the Financial Guaranty Insurance Policy issued in connection with the Series 2002 Bonds.

*Annual Administrative Fee* means the fee payable during each Bond Year for the general administrative and supervisory expenses of the Authority in the amount or amounts as more particularly described in the Loan Agreement.

*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 the Bond Series Certificate relating thereto 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 semiannual period in equal daily amounts on the basis of a year of twelve (12) 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 Event* means any one of the following:

(i) A failure by the Authority to pay the principal, Sinking Fund Installment Redemption Price of or interest on the Bonds under the Resolution has occurred;

(ii) The Center fails to pay, when due, any amount required to be paid on the Bonds by it pursuant to the Loan Agreement and such failure continues beyond any applicable grace period;

Appendix A

(iii) The occurrence and continuance of one or more of the Funding Events set forth in clauses (a)(ii), (a)(iii), (a)(iv), (a)(v) or (a)(vi) of the provisions of the Loan Agreement summarized in Appendix C to this Official Statement under the caption “Funding Events and Collateral Requirements.”

(iv) The occurrence and continuous of certain Events of Default under the Loan Agreement occurred;

(v) The occurrence and continuous of certain Events of Default under the Inducement Agreement.

*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 succeed to the rights, powers, duties and functions of the Authority.

*Authority Fee* means the fee payable to the Authority consisting of all of the Authority’s internal costs and overhead expenses attributable to the issuance of the Bonds and the construction of the Projects, as more particularly described in the Loan Agreement.

*Authorized Denominations* means (i) during any Daily Rate Period, any Commercial Paper Rate Period, or any Weekly Rate Period, \$100,000 or any integral multiple thereof, (ii) during any Term Rate Period or the Fixed Rate Period, \$5,000 or any integral multiple thereof and (iii) during the Auction Rate Mode, except as otherwise may be provided the Bond Series Certificate, \$25,000 and any integral multiple thereof.

*Authorized Newspaper* means The Bond Buyer or any other newspaper of general circulation printed in the English language and customarily published at least once a day for at least five (5) days (other than legal holidays) in each calendar week in the Borough of Manhattan, City and State of New York, designated by the Authority.

*Authorized Officer* means (i) in the case of the Authority, the Chair, the Vice–Chair, the Treasurer, an Assistant Treasurer, the Secretary, an Assistant Secretary, the Executive Director, the Deputy Executive Director, the Chief Financial Officer, 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 Center, when used with reference to any act or document, means the person or persons authorized by a resolution or the by–laws of the Center to perform such act or execute such document; and (iii) in the case of the Trustee, the President, a Vice President, an Assistant Vice President, a Corporate Trust Officer, an Authorized Signatory, an Assistant Corporate Trust Officer, a Trust Officer or an Assistant Trust Officer of the Trustee, 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 the Trustee or the by–laws of the Trustee.

*Available Moneys* means, (a) whenever a Liquidity Facility is in effect for the Series 2002 Bonds (i) moneys obtained by the Trustee or the Tender Agent from the Provider thereof pursuant to such Liquidity Facility and held by the Tender Agent for payment of the Purchase Price of the Series 2002 Bonds of such Sub–Series, (ii) moneys derived from the remarketing of Series 2002 Bonds of such Sub–Series which are directly paid to and held by the Tender Agent for the payment of the Purchase Price of the Series 2002 Bonds of such Sub–Series in accordance with the Bond Series Certificate, (iii) moneys which have been on deposit with the Trustee or the Tender Agent, as applicable, for at least one hundred twenty-four (124) days prior to and during which no petition by or against the Authority or the Center, under the United States Bankruptcy Code of 1978, as amended, 11 U.S.C. Sec. 101 et seq. (the “Bankruptcy Code”) shall have been filed or any bankruptcy or similar proceeding shall have been commenced, unless such petition or proceeding shall have been dismissed and such dismissal shall be final and not subject to appeal, (iv) any other moneys the application of which to the payment of the Purchase Price of the Series 2002 Bonds of such Sub–Series would not, in the opinion of Bond Counsel, constitute a voidable preference in the case of a filing for protection of the Authority under the Bankruptcy Code and (v) the proceeds from the investment of moneys described in clauses (i) through (iv) above; and (b) at any other time, any moneys.

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

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

*Bond Counsel* means Nixon Peabody LLP, or an attorney or other 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 Series Certificate* means the certificate of an Authorized Officer of the Authority fixing terms, conditions and other details of Bonds in accordance with the delegation of power to do so under the Resolution or under a Series Resolution.

*Bond Year* means a period of twelve (12) consecutive months beginning July 1 in any calendar year and ending on June 30 of the succeeding calendar year.

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

*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 or the beneficial owner of such Bond.

*Business Day* when used in connection with Series 2002 Bonds means a day other than (i) a Saturday and Sunday or a (ii) a day on which any of the following are authorized or required to remain closed: (A) banks or trust companies in New York, New York, (B) the Trustee, (C) the New York Stock Exchange, (D) if such Series 2002 Bonds are in the Commercial Paper Mode, the Daily Rate Mode, the Weekly Rate Mode or the Term Rate Mode, the Tender Agent, the Remarketing Agent or the Provider if a Liquidity Facility for such Series 2002 Bonds, or (E) if such Series 2002 Bonds are in the Auction Rate Mode, the Auction Agent or a Broker-Dealer for such Series 2002 Bonds.

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

*Cash and Investments* means, collectively, all cash and investments of the Center and the Affiliates, other than (i) those that are permanently restricted and (ii) the nominal value of cash and the fair market value of investments that have been encumbered by Liens given pursuant to the Loan Agreement to secure obligations that do not constitute Debt.

*Center* means Memorial Sloan-Kettering Cancer Center, a corporation duly organized and existing under the Not-For-Profit Corporation Law of the State.

*Certificate of Determination* means a certificate of an Authorized Officer of the Authority executed on the Issue Date or upon the Conversion of Series 2002 Bonds out of the any Rate Mode to an Initial Rate Mode, if any, prior to the Conversion of Series 2002 Bonds to a Daily Rate Mode, a Weekly Rate Mode or a Commercial Paper Mode, setting forth the Initial Rate, the Initial Rate Period, the first Interest Payment Date if other than a date on which interest would otherwise be payable under the Bond Series Certificate.

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

*Collateral* means (i) the pledge of or security interest in the Gross Receipts of the Center and the Affiliates, (ii) the mortgage or mortgages on Restricted Property, Unrestricted Property and Hospital Property, (iii) the security

interest in the furnishings and equipment located in and used in connection with any of the Restricted Property, Unrestricted Property and Hospital Property, (iv) the pledge of or security interest in any and all Sale Proceeds, (v) such other collateral security to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority and (vi) any other pledge, security interest or mortgage given or made to Authority, in each case given or made by the Center or an Affiliate in accordance with the Loan Agreement and by the Hospital pursuant to the Inducement Agreement.

*Commercial Paper Mode* means a Rate Mode in which a Series 2002A Bond for its respective Commercial Paper Rate Period bears interest at a Commercial Paper Rate.

*Commercial Paper Rate* means, with respect to each Series 2002A Bond in the Commercial Paper Mode, the rate at which each such Series 2002A Bond bears interest during the Commercial Paper Rate Period applicable thereto, as established in accordance with the Bond Series Certificate.

*Commercial Paper Rate Period* means, with respect to a particular Series 2002A Bond, a period commencing on a Conversion Date or a Reset Date and extending for a period of one to two hundred seventy days (1 to 270 days) during which such Series 2002A Bond bears interest at a Commercial Paper Rate, *provided, however,* that the first day immediately following the last day of each Commercial Paper Rate Period shall in all events be a Business Day.

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

*Construction Fund* means the fund so designated, created and established pursuant to the Resolution.

*Conversion Date* means the day on which the interest rate on a Series 2002A Bond is converted from one Rate Mode to a different Rate Mode or was proposed to be converted from one Rate Mode to another Rate Mode, which date must be a Reset Date or an Interest Payment Date for such Series 2002A Bond.

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

*Cost or Costs of the Project* means when used in relation to a Project the costs and expenses or the refinancing of costs and expenses determined by the Authority to be necessarily or appropriately incurred in connection with the Project, including, but not limited to, (i) costs and expenses of the acquisition of the title to or other interest in real property, including easements, rights-of-way and licenses, (ii) costs and expenses incurred for labor and materials and payments to contractors, builders and materialmen, for the acquisition, construction, reconstruction, rehabilitation, repair and improvement of the Project, (iii) the cost of surety bonds and insurance of all kinds, including premiums and other charges in connection with obtaining title insurance, that may be required or necessary prior to completion of the Project, which is not paid by a contractor or otherwise provided for, (iv) the costs and expenses for design, environmental inspections and assessments, test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction of the Project, (v) costs and expenses required for the acquisition and installation of equipment or machinery, (vi) all other costs which the Center 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 Center or the Authority for advances made by them for any of the above items or for other costs incurred and for work done by them in

connection with the Project (including interest on moneys borrowed from parties other than the Center), (viii) interest on the Bonds, bonds, notes or other obligations of the Authority issued to finance Costs of the Project prior to, during and for a reasonable period after completion of the acquisition, construction, reconstruction, rehabilitation, repair, improvement or equipping of the Project, and (ix) fees, expenses and liabilities of the Authority incurred in connection with the Project or pursuant to the Resolution or to the Loan Agreement, a Credit Facility, a Liquidity Facility or a Remarketing Agreement in connection with Option Bonds or Variable Interest Rate Bonds.

*Credit Facility* means an irrevocable letter of credit, surety bond, loan agreement, or other agreement 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 or saving and loan 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 shall entitle the Authority or the Trustee to obtain moneys to pay at maturity or earlier redemption the principal and Redemption Price of and, when due, the interest on Outstanding Bonds, and may entitle the Authority, the Trustee or a tender agent to obtain moneys to pay the purchase price of Option Bonds tendered for purchase or redemption in accordance with the Resolution and with the Series Resolution authorizing such Bonds or the Bond Series Certificate relating thereto.

*Daily Rate* means the rate at which a Series 2002 Bond in the Daily Rate Mode bears interest, as established in accordance with the Bond Series Certificate.

*Daily Rate Mode* means a Rate Mode in which a Series 2002 Bond in such Rate Mode bears interest at a Daily Rate.

*Daily Rate Period* means a period commencing on a Conversion Date or on a Business Day and extending to, but not including, the next succeeding Business Day, during which Series 2002 Bonds in the Daily Rate Mode bear interest at the Daily Rate.

*Debt* means (i) when used in the Loan Agreement, in connection with any person, indebtedness for borrowed money incurred or guaranteed by such person, whether or not evidenced by notes, bonds, debentures or other similar evidences of indebtedness, including indebtedness under purchase money mortgages, capital leases, installment sales agreements and similar security arrangements which appear as debt on the audited balance sheet of such person in accordance with generally accepted accounting principles and (ii) when used in the Resolution in connection with the Center, as of any particular date of calculation, the principal amount of Bonds issued that are then Outstanding.

*Debt Ratio* means as of any Measurement Date of calculation a ratio of the Cash and Investments of the Center and the Affiliates to the aggregate principal amount of outstanding Debt of the Center and the Affiliates, as determined by the chief financial officer of the Center based upon the unaudited combined financial statements of the Center and the Affiliates if the Measurement Date is not the last day of the Center's Fiscal Year, and based upon the audited combined financial statements of the Center and the Affiliates for such Fiscal Year if the Measurement Date is the last day of such Fiscal Year; *provided, however*, that for purposes of calculation of the Debt Ratio, Option Bonds held by or on behalf of the Center or an Affiliate (and the correlative obligations under the Loan Agreement) shall not be considered Debt.

*Debt Service Fund* means the fund so designated, created and established pursuant to the Resolution.

*Defeasance Security* means (a) a Government Obligation of the type described in clauses (i), (ii), (iii) or (iv) of the definition of Government Obligations, (b) Federal Agency Obligations described in clauses (i) or (ii) of the definition of Federal Agency Obligations and (c) an Exempt Obligation, provided such Exempt Obligation (i) is not subject to redemption prior to maturity other than at the option of the holder thereof or as to which irrevocable instructions have been given to the trustee of such Exempt Obligation by the obligor thereof to give due notice of

redemption and to call such Exempt Obligation for redemption on the date or dates specified in such instructions and such Exempt Obligation is not otherwise subject to redemption prior to such specified date other than at the option of the holder thereof, (ii) is secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or Government Obligations, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such Exempt Obligation on the maturity date thereof or the redemption date specified in the irrevocable instructions referred to in clause (i) above, (iii) as to which the principal of and interest on the direct obligations of the United States of America which have been deposited in such fund, along with any cash on deposit in such fund, are sufficient to pay the principal of and interest and redemption premium, if any, on such Exempt Obligation on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in clause (i) above, and (iv) is rated by at least two nationally recognized rating services in the highest rating category for such Exempt Obligation; *provided, however*, that (1) such term shall not include any interest in a unit investment trust or mutual fund or (2) any obligation that is subject to redemption prior to maturity other than at the option of the holder thereof.

*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 semiannually on July 1<sup>st</sup> and January 1<sup>st</sup> 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, or any other person, firm, association or corporation designated in the Series Resolution authorizing a Series of Bonds or a Bond Series Certificate relating to a Series of Bonds to serve as securities depository for the Bonds of such Series.

*Derivative Agreement* means an interest rate or currency exchange agreement, an interest rate cap or collar, an agreement for the purchase of debt securities to be delivered in the future or any other similar hedge or derivative arrangement.

*Derivative Obligation* means, as of any particular date of calculation: (i) when used in the Inducement Agreement or the Loan Agreement, except as set forth in the following clause (ii), with respect to a Derivative Agreement in connection with which the Center or an Affiliate has given a Lien, the amount that is or may be payable to the counter-party thereunder that is then secured by Liens on Property of the Center or an Affiliate; and (ii) solely when used in paragraph (b)(i) of the provisions of the Loan Agreement summarized in Appendix C of this Official Statement under the caption “*Liens; Secured Debt*” with respect to a Derivative Agreement that is not then secured by Liens on Property of the Center or an Affiliate, but for which the Center or an Affiliate is obligated upon the occurrence of a future event to give such security, the maximum amount that may be payable to the counter-party thereunder assuming that (A) in the case of an arrangement based upon interest rates, the relevant interest rates have changed by two hundred (200) basis points from the rates at the time such agreement or arrangement was entered into, and (B) in the case of an arrangement based upon currency rates, that the relevant exchange rates have risen or fallen by twenty-five percent (25%) from those existing at the time such agreement or arrangement was entered into, in each case so as to increase the amount that may be payable thereunder by the Center or an Affiliate.

*Exempt Obligation* means (i) an obligation of any state or territory of the United States of America, any political subdivision of any state or territory of the United States of America, or any agency, authority, public benefit corporation or instrumentality of such state, territory or political subdivision, the interest on which is excludable from gross income under Section 103 of the Code, which is not a “specified private activity bond” within the meaning of Section 57(a)(5) of the Code and which, at the time an investment therein is made or such obligation is deposited in any fund or account under the Resolution, is rated, without regard to qualification of such rating by symbols such as “+” or “-” and numerical notation, no lower than the second highest rating category for such obligation by at least two nationally recognized rating services, (ii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing and (iii) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

*Federal Agency Obligation* means (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 the 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.

*Financial Guaranty Insurance Policy* shall mean the financial guaranty insurance policy issued by Ambac insuring the payment when due of the principal and Sinking Fund Installments of and interest on the Series 2002 Bonds as provided therein.

*Fiscal Year* means a twelve month period beginning January 1<sup>st</sup> of a year and ending on December 31<sup>st</sup> of such year, or such other twelve month period as the Center may elect as its fiscal year.

*Fixed Rate* means the rate at which a Series 2002A Bond bears interest to its maturity during the Fixed Rate Period, as established in accordance with the Bond Series Certificate.

*Fixed Rate Mode* means a Rate Mode in which a Series 2002A Bond in such Rate Mode bears interest at a Fixed Rate.

*Fixed Rate Period* means the period from and including the Conversion Date and extending (i) to and including the date of maturity of a Series 2002 Bonds in the Fixed Rate Mode or (ii) to, but not including, the Conversion Date on which Series 2002 Bonds in the Fixed Rate Mode are converted another Rate Mode.

*Funding Event* means any one of the events set forth in the provisions of the Loan Agreement summarized in Appendix C to this Official Statement under the caption "*Funding Events and Collateral Requirement*".

*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 Receipts* means, when used in connection with any person (i) accounts, contract rights, chattel paper, instruments, general intangibles and other obligation of any kind of such, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services, whether or not such services have been performed, and all rights existing in and to all security agreements, leases and other contracts securing or otherwise relating to any such accounts, contract rights, chattel paper, instruments, general intangibles or obligations and (ii) all proceeds of any and all of the foregoing collateral, including without limitation any amounts received from the sale, exchange, lease or other disposition of any of the foregoing collateral and, to the extent not otherwise included, all payments under insurance (whether or not the Authority is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing collateral; *exclusive, however*, of (A) if the Research Center Property has been mortgaged to secure Debt of the Center or an Affiliate as permitted by the Loan Agreement, the rents, profits and issues of the Research Center Property, other than receivables and other income derived by the Center or an Affiliate from its general business activities in the Research Center Property, (B) any and all gifts, grants, bequests, donations and contributions received by such person, whether unrestricted or restricted by the donor or maker thereof, and (C) any and all income and earnings on investments of such person, including, but not limited to, interest income, dividends and realized or unrealized gains.

*Guarantor* means Sloan-Kettering Institute for Cancer Research or S.K.I. Realty Inc., as the maker of a Guaranty.

*Guaranty* means each guaranty of payment of the Center's obligations under the Loan Agreement made by Sloan-Kettering Institute for Cancer Research and S.K.I. Realty Inc.

Appendix A

*Hospital* means Memorial Hospital for Cancer and Allied Diseases, a hospital corporation duly organized and existing under the laws of the State of New York, and its successors and assigns.

*Hospital Debt* means, as of any particular date of calculation (i) the principal amount of Debt of the Center incurred pursuant to the Loan Agreement in connection with a Series of Bonds that the Department of Health of the State of New York has acknowledged in writing as having been incurred for the benefit of the Hospital, as set forth in the Inducement Agreement, as the same may be amended or supplemented in writing by the Authority in connection with the issuance of each Series of Bonds, *less* (ii) a pro rata amount of the Bonds of each such Series then no longer Outstanding based upon the relationship that the amount set forth in the Inducement Agreement for such Series bears to the aggregate principal amount of Bonds of such Series initially issued by the Authority; *provided, however*, that if there is a change in law, rule, or regulation or a written administrative interpretation of the same by the Department of Health that would permit the Hospital to give a Lien on its Gross Receipts to secure Debt of the Center whether or not such Debt is incurred for the benefit of the Hospital, such term shall mean, as of any particular date of calculation, the principal amount of Bonds then Outstanding. It is the intention of the parties to the Inducement Agreement that the principal amount of the Bonds of each Series set forth in the Inducement Agreement will be the amount of Debt incurred by the Center pursuant to the Loan Agreement that the Department of Health of the State of New York has acknowledged as being incurred for the benefit of the Hospital. Absent manifest error, the respective amounts set forth in the Inducement Agreement, as amended or supplemented by the Authority, shall be conclusive evidence of the amount of Debt incurred by the Center pursuant to the Loan Agreement that the Department of Health of the State of New York has acknowledged as incurred for the benefit of the Hospital and shall be binding on the parties the Inducement Agreement.

*Hospital Property* means all of the right, title and interest of the Hospital in and to (i) the land now owned by it, and the buildings and improvements thereon, regardless of when acquired or erected, in the City, County and State of New York and (ii) any and all land hereafter acquired by the Hospital, and the buildings and improvements thereon, regardless of when acquired or erected, exclusive of the Research Center Property, which for purposes of the Loan Agreement is considered Restricted Property.

*Insured Bond* means an Outstanding Bond for which the Authority or the Center obtained from an Insurer at the time of initial issuance a financial guaranty insurance policy pursuant to which the Insurer is obligated to pay the Holder of such Bond the principal or Sinking Fund Installments of and interest on such Bond not otherwise paid by the Authority in accordance with the terms of such Bond and of the Resolution.

*Insurer* or *Insurers* means Ambac Assurance Corporation, a Wisconsin domiciled stock insurance corporation, and any other person, including, but not limited to, a firm, association or corporation, including a public body or governmental agency, which, at the time of initial issuance of a Bond, issued at the request of the Authority or the Center a financial guaranty insurance policy pursuant to which such person is obligated to pay the Holder of such Bond the principal or Sinking Fund Installments of and interest on such Bond not otherwise paid by the Authority in accordance with the terms of such Bond and of the Resolution.

*Insurers' Consent* means the written consent of the Insurers of a majority in principal amount of the Insured Bonds.

*Inducement Agreement* means the Inducement Agreement, dated as of December 5, 2001, by and between Memorial Hospital for Cancer and Allied Diseases and the Authority made to induce the Authority to issue Bonds to make loans to the Center pursuant to the Loan Agreement.

*Initial Rate* means the rate per annum at which a Series 2002 Bond will bear interest during the Initial Rate Period, as set forth in a Certificate of Determination.

*Initial Rate Period* means the period commencing on the Issue Date or a Conversion Date and extending to and including the date set forth in a Certificate of Determination as the last day of the Initial Rate Period.

*Interest Commencement Date* means, with respect to any particular Deferred Income Bond, the date prior to the maturity date thereof specified in the Series Resolution authorizing such Bond or the Bond Series Certificate



relating to such Bond, after which interest accruing on such Bond shall be payable on the interest payment date immediately succeeding such Interest Commencement Date and semiannually thereafter on July 1 and January 1 of each Bond Year.

*Interest Payment Date* means (i) during any Initial Rate Period, Daily Rate Period, or any Weekly Rate Period, the first Business Day of each month, (ii) during any Commercial Paper Rate Period, the next succeeding Reset Date or Conversion Date, (iii) during any Term Rate Period or the Fixed Rate Period, each January 1 and July 1 and (iv) with respect to the Auction Rate Mode, each date that is specified as an “Interest Payment Date” in Appendix H to this Official Statement; *provided, however*, that if so provided in a Certificate of Determination the first Interest Payment Date may be a date that is different from the date on which interest would otherwise be payable; *provided, further*, that interest on Purchased Bonds shall be payable at the times required by the reimbursement agreement. If any such date is not a Business Day, the Interest Payment Date shall be the succeeding Business Day.

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

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

*Investment Property* means any (i) common or preferred stock, note, bond or debenture of any corporation, (ii) interest in a unit investment trust, mutual fund, hedge fund, limited partnership or limited liability company, and (iii) investment agreement or other investment property, held as part of the Cash and Investments of the Center or a Related Corporation, but such term shall not include any Sale Proceeds.

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

*Liquidity Facility* means when used in a Resolution, 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 savings bank, 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 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 may be obtained by the Authority, the Trustee or a tender agent upon the terms and conditions contained therein for the purchase or redemption of Option Bonds tendered for purchase or redemption in accordance with the terms of the Resolution and of the Series Resolution authorizing such Bonds or the Bond Series Certificate relating to such Bonds.

*Loan Agreement* means the Loan Agreement, dated as of December 5, 2001, by and between the Authority and the Center in connection with the issuance of Bonds, as the same shall have been amended, supplemented or otherwise modified as permitted by the Resolution and by the Loan Agreement.

## Appendix A

*Management Consultant* means a nationally recognized accounting firm or management consulting firm or other similar firm, experienced in reviewing and assessing hospital operations (which may include a firm of independent public accountants that, when appointed as Management Consultant, is then serving as the Center's auditor), selected by the Center and acceptable to the Authority and the Insurers in the exercise of their respective reasonable judgment.

*Mandatory Tender Date* means any date on which a Series 2002A Bond is required to be purchased in accordance with the Bond Series Certificate.

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

*Maximum Rate* means (i) in the case of a Series 2002A Bond bearing interest at an Auction Rate, fourteen percent (14%) per annum, (ii) in the case of a Series 2002A Bond bearing interest at any Rate other than an Auction Rate or a Purchased Bond Rate, fifteen percent (15%) per annum and (iii) in the case of a Series 2002A Bond bearing interest at a Purchased Bond Rate, twenty-two percent (22%) per annum; *provided, however*, that in no event shall the Rate at which any Series 2002A Bond bears interest exceed the maximum rate permitted by law.

*Measurement Date* means June 30<sup>th</sup> and December 31<sup>st</sup> of each Fiscal Year of the Center; *provided, however*, that, if the Center's Fiscal Year does not end on December 31<sup>st</sup> of a calendar year, the Measurement Dates shall be the last day of the second quarter of the Center's Fiscal Year and last day of such Fiscal Year.

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

*Mortgaged Property* means the real property mortgaged to the Authority pursuant to the provisions of the Loan Agreement summarized in Appendix C of this Official Statement under the captions "*Funding Events and Collateral Requirement*" and "*Limitation on Liens; Secured Debt*" or the provisions of the Inducement Agreement summarized in Appendix D of the Official Statement under the caption "*Collateral*", including all fixtures.

*Notice Event* means the occurrence of any one or more of the following: (i) any representation or warranty made in or deemed made by a Guarantor in connection with a Guaranty shall prove to have been false or misleading in any material respect; (ii) a Guarantor shall fail to pay any debt (excluding debt under a Guaranty) or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace or cure period, if any, specified in the agreement or instrument relating to such debt; (iii) a Guarantor shall fail to duly and punctually perform or observe any other material term, covenant or agreement contained in a Guaranty on its part to be performed or observed and such failure continues for thirty (30) days after written notice thereof is given to such Guarantor; *provided, however*, that if, in the determination of the Authority, such failure cannot be cured within such thirty (30) day period but can be cured by appropriate action, it will not be a Notice Event under such Guaranty if the Guarantor within such thirty (30) day period initiates corrective action and thereafter diligently pursues the same; (iv) any other default under any agreement or instrument relating to any such debt, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if as a consequence of such default such debt shall have been declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; (v) a Guarantor shall (A) generally not pay its debts as such debts become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or any other bankruptcy or insolvency law of any jurisdiction, (C) make a general assignment for the benefit of its creditors, (D) seek, or consent by answer in any proceeding instituted by or against the Guarantor or otherwise, to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (E) be adjudicated insolvent or be liquidated, or (F) take corporate action for the purpose of any of the foregoing; (vi) a Guaranty or any material provision of a Guaranty shall cease for any reason to be valid and binding, or a Guarantor shall initiate legal proceedings or assert in legal proceedings that (A) a Guaranty or any material provision of a Guaranty is invalid, or (B) the Guarantor has no liability thereon; or (vii) a judgment for the payment of money is rendered against the Hospital in excess of the lesser of (X)

\$25,000,000 over the insured risk and (Y) two and one-half percent (2 ½%) of the value of the Center's and the Related Corporations, Unrestricted Net Assets, if, in the reasonable judgment of the Authority or the Holders of a majority in principal amount of Outstanding Bonds, the same will materially adversely affect the rights of Holders of Outstanding Bonds and such judgment has not been vacated, discharged or stayed within sixty (60) days after entry thereof.

*Officer's Certificate* means, when used in connection with a Guarantor or the Hospital, a certificate signed by an individual authorized by any provision of the certificate of incorporation, charter, by-laws or other organizational document or resolution of the Guarantor or the Hospital, respectively.

*Official Statement* means, collectively, the Official Statement of the Authority, dated January 7, 2002, relating to the offering of the Authority's Memorial Sloan-Kettering Cancer Center Revenue Bonds, Series 2002A, as amended and supplemented to the Execution Date.

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

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

*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) 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 Encumbrance* means any of the following:

- (i) The lien of taxes and assessments which are not delinquent;
- (ii) The lien of taxes and assessments which are delinquent but the validity of which is being contested in good faith unless thereby the property or the interest of the Authority therein may be in danger of being lost or forfeited;

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

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

(v) Such other encumbrances, defects, and irregularities to which the Insurers' Consent and the prior written consent of the Authority have been obtained.

*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

(v) Investment Agreements that are fully collateralized by Permitted Collateral.

*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 the Resolution or in or pursuant to a Series Resolution.

*Property* when used in connection with the Series 2002 Bonds means any issuer of a Liquidity Facility and all other cases, means when used in connection with a person, the assets of such person, whether consisting of real property, tangible or intangible personal property, or an interest or estate in any such property

*Provider* when used in connection with the Series 2002 Bonds means any issuer of a Liquidity Facility and all other cases, means the issuer of a Credit Facility or a Liquidity Facility.

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

*Purchase Price* means: (i) when used in relation to Tendered Bonds, other than Series 2002 Bonds tendered upon a Conversion from the Fixed Rate Mode or Term Rate Mode, an amount equal to (a) one hundred percent (100%) of the principal amount of any Series 2002A Bond tendered or deemed tendered to the Tender Agent for purchase pursuant to the Bond Series Certificate or (b) the amount payable to the registered owner of a Purchased Bond following receipt by such owner of a purchase notice from the Remarketing Agent; and (ii) when used in relation to Tendered Bonds mandatorily tendered pursuant to the Bond Series Certificate upon Conversion

from the Fixed Rate Mode or a Term Rate Mode on a date other than a Reset Date, an amount equal to the Redemption Price that would be payable if such Series 2002 Bonds had been called for redemption on the Conversion Date; plus in each case accrued and unpaid interest thereon to the date of purchase; *provided, however*, that, in each case, if the date of purchase is an Interest Payment Date, then the Purchase Price shall not include accrued and unpaid interest, which shall be paid to the Holder of record on the applicable Record Date.

*Purchased Bond* means any Series 2002 Bond during the period from and including the date it is purchased or paid for by a Provider pursuant to a Liquidity Facility to, but excluding, the earliest of (i) the date on which the principal, Redemption Price or Purchase Price of such Series 2002 Bond, together with all interest accrued thereon, is paid with amounts other than amounts drawn under the Liquidity Facility, (ii) the date on which the registered owner of a Series 2002 Bond has given written notice of its determination not to sell such Series 2002 Bond following receipt of a purchase notice from the Remarketing Agent with respect to such Series 2002 Bond, or, if notice of such determination is not given on or before the Business Day next succeeding the day such purchase notice is received, the second Business Day succeeding receipt of such purchase notice or (iii) the date on which such Series 2002 Bond is to be purchased pursuant to an agreement by the registered owner of such Series 2002 Bond to sell such Series 2002 Bond following receipt of a purchase notice from the Remarketing Agent with respect to such Series 2002 Bond, if the Trustee then holds, in trust for the benefit of such registered owner, sufficient moneys to pay the Purchase Price of such Series 2002 Bond, together with the interest accrued thereon to the date of purchase.

*Purchased Bond Rate* means the rate at which a Purchased Bond, bears interest in accordance with a Liquidity Facility or the reimbursement agreement with the Provider thereof; *provided, however*, that in no event shall such rate exceed the Maximum Rate applicable thereto.

*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 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 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 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 under the Resolution purchased from such corporation, are insured by an insurer that meet the applicable rating requirements set forth above.

*Rate* means the Initial Rate, any Daily Rate, Commercial Paper Rate, Weekly Rate, Term Rate, Purchased Bond Rate, the Fixed Rate or the Auction Rate.

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

*Rate Period* means the Initial Rate, any Daily Rate Period, any Commercial Paper Rate Period, any Weekly Rate Period, any Term Rate Period, the Fixed Rate Period or any Auction Period.

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

*Record Date* means, with respect to each Interest Payment Date, (i) during any Daily Rate Period, any Commercial Paper Rate Period, any Weekly Rate Period or any Auction Period, the close of business on the Business Day preceding such Interest Payment Date, and (ii) during any Term Rate Period or the Fixed Rate Period, the close of business or the fifteenth (15th) day of the calendar month next preceding any calendar month in which this occurs on an Interest Payment Date, regardless of whether such day is a Business Day.

*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.

*Related Agreement* means each of the Guaranties, the Inducement Agreement, each Remarketing Agreement, each Interest Rate Exchange Agreement, each Broker-Dealer Agreement, the Auction Agent Agreement and each agreement executed in connection with a Credit Facility or Liquidity Facility, to which the Center is a party.

*Related Corporation* means each of Sloan-Kettering Institute for Cancer Research and S.K.I. Realty Inc., each of which is a corporation duly incorporated and existing pursuant to the Not-For-Profit Corporation Law of the State, their successors and assigns, and all entities no existing (other than the Hospital) or formed or acquired whose

financial statements are required under generally accepted accounting principles to be combined with those of the Center.

*Related Document* means any certificate, instrument or other written statement made by the Hospital in connection with the offering, sale, issuance, reissuance or remarketing of Bonds.

*Remarketing Agent* when used in connection with the Series 2002 Bonds in the Commercial Paper Mode, the Daily Rate Mode, the Weekly Rate Mode or the Term Rate Mode means the remarketing agent for such Series 2002 Bond appointed and servicing in such capacity pursuant to the Bond Series Certificate or any successor remarketing agent, means the person appointed by or pursuant to a Series Resolution authorizing the issuance of Option Bonds to remarket such Option Bonds tendered or deemed to have been tendered for purchase in accordance with such Series Resolution or the Bond Series Certificate relating to such Option Bonds.

*Remarketing Agreement* means, with respect to Option Bonds of a Series, an agreement either between the Authority and the Remarketing Agent, or among the Authority, the Center and the Remarketing Agent, relating to the remarketing of such Bonds.

*Research Center Property* means land now owned by the Hospital in the City, County and State of New York, generally known as (i) 405 through 415 East 68<sup>th</sup> Street, New York, New York, being Block 1462, Lots 5 and 11 and (ii) 425 East 68<sup>th</sup> Street, New York, New York, being Block 1461, Lot 13, and the building and improvements thereon, regardless of when acquired or erected.

*Reset Date* means, with respect to a Series 2002A Bond in a Daily Rate Mode, a Commercial Paper Mode, a Weekly Rate Mode or a Term Rate Mode, the date on which the interest rate borne by such Series 2002A Bond is to be determined in accordance with the provisions of the Bond Series Certificate.

*Resolution* means the Memorial Sloan-Kettering Cancer Center Revenue Bond Resolution, adopted by the Authority on December 5, 2001, as from time to time amended or supplemented by Supplemental Resolutions or Series Resolutions in accordance with the terms and provisions of the Resolution.

*Restricted Gift* means, when used in connection with a Project, any gift, grant or bequest of money or other property made or given by any person the use of which has been restricted by such person to paying any cost or expense that constitutes a Cost of a Project.

*Restricted Property* means all of the right, title and interest of the Center and each Related Corporation in and to (i) certain land now owned or after acquired by any of them, and the building and improvements thereon, regardless of when acquired or erected, (ii) the Research Center Property, (iii) any real property acquired by any of the Center or a Related Corporation in exchange for other Restricted Property or acquired with Sale Proceeds derived from the sale or other disposition of Restricted Property, (iv) any building or improvement erected or constructed with Sale Proceeds derived from the sale or other disposition of Restricted Property, and the land on which it is erected or constructed, (v) any real property acquired by the Center or a Related Corporation from the Hospital, and (vi) any real property acquired by any of the Center or a Related Corporation with cash or the proceeds of the disposition of any other Property paid or delivered to any of them by the Hospital in full or partial satisfaction of any Debt of the Hospital to any of them or of any account payable by or receivable from the Hospital to any of them.

*Revenues* means all payments received or receivable by the Authority pursuant to the Loan Agreement or a Guaranty, which are required 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), and all amounts received as a consequence of the enforcement of the Loan Agreement, a Guaranty or the Inducement Agreement, including, but not limited to amounts derived from the foreclosure, sale or other realization upon any of the Collateral.

*Sale Proceeds* means when used in connection with any Unrestricted Property, Restricted Property or Mortgaged Property (i) the cash proceeds of the sale or other disposition of such property remaining after deducting

therefrom the reasonable costs and expenses incurred by the seller in connection with such sale or disposition, including but not limited to, amounts received as deferred payment of the purchase price pursuant to any purchase money mortgage or otherwise, (ii) any intangible personal property received by the Center or an Affiliate in exchange for and as the whole or partial consideration for the sale or other disposition of property, (iii) any insurance, condemnation or eminent domain proceeds that the Center or a Related Corporation elects to treat as Sale Proceeds in accordance with Loan Agreement, and (iv) any and all investments in which such cash proceeds may from time to time be invested and the investment income or earnings thereon, *provided, however*, that when used in the Loan Agreement in connection with the Sale Proceeds derived from the sale or other disposition of Unrestricted Property, Sale Proceeds shall mean only the cash proceeds, the investment thereof and the investment income or earnings thereon that as of the date Funding Event occurs are then unspent.

*Secured Debt Limit* means as of any date of calculation an amount equal to fifteen percent (15%) of the Unrestricted Net Assets of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available.

*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 or a Bond Series Certificate, 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 2002 Bonds* means the Authority's Memorial Sloan-Kettering Cancer Center Revenue Bonds, Series 2002A, issued under the Series Resolution.

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

*Short-term Debt* means any Debt incurred in the ordinary course of business the principal of which is payable on demand or within three hundred sixty-five (365) days after such Debt was incurred.

*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 Interest Rate Bonds, so long as any 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 thereto to be paid on a single future July 1 for the retirement of any Outstanding Bonds of said Series which mature after said future July 1, but does not include any amount payable by the Authority by reason only of the maturity of a Bond, and said future July 1 is deemed to be the date when a Sinking Fund Installment is payable and the date of such Sinking Fund Installment and said Outstanding Bonds are deemed to be Bonds entitled to such Sinking Fund Installment, and 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 thereto to be paid on a single future date for the retirement of any Outstanding Bonds of said Series which mature after said future date, but does not include any amount payable by the Authority by reason only of the maturity of a Bond, and said future date is deemed to be the date when a Sinking Fund Installment is payable and the date of such Sinking Fund Installment and said Outstanding Option Bonds or Variable Interest Rate Bonds of such Series are deemed to be Bonds entitled to such Sinking Fund Installment.

*Standby Purchase Agreement* means an agreement by and between the Authority and another person or by and among the Authority, the Center and another person, pursuant to which such person is obligated to purchase an Option Bond tendered for purchase.

*State* means the State of New York.



*Sub-series* means the grouping of the Bonds of a Series established by the Authority by the Series Resolution authorizing the issuance of the Bonds of such Series or the Bond Series Certificate related to such Series of Bonds.

*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.

*Tender Date* means the date on which an Option Bond is required to be purchased from the Holder thereof upon a tender for purchase or redemption at the option of the Holder or upon a mandatory tender for purchase, in each case in accordance with the terms of the Resolution and such Option Bond.

*Tender Price* means the purchase price or Redemption Price payable on the Tender Date to the holder of an Option Bond that has been tendered or deemed tendered for purchase or redemption at the option of the Holder or upon a mandatory tender for purchase, in each case in accordance with the terms of the Resolution and such Option Bond.

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

*Term Option Bond* means an Option Bond that is subject to mandatory tender by the Holder thereof for purchase on a date that is not less than three hundred sixty-five (365) days after either the immediately preceding Tender Date or the date of initial issuance.

*Term Rate* means the rate at which a Series 2002 Bond bears interest during a Term Rate Period, as established in accordance with the Bond Series Certificate.

*Term Rate Mode* means a Rate Mode designated as such in a Conversion Notice in which a Series 2002 Bond in such Rate Mode bears interest at a Term Rate.

*Term Rate Period* means a period commencing on the Conversion Date or a Reset Date and extending (i) to and including the next succeeding Reset Date which Reset Date must be a Business Day at least three hundred sixty-five (365) days from such Conversion Date or Reset Date.

*Total Operating Revenues* means, as to any period of time, total operating revenues of the Center and the affiliates, less all deductions from revenues, as determined in accordance with generally accepted accounting principals consistently applied.

*Trustee* means The Bank of New York, New York, New York, as trustee under the Resolution, and any successor thereto appointed and serving as trustee thereunder, as assignee of the Authority.

*Unrestricted Net Assets* means for any Fiscal Year the unrestricted net assets of the Center and the affiliates as determined in accordance with generally accepted accounting principles consistently applied and reported in the audited combined financial statements of the Center and the affiliates for such Fiscal Year.

*Unrestricted Property* means all of the right, title and interest of the Center and each Related Corporation in and to the land owned or acquired by any of them, and the buildings and improvements thereon, regardless of when acquired or erected, that is not Restricted Property.

*Valuation Date* means (i) with respect to any Capital Appreciation Bond, each date set forth in the Series Resolution authorizing such Capital Appreciation Bond or in the Bond Series Certificate relating to such Bond on which a specific Accreted Value is 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 and 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.

Appendix A

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

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

*Weekly Rate* means the rate at which a Series 2002A Bond bear interest during a Weekly Rate Period, as established in accordance with the Bond Series Certificate..

*Weekly Rate Mode* means a Rate Mode in which a Series 2002A Bond in such Rate Mode bear interest at a Weekly Rate.

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

**COMBINED FINANCIAL STATEMENTS OF  
MEMORIAL SLOAN-KETTERING CANCER CENTER  
AND AFFILIATED CORPORATIONS  
AND REPORT OF INDEPENDENT AUDITORS**

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COMBINED FINANCIAL STATEMENTS

Memorial Sloan-Kettering Cancer Center and Affiliated Corporations  
Years Ended December 31, 2007 and 2006  
With Report of Independent Auditors

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Combined Financial Statements

Years Ended December 31, 2007 and 2006

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## Report of Independent Auditors

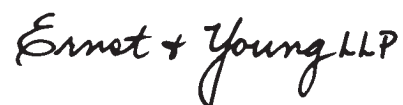
Board of Managers  
Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

We have audited the accompanying combined balance sheets of Memorial Sloan-Kettering Cancer Center and Affiliated Corporations (the Institution) as of December 31, 2007 and 2006, and the related combined statements of unrestricted activities, changes in net assets and cash flows for the years then ended. These financial statements are the responsibility of the Institution's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Institution's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Institution's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the combined financial position of Memorial Sloan-Kettering Cancer Center and Affiliated Corporations at December 31, 2007 and 2006, and the combined results of their operations, changes in their net assets and their cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

As discussed in Note 1 to the combined financial statements, the Institution adopted Statement of Financial Accounting Standards No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans*, effective December 31, 2006.



February 20, 2008

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Combined Balance Sheets  
(In Thousands)

	December 31	
	2007	2006
<b>Assets</b>		
Current assets:		
Cash and cash equivalents (Notes 1 and 3)	\$ 425,464	\$ 269,658
Short-term investments—at market (cost 2007—\$97,718; 2006—\$402,084) (Notes 1 and 3)	94,466	399,659
Accounts receivable, less allowance for doubtful accounts (2007—\$112,280; 2006—\$119,467) (Note 2)	316,357	303,152
Pledges, trusts and estates receivable (Note 1)	100,354	118,078
Other current assets	36,353	36,216
Total current assets	<u>972,994</u>	<u>1,126,763</u>
Noncurrent assets:		
Assets whose use is limited:		
Investments in marketable securities—at market:		
Construction, debt service and repair reserve funds (cost 2007—\$128,485; 2006—\$125,371) (Notes 1, 3 and 5)	130,110	126,591
Malpractice self-insurance fund (cost 2006—\$5,208) (Notes 1, 3, 6 and 8)	—	5,156
Employee benefit funds (cost 2007—\$124,926; 2006—\$115,324) (Notes 1, 6 and 7)	125,065	114,153
Total investments in marketable securities whose use is limited	<u>255,175</u>	<u>245,900</u>
Investments—at market (cost 2007—\$2,387,728; 2006—\$2,002,419) (Notes 1 and 3)	2,705,225	2,298,393
Investments in other non-marketable securities (Notes 1 and 3)	37,917	4,957
Property and equipment—net (Notes 1, 4 and 5)	1,809,759	1,698,465
Mortgages and other loans receivable	25,167	21,594
Pledges, trusts and estates receivable (Note 1)	303,387	300,715
Other noncurrent assets	33,809	43,934
Total noncurrent assets	<u>5,170,439</u>	<u>4,613,958</u>
Total assets	<u>\$ 6,143,433</u>	<u>\$ 5,740,721</u>

	December 31	
	2007	2006
<b>Liabilities and net assets</b>		
Current liabilities:		
Accounts payable	\$ 171,768	\$ 172,598
Accrued expenses	233,286	211,211
Current portion of long-term debt and capital lease obligation (Note 5)	20,360	220
Total current liabilities	<u>425,414</u>	<u>384,029</u>
Noncurrent liabilities:		
Long-term debt and capital lease obligation, less current portion (Note 5)	1,196,882	1,215,069
Other noncurrent liabilities (Notes 6, 7 and 8)	476,480	499,147
Total liabilities	<u>2,098,776</u>	<u>2,098,245</u>
Commitments and contingencies (Notes 2, 5, 8, 9 and 11)		
Net assets:		
Unrestricted:		
Undesignated	2,826,175	2,486,878
Board-designated	462,904	485,934
Total unrestricted	<u>3,289,079</u>	<u>2,972,812</u>
Temporarily restricted (Note 1)	365,085	377,504
Permanently restricted (Note 1)	390,493	292,160
Total net assets	<u>4,044,657</u>	<u>3,642,476</u>
Total liabilities and net assets	<u>\$ 6,143,433</u>	<u>\$ 5,740,721</u>

See notes to combined financial statements.



Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Combined Statements of Unrestricted Activities

	Year Ended December 31	
	2007	2006
	<i>(In Thousands)</i>	
<b>Undesignated operating revenues</b>		
Hospital care and services	\$ 1,237,391	\$ 1,113,704
Medical practice	294,248	284,689
Grants and contracts	149,275	129,693
Contributions allocated to operations	95,481	83,538
Royalty income	38,302	44,558
Other income	39,902	39,439
Investment returns allocated to operations	113,131	116,143
Transfer of Board-designated annual royalty annuitization	29,440	26,083
Total operating revenues	1,997,170	1,837,847
<b>Operating expenses</b>		
Salaries and wages	726,239	660,048
Physicians' practice compensation	117,347	101,656
Employee fringe benefits	218,360	204,330
Purchased supplies and services	432,158	397,139
Pharmaceuticals	227,330	197,532
Depreciation and amortization	157,494	139,402
Provision for bad debts and regulatory assessments	13,387	41,978
Interest	54,872	45,463
Total expenses	1,947,187	1,787,548
Less fund raising expenses transferred to nonoperating income and expenses	(33,523)	(28,390)
Total operating expenses	1,913,664	1,759,158
Income from operations	83,506	78,689
<b>Nonoperating income and expenses, net</b>		
Contributions, net of fundraising expenses and amount allocated to operations	(35,096)	10,863
Net assets released from restrictions	78,333	70,747
Investment returns, net of allocation to operations	166,834	133,873
Total nonoperating income and expenses, net	210,071	215,483
Increase in unrestricted net assets before change in postretirement benefit obligation to be recognized in future periods, accounting changes and Board-designated activities	293,577	294,172
<b>Board-designated</b>		
Investment income and other additions	6,410	4,974
Transfer of annual royalty annuitization	(29,440)	(26,083)
Decrease in Board-designated	(23,030)	(21,109)
Increase in unrestricted net assets before change in postretirement benefit obligation to be recognized in future periods, provision for asset retirement obligations and effect of adoption of FASB Statement No. 158	270,547	273,063
Change in postretirement benefit obligation to be recognized in future periods	45,720	-
Provision for asset retirement obligations	-	(19,427)
Effect of adoption of recognition and measurement date provisions of FASB Statement No. 158 (Note 1)	-	(85,549)
Increase in total unrestricted net assets	\$ 316,267	\$ 168,087

See notes to combined financial statements.

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Combined Statements of Changes in Net Assets

Years Ended December 31, 2007 and 2006

	<b>Unrestricted</b>	<b>Temporarily Restricted</b>	<b>Permanently Restricted</b>	<b>Total</b>
	<i>(In Thousands)</i>			
Net assets at January 1, 2006	\$ 2,804,725	\$ 316,051	\$ 231,950	\$3,352,726
Increase in unrestricted net assets	168,087	–	–	168,087
Contributions, pledges and bequests	–	132,200	43,737	175,937
Realized gains on investment transactions	–	–	14,872	14,872
Unrealized gains on investments	–	–	1,601	1,601
Net assets released from restrictions	–	(70,747)	–	(70,747)
Net assets at December 31, 2006	2,972,812	377,504	292,160	3,642,476
Increase in unrestricted net assets	<b>316,267</b>	–	–	<b>316,267</b>
Contributions, pledges and bequests	–	<b>65,914</b>	<b>78,835</b>	<b>144,749</b>
Realized gains on investment transactions	–	–	<b>22,462</b>	<b>22,462</b>
Unrealized losses on investments	–	–	<b>(2,964)</b>	<b>(2,964)</b>
Net assets released from restrictions	–	<b>(78,333)</b>	–	<b>(78,333)</b>
Net assets at December 31, 2007	<b>\$ 3,289,079</b>	<b>\$ 365,085</b>	<b>\$ 390,493</b>	<b>\$4,044,657</b>

*See notes to combined financial statements.*

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Combined Statements of Cash Flows

	Year Ended December 31	
	2007	2006
	<i>(In Thousands)</i>	
<b>Operating activities</b>		
Increase in net assets	\$ 402,181	\$ 289,750
Adjustments to reconcile increase in net assets to net cash provided by operating activities:		
Depreciation and amortization	157,494	139,402
Equity in earnings of investments in real estate, net	(511)	158
Unrealized net gains	(22,463)	(104,870)
Realized net gains	(222,882)	(110,658)
Interest accretion on long-term debt	—	(12,446)
Amortization of bond premium	(724)	1,651
Temporarily and permanently restricted contributions, pledges and bequests transferred to investing activities	(144,749)	(175,937)
Change in postretirement benefit obligation to be recognized in future periods	(45,720)	—
Effect of adoption of recognition and measurement date provisions of FASB Statement No. 158	—	85,549
Provision for asset retirement obligations	—	19,427
Decrease (increase) in assets:		
Accounts receivable, net	(13,205)	(37,559)
Other current assets	(137)	(3,002)
Other noncurrent assets	10,125	(12,268)
Increase in liabilities:		
Accounts payable and accrued expenses	26,956	43,836
Other noncurrent liabilities	23,009	59,566
Net cash provided by operating activities	169,374	182,599
<b>Investing activities</b>		
Net acquisitions of property and equipment	(273,944)	(309,524)
Decrease (increase) in investments, net	101,471	(147,787)
Mortgages and other loans receivable	(3,573)	(1,895)
Temporarily and permanently restricted contributions, pledges and bequests transferred from operating activities	159,801	103,180
Net cash used in investing activities	(16,245)	(356,026)
<b>Financing activities</b>		
Proceeds from financing	2,677	215,085
Repayment of debt	—	(98,691)
Net cash provided by financing activities	2,677	116,394
Net increase (decrease) in cash and cash equivalents	155,806	(57,033)
Cash and cash equivalents at beginning of the year	269,658	326,691
Cash and cash equivalents at end of the year	\$ 425,464	\$ 269,658

*See notes to combined financial statements.*

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements

December 31, 2007

**1. Organization and Significant Accounting Policies**

The mission of Memorial Sloan-Kettering Cancer Center and Affiliated Corporations is to provide leadership in the prevention, treatment and cure of cancer through excellence, vision and cost effectiveness in patient care, outreach programs, research and education. The accompanying financial statements are presented on a combined basis and include the accounts of the following tax exempt, Section 501(c)(3), incorporated affiliates: Memorial Sloan-Kettering Cancer Center (the Center), Memorial Hospital for Cancer and Allied Diseases (the Hospital), Sloan-Kettering Institute for Cancer Research (the Institute), S.K.I. Realty, Inc., MSK Insurance US, Inc. (MSKI) and the Louis V. Gerstner Jr. Graduate School of Biomedical Sciences. In addition, the accompanying combined financial statements include MSK Insurance, Ltd. (MSK), a wholly-owned captive insurance company domiciled in Bermuda. All of these entities are collectively referred to as the “Institution”.

The functional expenses related to the fulfillment of the Institution’s mission are:

	<b>Year Ended December 31</b>	
	<b>2007</b>	<b>2006</b>
	<i>(In Thousands)</i>	
Patient care and services	<b>\$ 1,484,010</b>	\$ 1,377,169
Research	<b>328,471</b>	289,667
Fund raising	<b>33,523</b>	28,390
Graduate School of Biomedical Sciences	<b>1,648</b>	1,270
General and administrative	<b>99,535</b>	91,052
	<b>\$ 1,947,187</b>	\$ 1,787,548

General and administrative expenses consist of the following:

	<b>Year Ended December 31</b>	
	<b>2007</b>	<b>2006</b>
	<i>(In Thousands)</i>	
Interest expense	<b>\$ 36,720</b>	\$ 36,908
Housing and parking	<b>29,116</b>	23,220
Other general and administrative	<b>33,699</b>	30,924
	<b>\$ 99,535</b>	\$ 91,052

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**1. Organization and Significant Accounting Policies (continued)**

Total contributions and pledges raised through fund raising efforts were \$239,020,000 and \$298,728,000 for 2007 and 2006, respectively. During 2006, the Institution received a one time contribution of \$73,452,000.

The following is a summary of the Institution's significant accounting policies:

**Temporarily and Permanently Restricted Net Assets**

Temporarily restricted net assets are those where use by the Institution has been limited by donors to a specific time frame or purpose. Permanently restricted net assets have been restricted by donors to be maintained by the Institution in perpetuity.

**Donor Gifts**

Unconditional promises to give cash and other assets are reported at fair value at the date the promise is received. The gifts are reported as either temporarily or permanently restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated time restriction ends or a purpose restriction is accomplished, temporarily restricted net assets are reclassified as unrestricted net assets and reported in the combined financial statements as net assets released from restrictions. Donor restricted contributions whose restrictions are met within the same year as received are reflected as unrestricted contributions in the accompanying combined financial statements.

Contributions allocated to operations represent the utilization of donor funds which are intended to support the current period's operations based on budgeted guidelines. The balance of unrestricted philanthropy is reported as nonoperating income.

**Cash and Cash Equivalents**

The Institution considers as cash and cash equivalents, all current investments, cash and certain highly liquid investments with original maturities of less than three months.

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**1. Organization and Significant Accounting Policies (continued)**

**Investments**

Investments in marketable securities are carried at fair value, based on quoted market prices. Realized gains or losses on investments sold or redeemed, together with unrealized appreciation or depreciation on investments, and investment income are distributed to all categories of net assets, as appropriate.

Alternative investments (nontraditional, not readily marketable asset classes), some of which are structured such that the Institution holds limited partnership interests, are stated at fair value as estimated in an unquoted market. Individual investment holdings in alternative investments of the Institution may, in turn, include investments in both marketable and nonmarketable securities. Valuations of these alternative investments and, therefore, the Institution's holdings may be determined by the investment manager or general partner. Values may be based on historical cost, appraisals, or other estimates that require varying degrees of judgment. The Institution uses the latest available information to value these alternative investments (which may be as of a date before December 31 for nonmarketable alternative investments). Generally, fair value reflects net contributions to the investee and an ownership share of realized and unrealized investment income and expenses. The alternative investments may indirectly expose the Institution to securities lending, short sales of securities, and trading in futures and forwards contracts, options and other derivative products. The financial statements of the investees are audited annually by independent auditors.

The Institution retains external investment managers with expertise in each component of its portfolio. Management and the Investment Subcommittee of the Joint Finance and Funding Committee of the Board of Managers regularly monitor the performance of each manager against appropriate benchmarks. The Institution retains several custodians to maintain physical control of marketable investments, record activity and produce monthly valuation and performance data. The Institution also retains the services of an independent investment consultant to provide specialized investment oversight.

The total investment return (investment income and realized and unrealized gains and losses) is reflected in the accompanying combined statements of unrestricted activities in two portions. The investment return allocated to operating revenues is determined by application of a 5% normal return to a three-year average market value of investments, excluding certain permanently restricted assets and certain other funds. In addition, actual investment earnings on short-term fixed income funds are included in operating revenues.

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**1. Organization and Significant Accounting Policies (continued)**

The investment return classified as nonoperating represents the difference between the actual total investment return and the amount allocated to operating revenues. Investment expenses, other than fees paid directly to investment managers, amounted to \$3,476,000 and \$3,359,000 in 2007 and 2006, respectively, and are included on the combined statements of unrestricted activities, in investment returns, net of allocation to operations.

Investment returns, excluding permanently restricted net assets, consist of the following (in thousands):

	2007	2006
Investment income	\$ 60,165	\$ 55,935
Realized gains	200,420	95,786
Unrealized gains	25,427	103,269
Total	\$ 286,012	\$ 254,990

**Unconditional Promises to Give**

Unconditional promises to give are recorded when the gift intent is made known in writing. A receivable has been established and net assets have been increased by the time-discounted value of the promises. Irrevocable trusts are recorded at the point of notification and are recorded as temporarily or permanently restricted as determined by the trust instruments. Estates are estimated and recorded at the conclusion of probate.

The Institution is aware of numerous unconditional promises to give and estimates the year of receipt to the extent possible. The anticipated present value of the receivable is (in thousands):

2008	\$ 100,354
2009	76,452
2010	56,106
2011	37,976
2012	21,450
Thereafter	111,403
	\$ 403,741

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**1. Organization and Significant Accounting Policies (continued)**

**Property and Equipment**

Property and equipment is carried at cost less accumulated depreciation and amortization. Depreciation on building components and equipment is computed on the straight-line method over the estimated useful service lives.

Leasehold improvements are being amortized over the term of the lease, based on the straight-line method.

The carrying amount of assets and the related accumulated depreciation or amortization are removed from the accounts when such assets are disposed of and any resulting gain or loss is included in operations.

All eligible costs incurred for the development of computer software for internal use are capitalized and carried at cost less accumulated amortization. Amortization of capitalized internal use software cost is based on the straight-line method over the estimated useful life of the software.

**Charity Care and Community Benefit Programs**

Consistent with its mission, the Institution invests significant amounts for the benefit of the worldwide community that is served through its patient care education and research activities. Listed below are quantifiable benefits provided.

Charity care represents the cost of services provided to patients who cannot afford health care services due to inadequate resources and/or are uninsured or underinsured. A patient is classified as a charity care patient in accordance with the Institution's established policies and where insufficient payment for such services is anticipated. For the periods presented, the Institution considers patients for charity care if household income is less than 400% (350% for 2006) of federal poverty guidelines. Services provided as charity care are not reported as revenue in the combined statements of unrestricted activities. Costs of providing charity care are estimated by multiplying the total charges incurred by patients that qualify for charity care by a ratio of historical expenses to charges as derived from the Hospital's accounting records.



Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**1. Organization and Significant Accounting Policies (continued)**

Unpaid cost of government sponsored health care represents the estimated difference between the payments made under the Medicare and Medicaid programs and the Institution's cost of providing these services. The Institution has converted Medicare and Medicaid charges to costs by multiplying a historical ratio of expenses to charges as derived from the Hospital's accounting records. The Institution then subtracted all revenues received from the Medicare and Medicaid programs to determine the community benefit provided.

Research community benefit costs represent the Institution's costs for basic, translational and clinical research that is not fully reimbursed by governmental or voluntary agencies. The amount shown as community benefit represents the total annual amount spent on research as shown in the Institution's functional expense table on page 6, less amounts received from external sources and recorded as grant and contract revenue in the combined statements of unrestricted activities.

The Institution is a preeminent provider of health training to health professionals who desire training in the skills necessary to treat cancer patients. The Institution trains physicians, radiology students, nursing students, social work students and individuals looking to create a career in the field of cancer biology. The amounts shown represent costs in excess of amounts reimbursed by third party payers such as training grant revenues and direct medical education payments from the Medicare program.

The following is a summary of the Institution's estimated costs of providing charity care and community benefit program services:

	<b>December 31</b>	
	<b>2007</b>	<b>2006</b>
	<i>(In Thousands)</i>	
Charity care	<b>\$ 14,553</b>	\$ 12,826
Unpaid cost of government sponsored healthcare	<b>172,968</b>	162,416
Research	<b>184,985</b>	166,115
Health training	<b>45,058</b>	38,819
Other	<b>3,251</b>	1,598
Charity care and community benefit programs	<b><u>\$ 420,815</u></b>	<b><u>\$ 381,774</u></b>

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**1. Organization and Significant Accounting Policies (continued)**

**Use of Estimates**

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make prudent and conservative estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Royalty Amortization**

The deferred gain on the sale of certain royalty rights is being recognized as a component of operating revenues over a ten year period.

**Reclassifications**

For purposes of comparison, certain reclassifications have been made to the accompanying 2006 combined financial statements.

**Recent Accounting Pronouncements**

In September 2006, the Financial Accounting Standards Board (FASB) issued FASB Statement No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans* (Statement 158). Statement 158 requires plan sponsors of defined benefit pension and other postretirement benefit plans (collectively, postretirement benefit plans) to recognize the funded status of their postretirement benefit plans in the combined balance sheet, measure the fair value of plan assets and benefit obligations as of the date of the fiscal year-end combined balance sheet, and provide additional disclosures. On December 31, 2006, the Institution adopted the recognition and disclosure provisions of Statement 158. The effect of adopting Statement 158 on the Institution's financial condition at December 31, 2006 has been included in the accompanying combined financial statements. As part of the adoption, the Institution now uses a measurement date of December 31. See Note 7 for further discussion.

In July 2006, FASB Interpretation No. 48 (FIN 48), *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109, Accounting for Income Taxes*, was issued. FIN 48

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**1. Organization and Significant Accounting Policies (continued)**

creates a single model to address uncertainty in tax positions and clarifies the accounting for income taxes by prescribing the minimum recognition threshold a tax position is required to meet before being recognized in the financial statements. Under the requirements of FIN 48, tax-exempt organizations could be required to record an obligation as the result of a tax position they have historically taken on various tax exposure items. Prior to FIN 48, the determination of when to record a liability for a tax exposure was based on whether a liability was considered probable and reasonably estimable in accordance with FASB Statement No. 5, *Accounting for Contingencies*. On January 1, 2007, the Institution adopted FIN 48. The impact of the adoption of FIN 48 on the Institution's combined financial statements is not significant.

In September 2006, the FASB issued FASB Statement No. 157, *Fair Value Measurements* (Statement 157). This Statement provides guidance on using fair value to measure assets and liabilities. Under this standard, the definition of fair value focuses on the price that would be received to sell the asset or paid to transfer the liability (an exit price), not the price that would be paid to acquire the asset or received to assume the liability (an entry price). Statement 157 clarifies that fair value is a market-based measurement, not an entity-specific measurement and sets out a fair value hierarchy with the highest priority being quoted prices in active markets and the lowest priority being unobservable data. Further, Statement 157 requires tabular disclosures of the fair value measurements by level within the fair value hierarchy. Statement 157 will be adopted by the Institution in 2008. The impact, if any, of adopting Statement 157 on the Institution's combined financial statements has not been determined.

In February 2007, the FASB issued Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* (Statement 159). Statement 159 permits companies to choose to measure certain financial instruments and other items at fair value that are not currently required to be measured at fair value. Statement 159 is effective for fiscal years beginning after November 15, 2007. The Institution has not yet determined the effect that the adoption of Statement 159 will have on its combined financial statements.

**2. Third Party Reimbursement Programs**

Patient revenues are recorded at established rates when patient services are performed. Reimbursement by third party payor programs can be less than published charges, with adjustments for such differences recorded as contractual allowances deducted directly from accounts receivable and operating revenues in the year incurred. Adjustments from established

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**2. Third Party Reimbursement Programs (continued)**

rates are also recorded for potential retrospective adjustments, which are an inherent component of the health care revenue recognition process.

Significant concentrations of accounts receivable at December 31, 2007 include 23% from Empire Health Choice and 24% from government related programs (20% and 26%, respectively, at December 31, 2006).

Laws and regulations governing the Medicare and Medicaid programs are extremely complex and subject to interpretation. As a result, there is a reasonable possibility that future operating revenue would require a retrospective adjustment. Approximately 1.06% of operating revenues in 2007 and (0.09)% of operating revenues in 2006 are due to favorable (unfavorable) adjustments of prior year operating revenues.

**3. Cash, Cash Equivalents and Investments**

The aggregate carrying value of cash, cash equivalents and investments includes:

	<b>December 31</b>	
	<b>2007</b>	<b>2006</b>
	<i>(In Thousands)</i>	
Cash, cash equivalents and short-term investments	<b>\$ 780,272</b>	\$ 864,362
United States-based equity investments	<b>621,500</b>	517,415
International equity investments	<b>568,263</b>	455,991
Fixed income investments:		
U.S. and other government obligations	<b>148,727</b>	177,835
Corporate debt securities and mortgages	<b>241,154</b>	232,604
Alternative investments:		
Marketable	<b>629,359</b>	566,381
Nonmarketable	<b>403,907</b>	289,826
	<b><u>\$ 3,393,182</u></b>	<b><u>\$ 3,104,414</u></b>

The Institution has invested funds or has commitments with 79 nonmarketable alternative investment managers. This broad diversification of investments provides exposure to investments whose return is not highly correlated with the conventional financial markets.

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**3. Cash, Cash Equivalents and Investments (continued)**

Approximately \$403,907,000 of the alternative investment portfolio is currently invested in nonmarketable securities (venture capital and private equities) and approximately \$629,359,000 is invested in marketable securities (hedge funds, market neutral funds, merger/convertible arbitrage and distressed securities funds). Investment managers are chosen by the Investment Subcommittee of the Joint Finance and Funding Committee of the Board of Managers which utilizes the expertise of an independent investment consulting firm. As of December 31, 2007, the Institution had outstanding commitments to provide additional capital of approximately \$286,525,000 to various nonmarketable alternative investment managers.

**4. Property and Equipment**

Property and equipment consists of the following:

	<b>December 31</b>	
	<b>2007</b>	<b>2006</b>
	<i>(In Thousands)</i>	
Land	\$ 42,684	\$ 42,684
Buildings and leasehold improvements	1,810,863	1,667,356
Equipment	1,114,631	1,035,990
Construction-in-progress	293,357	253,160
	3,261,535	2,999,190
Less accumulated depreciation and amortization	1,451,776	1,300,725
	<b>\$ 1,809,759</b>	<b>\$ 1,698,465</b>

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**5. Long-Term Debt and Capital Lease Obligation**

Long-term debt consists of the following; the carrying value approximates fair value:

	<b>December 31</b>	
	<b>2007</b>	<b>2006</b>
	<i>(In Thousands)</i>	
Dormitory Authority of the State of New York Series 2003, tax exempt bonds maturing between 2008 and 2034 at various fixed interest rates ranging from 2.75% to 5.25%	<b>\$ 389,845</b>	\$ 389,845
Dormitory Authority of the State of New York Series 1998, tax exempt bonds maturing in 2023 at various fixed interest rates ranging from 5.00% to 5.75%	<b>148,400</b>	148,620
Dormitory Authority of the State of New York Series 2002, tax exempt bonds maturing in 2036, at variable interest rates which averaged 3.43% and 3.22% in 2007 and 2006, respectively	<b>450,000</b>	450,000
Dormitory Authority of the State of New York Series 2006, tax exempt bonds maturing between 2027 and 2035 at various fixed interest rates ranging from 4.75% to 5.00%	<b>215,085</b>	215,085
Capital lease	<b>2,897</b>	—
	<b>1,206,227</b>	1,203,550
Less current portion	<b>20,360</b>	220
	<b>1,185,867</b>	1,203,330
Unamortized bond premium	<b>11,015</b>	11,739
	<b>\$ 1,196,882</b>	\$ 1,215,069

During 2006, the Institution issued additional fixed rate tax exempt debt through the Dormitory Authority of the State of New York. Proceeds were partially used to advance refund a portion of the Series 2003 Bonds. Approximately \$98,000,000 of the refunded bonds, which are legally defeased, remain outstanding at December 31, 2007. Amounts sufficient to meet future principal and interest requirements of the defeased debt have been irrevocably deposited into an escrow account. The bonds mature from 2012 through 2030. Proceeds of approximately \$100,000,000

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**5. Long-Term Debt and Capital Lease Obligation (continued)**

are being used to finance a portion of the costs of construction of a new eight-story, approximately 135,000 square foot research facility, to complete portions of a research building that had been previously shelled space, and to purchase apartments for staff housing.

Annual maturities on all long-term debt for the years 2008 through 2012 are as follows (in thousands):

2008	\$ 20,360
2009	21,245
2010	21,920
2011	22,915
2012	23,952

Total interest paid in 2007 and 2006 (including portions supporting capitalized costs) was \$52,506,000 and \$40,850,000, respectively.

The above debts are secured by a pledge of revenues from certain facilities, bond insurance and springing collateral, which would require the Institution to mortgage a substantial portion of real property if certain financial covenants and ratios are not maintained. The Institution was in compliance with all such requirements during 2007 and 2006.

Series 2002 tax exempt bonds are convertible to fixed rates. The Institution intends to exercise its conversion option in 2008.

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**6. Other Noncurrent Liabilities**

Other noncurrent liabilities consist of the following:

	<b>December 31</b>	
	<b>2007</b>	<b>2006</b>
	<i>(In Thousands)</i>	
Pension:		
Retirement benefit obligation	\$ 37,699	\$ 33,593
Amounts not yet recognized as periodic costs	29,676	79,717
Total pension obligations <i>(Note 7)</i>	67,375	113,310
Postretirement:		
Medical benefit obligation	72,294	67,365
Amounts not yet recognized as periodic costs	10,152	5,832
Total postretirement obligation <i>(Note 7)</i>	82,446	73,197
Insurance reserves <i>(Note 8)</i>	157,432	154,042
Deferred compensation	93,134	86,033
Asset retirement obligations	21,525	21,621
Deferred gift annuity	29,412	25,953
All other	25,156	24,991
	\$ 476,480	\$ 499,147

**7. Retiree Pension and Health Plans**

The Institution has a retirement annuity plan which provides eligible staff members with retirement income through individual deferred annuity contracts purchased in each participant's name. In addition, the Institution maintains a nonqualified deferred compensation plan which is used for employer contributions in excess of those allowed by the retirement annuity plan. The effective date of this plan was January 1, 1983 and it has been grandfathered from the changes made by the Tax Reform Act of 1986. The Institution contributes a fixed percentage of an individual's compensation to these plans. The Institution's cost for these plans was \$18,766,000 and \$16,887,000 in 2007 and 2006, respectively.



Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**7. Retiree Pension and Health Plans (continued)**

The Institution maintains a trustee defined benefit plan for employees not covered by the above retirement annuity program. The benefits are based on years of service, the employee's average compensation during the highest five of the last ten years of employment and a pension formula.

The Institution offers retirees and their spouses hospital and basic medical coverage which supplements any available Medicare coverage. The plan pays the balance of charges not paid by Medicare up to Medicare allowable charges. All employees become eligible for postretirement health care if they retire at age 60 or older, with at least 10 years of service, or under age 60 with 30 years of service. The accounting for the health care plans anticipates future retiree contributions increasing by annual health care cost increases plus 2%. Employees hired after December 31, 2006 will be required to pay 100% of the coverage cost.

On December 31, 2006, the Institution adopted the recognition and disclosure provisions of Statement 158. Statement 158 required the Institution to recognize the funded status (i.e., the difference between the fair value of plan assets and the projected benefit obligations) of its retiree pension and health plans, with a corresponding adjustment to unrestricted net assets. The adjustment to unrestricted net assets represents the net unrecognized actuarial losses and unrecognized prior service cost, all of which were previously netted against the plan's funded status in the Institution's combined balance sheet pursuant to the provisions of Statement 87. These amounts are now (beginning January 1, 2007) recognized as net periodic pension cost pursuant to the Institution's historical accounting policy for amortizing such amounts. Further, actuarial gains and losses that arise subsequent to December 31, 2006 which pursuant to Statement 87 are not recognized as net periodic pension cost in the same periods will be recognized as a component of other changes in unrestricted net assets. Such amounts will be subsequently recognized as a component of net periodic pension cost through amortization.

The incremental effects of adopting the provisions of Statement 158 on the Institution's combined balance sheet are disclosed in Note 6 as amounts not yet recognized as periodic costs. The adoption of Statement 158 had no effect on the Institution's combined statement of unrestricted activities for any prior period presented, and it will not affect the Institution's operating results in future periods. The prior service cost and actuarial loss included in unrestricted net assets and expected to be recognized in net periodic pension cost during the year ended December 31, 2008 is not expected to be significant.

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**7. Retiree Pension and Health Plans (continued)**

The following tables provide a reconciliation of the change in the benefit obligations and fair value of plan assets and funded status of the Institution's pension plan and postretirement plans:

	Pension Benefits		Postretirement Health	
	December 31		December 31	
	2007	2006	2007	2006
	<i>(In Thousands)</i>			
<b>Reconciliation of benefit obligations</b>				
Benefit obligations at beginning of period	\$ 491,182	\$ 444,663	\$ 75,891	\$ 81,715
Service cost	27,637	32,957	3,834	5,121
Interest cost	29,038	31,766	4,473	4,671
Plan participants' contributions	145	147	1,465	1,184
Amendments	-	-	-	(15,472)
Actuarial (gain) loss	(44,331)	(4,339)	3,773	2,225
Benefits paid	(11,997)	(14,012)	(4,159)	(3,553)
Benefit obligations at end of period	<u>\$ 491,674</u>	<u>\$ 491,182</u>	<u>\$ 85,277</u>	<u>\$ 75,891</u>
<b>Reconciliation of fair value of plan assets</b>				
Fair value of plan assets at beginning of period	\$ 377,872	\$ 327,842	\$ -	\$ -
Actual return on plan assets	33,279	38,895	-	-
Employer contributions	25,000	25,000	-	-
Plan participants' contributions	145	147	-	-
Benefits paid	(11,997)	(14,012)	-	-
Fair value of plan assets at end of period	<u>424,299</u>	<u>377,872</u>	<u>-</u>	<u>-</u>
Unfunded status at end of period	<u>\$ (67,375)</u>	<u>\$ (113,310)</u>	<u>\$ (85,277)</u>	<u>\$ (75,891)</u>
Current portion of obligation	\$ -	\$ -	\$ (2,831)	\$ (2,694)
Non-current portion of obligation	(67,375)	(113,310)	(82,446)	(73,197)
Total	<u>\$ (67,375)</u>	<u>\$ (113,310)</u>	<u>\$ (85,277)</u>	<u>\$ (75,891)</u>

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**7. Retiree Pension and Health Plans (continued)**

The following table provides the components of the net periodic costs for pension and postretirement benefit cost for the plans for the years ended December 31, 2007 and 2006:

	Pension Benefits		Postretirement Health	
	2007	2006	2007	2006
<b>Components of net periodic cost</b>				
Service cost	\$ 27,637	\$ 26,366	\$ 3,834	\$ 5,121
Interest cost	29,038	25,413	4,473	4,671
Expected return on assets	(29,362)	(26,407)		
Amortization of net loss	1,718	3,074	628	528
Amortization of prior service cost	71	71	(1,172)	59
Total net periodic cost	<u>\$ 29,102</u>	<u>\$ 28,517</u>	<u>\$ 7,763</u>	<u>\$ 10,379</u>

**Actuarial Assumptions**

Weighted-average assumptions used to determine benefit obligations are as follows:

	Pension Benefits		Postretirement Health	
	December 31		December 31	
	2007	2006	2007	2006
Discount rate	6.60%	6.00%	6.25%	6.00%
Rate of compensation increase	5.25	5.25	-	-

Weighted-average assumptions used to determine net periodic benefit cost are as follows:

	Pension Benefits		Postretirement Health	
	December 31		December 31	
	2007	2006	2007	2006
Discount rate	6.00%	5.80%	6.00%	6.00%
Rate of compensation increase	5.25	5.25	-	-
Expected long-term return on plan assets	7.50	8.00	-	-

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**7. Retiree Pension and Health Plans (continued)**

The expected return of the portfolio was arrived at using the weighted-average of the expected returns of the underlying benchmark asset classes.

The healthcare cost trend rate assumptions for the postretirement benefit plans at December 31 are as follows:

	2007	2006
Health care cost trend rate assumed for next year	8.00%	8.50%
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	5.00%	5.00%
Year that the rate reaches the ultimate trend rate	2013	2013

**Effect of Change in Health Care Trends**

Assumed health care cost trend rates have a significant effect on the postretirement health amounts reported. A 1% change in assumed health care cost trend rates would have the following effects on postretirement benefit costs:

	2007		2006	
	1% Increase	1% Decrease	1% Increase	1% Decrease
	<i>(In Thousands)</i>			
Effect on total of service and interest cost components of net periodic postretirement health care benefit cost	\$ 1,782	\$ (1,375)	\$ 2,406	\$ (1,823)
Effect on the health care component of the accumulated postretirement benefit obligation	13,624	(11,015)	14,221	(11,330)

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**7. Retiree Pension and Health Plans (continued)**

**Plan Assets**

The following table presents the weighted-average long-term target asset allocations and the percentages of the fair value of pension plan assets as of December 31:

	<b>Target Allocation 2007</b>	<b>Percentage of Plan Assets 2007</b>	<b>2006</b>
Equity securities	<b>45%</b>	<b>39.6%</b>	41.40%
Debt securities	<b>35%</b>	<b>31.8%</b>	32.95%
Alternative investments	<b>20%</b>	<b>28.6%</b>	25.65%

**Plan Objectives and Guidelines**

The overall investment objective of the pension trust fund is to outperform a composite benchmark (an asset-weighted series of market indices used to measure the performance of each asset class) over a market cycle, while maintaining similar risk to the benchmark.

The portfolio is diversified to reduce the impact of losses in individual investments in a manner that is responsive to fiduciary standards. Single issuers are limited to 5% of the portfolio's aggregate market value at time of purchase with the exception of U.S. government and agency securities and commingled funds. The underlying products that comprise a diversified portfolio may have exposure to derivatives which are managed and controlled.

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**7. Retiree Pension and Health Plans (continued)**

**Cash Flows**

*Contributions:* The Institution expects to contribute \$25,000,000 to its pension plan in 2008.

*Estimated future benefit payments:* The Institution expects to pay the following benefit payments, which reflect expected future service, as appropriate (in thousands):

	<u>Pension Benefits</u>	<u>Postretirement Health</u>
2008	\$ 14,598	\$ 2,831
2009	16,113	3,136
2010	17,692	3,495
2011	19,620	3,893
2012	21,468	4,196
2013 to 2017	139,340	27,547

**8. Insurance Programs**

The Institution uses MSK (a Bermuda corporation) as the primary insurance company for malpractice risk. MSK reinsures losses of an unrelated insurance company on the commercial general liability and workers' compensation policies issued to the Institution, maintaining risk transfer to the commercial market for catastrophic exposure. MSK provides umbrella excess of loss coverage to the Institution; this risk is reinsured by commercial insurance carriers.

MSKI, a domestic tax-exempt corporation, was formed for the purpose of insuring the property and equipment of the Institution under the coverage provided for Certified Acts of Foreign Terrorism. MSKI provides terrorism coverage to the Institution for general liability and umbrella liability. The coverage under these policies will be substantially reimbursed by the U.S. Government under a formula established by Federal law.

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**8. Insurance Programs (continued)**

MSKI also provides warranty coverage to the Institution for direct damage to covered equipment. Both MSK and MSKI reinsure unrelated insurance companies for coverage of the Institution under workers' compensation and general liability policies insuring the Institution's ongoing construction activities. The Institution is licensed by the State of New York to be self insured for workers' compensation risks. Primary levels of workers compensation coverage is provided by MSKI. The Institution's liability is limited, with catastrophic risk insured by commercial insurance carriers.

Insurance reserves represent estimated unpaid losses and loss adjustment expenses. Such amounts are established using management's estimates on the basis of claims records and an independent actuarial review and include an amount for the adverse development of reported claims. Adjustments to the estimate of the liability for losses are reflected in earnings in the period in which the adjustment is determined. The insurance reserves are necessarily based on estimates and, while management believes that the amount is adequate, the ultimate liability may vary significantly from the amount provided.

**9. Operating Leases**

The Institution leases certain facilities and equipment which are accounted for as operating leases. Total rent expense for operating leases aggregated \$12,558,000 and \$13,321,000 for 2007 and 2006, respectively. The future minimum lease commitments for noncancelable leases in excess of one year are as follows (in thousands):

2008	\$ 13,878
2009	10,890
2010	9,594
2011	9,376
2012	6,650
Thereafter	45,145
	<u>\$ 95,533</u>

There are provisions in certain leases which provide for rent escalation for inflation and other items.

Memorial Sloan-Kettering Cancer Center  
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

**10. Grant Awards**

The accompanying combined financial statements do not include amounts related to research grants (or portions thereof) that have been awarded to the Institute for which expenditures have not been incurred or cash has not been received. Such grant awards approximated \$95,000,000 and \$85,000,000 at December 31, 2007 and 2006, respectively.

**11. Commitments and Contingencies**

The Institution is involved in various litigation and claims that are not considered unusual given the complexity and size of the Institution's business. Management believes that the ultimate resolution of these matters will not have a material impact on the Institution's combined financial statements.

The Institution recognizes a liability for the future cost of conditional asset retirement obligations including building modifications and lease end costs. The Institution removes contained asbestos from facilities as facilities are being repaired and/or replaced. The Institution has estimated the cost of asbestos remediation, for the Institution's current plans for building modifications and lease end costs of approximately \$21,500,000 at December 31, 2007.

On an ongoing basis, the Institution utilizes substances which necessitate ongoing control procedures and reviews and possibly evaluation and remediation by independent third parties if its facilities were no longer to be used as a medical research center. The resulting additional liabilities would not be material to the Institution's combined financial position, results of operations or cash flows.



**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 statement of its provisions. Defined terms used in this Appendix have the meanings ascribed to them in Appendix A.

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

(Section 43)

### Project Financing

(a) The Authority agrees to use its best efforts from time to time to authorize, issue, sell and deliver Bonds in the aggregate principal amount sufficient, together with other moneys available therefor, to pay the Costs of the Project and Costs of Issuance. The proceeds of the Bonds shall be applied as specified in the Series Resolution authorizing the issuance thereof or the Bond Series Certificate relating to such Bonds.

(b) The Center agrees that, upon the request of an Authorized Officer of the Authority and as a condition to the issuance of a Series of Bonds, it shall deliver to the Authority a certificate of an Authorized Officer of the Center satisfactory to an Authorized Officer of the Authority setting forth and representing (i) the amount of Restricted Gifts theretofore received by the Center and each Affiliate in connection with the Project financed thereby, (ii) that all of such amount has been or will be spent on such Project or will be otherwise applied in a manner acceptable to an Authorized Officer of the Authority, (iii) that such amount will not be reimbursed from the proceeds of the sale of such Bonds, (iv) whether the Center reasonably expects that additional Restricted Gifts in connection with such Project will be received by the Center or an Affiliate while such Bonds are Outstanding, and (v) such other matters as may be required by an Authorized Officer of the Authority to determine whether issuance of such Bonds will comply with the requirements of the Code.

(c) If, prior to completion of construction of a Project, the Center or an Affiliate receives any Restricted Gift therefor, the Center shall, to the extent not inconsistent with the terms of such Restricted Gift, either (i) to the extent necessary to complete the Project, apply such amount in a manner acceptable to an Authorized Officer of the Authority, or (ii) to the extent such moneys will exceed the amount necessary to complete the Project, pay such amount to the Trustee for deposit to the Debt Service Fund. If, after completion of the construction of the Project, the Center receives any Restricted Gift which prior to such completion it reasonably expected to receive, the Center shall deliver a like amount to the Trustee for deposit to the Debt Service Fund.

(d) The Center represents, warrants and covenants that it and the Affiliates have expended or will expend on each Project, from sources other than the proceeds of the issuance of Bonds, an amount equal to the amount of Restricted Gifts received and reasonably expected to be received by it and the Affiliates in the future from pledges or otherwise, and no such moneys will be pledged as collateral for the Bonds or is otherwise expected to be used to pay the principal of or interest on Bonds. For purposes of this paragraph, it is understood that all or any part of a Project may be named in honor of a donor or donors in recognition of pledges, contributions or services of the donor or donors that are unrelated to the Costs of such Project, and amounts pledged or contributed by the donor or donors for purposes unrelated to the Costs of such Project will not be considered to have been raised for purposes of constructing or equipping such Project.

(Section 4)

### **Construction of Projects**

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

(Section 5)

### **Amendment of Projects**

The Center, with the prior consent of the Authority, may amend a 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 a Project which the Authority is authorized to undertake.

(Section 6)

### **Financial Obligations of the Center**

(a) Except to the extent that moneys are available therefor under the Resolution or the Loan Agreement, including moneys in the Debt Service Fund (other than moneys required to pay, the Redemption Price or purchase price of Outstanding Bonds theretofore called for redemption or contracted to be purchased, plus interest accrued to the date of redemption or purchase), and excluding interest accrued but unpaid on investments held in the Debt Service Fund, the Center pursuant to 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:

(i) On or before the date of delivery of the Bonds of a Series, the Authority Fee agreed to by the Authority and the Center;

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

(iii) Five Business Days prior to an interest payment date on Outstanding Variable Interest Rate Bonds, the interest coming due on such Variable Interest Rate Bonds on such interest payment date, assuming that such Bonds will, from and after the next succeeding date on which the rates at which such Bonds bear interest are to be determined, bear interest at a rate per annum equal to the rate per annum for such Bonds on the immediately preceding Business Day, plus one percent (1%) per annum;

(iv) On December 10<sup>th</sup> and June 10<sup>th</sup> of each Bond Year, the interest on Outstanding Bonds that are not Variable Interest Rate Bonds payable on the next succeeding January 1<sup>st</sup> and July 1<sup>st</sup>, respectively;

(v) On June 10<sup>th</sup> of each Bond Year, the principal and Sinking Fund Installments of Outstanding Bonds payable during the next succeeding Bond Year;

(vi) Except as provided below, by 12:30 p.m., New York City time, on the day on which payment of the purchase price of an Option Bond tendered for purchase which has not been remarketed and for which there is no Liquidity Facility then in effect, is due, the purchase price of such Option Bond, which shall be paid in immediately available funds; *provided, however*, that (A) if the Center has received notice that such payment is due given by or on behalf of the Authority after 10:00 a.m., New York City time, but prior to 3:00 p.m., New York City time, on

such day, then payment by the Center shall be made by 5:00 p.m., New York City time on such day, and (B) if such notice is given after 3:00 p.m., New York City time, on such day, then payment by the Center shall be made by 10:00 a.m. on the next succeeding Business Day;

(vii) At least thirty (30) days with respect to Bonds other than Option Bonds and Variable Interest Rate Bonds and fifteen (15) days with respect to Option Bonds and Variable Interest Rate Bonds prior to any date on which the Redemption Price or purchase price of Bonds previously called for redemption or contracted to be purchased, other than the Purchase Price, is to be paid, the amount required to pay the Redemption Price or purchase price of such Bonds;

(viii) On December 10<sup>th</sup> of each Bond Year one-half (½) of the Annual Administrative Fee payable during such Bond Year in connection with each Series of Bonds, and on June 10<sup>th</sup> of each Bond Year the balance of the Annual Administrative Fee payable during such Bond Year; *provided, however*, that the Annual Administrative Fee with respect to a Series of Bonds payable during the Bond Year during which such Annual Administrative Fee became effective shall be equal to the Annual Administrative Fee with respect to such Series of Bonds multiplied by a fraction the numerator of which is the number of calendar months or parts thereof remaining in such Bond Year and the denominator of which is twelve (12);

(ix) Promptly after notice from the Authority, but in any event not later than fifteen (15) days after such notice is given, the amount set forth in such notice as payable to the Authority (A) for the Authority Fee then unpaid, (B) to reimburse the Authority for payments made by it pursuant to the Loan Agreement and any expenses or liabilities incurred by the Authority pursuant to the Loan Agreement, (C) to reimburse the Authority for any external costs or expenses incurred by it attributable to the issuance of a Series of Bonds or the financing or construction of a Project, including but not limited to any fees or other amounts payable by the Authority under a Remarketing Agreement, a Credit Facility or a Liquidity Facility, (D) for the costs and expenses incurred by the Authority to compel full and punctual performance by the Center of all the provisions of the Loan Agreement in accordance with the terms thereof and (E) for the fees and expenses of the Trustee and any Paying Agent in connection with performance of their duties under the Resolution;

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

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

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

(xiii) Not less than fifteen (15) days prior to the day a premium is payable to an Insurer for a financial guaranty insurance policy in connection with the Bonds, the amount thereof.

Subject to the provisions of the Loan Agreement and of the Resolution, the Center shall receive a credit against the amount required to be paid by the Center during a Bond Year pursuant to paragraph (a)(v) above on account of any Sinking Fund Installments if, prior to the date notice of redemption is given pursuant to the Resolution with respect to Bonds to be redeemed through any Sinking Fund Installments during the next succeeding Bond Year, either (i) the Center delivers to the Trustee for cancellation one or more Bonds of the Series and maturity to be so redeemed or (ii) the Trustee, at the direction of the Authority, has purchased one or more Bonds of

the maturity to be so redeemed from amounts on deposit in the Debt Service Fund in accordance with the Resolution during such Bond Year. The amount of the credit shall be equal to the principal amount of the Bonds so delivered.

The Authority pursuant to the Loan Agreement directs the Center, and the Center pursuant to the Loan Agreement agrees, to make the payments required by paragraphs (a)(iii), (a)(iv), (a)(v), (a)(vii) and (a)(x) above directly to the Trustee for deposit and application in accordance with the Resolution; the payments required by paragraph (a)(ii) above directly to the Trustee for deposit in the Construction Fund or other fund established under the Resolution, as directed by the Authority; the payments required by paragraphs (a)(i), (a)(viii) and (a)(ix) above directly to the Authority; and the payments required by paragraphs (a)(vi), (a)(xi), (a)(xii) and (a)(xiii) above to or upon the written order of the Authority.

(b) Notwithstanding any provisions in the Loan Agreement or in the Resolution to the contrary (except as otherwise specifically provided for in this paragraph), all moneys paid by the Center to the Trustee pursuant to the Loan Agreement or otherwise held by the Trustee shall be applied in reduction of the Center's indebtedness to the Authority under the Loan Agreement, first, with respect to interest and, then, with respect to the principal amount of such indebtedness, but only to the extent that, with respect to interest on such indebtedness, such moneys are applied by the Trustee for the payment of interest on Outstanding Bonds, and, with respect to the principal of such indebtedness, such moneys have been applied to, or are held for, payments in reduction of the principal amount of Outstanding Bonds and as a result thereof Bonds have been paid or deemed to have been paid in accordance with the Resolution. Except as otherwise provided in the Resolution, the Trustee shall hold such moneys in trust in accordance with the applicable provisions of the Resolution for the sole and exclusive benefit of the Holders of Bonds, regardless of the actual due date or applicable payment date of any payment to the Holders of Bonds.

(c) The obligations of the Center to make payments or cause the same to be made under the Loan Agreement shall be absolute and unconditional and the amount, manner and time of making such payments shall not be decreased, abated, postponed or delayed for any cause or by reason of the happening or non-happening of any event, irrespective of any defense or any right of set-off, recoupment or counterclaim which the Center 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 Center to complete any Project or the completion thereof with defects, failure of the Center to occupy or use any Project, any declaration or finding that the Bonds of any Series 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 Center may institute such action as it may deem necessary to compel performance or recover damages for non-performance. Notwithstanding the foregoing, the Authority shall have no obligation to perform its obligations under the Loan Agreement to cause advances to be made to reimburse the Center for, or to pay, the Costs of any Project beyond the extent of moneys in the Construction Fund established for such Project available therefor.

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

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

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

(f) The Center, if it is not in default under the Loan Agreement, shall have the right to make voluntary payments in any amount to the Trustee. In the event of a voluntary payment, the amount so paid shall be deposited in the Debt Service Fund and applied in accordance with the Resolution or held by the Trustee for the payment of Bonds in accordance with the Resolution. Upon any voluntary payment by the Center, the Authority agrees to direct the Trustee to purchase or redeem Bonds in accordance with the Resolution or to give the Trustee irrevocable instructions in accordance with the Resolution; *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 Center, 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.

(g) As soon as practicable after the later of the date a Project is deemed to be complete pursuant to the Loan Agreement or the issuance of the Bonds of a Series, the Authority shall determine, and notify the Center of, the actual Authority Fee incurred by the Center in connection with such Project to the date of such notice. The balance, if any, of such Authority Fee then unpaid, to the extent not paid from the Construction Fund, shall be paid by the Center pursuant to paragraph (a)(ix) above. If upon such determination the actual amount of the Authority Fee incurred by the Center in connection with such Project to the date of such notice is less than the amount paid theretofore, the Authority shall promptly refund to the Center the amount paid in excess of such actual amount. The Authority agrees to provide the Center with a copy of each certificate delivered by the Authority to the Trustee in connection with payments to be made pursuant to the Resolution with respect to the Costs of Issuance of Bonds.

(Section 9)

#### **Financial Covenants of the Center**

The Center covenants and agrees pursuant to the Loan Agreement as follows:

(i) **Adjusted Operating Loss Calculation.** If (A) the most recently available audited combined financial statements of the Center and the Affiliates show a decrease in Unrestricted Net Assets of \$50,000,000 or more or (B) the Debt Ratio on any Measurement Date that is the last day of the Center's Fiscal Year, as shown on the certificate delivered in accordance with the Loan Agreement, is less than 1.2 : 1.0, the Center will promptly, but in no event more than thirty (30) days after such financial statements became available, cause the Adjusted Operating Loss to be calculated and a copy of such calculation, certified by an Authorized Officer of the Center, delivered to the Authority and each Insurer.

(ii) **Management Consultant.** If either (A) the Debt Ratio on any Measurement Date, as shown on the certificate delivered in accordance with the Loan Agreement, is less than 1.0 : 1.0 or (B) the Debt Ratio on any Measurement Date that is the last day of the Center's Fiscal Year, as shown on the certificate delivered in accordance with the Loan Agreement, is less than 1.2 : 1.0 and the Adjusted Operating Loss for such Fiscal Year, calculated as required by paragraph (i) above, is greater than \$50,000,000, the Center will:

(1) Within sixty (60) days thereafter, unless a Management Consultant report has been delivered during the preceding one hundred eighty (180) days, engage at its own expense a Management Consultant to review the operations and management of the Center and the Affiliates and any other matter deemed appropriate by the Authority and to make such recommendations with respect to such operations, management and other matters as it considers reasonably required for the Center and the Affiliates to establish and maintain a Debt Ratio of not less than 1.0 : 1.0 and to eliminate the Adjusted Operating Loss;

(2) Promptly after the report and recommendations of the Management Consultant are available, but in no event more than one hundred twenty (120) days after the Management Consultant is engaged, deliver or cause to be delivered to the Authority and each Insurer a copy of the Management Consultant's report and recommendations;

(3) Within sixty (60) days after the Management Consultant's report and recommendation were delivered to the Center, (a) deliver to the Authority and each Insurer (i) a certified copy of a resolution adopted by the Board of Managers of the Center accepting both the Management Consultant's report and the report delivered pursuant to clause (ii) below, and (ii) a written report of the Center's Board of Managers and of an Authorized Officer of the Center setting forth in reasonable detail the actions taken and proposed to be taken by the Center and the Affiliates to implement the recommendations of the Management Consultant, and (b) commence and diligently prosecute all reasonable actions necessary to implement the recommendations of the Management Consultant, other than those that are inconsistent with any federal or State law, rule or regulation or judicial or governmental administrative order applicable to the Center's or an Affiliate's property or operations; and

(4) Within thirty (30) days after the end of each calendar quarter ending more than sixty (60) days after the report required by clause (a)(ii) of the preceding paragraph is delivered, deliver to the Authority and each Insurer a written report of the Center's Board of Managers and of an Authorized Officer of the Center setting forth in reasonable detail the actions taken and proposed to be taken by the Center and the Affiliates to implement the recommendations of such Management Consultant.

(iii) **Liquidity for Tender Option Obligations.** (A) The Center will not, without the prior written consent of the Insurers, authorize the Authority to issue or convert, or consent to the issuance or conversion by the Authority of, any Option Bonds, unless upon such issuance or conversion a Liquidity Facility has been provided. Notwithstanding the foregoing, the Center may authorize the Authority to issue or convert, or consent to the issuance or conversion by the Authority of, any Term Option Bonds without a Liquidity Facility; *provided, however*, that if on a date that is three hundred sixty-five days prior to the Tender Date of a Term Option Bond either:

(1) the Cash and Investments of the Center and the Affiliates, as reflected on the unaudited combined financial statements of the Center and the Affiliates for the most recent fiscal quarter for which unaudited combined financial statements are then available, are less than one hundred twenty percent (120%) of the Tender Price payable on the Tender Date of such Option Bond; or

(2) the senior unsecured Debt of the Center or any senior unenhanced debt obligation issued on behalf of the Center and payable from unsecured payments to be made by the Center is rated either (x) by any two of the following below the following respective ratings: "A" by Fitch, Inc.; "A-2" by Moody's Investors Service, Inc.; or "A" by Standard & Poor's Rating Service; or (y) by any one of the following below the following respective ratings: "A-" by Fitch, Inc.; "A-3" by Moody's Investors Service, Inc.; or "A-" by Standard & Poor's Rating Service;

then the Center shall do or cause to be done any of the following:

(1) obtain a Liquidity Facility for such Term Option Bond from a Provider whose unsecured senior debt, or the unsecured senior debt of any guarantor of the Provider's obligations under such Liquidity Facility, is rated by at least one Rating Service in either the second highest long-term rating category or such lower long-term rating category to which the Authority and the Insurers have given their prior written consent;

(2) make provision for payment by the Center or an Affiliate of the Tender Price of such Term Option Bond on such terms and conditions as may be required by the Authority and the Insurers or establish to the satisfaction of the Authority and the Insurers that the Center and the Affiliates have sufficient liquidity to pay the Tender Price; or

(3) convert such Term Option Bond from and after the Tender Date such that the Term Option Bond will no longer be an Option Bond.



Except as provided in the succeeding paragraph, any Option Bond purchased on a Tender Date by or on behalf of the Center may, in the sole discretion of the Center, be remarketed or surrendered to the Authority for cancellation.

(B) The Center, promptly after notice from the Authority or the Trustee that an event of default under the Resolution has occurred and is continuing, shall deliver or cause to be delivered to the Authority for cancellation all Option Bonds held by or on behalf of the Center or an Affiliate that were tendered for purchase by the Holders thereof, not remarketed and, as a consequence thereof, acquired by the Center or an Affiliate.

(Section 10)

### **Funding Events and Collateral Requirement**

(a) **Funding Events.** Each of the following events will be a “Funding Event”:

(i) The Center fails to pay, when due, any amount required to be paid by it pursuant to clauses (a)(iii), (a)(iv), (a)(v), (a)(vi), (a)(vii) or (a)(x) of the provisions of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*” and such failure continues beyond any applicable grace period;

(ii) The Center fails to pay, when due, any amount in excess of \$25,000,000 required to be paid by it pursuant to clause (a)(xii) of the provisions of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*” and such failure continues beyond any applicable grace period;

(iii) The Center fails to comply with the provisions of the Loan Agreement summarized above under the caption “*Financial Covenants of the Center*” and such failure continues uncured for a period of thirty (30) days or within such longer period to which the Center has obtained the Insurers’ Consent and the prior written consent of the Authority;

(iv) For each of two consecutive Fiscal Years, the Unrestricted Net Assets of the Center and the Affiliates have decreased by \$50,000,000 or more and the Adjusted Operating Loss has exceeded \$50,000,000, as determined based upon the audited combined financial statements of the Center and the Affiliates for such Fiscal Years;

(v) The Debt Ratio on any Measurement Date, as shown on the certificate delivered in accordance with the Loan Agreement, is less than .60 : 1.0;

(vi) The senior unsecured Debt of the Center or any senior unenhanced debt obligation issued on behalf of the Center and payable from unsecured payments to be made by the Center is not rated in at least the “A” category by either two Rating Services, if such Debt or debt obligation is rated by three Rating Services, or by one Rating Service if such Debt or debt obligation is rated by less than three Rating Services; or

(vii) An Event of Default has occurred under the Inducement Agreement.

(b) **Collateral Upon Funding Event.** Except as otherwise expressly provided in this paragraph (b), the Center covenants and agrees that, as soon as practicable after the occurrence of a Funding Event, but in no event more than sixty (60) days thereafter:

(i) It will give or cause to be given to the Authority a pledge of or security interest in Gross Receipts of the Center, the Related Corporations and, subject to the limitations thereon set forth in the Inducement Agreement, the Hospital; and

(ii) It will make and deliver or cause to be made and delivered to the Authority a mortgage or mortgages in recordable form on all Unrestricted Property and Restricted Property,

other than the Research Center Property; *provided, however*, that if prior to the occurrence of such Funding Event either (A) Bonds have been issued to finance all or any portion of the cost of the construction of a building or improvement on the Research Center Property or (B) construction of a building or improvement thereon is substantially complete and the costs thereof were not financed by Debt of the Center or an Affiliate secured by a mortgage on the Research Center Property, then upon the occurrence of such Funding Event the Center shall make and deliver or cause to be made or delivered a mortgage in recordable form on the Research Center Property; and

(iii) It will cause the Hospital to make and deliver to the Authority a mortgage or mortgages in recordable form on all Hospital Property in accordance with the Inducement Agreement; *provided, however*, that, if the consent or approval of the Department of Health of the State of New York is required by law to be obtained prior to making or delivering any such mortgage, the Center will take or cause the Hospital to take all actions reasonably necessary to obtain such consent or approval and will make and deliver such mortgage promptly after such consent or approval is obtained, but in no event more than sixty (60) days thereafter; *provided, further*, that no default under the Loan Agreement shall result from a failure to make and deliver any such mortgage if the same is solely due to the inability of the Center or the Hospital to obtain any consent thereto or approval thereof required by law after diligent effort has been made to obtain such consent or approval; and

(iv) It will give or cause to be given to the Authority a security interest in the furnishings and equipment located in and used in connection with the property to be mortgaged in accordance with Loan Agreement; and

(v) It will give or cause to be given to the Authority a pledge of or security interest in the Sale Proceeds of the sale or disposition of any Hospital Property, Restricted Property or Unrestricted Property, including, but not limited to a pledge of or security interest in the right to receive any Sale Proceeds payable thereafter that are deferred payment of any portion of the purchase price of such property pursuant to a purchase money mortgage or otherwise, and the proceeds of such right; or

(vi) In lieu of all or any of clauses (i) through (v) above, inclusive, it will give or cause to be given to the Authority such other Collateral to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority.

***Upon receipt of the consent of the holders of a majority in principal amount of Outstanding Bonds, the Second Amendment of Loan Agreement will become effective and clause (ii) above will be amended to read as follows:***

(ii) It will make and deliver or cause to be made and delivered to the Authority a mortgage or mortgages in recordable form on all Unrestricted Property and Restricted Property, other than the Research Center Property; and

If pursuant to paragraph (b)(ii) above, no mortgage on the Research Center Property was required to be given upon the occurrence of a Funding Event, the Center nevertheless agrees that it will make and deliver or cause to be made and delivered to the Authority a mortgage or mortgages in recordable form on the Research Center Property promptly, but in not event more than sixty (60) days after the earlier to occur of (x) issuance of Bonds to finance all or any portion of the costs of the construction of a building or improvement thereon and (y) substantial completion of construction of a building or improvement on the Research Center Property; *provided, however*, nothing in the Loan Agreement shall require delivery of a mortgage on the Research Center Property if either (A) the costs of constructing a building or improvement thereon had theretofore been financed by Debt of the Center or an Affiliate incurred to any person, including to the Authority other than pursuant to the Loan Agreement, if such Debt is secured by a mortgage on the Research Center Property, or (B) prior to the occurrence of either (x) or (y) above, a Funding Event is no longer continuing.

The Authority agrees that, if no Funding Event or Event of Default is then continuing, and if there has not occurred any event, which with the passage of time or the giving of notice, or both, will constitute an Event of Default, it will as soon as practicable after the written request of the Center release any and all Collateral from any pledge, security interest or mortgage made or given pursuant to the Loan Agreement, and execute such instruments as the Center may reasonably require to effect or evidence such release.

(c) **Collateral Upon Excess Secured Debt.** The Center covenants and agrees that, if at the time the Center or a Related Corporation gives a Lien to secure an obligation incurred pursuant to clause (a)(v) of the provisions of the Loan Agreement summarized below under the caption “*Liens; Secured Debt*” the aggregate principal amount of Debt secured by Liens given pursuant to clauses (a)(viii) and (a)(ix) of the provisions of the Loan Agreement summarized below under the caption “*Liens; Secured Debt*”, together with the aggregate amount of Derivative Obligations then secured by Liens given pursuant to clause (a)(v) of the provisions of the Loan Agreement summarized below under the caption “*Liens; Secured Debt*”, including the Derivative Obligation then to be secured (collectively, the “*Limited Secured Debt*”), exceeds the Secured Debt Limit, the Center, as security for its obligations under the Loan Agreement, will promptly give or cause to be given to the Authority a Lien or Liens on Property reasonably acceptable to the Authority and the Insurers, the fair market value or, in the case of mortgages on real property, the appraised value of which is at the time such Liens are given at least equal to the amount by which the Limited Secured Debt exceeds the Secured Debt Limit. Notwithstanding the foregoing, no Lien or Liens otherwise required by this paragraph (c) to be given will be required if the obligations of the Center under the Loan Agreement are then secured by Collateral given pursuant to paragraph (b) immediately above.

The Authority agrees that, if no Event of Default or any event which with the passage of time or the giving of notice, or both, would constitute an Event of Default is then continuing, it will as soon as practicable after the written request of the Center (which may be made no more frequently than once each calendar quarter) and receipt of evidence satisfactory to it and the Insurers that the Limited Secured Debt no longer exceeds the Secured Debt Limit release any and all Collateral from any pledge, security interest, or mortgage made or given pursuant to this paragraph (c), and execute such instruments as the Center may reasonably require to effect or evidence such release.

(d) **Lien Priority; Required Documents.** Each mortgage, pledge and security interest made or given pursuant to this section shall be a first lien on the affected Property subject to only Permitted Encumbrances.

Simultaneously with delivery of any Collateral, the Center shall also (i) deliver to the Authority and each Insurer such certificates and opinions of counsel to the Center and the Affiliates with respect to such Collateral as the Authority or an Insurer may reasonably require in connection with the delivery of such Collateral, including but not limited to such matters as the Center’s or an Affiliate’s corporate power and authority, the due authorization to execute and deliver documents and instruments, and the execution and delivery and the valid, binding and enforceable nature of the pledges, security interests or mortgages made or given and of the documents and instruments executed by the Center or an Affiliate, (ii) take the necessary steps to create, perfect and protect the lien on such Collateral, including but not limited to execution of security agreements and other instruments and the authorization of financing statements, (iii) deliver, to the Authority such title insurance policies as the Authority may reasonably require in connection with any mortgage, (iv) pay all fees, taxes, charges and other expenses incurred in connection with the delivery of such Collateral, (v) make such representations, warranties and covenants with respect to such Collateral as the Authority may reasonably require, and (vi) take such other actions as the Authority may request pursuant to the Loan Agreement.

(Section 11)

### **Consent to Pledge and Assignment**

The Center consents to and authorizes the assignment, transfer or pledge by the Authority to the Trustee of (i) the Authority’s rights to receive any or all of the payments required to be made pursuant to the Loan Agreement, (ii) any or all pledges, security interests and mortgages made or given by the Center or an Affiliate pursuant to the Loan Agreement or pursuant to the Inducement Agreement, and (iii) all funds and accounts established by the Resolution and pledged thereby, in each case to secure any payment or the performance of any obligation of the Center 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. The Center further agrees that the Authority may pledge and assign to the Trustee any and all of the Authority’s rights and remedies under the Loan Agreement or under any Related Agreement. Upon any pledge, transfer or

assignment by the Authority to the Trustee authorized by the Loan Agreement, the Trustee shall be fully vested with all of the rights of the Authority so assigned and pledged and may thereafter exercise or enforce, by any remedy provided therefor 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 the Authority's rights (i) to receive payments required to be made pursuant to the Loan Agreement, (ii) to receive payments required to be made by a Guarantor under its Guaranty, (iii) in and under any pledge, security interest or mortgage made or given pursuant to the Loan Agreement and (iv) to enforce all other obligations required to be performed by the Center under the Loan Agreement. Any realization upon any pledge, security interest or mortgage made or given pursuant to the Loan Agreement shall not, by operation of law or otherwise, result in cancellation or termination of the Loan Agreement or of the obligations of the Center or a Guarantor under the Loan Agreement or under any Guaranty.

(Section 12)

### **Liens; Secured Debt**

(a) **Permitted Liens.** The Center covenants and agrees that neither it nor any Related Corporation will incur, issue, assume or guaranty any Debt secured by Liens on any Property unless either (A) the Center or such Related Corporation effectively provides by documents reasonably satisfactory to the Authority that the Center's indebtedness under the Loan Agreement (together with, if the Center so determines, any other indebtedness or obligation thereafter created that is not subordinate in right of payment to the Center's indebtedness under the Loan Agreement) shall be secured equally and ratably with or prior to all other obligations secured thereby as long as such Debt shall be so secured, or (B) the Center or the Related Corporation has obtained the Insurers' Consent and the prior written consent of the Authority thereto. Notwithstanding the foregoing provisions of the Loan Agreement, the Center or a Related Corporation may create or suffer the existence of:

(i) Liens to secure Debt incurred pursuant to the Loan Agreement;

(ii) Liens to secure all or any part of the purchase price of furnishings or equipment acquired by the Center or a Related Corporation, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;

(iii) Liens to secure all or any part of the purchase price of Investment Property acquired by the Center or a Related Corporation, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;

(iv) Liens heretofore existing on Property or existing thereon at the time such Property was acquired by the Center or a Related Corporation, provided the principal amount of the Debt secured by any such Lien does not exceed ninety-five percent (95%) of the fair market value (in the opinion of an Authorized Officer of the Center) of such Property;

(v) Subject to the limitations set forth in paragraph (b) below, Liens on intangible personal property to secure obligations incurred by the Center or a Related Corporation to the counter-party in connection with a Derivative Agreement;

(vi) Liens on any of the Collateral to secure Debt incurred to the Authority (other than pursuant to the Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds) provided either (A) the express terms of such Debt or of an intercreditor agreement by and between the Authority and the person secured thereby provide that (1) any Lien on any Collateral (other than the Hospital's Gross Receipts) or the secured party's rights therein will be equal or subordinate, but not be prior to any Lien thereon thereafter given pursuant to the Loan Agreement to secure the Center's obligations under the Loan Agreement and (2) unless the Insurers otherwise consent thereto in writing, any Lien on the Hospital's Gross Receipts or the secured party's rights therein will be subordinate to any Lien thereon thereafter

given pursuant to the Loan Agreement to secure the Center's obligations hereunder or (B) the Insurers have consented thereto in writing;

(vii) With the Insurers' Consent, Liens on Property other than the Collateral to secure Debt incurred to the Authority (other than pursuant to the Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds);

(viii) Liens on the Research Center Property, and the rents, profits and issues thereof, to secure Debt incurred by the Center or a Related Corporation to pay all or any part of the costs of constructing, furnishing and equipping a building or improvement on the Research Center Property, unless Bonds have been issued to pay all or any part of such costs;

(ix) Subject to the limitations set forth in paragraph (b) below, Liens on intangible personal property, other than accounts receivable, to secure Short-term Debt;

(x) Subject to the limitations set forth in paragraph (b) below, Liens on accounts receivable;

(xi) Liens on pledges to make gifts or bequests to secure Debt provided the proceeds of such Debt is applied by the Center or an Affiliate to acquire real property or furnishings and equipment to be used in and in connection with Unrestricted Property, Restricted Property, Hospital Property or Mortgaged Property;

(xii) With the Insurers' Consent and the prior written consent of the Authority Liens on Property to secure obligations incurred by the Center or a Related Corporation to a counter-party in connection with a Credit Facility or a Liquidity Facility; and

(xiii) Any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any Lien referred to in the foregoing clauses (i) through (xii) inclusive or of any Debt or other obligation secured thereby; *provided, however*, that in the case of Liens given to secure Debt (A) the principal amount of Debt or secured thereby shall not exceed the greater of (1) the principal amount of Debt so secured at the time of such extension, renewal or replacement or (2) ninety-five percent (95%) of the original purchase price or cost of construction of the Property subject to such Lien, and (B) such extension, renewal or replacement Lien shall be limited to all or part of substantially the same property to which the Lien that was extended, renewed or replaced applied (plus improvements on such property).

Except for Liens permitted by this section and Permitted Encumbrances, the Center and each Related Corporation shall keep their respective Property free and clear of Liens.

(b) **Limitations on Secured Debt.** The Center covenants and agrees that neither it nor any Related Corporation will:

(i) Incur, issue, assume or guaranty (A) Debt secured by Liens given pursuant to clauses (ix) or (x) of paragraph (a) above, (B) obligations secured by Liens given pursuant to clause (v) of paragraph (a) above or (C) any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any such Debt or obligation, if at the time such Debt or Derivative Obligation secured by such Liens is incurred, issued, assume or guaranteed, the aggregate principal amount of Debt and Derivative Obligations of the Center and the Affiliates so secured and then outstanding, inclusive of any secured Short-term Debt or Debt secured by accounts receivable permitted by clauses (ii) and (iii) below, respectively, together with the aggregate principal amount of such Debt or Derivative Obligation then to be so secured, would exceed fifteen percent (15%) of the Unrestricted Net Assets of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available; or

(ii) Incur, issue, assume or guaranty Short-term Debt secured by Liens given pursuant to clause (viii) of paragraph (a) of above, if the aggregate principal amount of Short-term Debt of the Center and the Affiliates so secured and then outstanding, together with the aggregate principal amount of Short-term Debt then to be so secured, would exceed fifteen percent (15%) of the Total Operating Revenues of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available; *provided, however*, that, unless the Authority and the Insurers otherwise agree in writing after either (x) a Funding Event has occurred and is continuing or (y) a Management Consultant has been engaged and is then serving in accordance with the Loan Agreement, for a period of at least twenty (20) consecutive calendar days during each Fiscal Year of the Center the aggregate principal amount of Short-term Debt so secured shall not exceed five percent (5%) of the Total Operating Revenues of the Center and the Affiliates as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available, or

(iii) Incur, issue, assume or guaranty Debt secured by Liens on accounts receivable given pursuant to clause (x) of paragraph (a) above, if (A) the aggregate principal amount of Debt of the Center and the Affiliates so secured and then outstanding, together with the aggregate principal amount of Debt then to be so secured, would be less than eighty percent (80%) of the accounts receivable subject to such Liens or (B) the accounts receivable securing such Debt would exceed twenty-five percent (25%) of the net accounts receivable of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available.

(Section 14)

### **Sale of Property**

The Center covenants that neither it nor a Related Corporation will transfer, sell, convey or otherwise dispose of any Unrestricted Property, Restricted Property or Mortgaged Property, or any interest therein, for less than fair market value unless such transfer sale, conveyance or other disposition is to the Center or an Affiliate. No Unrestricted Property, Restricted Property or Mortgaged Property that is any part of a Project may be transferred, sold, conveyed or otherwise disposed of unless, in the opinion of Bond Counsel, the same will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation. All Sale Proceeds of the Center or a Related Corporation shall, until expended as permitted by the Loan Agreement, be held by the Center or a Related Corporation separate and apart from, and not commingled with, any other cash, investments or other assets of any of them and shall be separately identified as Sale Proceeds on the books of the Center and the Related Corporation except that for purposes of investments of Sale Proceeds permitted by the Loan Agreement, the Sale Proceeds may be commingled with other moneys of the Center or an Affiliate similarly invested. Sale Proceeds in the form of cash may, nevertheless, be invested and reinvested from time to time in fixed income debt securities that at the time such investment is made (i) are rated by at least one Rating Service in the third highest rating category for such securities, (ii) mature no more than thirty-six (36) months thereafter and (iii) are not securities (other than Government Obligations or Federal Agency Obligations) of an issuer or obligor in which more than ten percent (10%) of the principal amount of Sale Proceeds are invested after giving effect to the investment then to be made.

Except as otherwise provided below, the Center or an Affiliate may, prior to the occurrence of a Funding Event or if no Funding Event is then continuing, in its or their sole discretion, apply the Center's or a Related Corporation's Sale Proceeds derived from the sale or other disposition of Unrestricted Property to any corporate purpose of the Center or a Related Corporation. The Center or a Related Corporation may, in its or their sole discretion, apply the Sale Proceeds derived from the sale or other disposition of Restricted Property or Mortgaged Property to any one or more of the following:

- (i) To acquire title to other real property;
- (ii) To pay the costs of constructing buildings and improvements on land theretofore owned or thereafter acquired by any of them;

(iii) With the consent of the Insurers and the Authority, to pay or make provision for payment of Outstanding Bonds, either at their respective maturity or redemption dates; and

(iv) To such other corporate purpose or purposes of the Center or a Related Corporation to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority.

Notwithstanding the foregoing, no Sale Proceeds derived from the sale of any Unrestricted Property, Restricted Property or Mortgaged Property that is any part of a Project shall be applied to any of the foregoing purposes unless, in the opinion of Bond Counsel, such application will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation.

*(Section 15)*

### **Tax-Exempt Status**

The Center represents that it and the Affiliates (i) are organizations described in Section 501(c)(3) of the Code, or corresponding provisions of prior law, and not "private foundations," as such term is defined under Section 509(a) of the Code, (ii) have 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) are in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification, (iv) 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 (v) are exempt from federal income taxes under Section 501(a) of the Code.

*(Section 16)*

### **Restrictions on Religious Use**

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

*(Section 21)*

## Insurance

(a) The Center, at its sole cost and expense, shall procure and maintain, or cause to be procured and maintained, to the extent reasonably obtainable, from responsible insurers reasonably acceptable to an Authorized Officer of the Authority, insurance of the type and in the amounts customarily maintained by institutions providing services similar to those provided by the Center or the Affiliates. All policies of insurance required by this paragraph shall be primary to any insurance maintained by the Authority.

(b) The Center, at the times specified in the following paragraphs, shall procure and maintain, or cause each Related Corporation to procure and maintain, to the extent reasonably obtainable, from responsible insurers acceptable to the Authority, including self-insurance, the following insurance:

(i) prior to the completion of construction of any building that constitutes Unrestricted Property or Restricted Property or that is part of any Project, and until insurance is procured pursuant to subparagraph (ii) 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 centum (100%) completed value basis on the insurable portion;

(ii) at all times (except during a period when builders' risk insurance is in effect as required by subparagraph (i) above), all risk property insurance against direct physical loss or damage to a Project, Unrestricted Property, Restricted Property and the Mortgaged Property, in an amount equal to not less than eighty percent (80%) of the replacement value thereof using commercial insurance, captive insurance or other forms of self-insurance or any combination 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 such property under a blanket insurance policy or policies of the Center insuring against the aforesaid hazards in an amount aggregating at least eighty percent (80%) 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 paragraph with respect to such property; *provided, further*, that in any event, each such policy shall be in an amount sufficient to prevent the Center and the Authority from becoming co-insurers under the applicable terms of such policy;

(iii) at all times (except during a period when builders' risk insurance is in effect as required by subparagraph (i) above), all risk property insurance against direct physical loss or damage to the Hospital Property located at 1275 York Avenue in the City and State of New York currently used for in-patient services (and such other additional property or replacement property at which the Hospital may hereafter provide in-patient services), in an amount equal to not less than one hundred percent (100%) of the replacement value thereof using commercial insurance, captive insurance or other forms of self-insurance or any combination 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 such property under a blanket insurance policy or policies of the Center or an Affiliate insuring against the aforesaid hazards in an amount aggregating at least one hundred percent (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 paragraph with respect to such property; *provided, further*, that in any event, each such policy shall be in an amount sufficient to prevent the Center and the Authority from becoming co-insurers under the applicable terms of such policy;

(iv) 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;



(v) at all times, statutory disability benefits;

(vi) at all times, commercial general liability insurance protecting the Authority, the Center and each Related Corporation 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, the Center or a Related Corporation by any applicable workers' compensation law;

(vii) commencing with the date on which construction of any building that constitutes Unrestricted Property or Restricted Property or that is part of any Project, 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; and

(viii) each other form of insurance which the Center and a Related Corporation 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 pursuant to the Loan Agreement, including any blanket insurance policy, may include deductible provisions reasonably satisfactory to the Authority. In determining whether or not any insurance required by this 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 Center and approved by the Authority, and any such decision by the Authority, based upon such advice and judgment, shall be conclusive.

In lieu of any insurance coverage required by the Loan Agreement, the Center or a Related Corporation may, upon the recommendation of an independent insurance consultant or actuary reasonably acceptable to the Authority, self-insure against any risk provided the Center or such Related Corporation funds such self-insurance at the level recommended by such insurance consultant or actuary.

Each policy maintained pursuant to the Loan Agreement shall provide that the insurer writing such policy shall give at least thirty (30) days notice in writing to the Authority 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 Center, not later than July 15<sup>th</sup> of each year, shall provide (i) with respect to each policy of insurance maintained by the Center as of the preceding June 30<sup>th</sup>, a certificate of insurance that sets forth the name of the insurer, the insured parties or loss payees, the level of coverage, the deductible and such other information as the Authority may reasonably request, and (ii) with respect to each self-insurance plan maintained by the Center as of the preceding June 30<sup>th</sup>, a written statement describing such plan, the risks insured thereby and the then current level of funding.

All policies of insurance shall be open to inspection by the Authority, each Insurer and the Trustee or their 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, each Insurer and the Trustee at the time of such change. The Center covenants and agrees not to make any change in any policy of insurance which would reduce the coverages or increase the deductible thereunder without the prior written consent of the Authority and each Insurer.

All policies of insurance maintained pursuant to the Loan Agreement, other than policies of workers' compensation insurance, shall include the Authority, as an additional insured or as mortgagee or loss payee as appropriate.

In the event the Center or a Related Corporation fails to provide the insurance required by the Loan Agreement, the Authority may elect at any time thereafter to procure and maintain the insurance required by the Loan Agreement at the expense of the Center and shall give written notice thereof to each Insurer. The policies procured and maintained by the Authority shall be open to inspection by the Center and each Insurer at all

reasonable times, and, upon request of the Center, a complete list describing such policies as of the June 30<sup>th</sup> preceding the Authority's receipt of such request shall be furnished to the Center by the Authority.

(Section 23)

**Reporting Requirements; Access to Records** (a) **Reporting Requirements.** The Center shall furnish or cause to be furnished to the Authority, the Trustee, each Insurer and such other persons as the Authority may designate:

(i) within sixty (60) days after the end of each of the first three quarters of the Center's Fiscal Year (A) a copy of the interim, comparative cumulative combined financial statements of the Center and the Affiliates, including therein, without limitation, a balance sheet, a statement of changes in net assets and a statement of activities, duly certified by the chief financial officer of the Center as having been prepared in accordance with generally accepted accounting principles, and, (B) if an Event of Default under the Loan Agreement, or, to the best of the Center's knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, a certificate of an Authorized Officer of the Center stating the nature thereof and the action that the Center or an affected Affiliate proposes to take with respect thereto;

(ii) annually, within one hundred twenty (120) days after the end of the Center's Fiscal Year, (A) a copy of (1) the annual audited combined financial statements of the Center and the Affiliates for such Fiscal Year, (2) the annual audited financial statement of the Center for such Fiscal Year, if separate audited financial statements for the Center have been prepared for such Fiscal Year, and (3) the audited consolidated financial statements of the Center and the Affiliates, if audited such audited consolidated statements have been prepared for such Fiscal Year, in each case including therein without limitation, a balance sheet as of the end of such Fiscal Year, a statement of changes in net assets and a statement of activities for such Fiscal Year or such other financial statements then required in accordance with generally accepted accounting principles applicable to the Center, in each case audited by a firm of independent public accountants of recognized standing as may be reasonably acceptable to the Authority and the Insurers, (B) a copy of any management letter prepared by the auditors, (C) a certificate or other instrument signed by the Center's auditors stating whether an Event of Default, or, to the best of the auditors' knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, and, if such an Event of Default or such an event has occurred and is continuing, a statement as to the nature thereof, and (D) if such an Event of Default or such an event has occurred and is continuing, a certificate of an Authorized Officer of the Center setting forth the action that the Center or the affected Affiliate proposes to take with respect thereto,

(iii) within sixty (60) days after each Measurement Date that is not the last day of the Center's Fiscal Year, and within one hundred twenty (120) days after each Measurement Date that is the last day of the Center's Fiscal Year, a certificate executed by an Authorized Officer of the Center (A) setting forth the Cash and Investments and outstanding Debt of the Center and the Affiliates and (B) calculating the Debt Ratio, each as of the applicable Measurement Date;

(iv) within one hundred twenty (120) days after the end of each of the Center's Fiscal Years, a certificate of an Authorized Officer of the Center setting forth (i) the Unrestricted Net Assets for the two most recently ended Fiscal Years, and (ii) if then required by the provisions of the Loan Agreement summarized above under the caption "*Financial Covenants of the Center*", the Adjusted Operating Loss for such Fiscal Years;

(v) promptly after, but in no event more than thirty (30) days after, the Center or a Related Corporation either incurs, issues, assumes or guarantees (A) a Debt secured by Liens given pursuant to clauses (a)(viii) or (a) (ix) of the provisions of the Loan Agreement summarized above under the caption "*Liens; Secured Debt*", (B) an obligation secured by Liens given pursuant to clause (a)(v) of the provisions of the Loan Agreement summarized above under the

caption “*Liens; Secured Debt*”, or (C) any extension, renewal or replacement (or any successive extensions, renewals or replacements) in whole or in part of any such Debt or obligation, a certificate of an Authorized Officer of the Center (1) setting forth in reasonable detail the Debt or obligation then incurred, issued, assumed or guaranteed, (2) containing a statement to the effect that, after giving effect thereto, the Center and the Related Corporations are in compliance with each limitation applicable thereto and to each of them set forth in paragraph (c) of the provisions of the Loan Agreement summarized above under the caption “*Funding Events and Collateral Requirement*” and (3) setting forth in reasonable detail the calculation of each such limitation.

(vi) promptly after, but in no event more than thirty (30) days after, the Center or a Related Corporation gives a Lien to secure an obligation incurred pursuant to clause (a)(v) of the provisions of the Loan Agreement summarized above under the caption “*Liens; Secured Debt*”, a certificate of an Authorized Officer of the Center setting forth in reasonable detail the calculation of the Secured Debt Limit, the amount of Limited Secured Debt then outstanding and the amount, if any, by which the Limited Secured Debt exceeds the Secured Debt Limit.

(vii) prompt written notice, but in no event more than thirty (30) days after commencement, of any adverse litigation (A) seeking damages in excess of the lesser of (1) \$25,000,000 over the applicable insurance coverage and (2) two and one-half percent (2 ½%) of the value of the Center’s and the Affiliate’s Unrestricted Net Assets or (B) in which an adverse determination may have a material adverse effect on the combined financial or operating condition of the Center and the Affiliates;

(viii) prompt written notice of, but in no event more than ten (10) days after, a failure by the Center or a Guarantor to pay any amount payable by the Center pursuant to clauses (a)(iii), (a)(iv), (a)(v), (a)(vi), (a)(vii), (a)(x) or (a)(xii) of the provisions of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*”;

(ix) prompt written notice to the Authority and each Insurer of the loss or change in the chief executive officer, the chief operating officer, president, or chief financial officer of the Center, the Hospital or Sloan–Kettering Institute for Cancer Research;

(x) prompt written notice of any pending formation, acquisition, merger, consolidation, change in ownership or dissolution of or by the Center or an Affiliate and, within ten (10) days after any of the foregoing become effective;

(xi) such reports with respect to the condition of, and repairs, replacements, renovations, and maintenance, to one or more Projects as the Authority or an Insurer may from time to time reasonably request; and

(xii) such other information respecting the business, property or the condition or operations, financial or otherwise, of the Center and the Related Corporations as the Authority or an Insurer may from time to time reasonably request (other than information the Center of such Related Corporation is required by law to keep confidential), including, but not limited to, such information as, in the reasonable judgment of the Authority, may be necessary in order to ensure compliance with applicable federal securities laws in effect from time to time or to maintain a market for or enable securities dealers to offer the Bonds for sale.

(b) **Access to Records.** At any and all reasonable times and from time to time, permit the Authority, the Trustee and each Insurer, or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account (other than those books and records that by law must be treated as confidential) of, and visit the properties of the Center and each Related Corporation and to discuss the affairs, finances and accounts of the Center and the Related Corporations with any of their respective officers.

(Section 26)

### Defaults and Remedies

(a) As used in the Loan Agreement the term “Event of Default” shall mean:

(i) the Center shall (A) default in the timely payment of any amount payable pursuant to the paragraph (a) of the provisions of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*” (other than pursuant to clauses (iii) and (ix) of such paragraph) or in the delivery of Exempt Obligations or Government Obligations or the payment of any other amounts required to be delivered or paid by or on behalf of the Center in accordance with the Loan Agreement or with the Resolution and such default continues for a period in excess of seven (7) days or (B) default in the timely payment of any amount payable pursuant to clause (a)(iii) of the provision of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*” and such default continues for a period in excess of one (1) Business Day or (C) default in the timely payment of any amount pursuant to clause (a)(xi) of the provision of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*”;

(ii) the Center or a Related Corporation shall no longer be qualified as organizations described in Section 501(c)(3) of the Code or entitled to tax-exempt status pursuant to Section 501(a) of the Code, or shall become a “private foundation” as defined under Section 509(a) of the Code or shall otherwise fail to comply with the provisions of the Loan Agreement;

(iii) the Center or a Related Corporation incurs, issues, assumes or guarantees Debt or other obligation secured by Liens inconsistent with the limitations contained in the Loan Agreement or otherwise fails to comply with the provisions of the Loan Agreement summarized above under the captions “*Funding Events and Collateral Requirement*,” “*Liens; Secured Debt*” or “*Sale of Property*” and the same continues uncured for ten (10) days after written notice thereof shall have been given to the Center;

(iv) the Center fails to duly and punctually observe any other covenant or agreement contained in the Loan Agreement and such failure continues for thirty (30) days after written notice thereof shall have been given to the Center; *provided, however*, that if, in the determination of the Authority, such failure cannot be cured within such thirty (30) day period but can be cured by appropriate action, it shall not constitute an Event of Default under the Loan Agreement if the Center within such thirty (30) day period initiates corrective action and thereafter diligently pursues the same;

(v) as a result of any default in payment or performance required of the Center 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 default or event of default shall remain uncured or the Trustee, a Facility Provider or Holders of the Bonds shall be seeking the enforcement of any remedy under the Resolution as a result thereof;

(vi) the Center or an Affiliate shall be in default under any Related Agreement (which default has not been waived or cured) if the Center’s or such Affiliate’s obligations thereunder are secured by a lien upon or pledge which is equal or prior to the lien created by the Loan Agreement thereon or the pledge thereof made by the Loan Agreement and, upon such default, (A) the

principal of any indebtedness thereunder may be declared to be due and payable or (B) the lien upon or pledge may be foreclosed or realized upon;

(vii) the Center or an Affiliate shall (A) be generally not paying its debts as they become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, (C) make a general assignment for the benefit of its creditors, (D) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (E) be adjudicated insolvent or be liquidated or (F) take corporate action for the purpose of any of the foregoing;

(viii) a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the Center or an Affiliate, a custodian, receiver, trustee or other officer with similar powers with respect to the Center or such Affiliate 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 Center or such Affiliate, or any petition for any such relief shall be filed against the Center or such Affiliate and such petition shall not be dismissed within ninety (90) days;

(ix) the charter of the Center or an Affiliate shall be suspended or revoked;

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

(xi) an order of dissolution of the Center or an Affiliate shall be made by the legislature of the State or other governmental authority having jurisdiction over the Center or such Affiliate, which order shall remain undismissed or unstayed for an aggregate of thirty (30) days;

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

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

(xiv) a judgment for the payment of money in amount in excess of the lesser of (A) \$25,000,000 over the insured risk and (B) two and one-half percent (2½%) of the value of the Center's and the Affiliates' Unrestricted Net Assets, if, in the reasonable judgment of the Authority or the Holders of a majority in principal amount of the Outstanding Bonds, the same will materially adversely affect the rights of the Holders of Outstanding Bonds and such judgment has not been vacated, discharged or stayed within sixty (60) days after entry thereof;

(xv) an Event of Default under the Inducement Agreement has occurred;

(xvi) any representation or warranty made by the Center in the Loan Agreement or in an any Related Agreement to which it is a party or in any certificate, agreement, instrument or statement made in connection with the Loan Agreement or with the sale and issuance of Bonds shall prove to have been false or misleading in any material respect;

(xvii) any representation or warranty made by an Affiliate in any Related Agreement to which it is a party or in any certificate, agreement, instrument or statement made in connection with the Loan Agreement or with the sale and issuance of Bonds shall prove to have been false or misleading in any material respect;

(xviii) a Related Agreement or any material provision of the Loan Agreement or a Related Agreement shall cease for any reason to be valid and binding, or the Center or an Affiliate shall initiate legal proceedings or assert in legal proceedings that (A) the Loan Agreement or a Related Agreement or any material provision of the Loan Agreement or a Related Agreement is invalid or (B) the Center has no liability under the Loan Agreement or any Related Agreement to which it is a party or (C) an Affiliate has no liability on any Related Agreement to which it is a party; or

(xix) a “Notice Event”, as defined in either of the Guaranties, has occurred and is continuing.

(b) Upon the occurrence of an Event of Default the Authority may take any one or more of the following actions:

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

(ii) direct the Trustee to withhold any and all payments, advances and reimbursements from the proceeds of Bonds or the Construction Fund or otherwise to which the Center may otherwise be entitled under the Loan Agreement and in the Authority’s sole discretion apply any such proceeds or moneys for such purposes as are authorized by the Resolution;

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

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

(v) assign to or otherwise deliver to the Trustee all its rights to and interests to the Collateral;

(vi) to the extent permitted by law, (A) enter upon any Project and complete the construction of any Project in accordance with the plans and specifications with such changes therein as the Authority may deem appropriate and employ watchmen to protect the Project, all at the risk, cost and expense of the Center, consent to such entry being given under the Loan Agreement by the Center, (B) at any time discontinue any work commenced in respect of the construction of any Project or change any course of action undertaken by the Center and not be bound by any limitations or requirements of time whether set forth in the Loan Agreement or otherwise, (C) assume any construction contract made by the Center in any way relating to the construction of any Project and take over and use all or any part of the labor, materials, supplies and equipment contracted for by the Center, whether or not previously incorporated into the construction of such Project, and (D) in connection with the construction of a Project undertaken by the Authority pursuant to the provisions of this clause (vi), (1) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment in connection with the construction of such Project, (2) pay, settle or compromise all bills or claims which may become liens against any Project or against any moneys of the Authority applicable to the construction of a Project, or which have been or may be incurred in any manner in connection with completing the construction of a Project or for the discharge of liens, encumbrances or defects in the title to a Project or against any moneys of the Authority applicable to the construction of a Project, and (3) take or refrain from taking such action under the Loan Agreement as the Authority may from time to time determine. The Center shall be liable to the

Authority for all sums paid or incurred for construction of any Project whether the same shall be paid or incurred pursuant to the provisions of this clause (vi) 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 Center to the Authority upon demand. For purposes of exercising the rights granted by this clause (iv) during the term of the Loan Agreement, the Center pursuant to the Loan Agreement irrevocably constitutes and appoints the Authority its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Center;

(vii) take any and all action available under the Loan Agreement or under the Inducement Agreement or by law to realize on the Collateral and the Liens securing the Debt under the Loan Agreement, except that any such action with respect to the Collateral consisting of the Gross Receipts of the Hospital shall be subject to the limitation thereon set forth in the Inducement Agreement; and

(viii) take any and all other action or proceeding permitted by the terms of the Loan Agreement, or by law.

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

(d) At any time before the entry of a final judgment or decree in any suit, action or proceeding instituted on account of any Event of Default or before the completion of the enforcement of any other remedies under the Loan Agreement, the Authority may annul any declaration made or action taken pursuant to paragraph (a) above 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)*

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**SUMMARY OF CERTAIN PROVISIONS  
OF THE GUARANTIES AND THE  
INDUCEMENT AGREEMENT**

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## SUMMARY OF CERTAIN PROVISIONS OF THE GUARANTIES AND THE INDUCEMENT AGREEMENT

The following is are summaries of certain provisions of the Guaranties and the Inducement Agreement. These summaries do not purport to be complete and reference is made to the Guaranties and the Inducement Agreement for full and complete statements of their respective provisions. Defined terms used in this Appendix D and not otherwise defined herein shall have the respective meanings ascribed to them in Appendix A.

### THE GUARANTIES

#### Guaranty

Under the Guaranties, each Guarantor unconditionally guarantees to the Authority the punctual payment, when due, of (i) the amounts payable by the Center pursuant to the Loan Agreement, on account of the principal, Redemption Price and Sinking Fund Installments of and interest on the Outstanding Bonds (the “*Debt*”), including, upon acceleration thereof and (ii) the fees and expenses of the Authority and the Trustee, when due (collectively with the Debt, the “*Obligations*”). Each Guarantor agrees to pay in addition to the Obligations any and all expenses (including counsel fees and expenses) incurred by the Authority or the Trustee in enforcing any rights under the respective Guaranties promptly upon demand by the Authority or the Trustee, as the case may be. Each Guarantor further agrees that its Guaranty constitutes a guaranty of payment when due and not of collection and that its obligations under such Guaranty are joint and several with those of the other respective Guarantor, that has unconditionally guaranteed the punctual payment, when due, of the Obligations.

(Section 2)

#### Guaranty Absolute

The liability of each Guarantor under its Guaranty shall be absolute and unconditional irrespective of:

(i) any lack of validity or enforceability of the Loan Agreement, the Resolution, any Bond, any Related Agreement or any other guaranty or agreement or instrument related thereto.

(ii) any amendment, modification, alteration or waiver of any provision of the Resolution, the Loan Agreement or a Related Agreement, other than any change in the time, manner or place of payment of all or any of the Obligations made without the prior written consent of the Guarantor;

(iii) any taking and holding of collateral or additional guarantees for all or any of the Obligations; or any amendment, alteration, exchange, substitution, transfer, enforcement, waiver, subordination, termination or release of any collateral or such guarantees, or any non-perfection of any collateral, or any consent to departure from any such guaranty;

(iv) any manner of application of collateral, or proceeds thereof, to all or any of the Obligations, or the manner of sale of any collateral;

(v) any consent by the Authority to the change, restructure or termination of the corporate structure or existence of the Center or a Related Corporation;

(vi) any modification, compromise, settlement or release, by operation of law, of collection or other liquidation of the Obligations or the liability of the Center or a Related Corporation, by the Authority, operation of law or otherwise, of any other guarantor, or of any collateral, in whole or in part, from any obligor or guarantor in connection with any of the Obligations, whether or not with notice to, or further assent by, or any reservation of rights against, the Guarantors;

(vii) the Center's or a Related Corporation's discharge in bankruptcy or adjustment of such debts, liabilities and obligations in insolvency proceedings or pursuant to some other compromise with creditors; or

(viii) any other circumstances (including, but not limited to, any statute of limitations) that might otherwise constitute a defense available to, or a discharge of, the Center, a Related Corporation or a guarantor other than indefeasible payment in full of the Obligations.

Each Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or is otherwise returned by the Authority upon the insolvency, bankruptcy or reorganization of the Center, a Related Corporation or other guarantor, or otherwise, all as though such payment had not been made other than demands or notices required by the Guaranties or the Loan Agreement.

(Section 3)

### Representations and Warranties

Under the Guaranties, each Guarantor represents and warrants to the Authority as follows:

(a) **Existence.** The Guarantor (i) validly existing not-for-profit corporation under the laws of the State of New York, with all requisite corporate power and authority to execute, deliver and perform its obligations under the Guaranty, to conduct its business and to own its property.

(b) **Federal Tax Status.** The Guarantor (i) is an organization described in Section 501(c)(3) of the Code, (ii) has received the written determination to that effect of the federal Internal Revenue Service, which determination has not been rescinded or revoked, and (iii) is not a “private foundation” as defined in Section 509(a) of the Code.

(c) **Authorization.** The Guarantor has duly authorized by all necessary corporate action the execution and delivery of the Guaranty and the Related Agreements to which it is a party, and the performance of its obligations under the Guaranty and under the Related Agreements.

(d) **Binding Effect.** The Guaranty and the Related Agreements to which it is a party constitute valid and binding agreements of the Guarantor, enforceable in accordance with their respective terms, except as (i) enforceability hereof may be limited by bankruptcy, insolvency or similar laws affecting creditors’ rights generally and (ii) the availability of equitable remedies may be limited by equitable principles of general applicability.

(e) **Litigation.** Except as disclosed in the Official Statement or in either the audited combined financial statements of the Guarantor, the Center and the Related Corporations for the Fiscal Year ended December 31, 2000 or in a schedule delivered to the Authority and the Insurer of the Series 2002 Bonds prior to the Execution Date, there is no action, suit, proceeding or investigation pending or (to the best knowledge of the Guarantor) overtly threatened against the Guarantor or (to the best knowledge of the Guarantor, no independent investigation having been made) any other Person in any court or before any governmental authority (i) seeking to restrain or enjoin the execution and delivery of the Guaranty, or in any way contesting the validity of validity of the Guaranty, or contesting the power and authority of the Guarantor to execute and deliver the Guaranty or to perform its obligations under the Guaranty or (ii) in which a final adverse decision would materially adversely affect performance by the Guarantor of its obligations under the Guaranty or, singly or in the aggregate, would materially adversely affect the business, property, earnings or condition (financial or otherwise) of the Guarantor.

(f) **No Default.** The Guarantor is not in default under the Guaranty or under the provisions of any indenture, loan or credit agreement or any other agreement, lease or instrument, to which the Guarantor is subject or by which it or any of its property is bound, where such default would have a material adverse affect on the Guarantor’s ability to perform its obligations under the Guaranty. The Guarantor is not in violation of or default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award as currently in effect to which the Guaranty or any of its property is subject.

(g) **No Conflict.** The execution, delivery and performance by the Guarantor of the Guaranty do not and will not (i) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award as currently in effect to which the Guarantor or any of its property is subject, (ii) result in a breach of or constitute a default under the provisions of any indenture, loan or credit agreement or any other agreement, lease or instrument, to which the Guarantor is subject or by which it or any of its property is bound, or (iii) result in, or

require, the creation or imposition of any mortgage, deed of trust, assignment, pledge, lien, security interest or other charge or encumbrance of any nature or with respect to any of the property of the Guarantor.

(h) **Governmental Approvals.** The Guarantor has obtained all authorizations, consents, approvals, licenses, exemptions of or filing and registrations with, all commissions, boards, bureaus, agencies and instrumentalities, domestic and foreign, necessary for the due execution, delivery and performance by the Guarantor of the Guaranty.

(i) **Accuracy of Information.** All information, including financial information, supplied by the Guarantor to the Authority relating to the Guarantor, and all information concerning the Guarantor in the Official Statement, is true and accurate in all material respects and there has been no omission of information or misstatements of information which in light of the circumstances under which such information is to be used would make such information misleading or inaccurate in a material respect. Except as described in the Official Statement, there has been no material adverse change in the financial condition of the Guarantor since December 31, 2000.

In addition to the representations and warranties made by the Guarantors in the Guaranties, all statements contained in any agreement, document, instrument, report or certificate delivered by the Guarantors, or on behalf of the Guarantors by any of their respective officers, directors or agents, to the Authority in connection with the transactions contemplated by the Guaranties, the Loan Agreement or the Resolution shall constitute representations and warranties made by the Guarantors under the respective Guaranties. All representations and warranties made by or on behalf of the Guarantors in the Guaranties or thereunder shall survive the delivery of such Guaranties.

(Section 6)

## Covenants

Each Guarantor covenants and agrees that, so long as any part of the Obligations shall remain unpaid or unperformed, such Guarantor will, unless the Authority and the Insurers shall otherwise consent in writing:

(a) **Preservation of Existence, Etc.** Preserve and maintain its corporate existence and all material rights, privileges and franchises necessary in the conduct of its business and in the performance of its obligations under the Guaranty and not dissolve or otherwise discontinue its existence or operations.

(b) **Compliance with Laws, Etc.** Comply with any law, statute, ordinance, decree, requirement, order, judgment, rule or regulation (or interpretation of any of the foregoing) of, and the terms of any license or permit issued by the United States of America, any state of the United States and any political subdivision of any of the foregoing, and any agency, department, commission, board, bureau or court or other judicial or administrative tribunal having jurisdiction over the Guarantor or any of its property (collectively, the "Governmental Authority") applicable to the Guarantor noncompliance with which could have a material adverse impact on the business, assets, operations or financial condition of the Guarantor.

(c) **Payment of Taxes, Etc.** Pay and discharge, before the same shall become delinquent (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property, and (ii) all lawful claims that, if unpaid, might by law become a lien upon its property; *provided, however*, that the Guarantor shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, governmental charge, or claim to the extent that the amount, applicability, or validity thereof shall currently be contested in good faith by appropriate proceedings, so long as no forced sale can occur during such proceedings and the Guarantor shall have established and shall maintain adequate reserves on its books for the payment of such amounts.

(d) **Access to Records.** At any reasonable time and from time to time (and to the extent not prohibited by law), upon reasonable prior notice, permit the Authority and each of the Insurers or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of the Guarantor and to discuss the affairs, finances and accounts of the Guarantor with any of its officers.

(e) **Keeping of Books.** Keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Guarantor in accordance with generally accepted accounting principles consistently applied.

(f) **Maintenance of Properties, Etc.** Maintain and preserve all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

(g) **Maintenance of Insurance.** Maintain (i) insurance and self-insurance against risks as required by the Loan Agreement and comply with all other provisions thereof as though it were a party to the Loan Agreement and (ii) such other insurance with responsible and reputable insurance carriers or self-insurance in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Guarantor operates.

(h) **Further Assurances.** To execute and deliver to the Authority all documents and instruments and do all other acts and things as may be reasonably necessary or required by the Center or the Authority to enable the Center to comply with its obligations under the Loan Agreement and to enable the Authority to exercise and enforce its rights under the Guaranty and under the Related Agreements to which it is a party and to record and file and re-record and re-file all documents and instruments, at such time or times, in such manner and at such place or places, all as may be reasonably necessary or required to validate, preserve, perfect, defend and protect the rights of the Authority under the Guaranty and under the Loan Agreement and the Related Agreements to which it is a party and in the Collateral.

(i) **Reporting Requirements.** Furnish to the Authority, the Trustee, each of the Insurers and such other persons as the Authority may designate the following:

(i) as soon as practicable, but in no event later than five (5) Business Days after the occurrence of any Notice Event, or any event that, with the giving of notice or passage of time, or both, would constitute such a Notice Event, an Officer's Certificate setting forth details of such Notice Event or such event and the action that the Guarantor proposes to take with respect thereto;

(ii) as soon as practicable, but in no event later than five (5) Business Days after the occurrence of any event that could have a material adverse effect on the business, assets, operations or financial condition of the Guarantor, an Officer's Certificate setting forth details of such material adverse event and the action that the Guarantor proposes to take with respect thereto;

(iii) within sixty (60) days after the end of each of the first three quarters of each Fiscal Year of the Guarantor, (A) a copy of interim, comparative, cumulative quarterly combined financial statements of the Guarantor, the Center and the Related Corporations, including therein, without limitation, a balance sheet, a statement of changes in net assets, and a statement of activities, duly certified by the chief financial officer of the Guarantor as having been prepared in accordance with generally accepted accounting principles, and, (B) if a Notice Event, or, to the best of the Guarantor's knowledge, as event that, with the giving of notice or the passage of time, or both, would constitute such a Notice Event, has occurred and is continuing, an Officer's Certificate stating the nature thereof and the action that the Guarantor proposes to take with respect thereto;

(iv) annually, within one hundred twenty (120) days after the end of each Fiscal Year of the Guarantor, (A) a copy of the annual audit combined financial statements of the Guarantor, the Center and the Related Corporations for such Fiscal Year, including therein a balance sheet as at the end of such Fiscal Year, a statements of changes in net assets and a statement of activities for

such Fiscal Year (or such other finance statements then required in accordance with generally accepted accounting principles applicable to the Guarantor), in each case audited by a firm of independent public accountants of recognized standing as may be reasonably acceptable to the Authority and the Insurers, (B) a copy of any management letter prepared by the auditors, (C) a certificate or other instrument signed by the auditors stating whether any Notice Event, or, to the best of the auditors' knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such a Notice Event, has occurred and is continuing, and, if such a Notice Event or such an event has occurred and is continuing, setting forth statement as to the nature thereof and the action that the Guarantor proposes to take with respect thereto, and (D) if such a Notice Event or such an event has occurred and is continuing, an Officer's Certificate setting forth the action the Guarantor proposes to take with respect thereto;

(v) prompt written notice of any adverse litigation (A) seeking damages in excess of the lesser of (1) \$25,000,000 over the applicable insurance coverage and (2) two and one-half percent (2 ½%) of the value of the Guarantor's, the Center's and the Related Corporation's Unrestricted Net Assets and (B) in which an adverse determination may have a material adverse effect on the combined financial or operating conditions of the Guarantor, the Center and the Related Corporations;

(vi) prompt written notice of the pending formation, acquisition, merger, consolidation or dissolution of or by the Guaranty, the Center or a Related Corporation; and

(vii) such other information respecting the business, property or the condition or operations, financial or otherwise, of the Guarantor as the Authority or any of the Insurers may from time to time reasonably request (other than information the Guarantor is required by law to keep confidential), including, but not limited to, such information as, in the reasonable judgment of the Authority, may be necessary in order to ensure compliance with applicable federal securities laws in effect from time to time or to maintain a market for or enable securities dealers to offer the Bonds for sale.

(j) **Related Agreements.** Not to enter into or consent to any amendment or modification of any Related Agreement to which it is a party or for which its consent to such amendment or modification is required, without obtaining the Insurers' Consent and the prior written consent of the Authority.

(Section 7)

## THE INDUCEMENT AGREEMENT

### Federal Tax Status

The Hospital (i) is an organization described in Section 501(c)(3) of the Code, (ii) has received the written determination to that effect of the federal Internal Revenue Service, which determination has not been rescinded or revoked, and (iii) is not a "private foundation" as defined in Section 509(a) of the Code.

(Section 2.02)

### Authorization

The Hospital has duly authorized by all necessary corporate action the execution and delivery of the Inducement Agreement and each of the Related Agreements and Related Documents to which it is a party and the performance of its obligations under the Inducement Agreement and Related Documents.

(Section 2.03)

### No Default

The Hospital is not in default under the Inducement Agreement, under any Related Agreement to which it is a party or under the provisions of any indenture, loan or credit agreement or any other agreement, lease or

## *Appendix D*

instrument, to which the Hospital is subject or by which it or any of its property is bound, where such default would have a material adverse affect on the Hospital's ability to perform its obligations under the Inducement Agreement or under any Related Agreement to which it is a party. The Hospital is not in violation of or default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award as currently in effect to which the Hospital or any of its property is subject.

*(Section 2.06)*

### **No Liens**

There is no Lien existing on any of the Hospital Property or on any of the Gross Receipts of the Hospital.

*(Section 2.11)*

### **Maintenance of Corporate Existence**

The Hospital will (i) maintain its corporate existence as a not-for-profit hospital corporation under the laws of New York State, (ii) not take any action or omit to take any action if the same will result in a modification or revocation of its status as an organization described in Section 501(c)(3) of the Code which is not a "private foundation" as defined in Section 509(a) of the Code, (iii) obtain, maintain and keep in full force and effect such governmental approvals, consents, licenses, permits and accreditation as may be necessary for Hospital to continue to operate its business, including its accreditation with the Joint Commission on Accreditation of Health Care Organizations, its licenses as a "hospital" by the State of New York, and its eligibility for reimbursement under Title XVIII and XIX of the Social Security Act of 1935, as amended, (iv) except as expressly otherwise permitted by the Inducement Agreement, not dissolve or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another person or permit one or more persons to consolidate with or merge into it. The Hospital may, in its sole discretion, dispose of all or substantially all of its assets to, or consolidate with or merge into, the Center or a Guarantor. In addition, with the Insurers' Consent and the prior written consent of the Authority, may (A) sell or otherwise transfer all or substantially all of its assets to, or consolidate with or merge into, another organization or corporation which qualifies as an organization described in Section 501(c)(3) of the Code, or any successor provision of federal income tax law, (B) permit one or more corporations or any other organization to consolidate with or merge into it, or (C) acquire all or substantially all of the assets of one or more corporations or other organizations. Notwithstanding the foregoing provisions, no disposition, transfer, consolidation or merger otherwise permitted by the Inducement Agreement shall be permitted unless (1) the same would not in the opinion of Bond Counsel adversely affect the exclusion of interest on any Bond from gross income for purposes of federal income taxation, (2) neither the Hospital will as a result thereof be in default under the Inducement Agreement or under any Related Agreement to which it is a party, nor the Center or a Related Corporation will as a result thereof be in default under the Loan Agreement or any Related Agreement to which it is a party, (3) the surviving, resulting or transferee corporation is incorporated under the laws of the State and is qualified as an organization described in Section 501(c)(3) of the Code or any successor provision of federal income tax law, and (4) the surviving, resulting or transferee corporation assumes in writing all of the obligations of and restrictions on the Hospital under the Inducement Agreement and under the Related Agreements to which it is a party and furnishes to the Authority and each Insurer (x) a certificate to the effect that upon such sale, transfer, consolidation, merger or acquisition such corporation will be in compliance with each of the provisions of the Inducement Agreement and of the Related Agreements to which it is a party, and will meet the requirements of the Act and (y) such other certificates and documents as the Authority or an Insurer may reasonably require to establish compliance with the Inducement Agreement.

*(Section 3.01)*

### **Compliance with Laws**

The Hospital will comply with any law, statute, ordinance, decree, requirement, order, judgment, rule or regulation (or interpretation of any of the foregoing) of, and the terms of any license or permit issued by the United States of America, any state of the United States of America and any political subdivision or any of the foregoing, and any agency, department, commission, board, bureau or court or other judicial or administrative tribunal having jurisdiction over the Hospital or any of its property applicable to the Hospital noncompliance with which could have a material adverse impact on the business, assets, operations or financial condition of the Hospital.

*(Section 3.02)*



**Payment of Taxes, Etc.**

The Hospital will pay and discharge, before the same shall become delinquent (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property, and (ii) all lawful claims that, if unpaid, might by law become a lien upon its property; *provided, however*, that the Hospital shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, governmental charge or claim to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings, so long as no forced sale can occur during such proceeding and the Hospital shall have established and shall maintain adequate reserves on its books for the payment of such amount.

(Section 3.03)

**Access to Records**

At any reasonable time and from time to time, upon reasonable prior notice, the Hospital will permit the Authority, the Trustee and each of the Insurers or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account (other than those books and records that by law must be treated as confidential) of, and visit the properties of the Hospital and to discuss the affairs, finances and accounts of the Hospital with any of its officers.

(Section 3.04)

**Books and Records**

The Hospital will keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Hospital in accordance with generally accepted accounting principles consistently applied.

(Section 3.05)

**Maintenance of Properties**

The Hospital will maintain and preserve all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

(Section 3.06)

**Maintenance of Insurance**

The Hospital will maintain insurance or self-insure against risks as required by the Loan Agreement and comply with all other provisions thereof as though it were a party to the Loan Agreement. In addition, the Hospital will maintain such other insurance with responsible and reputable insurance carriers or self-insurance, including against professional liability, in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general area in which the Hospital operates.

(Section 3.07)

**Liens; Secured Debt**

(a) ***Permitted Liens***. The Hospital covenants and agrees that it will not incur, issue, assume or guaranty any Debt secured by Liens on any Property unless either (A) the Hospital effectively provides by documents reasonably satisfactory to the Authority that the Center's indebtedness under the Loan Agreement (together with, if the Center so determines, any other indebtedness or obligation thereafter created that is not subordinate in right of payment to the Center's indebtedness under the Loan Agreement) shall be secured equally and ratably with or prior to all other obligations secured thereby as long as such Debt shall be so secured, or (B) the Hospital has obtained the Insurers' Consent and the prior written consent of the Authority thereto; *provided, herein*, that in no event shall the Hospital without the written prior consent of the Authority and the Insurers create or suffer the existence of any Liens on its Gross Receipts other than Liens thereon given pursuant to paragraph (a) of the provisions of the Inducement Agreement summarized below under the caption "*Collateral*" and Permitted Encumbrances thereon.

Notwithstanding the foregoing provisions, the Hospital may create or suffer the existence of:

(i) Liens to secure Debt incurred pursuant to the Loan Agreement;

(ii) Liens to secure all or any part of the purchase price of furnishings or equipment acquired by the Hospital, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;

(iii) Liens to secure all or any part of the purchase price of Investment Property acquired by the Hospital, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;

(iv) Liens heretofore existing on Property or existing thereon at the time such Property was acquired by the Hospital, provided the principal amount of the Debt secured by any such Lien does not exceed ninety-five percent (95%) of the fair market value (in the opinion of an Authorized Officer of the Hospital) of such Property;

(v) Subject to the limitations set forth in paragraph (b) below, Liens on intangible personal property to secure obligations incurred by the Hospital to the counter-party in connection with a Derivative Agreement;

(vi) Liens on any of the Collateral to secure Debt incurred to the Authority (other than pursuant to the Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds) provided either (A) the express terms of such Debt or of an intercreditor agreement by and between the Authority and the person secured thereby provide that (1) any Lien on any Collateral (other than the Hospital's Gross Receipts) or the secured party's rights therein will be equal or subordinate, but not be prior to any Lien thereon thereafter given pursuant to the Inducement Agreement to secure the Center's obligations under the Loan Agreement and (2) unless the Insurers otherwise consent thereto in writing, any Lien on the Hospital's Gross Receipts or the secured party's rights therein will be subordinate to any Lien thereon thereafter given pursuant to the Inducement Agreement to secure the Center's obligations under the Loan Agreement or (B) the Insurers have consented thereto in writing;

(vii) With the Insurers' Consent, Liens on Property other than the Collateral to secure Debt incurred to the Authority (other than pursuant to the Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds);

(viii) Subject to the limitations set forth in paragraph (b) below, Liens on intangible personal property, other than accounts receivable, to secure Short-term Debt;

(ix) Subject to the limitations set forth in paragraph (b) below, Liens on accounts receivable;

(x) Liens on pledges to make gifts or bequests to secure Debt provided the proceeds of such Debt is applied by the Hospital to acquire real property or furnishings and equipment to be used in and in connection with Hospital Property;

(xi) With the Insurers' Consent and the prior written consent of the Authority, Liens on Property to secure obligations incurred by the Hospital to a counter-party in connection with a Credit Facility or a Liquidity Facility; and

(xii) Any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any Lien referred to in the foregoing clauses (i) through (xi) inclusive or of any Debt or other obligation secured thereby; *provided, however*, that in the case of

Liens given to secure Debt (A) the principal amount of Debt or secured thereby shall not exceed the greater of (1) the principal amount of Debt so secured at the time of such extension, renewal or replacement or (2) ninety-five percent (95%) of the original purchase price or cost of construction of the Property subject to such Lien, and (B) such extension, renewal or replacement Lien shall be limited to all or part of substantially the same property to which the Lien that was extended, renewed or replaced applied (plus improvements on such property).

Except for Liens permitted by the Inducement Agreement and Permitted Encumbrances, the Hospital shall keep its Property free and clear of Liens.

(b) **Limitations on Secured Debt.** The Hospital covenants and agrees that it will not:

(i) Incur, issue, assume or guaranty (A) Debt secured by Liens given pursuant to clause (viii) of paragraph (a) above, (B) obligations secured by Liens given pursuant to clause (v) of paragraph (a) above or (C) any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any such Debt or obligation, if at the time such Debt or Derivative Obligation secured by such Liens is incurred, issued, assume or guaranteed, the aggregate principal amount of Debt and Derivative Obligations of the Hospital, the Center and the Related Corporations so secured and then outstanding, together with the aggregate principal amount of such Debt or Derivative Obligation then to be so secured, would exceed fifteen percent (15%) of the Unrestricted Net Assets of the Hospital, the Center and the Related Corporations, as reflected on the audited combined financial statements of the Hospital, the Center and the Related Corporations for the most recent Fiscal Year for which audited combined financial statements are available; or

(ii) Incur, issue, assume or guaranty Short-term Debt secured by Liens given pursuant to clause (viii) of paragraph (a) above, if the aggregate principal amount of Short-term Debt of the Hospital, the Center and the Related Corporations so secured and then outstanding, together with the aggregate principal amount of Short-term Debt then to be so secured, would exceed fifteen percent (15%) of the Total Operating Revenues of the Hospital, the Center and the Related Corporations, as reflected on the audited combined financial statements of the Hospital, the Center and the Related Corporations for the most recent Fiscal Year for which audited combined financial statements are available; *provided, however*, that after (x) a Funding Event as defined in the Loan Agreement has occurred and is continuing or (y) a Management Consultant has been engaged and is then serving in accordance with the Loan Agreement, that for a period of at least twenty (20) consecutive calendar days during each Fiscal Year of the Hospital the aggregate principal amount of Short-term Debt so secured shall not exceed five percent (5%) of the Total Operating Revenues of the Hospital, the Center and the Related Corporations as reflected on the audited combined financial statements of the Hospital, the Center and the Related Corporations for the most recent Fiscal Year for which audited combined financial statements are available, except to the extent the foregoing reduction requirement is amended, modified or waived in writing by the Authority with the written consent of the Insurers.

(Section 3.08)

### **Sale of Hospital Property**

The Hospital will not transfer, sell, convey or otherwise dispose of any Hospital Property or any interest therein for less than fair market value unless such transfer sale, conveyance or other disposition is to the Center or a Related Corporation. No Hospital Property that is any part of a Project will be transferred, sold, conveyed or otherwise disposed of unless, in the opinion of Bond Counsel, the same will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation. All Sale Proceeds shall, until expended as permitted by the Inducement Agreement, be held by the Hospital separate and apart from, and not commingled with, any other cash, investments or other assets of Hospital, the Center or any Related Corporation and shall be separately identified as Sale Proceeds on the books of the Hospital except that for purposes of investments of Sale Proceeds permitted by the Inducement Agreement, the Sale Proceeds may be commingled with other moneys

of the Hospital, the Center or a Related Corporation similarly invested. Sale Proceeds in the form of cash may, nevertheless, be invested and reinvested from time to time in fixed income debt securities that at the time such investment is made (i) are rated by at least one Rating Service in the third highest category for such securities, (ii) mature no more than thirty-six (36) months thereafter and (iii) are not securities (other than Government Obligations or Federal Agency Obligations) of an issuer or obligor in which more than ten percent (10%) of the principal amount of Sale Proceeds are invested after giving effect to the investment then to be made.

Except as otherwise provided below, the Hospital may, in its sole discretion, apply the Sale Proceeds to any one or more of the following:

- (i) To acquire title to other real property;
- (ii) To pay the costs of constructing buildings and improvements on land theretofore owned or thereafter acquired by the Hospital;
- (iii) With the consent of the Insurers and the Authority, to pay or make provision for payment of Outstanding Bonds, either at their respective maturity or redemption dates; and
- (iv) To such other corporate purpose or purposes of the Hospital to which the Hospital has obtained the Insurers' Consent and the prior written consent of the Authority.

Notwithstanding the foregoing, no Sale Proceeds derived from the sale of any Hospital Property that is any part of a Project shall be applied to any of the foregoing purposes unless, in the opinion of Bond Counsel, such application will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation.

(Section 3.09)

#### **Collateral**

(a) **Upon Funding Event.** Except as otherwise expressly provided in the Inducement Agreement, the Hospital, as soon as practicable after the occurrence of a Funding Event, but in no event more than sixty (60) days thereafter, will, as collateral security for the Center's obligations under the Loan Agreement:

(i) Give to the Authority a pledge of or security interest in the Gross Receipts, *provided, however,* that the principal amount of the Center's Debt under the Loan Agreement secured thereby shall be limited to the Hospital Debt outstanding from time to time;

(ii) Make and deliver to the Authority a mortgage or mortgages in recordable form on all Hospital Property; *provided, however,* that if the consent or approval of the Department of Health of the State of New York is required by law to be obtained prior to making or delivering any such mortgage, the Hospital will take all actions reasonably necessary to obtain such consent or approval and will make and deliver such mortgage promptly after such consent or approval is obtained, but in no event more than sixty (60) days thereafter; *provided, further,* that no default under the Inducement Agreement shall result from a failure of the Hospital to make and deliver any such mortgage if the same is solely due to the inability of the Hospital to obtain any consent thereto or approval thereof required by law after diligent effort has been made to obtain such consent or approval;

(iii) Give to the Authority a security interest in the furnishings and equipment located in and used in connection with the Hospital Property; and

(iv) Give to the Authority a pledge of or security interest in the Sale Proceeds, including, but not limited to, a pledge of or security interest in the Hospital's right to receive any Sale Proceeds payable thereafter as the deferred payment of any part of the purchase price pursuant to any purchase money mortgage or otherwise, and the proceeds of such right; or

(v) In lieu of all or any of clauses (i) through and (iv) above, inclusive, it will give or cause to be given to the Authority such other Collateral to which the Hospital has obtained the Insurers' Consent and the prior written consent of the Authority.

The Authority agrees that, if no Funding Event or Event of Default under the Loan Agreement is then continuing, and if there has not occurred any event, which with the passage of time or the giving of notice, or both, will constitute an Event of Default under the Inducement Agreement, it will as soon as practicable after the written request of the Hospital release any and all Collateral from any pledge, security interest or mortgage made or given pursuant to this section, and execute such instruments as the Hospital may reasonably require to effect or evidence such release.

(b) **Upon Excess Secured Debt.** The Hospital covenants and agrees that, if at the time the Hospital gives a Lien to secure an obligation incurred pursuant to clause (a)(v) of the provision of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", the aggregate principal amount of Debt secured by Liens given pursuant to clauses (a)(vii) and (a)(viii) of the provisions of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", together with the aggregate amount of Derivative Obligations then secured by Liens given pursuant to clause (a)(v) of the provision of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", including the Derivative Obligation then to be secured (collectively, the "*Limited Secured Debt*"), exceeds the Secured Debt Limit, the Hospital, to secure the Center's obligations under the Loan Agreement, will promptly give or cause to be given to the Authority a Lien or Liens on Property reasonably acceptable to the Authority and the Insurers, the fair market value or, in the case of mortgages on real property, the appraised value of which is at the time such Liens are given at least equal to the amount by which the Limited Secured Debt exceeds the Secured Debt Limit. Notwithstanding the foregoing, no Lien or Liens otherwise required by this paragraph (b) to be given will be required if the obligations of the Center under the Loan Agreement are then secured by Collateral given by the Hospital pursuant to paragraph (a) of this section or by the Center or a Related Corporation pursuant to the Loan Agreement.

The Authority agrees that, if no Event of Default or any event which with the passage of time or the giving of notice, or both, would constitute an Event of Default is then continuing, it will as soon as practicable after the written request of the Hospital (which may be made no more frequently than once each calendar quarter) and receipt of evidence satisfactory to it and the Insurers that the Limited Secured Debt no longer exceeds the Secured Debt Limit release any and all Collateral from any pledge, security interest, or mortgage made or given pursuant to this paragraph (b), and execute such instruments as the Hospital may reasonably require to effect or evidence such release.

(c) **Lien Priority; Required Documents.** Each mortgage, pledge and security interest made or given pursuant to this section shall be a first lien on the affected Property, subject to only Permitted Encumbrances.

Simultaneously with delivery of any Collateral, the Hospital shall also (i) deliver to the Authority and each Insurer such certificates and opinions of counsel to the Hospital with respect to such Collateral as the Authority or

an Insurer may reasonably require in connection delivery of such Collateral, including but not limited to such matters as the Hospital's corporate power and authority, the due authorization to execute and deliver documents and instruments, and the execution and delivery and the valid, binding and enforceable nature of the pledges, security interests or mortgages made or given and of the documents and instruments executed by the Hospital, (ii) take the necessary steps to create, perfect and protect the lien on such Collateral, including but not limited to execution of security agreements and other instruments and the authorization of financing statements, (iii) deliver to the Authority such title insurance policies as the Authority may reasonably require in connection with any mortgage, (iv) pay all fees, taxes, charges and other expenses incurred in connection with the delivery of such Collateral, and (v) make such representations, warranties and covenants with respect to such Collateral as the Authority may reasonably require.

(Section 3.10)

### **Damage or Condemnation**

In the event of a taking of Hospital Property, or any portion thereof, by eminent domain or condemnation, or of damage or destruction affecting all or part thereof, all property casualty insurance, condemnation or eminent domain proceeds shall, if in excess of \$1,000,000 and not applied to reimburse the Hospital, the Center or a Related Corporation for costs incurred to repair or restore the same, be paid to the Trustee for deposit in the Construction Fund. All proceeds derived from an award for such taking or from property casualty insurance shall be applied as provided below.

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

(ii) If no agreement for the repair, restoration or replacement shall have been reached by the Authority and the Hospital within such period, either (A) if an Officer's Certificate is filed with the Authority, each Insurer and the Trustee in which the officer executing the same certifies that the failure to repair, restore or replace such property will not cause the Hospital, the Center or a Related Corporation to be in violation of any covenant or agreement of the Inducement Agreement or of the Loan Agreement, a Guaranty or Related Agreement to which any one of them is a party, the Hospital in its sole discretion may, by written notice to the Authority and each Insurer given within thirty (30) days after the expiration of such period, irrevocably elect to consider and treat the proceeds as Sale Proceeds, whereupon the Authority shall cause any proceeds then held in the Construction Fund to be paid to the Center, or (B) if an election is not timely made, the proceeds then held by the Hospital, the Center or a Related Corporation shall be paid the Trustee for deposit in the Debt Service Fund and the proceeds then held in the Construction Fund shall be transferred to the Debt Service Fund, whereupon such proceeds shall be applied to the purchase or redemption of Outstanding Bonds.

*(Section 3.11)*

### **Further Assurances**

The Hospital will execute and deliver to the Authority all documents and instruments and do all other acts and things as may be reasonably necessary or required by the Center or the Authority to enable the Center to comply with its obligations under the Loan Agreement and to enable the Authority to exercise and enforce its rights under the Inducement Agreement and under the Related Agreements to which it is a party and to record and file and re-record and re-file all documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the Authority to validate, preserve, perfect, defend and protect the rights of the Authority under the Inducement Agreement and under the Related Agreements to which the Hospital, the Center or a Related Corporation is a party and in the Collateral.

*(Section 3.12)*

### **Reporting Requirements**

The Hospital will furnish or cause to be furnished to the Authority, the Trustee, each Insurer and such other persons as the Authority shall designate:

(i) as soon as practicable, but in no event later than five (5) Business Days after the occurrence of any Event of Default, or any event that, with the giving of notice or passage of time, or both, would constitute such an Event of Default continuing on the date of such statement, an Officer's Certificate setting forth details of such Event of Default or event and the action that the Hospital proposes to take with respect thereto.

(ii) as soon as practicable, but in no event later than five (5) Business Days after the occurrence of any event that could have a material adverse effect on the business, assets, operations or financial condition of the Hospital, an Officer's Certificate setting forth details of such material adverse event and the action that the Hospital proposes to take with respect thereto;

(iii) within sixty (60) days after the end of each of the first three quarters of each Fiscal Year of the Hospital, (A) a copy of interim, comparative, cumulative quarterly combined financial statements of the Hospital, the Center and the Related Corporations, including therein, without limitation, a balance sheet, a statement of activities and changes in net assets, duly certified by the chief financial officer of the Hospital as having been prepared in accordance with generally accepted accounting principles, and, (B) if an Event of Default, or, to the best of the Hospital's knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, an Officer's Certificate stating the nature thereof and the action that the Hospital proposes to take with respect thereto;

(iv) annually, within one hundred twenty (120) days after the end of each Fiscal Year of the Hospital, (A) a copy of (1) the annual audited combined financial statements of the Hospital, the Center and the Related Corporations for such Fiscal Year, (2) the annual audited financial statements of the Hospital for such Fiscal Year, if separate audited financial statements of the Hospital for such Fiscal Year have been prepared, and (3) the annual consolidated financial statements of the Hospital, the Center and the Related Corporations for such Fiscal Year, if such audited consolidated financial statements for such Fiscal Year have been prepared, in each case including therein a balance sheet as at the end of such Fiscal Year, a statement of activities and changes in net assets for such Fiscal Year (or such other financial statements then required in accordance with generally accepted accounting principles applicable to the Hospital), in each case audited by a firm of independent public accountants of recognized standing as may be reasonably acceptable to the Authority and the Insurers, (B) a copy of any management letter prepared by the auditors, (C) a certificate or other instrument signed by the auditors stating whether any Event of Default, or, to the best of the auditors' knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, and, if such an Event of Default or such an event has occurred and is continuing, a statement as to the nature thereof, and (D) if such an Event of Default or such an event has occurred and is continuing, an Officer's Certificate set forth the action that the Hospital proposes to take with respect thereto;

(v) annually, within one hundred twenty (120) days after the end of each Fiscal Year of the Hospital, payor mix and operating statistics of the type and in the form required by Exhibit A to the Inducement Agreement;

(vi) promptly after, but in no event more than thirty (30) days after, the Hospital either incurs, issues, assumes or guarantees (A) a Debt secured by Liens given pursuant to clauses (a)(vii) or (a)(viii) of the provisions of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", (B) an obligation secured by Liens given pursuant to clause (a)(v) of the provision of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", or (C) any extension, renewal or replacement (or any successive extensions, renewals or replacements) in whole or in part a of any such Debt or obligation, an Officer's Certificate (1) setting forth in reasonable detail the Debt or obligation then incurred, issued, assumed or guaranteed, (2) containing a statement to the effect that, after giving effect thereto, the Hospital is in compliance with each limitation applicable thereto and to each of them set forth in paragraph (b) of the provisions of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*" and (3) setting forth in reasonable detail the calculation of each such limitation.

(vii) promptly after, but in no event more than thirty (30) days after, the Hospital gives a Lien to secure an obligation incurred pursuant to clause (a)(v) of the provision of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", an Officer's Certificate setting forth in reasonable detail the calculation of the Secured Debt Limit, the amount of Limited Secured Debt then outstanding and the amount, if any, by which the Limited Secured Debt exceeds the Secured Debt Limit.

## Appendix D

(viii) prompt written notice, but in no event more than thirty (30) days after the occurrence, of any adverse litigation (A) seeking damages in excess of the lesser of (A) \$25,000,000 over the applicable insurance coverage and (B) two and one-half percent (2 ½%) of the value of the Unrestricted Net Assets of the Hospital, the Center and the Related Corporations or (B) in which an adverse determination may have a material adverse effect on the combined financial or operating condition of the Hospital, the Center and the Related Corporations;

(ix) prompt written notice of the loss or change in the chief executive officer, the chief operating officer, president or chief financial officer of the Hospital, the Center or Sloan-Kettering Institute for Cancer Research;

(x) prompt written notice of the pending formation, acquisition, merger, consolidation or dissolution of or by the Hospital, the Center or a Related Corporation and, within ten (10) days after any of the foregoing become effective, written notice thereof;

(xi) such reports with respect to the condition of, and repairs, replacements, renovations, and maintenance to, the Hospital Property as the Authority or an Insurer may from time to time reasonably request; and

(xii) such other information respecting the business, property or the condition or operations, financial or otherwise, of the Hospital as the Authority or any of the Insurers may from time to time reasonably request (other than information the Hospital is required by law to keep confidential), including, but not limited to, such information as, in the reasonable judgment of the Authority, may be necessary in order to ensure compliance with applicable federal securities laws in effect from time to time or to maintain a market for or enable securities dealers to offer the Bonds for sale.

(Section 3.13)

### Events of Default

It shall be an Event of Default under the Inducement Agreement if one or more of the following events shall have occurred:

(i) The Hospital shall fail to duly and punctually observe a covenant or agreement set forth in any of the provisions of the Inducement Agreement summarized above under the captions “*Liens; Secured Debt*”, “*Sale of Hospital Property*” or “*Collateral*” and such failure continues for ten (10) days after written notice thereof shall have been given to the Hospital;

(ii) the Hospital shall fail to duly and punctually observe any other covenant or agreement contained in the Inducement Agreement and such failure continues for thirty (30) days after written notice thereof shall have been given to the Hospital; *provided, however*, that if, in the determination of the Authority, such failure cannot be cured within such thirty (30) day period but can be cured by appropriate action, it shall not constitute an Event of Default under the Inducement Agreement if the Hospital within such thirty (30) day period initiates corrective action and thereafter diligently pursues the same;

(iii) any representation or warranty made by the Hospital in the Inducement Agreement or in any Related Agreement to which it is a party or Related Document shall prove to have been false or misleading in any material respect;

(iv) a Related Agreement to which it is a party or any material provision of the Inducement Agreement or a Related Agreement to which it is a party shall cease for any reason to be valid and binding, or the Hospital shall initiate legal proceedings or assert in legal proceedings that (A) the Inducement Agreement or a Related Agreement to which it is a party or any material provision of the Inducement Agreement or Related Agreement is invalid, or (B) the Hospital has no liability on the Inducement Agreement or Related Agreement;

(v) the Hospital shall (A) be generally not paying its debts as they become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or any other bankruptcy or insolvency law of any jurisdiction, (C) make a general assignment for the benefit of its creditors, (D) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of it any



substantial part of its property, (E) be adjudicated insolvent or be liquidated, or (F) take corporate action for the purpose of any of the foregoing; or

(vi) a judgment for the payment of money is rendered against the Hospital in excess of the lesser of (A) \$25,000,000 over the applicable insurance coverage and (B) two and one-half percent (2 ½%) of the value of the Hospital's, the Center's and the Related Corporations' Unrestricted Net Assets, if, in the reasonable judgment of the Authority or the Holders of a majority in principal amount of Outstanding Bonds, the same will materially adversely affect the rights of Holders of Outstanding Bonds and such judgment has not been vacated, discharged or stayed within sixty (60) days after the entry thereof.

*(Section 4.01)*

### **Remedies**

Upon the occurrence of an Event of Default under the Inducement Agreement, the Authority may liquidate or foreclose on any or all of the Collateral theretofore delivered by the Hospital pursuant to the Inducement Agreement and apply the proceeds to payment of a portion of the Center's indebtedness under the Loan Agreement equal to amount of Hospital Debt then outstanding and the interest payable thereon. In addition, the Authority may, upon the occurrence of an Event of Default under the Inducement Agreement, take any actions permitted by applicable law. All rights and remedies in the Inducement Agreement given or permitted by applicable law are cumulative, non-exclusive. No failure to exercise or delay in exercising any remedy shall effect a waiver of the Authority's right to exercise such remedy thereafter.

*(Section 4.02)*

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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 brief summary of certain provisions of the Resolution pertaining to the Bonds and the Project. Such summary does not purport to be complete and reference is made to the Resolution for full and complete statements of such and all provisions. Defined terms used herein shall have the respective meanings ascribed to them in Appendix A.

### **Contract with Bondholders**

With respect to the Bonds, in consideration of the purchase and acceptance of any and all of the Bonds authorized to be issued under the Resolution by those who shall hold or own the same from time to time, the Resolution shall be deemed to be and shall constitute a contract among the Authority, the Trustee and the Holders from time to time of such Bonds, and the pledge and assignment to the Trustee made in the Resolution and the covenants and agreements set forth to be performed by or on behalf of the Authority shall be for the equal and ratable benefit, protection and security of the Holders of any and all of such Bonds, 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 such Bonds, over any other Bonds except as expressly provided in or permitted by the Resolution.

*(Section 1.03)*

**Assignment of Certain Rights and Remedies** As security for the payment of the principal and Redemption Price of and interest on the Outstanding Bonds and for the performance of each other obligation of the Authority under the Resolution, the Authority may, and if an Assignment Event has occurred shall, grant, pledge and assign to the Trustee all of the Authority's estate, right, title, interest and claim in, to and under the Loan Agreement, the Guaranties, the Inducement Agreement and the Collateral, together with all rights, powers, security interests, privileges, options and other benefits of the Authority thereunder, including, without limitation, the immediate and continuing right to receive, enforce and collect (and to apply the same in accordance herewith) all Revenues, insurance proceeds, sale proceeds and other payments and other security payable to or receivable by the Authority under the Loan Agreement, each Guaranty, the Inducement Agreement and the Collateral, and the right to make all waivers and agreements in the name and on behalf of the Authority, as Trustee for the benefit of the Bondholders, and to perform all other necessary and appropriate acts under the Loan Agreement, each Guaranty, the Inducement Agreement and the Collateral, including, but not limited to the right to declare the indebtedness under the Loan Agreement immediately due and payable and to foreclose, sell or otherwise realize upon the Collateral, subject to the following conditions: (i) that the Holders of the Bonds, if any, 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 (ii) that unless and until the grant, pledge and assignment contemplated by this section shall have been made, the Trustee shall not be responsible or liable in any manner or to any extent for the performance of any of the covenants or provisions contained in the Loan Agreement, a Guaranty or the Inducement Agreement to be performed by the Authority (except to the extent of actions undertaken by the Trustee in the course of its performance of any such covenant or provision), the Authority, however, to remain liable to observe and perform all the conditions and covenants, in the Loan Agreement, the Guaranties and the Inducement Agreement provided to be observed and performed by it. Upon any such grant, pledge or assignment contemplated by this paragraph the Authority may retain the right to (i) the payment of the fees, costs and expenses of the Authority payable pursuant to the Loan Agreement or a Guaranty, (ii) the indemnities provided thereby and payments made pursuant to such indemnities and (iii) the exercise any of the remedies available under the Loan Agreement or a Guaranty for the enforcement of the obligations of the Center and the Guarantors to which the Authority has retained such rights.

Any grant, pledge or assignment made pursuant to this section shall be made by instruments in form and substance reasonably satisfactory to the Trustee executed and delivered by the Authority within thirty (30) days after the Collateral is delivered to the Authority upon the occurrence of a Funding Event, but in no event more than ninety (90) days after the Assignment Event has occurred if the same is then continuing. The Trustee shall accept such grant, pledge and assignment by written instrument signed by an Authorized Officer of the Trustee in form and substance reasonably satisfactory to the Authority.

If for a period of one year no Assignment Event has occurred or is continuing, then, if there is no event of default under the Loan Agreement, the Trustee as soon as practicable after the written request of the Authority, re-grant and reassign to the Authority, and release from the pledge made by the Authority pursuant to the

## *Appendix E*

Loan Agreement, all of the Authority's estate, right, title, interest and claim in, to and under the Loan Agreement, the Guaranties, the Inducement Agreement and the Collateral, together with all rights, powers, security interests, privileges, options and other benefits of the Authority thereunder, theretofore granted, pledged or assigned to the Trustee pursuant to this section and execute such instruments as the Authority may reasonably require to effect or evidence such regrant, reassignment of release.

*(Section 1.04)*

### **Pledge of Revenues**

The proceeds from the sale of the Bonds, the Revenues and all funds and accounts, excluding the Arbitrage Rebate Fund and any fund or account established to pay the purchase price of Option Bonds tendered for purchase, established by the Resolution and any Series Resolution, are pledged and assigned to the Trustee as security for the payment of the principal and Redemption Price of and interest on the Bonds and as security for the performance of any other obligation of the Authority under the Resolution and any Series Resolution, all in accordance with the provisions of the Resolution and any Series Resolution. 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 Bonds, the Revenues and the funds and accounts established by the Resolution and any Series Resolution and pledged thereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. No instrument by which such pledge is created nor any financing statement need be recorded or filed. The Bonds shall be special obligations of the Authority payable solely from and secured by a pledge of the proceeds from the sale of the Bonds, the Revenues and the funds and accounts established by the Resolution, which pledge shall constitute a first lien thereon.

*(Section 5.01)*

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

The following funds and separate accounts within funds are established by the Resolution and shall be held and maintained by the Trustee:

Construction Fund;  
Debt Service Fund; and  
Arbitrage Rebate Fund

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

*(Section 5.02)*

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

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

(Section 5.03)

#### **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 Construction Fund or Funds established for the Project or Projects in connection with which such Series of Bonds was issued the amount required to be deposited therein pursuant to the Series Resolution authorizing the issuance of such Series or the Bond Series Certificate relating to such Series. Except as otherwise provided in the Resolution and in any applicable Series Resolution or Bond Series Certificate, moneys deposited in the Construction Fund shall be used only to pay the Costs of Issuance of the Bonds and the Costs of the Projects for which such fund was established.

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

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

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

(Section 5.04)

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

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

First: To the 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 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 any Variable Interest Rate Bond on and prior to the next succeeding January 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, (b) the Sinking Fund Installments of Outstanding Option Bonds and Variable Interest Rate Bonds 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 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 Debt Service Fund equal to (a) the interest on and the principal and Sinking Fund Installments of Outstanding Bonds payable on and prior to the next succeeding July 1, including the interest estimated by the Authority to be payable on any Variable Interest Rate Bond 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 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 Provider for Provider Payments which are then unpaid, in proportion to the respective Provider Payments then unpaid to each Provider; and

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

Fourth: To the Authority, unless otherwise paid, such amounts as are payable to the Authority for: (i) any expenditures of the Authority for fees and expenses of auditing, and fees and expenses of the Trustee and Paying Agents, all as required by the Resolution, (ii) all other expenditures reasonably and necessarily incurred by the Authority in connection with the financing of the Projects, including expenses incurred by the Authority to compel full and punctual performance of all the provisions of the Loan Agreement in accordance with the terms thereof, and (iii) any fees of the Authority; but only upon receipt by the Trustee of a certificate signed by an Authorized Officer of the Authority, stating in reasonable detail the amounts payable to the Authority pursuant to this paragraph Fourth.

The Trustee shall notify the Authority and the Center promptly after making the payments of any balance of Revenues then remaining on the immediately succeeding July 1. After making the above required payments, the balance, if any, of the Revenues then remaining shall, upon the direction of an Authorized Officer of the Authority, be paid by the Trustee to the Construction Fund or the Debt Service Fund, or paid to the Center, in the respective amounts set forth in such direction. Any amounts paid to the Center shall be free and clear of any pledge, lien, encumbrance or security interest created by the Resolution or by the Loan Agreement.

(Section 5.05)

### **Debt Service Fund**

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

- (a) the interest due and payable on all Outstanding Bonds on such interest payment date;
- (b) the principal amount due and payable on all Outstanding Bonds on such interest payment date; and
- (c) the Sinking Fund Installments or other amounts related to a mandatory redemption, if any, due and payable on all Outstanding Bonds on such interest payment date.

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

Notwithstanding the provisions of this subdivision, the Authority may, at any time subsequent to July 1 of any Bond Year but in no event less than forty-five (45) days prior to the succeeding date on which a Sinking Fund Installment is scheduled to be due, direct the Trustee to purchase, with moneys on deposit in the Debt Service Fund, at a price not in excess of par plus interest accrued and unpaid to the date of such purchase, Term Bonds to be redeemed from such Sinking Fund Installment. Any Term Bond so purchased and any Term Bond purchased by the Center and delivered to the Trustee in accordance with the Loan Agreement shall be canceled upon receipt thereof by the Trustee and evidence of such cancellation shall be given to the Authority. The principal amount of each Term Bond so canceled shall be credited against the Sinking Fund Installment due on such date; *provided, however*, that such Term Bond is canceled by the Trustee prior to the date on which notice of redemption is given.

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



Authorized Officer of the Authority given pursuant to the Resolution to the redemption of Bonds as provided in the Resolution, at the Redemption Prices specified in the applicable Series Resolution authorizing the issuance of the Bonds to be redeemed or the Bond Series Certificate relating to such Bonds.

*(Section 5.06)*

### **Arbitrage Rebate Fund**

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

Moneys on deposit in the Arbitrage Rebate Fund shall be applied by the Trustee in accordance with the direction of an Authorized Officer of the Authority to make payments to the Department of the Treasury of the United States of America at such times and in such amounts as the Authority shall determine to be required by the Code to be rebated to the Department of the Treasury of the United States of America. Moneys which an Authorized Officer of the Authority determines to be in excess of the amount required to be so rebated shall, first, be applied to reimburse pro rata, each Provider for moneys advanced under a Credit Facility or a Liquidity Facility, including interest thereon, which is then unpaid in proportion to the respective amounts advanced by each such Provider, and, then be deposited to any fund or account established under the Resolution in accordance with the directions of such Authorized Officer.

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

*(Section 5.07)*

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

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

*(Section 5.08)*

### **Investment of Funds and Accounts**

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 Insurer or a Rating Service applicable to the funds held under the Resolution, any other Permitted Investment; *provided, however*, that each such investment shall permit the moneys so deposited or invested to be available for use at the times at which the Authority reasonably believes such moneys will be required for the purposes of the Resolution; *provided, further*, that (x) any Permitted Collateral required to secure any Permitted Investment shall have a market value determined by the Trustee or its agent periodically, but no less

frequently than weekly, at least equal to the amount deposited or invested including interest accrued thereon, (y) the Permitted Collateral shall be deposited with and held by the Trustee or an agent of the Trustee approved by an Authorized Officer of the Authority, and (z) the Permitted Collateral shall be free and clear of claims of any other person.

Permitted Investments purchased as an investment of 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, each Permitted Investment shall be valued at par or the market value thereof, plus accrued interest, whichever is lower.

Notwithstanding anything to the contrary in the Resolution, the Authority, in its discretion, may direct the Trustee to, and the Trustee upon receipt of such direction 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 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, the Center, and, upon the written request of an Insurer, such Insurer, 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 first and second paragraphs of this section. 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.

*(Section 6.02)*

### **Additional Bonds**

Notwithstanding anything in the Resolution to the contrary, no Series of Bonds, other than the Series 2002 Bonds, shall be issued by the Authority unless (i) the Insurers have given their prior written consent thereto, (ii) the principal amount of the Debt of the Center incurred under the Loan Agreement on account of such Series of Bonds is secured by a lien upon, security interest in or pledge of the Hospital's Gross Receipts that is subordinate to the lien upon, security interest in or pledge of the Gross Receipts on account of the Series 2002 Bonds or (iii) the Hospital Debt secured by the liens upon, security interests in or pledges of the Hospital's Gross Receipts is equal to the principal amount of Outstanding Bonds, inclusive of the principal amount of Bonds then to be issued.

*(Section 2.02)*

### **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 a maturity 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 the Resolution and of the Series Resolution authorizing such Series of Refunding Bonds.

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

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 as provided by the Resolution.

*(Sections 2.04 and 2.05)*

### **Creation of Liens**

Except as permitted by the Resolution, the Authority shall not create, cause to be created or suffer or permit the creation of any lien or charge prior or equal to that of the Bonds on the proceeds from the sale of the Bonds, the Revenues, the rights of the Authority to receive payments to be made under the Loan Agreement or the Guaranties that are to be deposited with the Trustee or the funds and accounts established by the Resolution or by any Series Resolution which are pledged by the Resolution; *provided, however*, that nothing contained in the Resolution shall prevent the Authority from incurring obligations with respect to a Credit Facility or a Liquidity Facility which are secured by a lien upon and pledge of the Revenues which lien and pledge is of equal priority with the lien created and the pledge made by the Resolution.

*(Section 7.06)*

### **Tax Exemption; Rebates**

In order to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Bonds of such Series as the Authority may designate, the Authority shall comply with the provisions of the Code applicable to the Bonds of such Series necessary to maintain such exclusion, including without limitation the provisions of the Code which prescribe yield and other limits within which proceeds of the Bonds of such Series are to be invested, and which, in certain circumstances, require the rebate of certain earnings on such amounts to the Department of the Treasury of the United States of America. In furtherance of the foregoing, the Authority shall comply with the provisions of the Tax Certificate and with such written instructions as may be provided by Bond Counsel or a special tax counsel with respect to such Series of Bonds.

The Authority shall not take any action or fail to take any action which would cause the Bonds of such Series to be “arbitrage bonds” within the meaning of Section 148(a) of the Code; nor shall the Authority use or permit to the use, directly or indirectly, of any part of the proceeds of the Bonds of such Series to acquire any security or obligation the acquisition of which would cause any Bond of such Series to be an “arbitrage bond” within the meaning of Section 148(a) of the Code.

The Authority shall not use any part of the proceeds of the Bonds of such Series in a manner which would cause the Bonds of such Series to be “private activity bonds” within the meaning of Section 141(a) of the Code.

Notwithstanding any provision of the Resolution to the contrary, the obligations of the Authority to comply with the requirements of this section shall survive the payment, redemption or defeasance of any and all Bonds of such Series.

*(Section 5.01, Series 2002A Resolution)*

### **Event of Default**

Each of the following constitutes an “event of default” under the Resolution and each Series Resolution if:

(a) Payment of the principal, Sinking Fund Installments or Redemption Price of any Bond shall not be made by the Authority when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(b) Payment of an installment of interest on any Bond shall not be made when the same shall become due and payable; or

(c) The Authority shall default in the due and punctual performance of the rebate covenants contained in the Resolution, and, as a result thereof, the interest on the Bonds of a Series shall no longer be excludable from gross income under Section 103 of the Code; or

(d) The Authority shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Resolution or in 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 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 percent (25%) in principal amount of the Outstanding Bonds, or, if such default is not capable of being cured within thirty (30) days, if the Authority fails to commence to cure such default within said thirty (30) days and diligently prosecutes the cure thereof; or

(e) The Authority shall have notified the Trustee that an "Event of Default", as defined in the Loan Agreement shall have occurred and is continuing and all sums payable by the Center under the Loan Agreement shall have been declared to be immediately due and payable, which declaration shall not have been annulled and the Authority shall have notified the Trustee of such "Event of Default."

(Section 11.02)

### **Acceleration of Maturity**

Upon the happening and continuance of any event of default (other than under paragraph (c) of the provisions of the Resolution summarized above under the caption "*Event of Default*" above), then and in every such case the Trustee may, and upon the written request of the Holders of not less than twenty-five percent (25%) in principal amount of the Outstanding Bonds shall, by a notice in writing to the Authority, declare the principal of and interest on all of the Outstanding Bonds to be due immediately and payable. At the expiration of thirty (30) days from the giving of notice of such declaration, such principal and interest shall become and be immediately due and payable, anything in the Resolution or in the Bonds or any Series Resolution to the contrary notwithstanding. 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 shall with the written consent of the Holders of not less than twenty-five percent (25%) in principal amount of the Bonds not then due by their terms and then Outstanding and by written notice to the Authority, annul such declaration and its consequences if: (i) moneys shall have accumulated in the Debt Service Fund sufficient to pay all arrears of interest, if any, upon all of the Outstanding Bonds (except the interest accrued on such Bonds since the last interest payment date); (ii) moneys shall have accumulated and be available sufficient to pay the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee and any Paying Agent; (iii) all other amounts then payable by the Authority under the Resolution and under each Series Resolution (other than principal amounts payable only because of a declaration and acceleration under the Resolution) shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee; and (iv) every other default known to the Trustee in the observance or performance of any covenant, condition or agreement contained in the Resolution or in the Bonds or any Series Resolution (other than a default in the payment of the principal of such Bonds then due only because of a declaration under this Section) shall have been remedied to the satisfaction of the Trustee. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

(Section 11.03)

### **Enforcement of Remedies**

Upon the happening and continuance of any event of default, then and in every such case, the Trustee may proceed, and, upon the written request of the Holders of not less than twenty-five percent (25%) in principal amount of the Outstanding Bonds or, in the case of the happening and continuance of an event of default described in paragraph (c) of the provisions of the Resolution summarized above under the caption "*Event of Default*", upon the written request of the Holders of not less than twenty-five percent (25%) in principal amount of the Outstanding Bonds of the Series affected thereby, shall proceed (subject to the provisions of the Resolution regarding indemnification of the Trustee), to protect and enforce its rights and the rights of the Holders of the Bonds under the laws of the State or under the Resolution or under any Series Resolution by such suits, actions or special

proceedings in equity or at law, either for the specific performance of any covenant contained under the Resolution and under any Series Resolution or in aid or execution of any power 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 Collateral 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 or of 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 and 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 11.04)*

### **Priority of Payments After Default**

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

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

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

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

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

The provisions of this subdivision are in all respects subject to the provisions of the Resolution prohibiting the extension of payment of Bonds.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this section, such moneys shall be applied by the Trustee at such times, and from time to time, as the Trustee in its sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. The setting aside of such moneys in trust for application in accordance with the Resolution shall constitute proper application by the Trustee, and the Trustee

shall incur no liability whatsoever to the Authority, to any Holder of Bonds or to any other person for any delay in applying any such moneys so long as the Trustee acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of the Resolution as may be applicable at the time of application by the Trustee. Whenever the Trustee shall exercise such discretion in applying such moneys, it shall fix the date (which shall be on an interest payment date unless the Trustee shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date. The Trustee shall not be required to make payment to the Holder of any Bond unless such Bond shall be presented to the Trustee for appropriate endorsement.

(Section 11.05)

### **Termination of Proceedings**

In case any proceedings taken by the Trustee on account of any default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then and in every such case the Authority, the Trustee, each Provider, the Center and the Bondholders shall be restored to their former positions and rights under the Resolution, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no such proceeding had been commenced.

(Section 11.06)

### **Bondholders' Direction of Proceedings**

Anything in the Resolution to the contrary notwithstanding, the Holders of a majority in principal amount of the Outstanding Bonds or, in the case of an event of default as specified under paragraph (c) of the provision of the Resolution summarized above under the caption "*Event of Default*", the Holders of a majority in principal amount of the Outstanding Bonds of the Series affected thereby shall have the right, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee under the Resolution and under each Series Resolution, provided such direction shall not be otherwise than in accordance with law and the provisions of the Resolution and of each Series 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.

(Section 11.07)

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

No Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust under the Resolution, or for any other remedy under the Resolution unless such Holder previously shall have given to the Trustee written notice of the event of default on account of which such suit, action or proceeding is to be instituted, and unless also the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds, or, in the case of an event of default under paragraph (c) of the provision of the Resolution summarized above under the caption "*Event of Default*", the Holders of not less than twenty-five per centum (25%) 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 reasonable security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time. Such notification, request and offer of indemnity are by the Resolution declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts 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 in the Resolution, and that all proceedings at law or in equity shall be instituted and maintained for the benefit of all Holders of the Outstanding Bonds. Notwithstanding any other provision of the Resolution, the Holder of any Bond shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and interest on such Bond on the stated maturity

expressed in such Bond (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

(Section 11.08)

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

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

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

(b) To add additional covenants and agreements of the Authority for the purpose of further securing the payment of the Bonds, provided such additional covenants and agreements are not contrary to or inconsistent with the covenants and agreements of the Authority contained in the Resolution;

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

(d) To surrender any right, power or privilege reserved to or conferred upon the Authority by the terms of the Resolution, provided that the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Authority contained in the Resolution; *provided, however*, that if the same would adversely affect the rights of an Insurer or a Provider in a material respect, no Series or Supplemental Resolution providing therefor shall become effective until consented to in writing by the Insurer and the Provider affected thereby;

(e) 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 of any other moneys, securities or funds;

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

(g) To modify or amend a Project; or

(h) With the consent of the Trustee, to cure any ambiguity or defect or inconsistent provision in the Resolution or to insert such provisions clarifying matters or questions arising under the Resolution as are necessary or desirable in the event 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 Holders in any material respect.

(Section 9.01)

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

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

(Section 9.02)

### **Powers of Amendment**

Any modification or amendment of the Resolution and of the rights and obligations of the Authority and of the Holders of the Bonds under the Resolution, in any particular, may be made by a Supplemental Resolution, with the written consent given as provided in the Resolution, (i) of the Holders of at least a majority in principal amount of the Bonds Outstanding at the time such consent is given, or (ii) in case less than all of the several Series of Bonds then Outstanding are affected by the modification or amendment, of Holders of at least a majority in principal amount of the Bonds of each Series so affected and Outstanding at the time such consent is given, or (iii) in case the modification or amendment changes the amount or date of any Sinking Fund Installment, of the Holders of at least a majority in principal amount of the Bonds 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 and maturity remain Outstanding, the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under the Resolution. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond 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 paragraph, 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 Bonds of any particular Series or maturity would be so affected by any such modification or amendment of the Resolution.

*(Section 10.01)*

### **Consent of Bondholders**

The Authority may at any time adopt a Supplemental Resolution making a modification or amendment permitted by the provisions of the Resolution to take effect when and as provided in the Resolution. A copy of such Supplemental Resolution (or brief summary thereof or reference thereto in form approved by the Trustee) together with a request to the Holders for their consent thereto in form satisfactory to the Trustee, is required, promptly after adoption, to be mailed by the Authority to the Holders (but failure to mail such copy and request will not affect the validity of the Supplemental Resolution when consented to as provided in the Resolution). Such Supplemental Resolution shall not be effective unless and until (i) there shall been filed with the Trustee (a) the written consent of Holders of the percentages of Outstanding Bonds specified in the Resolution and (b) an opinion of Bond Counsel stating that such Supplemental Resolution has been duly and lawfully adopted and filed by the Authority in accordance with the provisions of the Resolution, is authorized or permitted by the Resolution, and is valid and binding upon the Authority and enforceable in accordance with its terms, and (ii) a notice shall have been mailed as provided in the Resolution. Each such consent shall be effective only if accompanied by proof of the holding or owning at the date of such consent, of the Bonds with respect to which such consent is given, which proof shall be such as is permitted by the Resolution. A certificate or certificates by the Trustee filed with the Trustee that it has examined such proof and that such proof is sufficient in accordance with the Resolution shall be conclusive that the consents have been given by the Holders described in such certificate or certificates of the Trustee. Any consent shall be binding upon the Holder of the Bonds giving such consent and, anything in the Resolution to the contrary notwithstanding, upon any subsequent Holder of such Bonds 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 the Holder of such Bonds giving such consent or a subsequent Holder thereof by filing with the Trustee, prior to the time when the written statement of the Trustee provided for in the Resolution is filed, such revocation. The fact that a consent has not been revoked may likewise be proved by a certificate of the Trustee filed with the Trustee to the effect that no revocation thereof is on file with the Trustee. At any time after 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 Holders of such required percentages of Bonds have filed such consents. Such written statement shall be conclusive that such consents have been so filed. At any time thereafter notice, stating in



substance that the Supplemental Resolution (which may be referred to as a Supplemental Resolution adopted by the Authority on a stated date, a copy of which is on file with the Trustee) has been consented to by the Holders of the required percentages of Bonds and will be effective as provided in the Resolution, shall be given to the Bondholders by the Authority by mailing such notice to the Bondholders and, at the discretion of the Authority, by publishing the same at least once not more than ninety (90) days after the Holders of the required percentages of Bonds shall have filed their consents to the Supplemental Resolution and the written statement of the Trustee provided for above is filed (but failure to publish such notice shall not prevent such Supplemental Resolution from becoming effective and binding as in this paragraph provided). The Authority shall file with the Trustee proof of the mailing of such notice, and, if the same shall have been published to the Bondholders, of the publication thereof. A transcript, consisting of the papers required or permitted by the Resolution to be filed with the Trustee, shall be proof of the matters therein stated. Such Supplemental Resolution making such amendment or modification shall be deemed conclusively binding upon the Authority, the Trustee, each Paying Agent and the Holders of all Bonds at the expiration of thirty (30) days after the filing with the Trustee of the proof of the mailing of the first publication of such last mentioned notice, 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.

(Section 10.02)

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

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

(Section 10.03)

#### **Amendment of Loan Agreement, Inducement Agreement or Guaranties**

Except as otherwise provided in the Resolution, neither the Loan Agreement, the Inducement Agreement nor a Guaranty may be amended, changed, modified, altered or terminated, nor may any provision thereof be waived, without the consent of the Holders of Outstanding Bonds and the Insurers as provided in the Resolution, if such amendment, change, modification, termination or waiver (i) reduces the amount payable by the Center under the Loan Agreement or a Guarantor under a Guaranty on any date or delays the date on which payment is to be made, (ii) amends, changes or modifies in any material respect, or waives compliance with any material provision of the Loan Agreement or amends, changes or modifies in any material respect, or waives compliance with any material provision of the Guaranty or the Inducement Agreement, (iii) modifies the events which constitute events of default under the Loan Agreement or the Inducement Agreement, (iv) modifies the events that constitute Notice Events under a Guaranty, (v) diminishes, limits or conditions the rights or remedies of the Authority under the Loan Agreement, the Inducement Agreement or a Guaranty upon the occurrence of an event of default or a notice event under the Loan Agreement, the Inducement Agreement or a Guaranty, or (vi) adversely affects the rights of the Bondholders or an Insurer in any material respect *unless* any of the foregoing (A) adds an additional covenant or agreement for the purpose of further securing the payment of the Center's obligations under the Loan Agreement that is not contrary to or inconsistent with the covenants and agreements of the Center or an Affiliate contained in the Loan Agreement, the Inducement Agreement or a Guaranty, (B) prescribes further limitations and restrictions upon the Center's or the Hospital's right to incur, issue, assume or guaranty indebtedness that are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect, (C) surrenders any right, power or privilege reserved to or conferred upon the Center, the Hospital or a Guarantor, provided that the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of Center, the Hospital or a Guarantor contained in the Loan Agreement, the Inducement Agreement or the applicable Guaranty; *provided, however*, that if the same would adversely affect the rights of an Insurer or a Provider, no amendment, change, modification, termination or waiver shall become effective until consented to in writing by the Insurer and the Provider affected thereby, (D) provides that the lien upon, security interest in or pledge of the Hospital's Gross

Receipts confirms, as further assurance, any pledge under the Loan Agreement or the Inducement Agreement, and the subjection to any lien, claim or pledge created or to be created thereunder, or (E) limits the security for Bonds issued after the date such amendment, change, modification, termination or waiver takes effect, or (F) cures any ambiguity or defect or inconsistent provision in the Loan Agreement, the Inducement Agreement or a Guaranty or inserts 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 therewith as theretofore in effect, or to modify any of the provisions thereof in any other respect, provided that the same shall not adversely affect the interests of the Bondholders or the Insurers in any material respect.

No such amendment, change, modification, termination or waiver shall take place without the prior written consent of (a) the Holders of at least a majority in aggregate principal amount of the Bonds then Outstanding and the Insurers, or (b) in case less than all of the several Series of Bonds then Outstanding are affected by the amendment, change, modification, termination or waiver, the Holders of not less than a majority in aggregate principal amount of the Bonds of each Series so affected then Outstanding and the Insurers of such Bonds; *provided, however*, that if such amendment, change, modification, termination or waiver, will, by its terms, not take effect so long as any Bonds of any specified Series remain Outstanding, the consent of the Holders or the Insurers 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 section.

The Loan Agreement, Inducement Agreement or a Guaranty may be amended, changed, modified or altered or any provision thereof waived in any other respect without the consent of the Holders of Outstanding Bonds or the Insurers, except that no amendment, change, modification or alteration thereof to cure any ambiguity or defect or inconsistent provision therein or to insert such provisions clarifying matters or questions arising thereunder as are necessary or shall be made unless such amendment, change, modification or waiver is not contrary to or inconsistent with the provisions contained in the Loan Agreement, the Inducement Agreement or the Guaranty and unless consented to by the Trustee.

No amendment, change, modification or termination of the Loan Agreement, the Inducement Agreement or a Guaranty or waiver or a provision thereof shall be made other than pursuant to a written instrument signed by the parties thereto. No such amendment, change, modification or waiver shall become effective unless there has been delivered to the Trustee an opinion of Bond Counsel to the effect that the same is not inconsistent with the Resolution and will not adversely affect the exclusion of interest on any Bond from gross income for purposes of federal income taxation. A copy of each such amendment, change, modification, termination or waiver shall be filed with the Trustee and a copy thereof shall be sent to each Insurer.

For the purposes of this section, the purchasers of the Bonds of a Series, whether purchasing as underwriters, for resale or otherwise, upon such purchase, may consent to an amendment, change, modification, alteration or termination permitted by this section with the same effect as a consent given by the Holder of such Bonds.

For the purposes of this section, a 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 in any material respect. The Trustee may in its discretion determine whether or not, in accordance with the foregoing provisions, Bonds of any particular Series would be adversely affected in any material respect by any amendment, change, modification or alteration, and any such determination shall be binding and conclusive on the Center, the Authority and all Holders of Bonds.

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

(Section 7.11)

### **Defeasance**

If the Authority shall pay or cause to be paid to the Holders of the Bonds of a Series the principal, Sinking Fund Installments, if any, or Redemption Price of and interest thereon, at the times and in the manner stipulated

therein, in the Resolution, and in the applicable Series Resolution and Bond Series Certificate, then the pledge of the Revenues or other 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 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 other securities held by it pursuant to the Resolution and to the applicable Series Resolution which are not required for the payment or redemption of Bonds of such Series shall be paid or delivered by the Trustee as follows: first, to the Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to each Provider, the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Provider; third, to the Authority the amount certified by an Authorized Officer of the Authority to be then due or past due pursuant to the Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, then, the balance thereof to the Center. The securities so paid or delivered shall be released from any trust, pledge, lien, encumbrance or security interest created by the Resolution or by the Loan Agreement.

Bonds for the payment or redemption of which 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 or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in the preceding paragraph. All Outstanding Bonds of any Series or any maturity within a Series or a portion of a maturity within a Series shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in the preceding paragraph if (a) in case any of such Bonds are to be redeemed on any date prior to their maturity, the Authority shall have given to the Trustee, in form satisfactory to it, irrevocable instructions to give as provided in the Resolution notice of redemption on such date of such Bonds, (b) there shall have been deposited with the Trustee either moneys in an amount which shall be sufficient, or Defeasance Securities the principal of and interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient to pay when due the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, and interest due and to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, (c) there has been delivered to the Trustee and the Insurer of such Bonds a letter or other written report of a firm of independent certified public accountants verifying the accuracy of the arithmetical computations which establish the adequacy of such money and Defeasance Securities deposited with the Trustee for such purpose, (d) the Trustee shall have received the written consent to such defeasance of each Provider which has given written notice to the Trustee and the Authority that amounts advanced under a Credit Facility or Liquidity Facility issued by it or the interest thereon have not been repaid to such Provider, (e) the Insurer and any Provider of a Credit Facility or Liquidity Facility for such Bonds shall have received such documents and opinions as may be required to be delivered to it pursuant to the Bond Series Certificate related to such Bonds or the agreement pursuant to which such Credit Facility or Liquidity Facility was made available and (f) in the event such Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, the Authority shall have given the Trustee, in form satisfactory to it irrevocable instructions to give, as soon as practicable, by first class mail, postage prepaid, to the Holders of said Bonds at their last known addresses appearing on the registration books, and, if directed by an Authorized Officer of the Authority, by publication, at least twice, at an interval of not less than seven (7) days between publications, in an Authorized Newspaper, a notice to the Holders of such Bonds that the deposit required by (b) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on such Bonds. The Authority shall give written notice to the Trustee of its selection of the Series and maturity the payment of which shall be made in accordance with this section. The Trustee shall select the Bonds of like Series and maturity payment of which shall be made in accordance with this section in the manner provided in the Resolution. Neither the Defeasance Securities nor moneys deposited with the Trustee pursuant to the Resolution nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on such Bonds; *provided, however*, 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, or Redemption Price, if applicable, of and interest to become due on such Bonds on and prior to such redemption date or maturity date thereof, as the case may be; and *provided, further*, that moneys and Defeasance Securities may be withdrawn and used by the Authority for any purpose upon (i) the simultaneous substitution therefor of either moneys in an amount which shall be sufficient, or Defeasance Securities

the principal of and interest on which when due will provide moneys which without regard to reinvestment, together with the moneys, if any, held by or deposited with the Trustee at the same time, shall be sufficient to pay when due the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, and interest due and to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, and (ii) receipt by the Trustee and the Insurer of the affected Bonds of a letter or other written report of a firm of independent certified public accountants verifying the accuracy of the arithmetical computations which establish the adequacy of such moneys and Defeasance Securities for such purpose. 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 by the Resolution to pay the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on such Bonds, as realized, be paid by the Trustee as follows: first, to the Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to each Provider, the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Provider; third, to the Authority the amount certified by an Authorized Officer of the Authority to be then due or past due pursuant to the Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, then, the balance thereof to the Center, 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 Loan Agreement.

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

Option Bonds shall be deemed to have been paid in accordance with the Resolution only if, in addition to satisfying the requirements of clauses (a) and (c) above, there shall have been deposited with the Trustee 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 Resolution, the options originally exercisable by the Holder of an Option Bond are no longer exercisable, such Bond shall not be considered an Option Bond for purposes of this paragraph. If any portion of the 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 to the Authority free and clear of any trust, pledge, lien, encumbrance or security interest created by the Resolution or by the Loan Agreement.

Anything in the Resolution to the contrary notwithstanding, any moneys held by the Trustee or a Paying Agent in trust for the payment and discharge of any of the Bonds of a Series or the interest thereon which remain unclaimed for one (1) year after the date when all of the Bonds of such Series have become due and payable either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee or Paying Agent at such date, or for one (1) year after the date of deposit of such moneys if deposited with the Trustee or Paying Agent after such date when all of the Bonds of such Series become due and payable, shall, at the written request of the Authority, be repaid by the Trustee or Paying Agent to the Authority as its absolute property and free from trust, and the Trustee or Paying Agent shall thereupon be released and discharged and the Holders of Bonds shall look only to the Authority for payment of such Bonds; *provided, however*, that, before being required to make any such payment to the Authority, the Trustee or Paying Agent may, at the expense of the Authority cause to be published in an Authorized Newspaper a notice that such moneys remain unclaimed and that, after a date named in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after the date of publication of such notice, the balance of such moneys then unclaimed shall be returned to the Authority.

*(Section 12.01)*

**SUMMARY OF  
CERTAIN PROVISIONS  
OF THE INTERCREDITOR AGREEMENT**

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## SUMMARY OF CERTAIN PROVISIONS OF THE INTERCREDITOR AGREEMENT

The following is a summary of certain provisions of the Intercreditor Agreement. The summary does not purport to be complete and reference is made to the Intercreditor Agreement for a full and complete statement of its provisions. Defined terms used in this Appendix have the meanings ascribed to them in Appendix A.

### Priority of Liens and Indebtedness

All Lien on the Shared Collateral made and given by the Center, a Related Corporation or the Hospital to the Authority, the 2001 Resolution Trustee or the 2003 Resolution Trustee pursuant to the Loan Agreements or the Inducement Agreements, and the indebtedness secured by such Liens, shall be of equal priority. None of the Authority, the 2001 Resolution Trustee or the 2003 Resolution Trustee shall have a priority of payment over or be subordinate to either of the others with respect to payments under the Loan Agreement, except as expressly provided in the Intercreditor Agreement and in the Loan Agreements. The priorities specified above shall be applicable irrespective of the time or order in which Loans are made, the Bonds are issued, the time or order of attachment or perfection of the security interests or other interests referred to in the Intercreditor Agreement, the time or order of recording or filing of mortgages or financing statements or knowledge by any of the parties to the Intercreditor Agreement or the making or giving of any pledge, security interest, mortgage or other interest referred to in the Intercreditor Agreement.

(Section 2)

### Foreclosure

Any party to the Intercreditor Agreement may, without the consent of the other parties to the Intercreditor Agreement, commence an action or proceeding to Foreclose, and Foreclose, the Lien on any of the Shared Collateral whenever, and to the extent, such party is permitted to do so under the 2001 Loan Agreement and 2001 Resolution or the 2003 Loan Agreement and 2003 Resolution. Each other party to the Intercreditor Agreement may, if it is then entitled to independently commence an action or proceeding to Foreclose on the Shared Collateral join in any action or proceeding commenced by another party to the Intercreditor Agreement to Foreclose on any of the Shared Collateral.

(Section 3)

### Other Actions

The Authority and, from and after the date a Collateral Assignment is made and is continuing, the 2001 Resolution Trustee and the 2003 Resolution Trustee shall each have the right, without the consent of any other party to the Intercreditor Agreement, to commence an action or proceeding to enforce any of their respective rights under, to compel compliance with or enjoin a breach of any covenant or agreement of the Center, a Guarantor or the Hospital contained in:

(i) in the case of the 2001 Resolution Trustee, the 2001 Loan Agreement, the 2001 Guaranty, the 2001 Inducement Agreement and any Collateral Document related thereto;

(ii) in the case of the 2003 Resolution Trustee, the 2003 Loan Agreement, 2003 Guaranty, the 2003 Inducement Agreement and any Collateral Document related thereto;

(iii) in the case of the Authority, any of the foregoing documents;

*provided, however*, that, from and after the date a Collateral Assignment is made and while it is continuing, the Authority shall not commence any such action or proceeding unless the same is to enforce the rights reserved to it upon such Collateral Assignment.

(Section 4)

### Notice of Default and Actions

Each party to the Intercreditor Agreement agrees to give each other party prompt written notice of the occurrence of a Funding Event, an Assignment Event or an Event of Default known to it under any of the Resolutions, the Loan Agreements, the Inducement Agreements or the Guaranties to which it is a party, including by assignment, or made for its benefit or by which it is benefited. In addition, each party to the Intercreditor Agreement agrees to give each other party to the Intercreditor Agreement not less than fifteen (15) days prior notice of its intention to commence any action or proceeding based an Event of Default under any of the Loan Agreements, the Inducement Agreements, the Guaranties or the Collateral Documents. The failure of a party to give any such notice shall not nullify or otherwise adversely affect or impair the validity of any notice or declaration of default under any of the Loan Agreements, the Inducement Agreements, the Guaranties or the Collateral Documents given by such party to the Center, the Hospital or a Guarantor.

(Section 5)

### Cash Proceeds

Any cash proceeds realized by any of the parties to the Intercreditor Agreement as a consequence of the sale of, collection out of or other realization upon all or any part of the Shared Collateral or otherwise, including receipt of any payment of or on account of indebtedness under the Loan Agreements, shall be held for the equal benefit of all of the parties to the Intercreditor Agreement and, as soon as reasonably practicable, shall be applied to the costs and expenses incurred in connection with the collection thereof and then the balance remaining shall be applied:

First, to payment to the 2001 Resolution Trustee and the 2003 Resolution Trustee, *pro rata* based on the unpaid principal amount of the indebtedness under the Loan Agreements, but not in excess of the principal of and interest on such indebtedness then due and unpaid;

Second, to payment to the Authority, the 2001 Resolution Trustee and the 2003 Resolution Trustee, *pro rata*, based on, but not in excess of, the fees and expenses of the Authority, the 2001 Resolution Trustee and the 2003 Resolution Trustee then due and unpaid; and

Third, to payment to the Authority, the 2001 Resolution Trustee and the 2003 Resolution Trustee, *pro rata*, based on, but not in excess of, all other amounts owing under the Loan Agreements and the Resolutions then due and unpaid.

Any surplus of cash proceeds remaining after payment in full of all of the Center's obligations under the Loan Agreements and the Resolutions shall be paid over to the Center or to whomever may be lawfully entitled to receive such surplus.

(Section 6)

### Additional Covenants

Each of the parties to the Intercreditor Agreement covenant and agree with the other parties as follows.

(i) The Authority covenants and agrees that it will not while a Collateral Assignment is continuing declare the indebtedness under either of the Loan Agreements to be immediately due and payable unless, if it is then entitled to do so, it also declares the indebtedness under the other to be immediately due and payable.

(ii) The 2001 Resolution Trustee agrees that, if while a Collateral Assignment made to it is continuing the Authority or the 2003 Resolution Trustee declares the indebtedness under the 2003 Loan Agreement to be immediately due and payable it will, to the extent it is entitled to do so, declare the indebtedness under the 2001 Loan Agreement to be immediately due and payable.



(iii) The 2003 Resolution Trustee agrees that, if while a Collateral Assignment made to it is continuing the Authority or the 2001 Resolution Trustee declares the indebtedness under the 2001 Loan Agreement to be immediately due and payable, it will, to the extent it is entitled to do so, declare the indebtedness under the 2003 Loan Agreement to be immediately due and payable.

*(Section 7)*

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**FORM OF APPROVING OPINION  
OF BOND COUNSEL**

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May , 2008

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 \$281,165,000 aggregate principal amount of Memorial Sloan–Kettering Cancer Center Revenue Bonds, Series 2008A2 (the “Series 2008A2 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 Series 2008A2 Bonds are issued under and pursuant to the Act, the Memorial Sloan–Kettering Cancer Center Revenue Bond Resolution of the Authority, adopted on December 5, 2001 (the “Resolution”), Memorial Sloan–Kettering Cancer Center Series 2008 Resolution Authorizing Up To \$475,000,000 Series 2008 Bonds, adopted on March 26, 2008 (the “Series Resolution”) and the Bond Series Certificate relating to the Series 2008A2 Bonds (the “Bond Series Certificate”). Said resolutions and Bond Series Certificate are herein collectively referred to as the “Resolutions.” Unless otherwise defined herein, capitalized terms used herein have the respective meanings given to them in the Resolutions.

The Series 2008A2 Bonds are part of an issue of bonds of the Authority (the “Bonds”), which the Authority has established and created under the terms of the Resolution and is authorized to issue from time to time for the purposes authorized by the Act and the Resolution, as then in effect, and without limitation as to amount, except as provided in the Resolutions or as may be limited by law. The Series 2008A2 Bonds are being issued for the purposes set forth in the Resolutions.

The Authority is authorized to issue Bonds, in addition to the Series 2008A2 Bonds, only upon the terms and conditions set forth in the Resolution and such Bonds, when issued, will with the Series 2008A2 Bonds be entitled to the equal benefit, protection and security of the provisions, covenants and agreements of the Resolution.

The Series 2008A2 Bonds are dated their date of delivery and will bear interest at the rates and mature on July 1 of each of the years and in the principal amounts set forth below.

<b>Series 2008A2</b>		
<b><u>Year</u></b>	<b><u>Principal Amount</u></b>	<b><u>Interest Rate</u></b>
2013	\$22,855,000	4.000%
2113	\$ 5,330,000	5.000%
2014	\$10,940,000	4.000%
2014	\$18,390,000	5.000%
2015	\$ 3,800,000	3.550%
2015	\$ 4,785,000	5.000%
2016	\$ 3,860,000	4.000%
2016	\$ 5,175,000	5.000%
2017	\$34,290,000	5.000%
2018	\$25,195,000	4.000%
2019	\$16,500,000	4.100%
2024	\$21,385,000	4.500%
2025	\$ 4,590,000	4.550%
2026	\$15,625,000	4.600%
2026	\$88,445,000	5.000%

The Series 2008A2 Bonds are issuable in the form of fully registered Bonds in denominations of \$5,000 or any integral multiples thereof and are numbered consecutively from one upward in order of issuance.

The Series 2008A2 Bonds are subject to redemption prior to maturity and mandatory tender for purchase as provided in the Resolutions.

The Series 2008A2 Bonds are being issued to finance a loan by the Authority to Memorial Sloan-Kettering Cancer Center (the “Center”). The Authority and the Center have entered into a Loan Agreement, dated as of December 5, 2001 (the “Loan Agreement”), by which the Center is required to make payments sufficient to pay the principal and Redemption Price of and interest on Outstanding Bonds, including the Series 2008A2 Bonds, as well as the Authority’s annual administrative expenditures and costs. All amounts payable under the Loan Agreement which are required to be paid to the Trustee under the Resolution for payment of the principal or Redemption Price of or interest on the Bonds have been pledged by the Authority for the benefit of the Holders of Outstanding Bonds including the Series 2008A2 Bonds.

Sloan-Kettering Institute for Cancer Research and S.K.I. Realty, Inc. have each entered into a Guaranty in favor of the Authority pursuant to which they jointly and severally guaranty payment of the Center’s obligations under the Loan Agreement. Memorial Hospital for Cancer and Allied Diseases (the “Hospital”) has enter into an Inducement Agreement with the Authority (the “Inducement Agreement”) pursuant to which the Hospital has agreed to certain limitations on its ability to incur debt or liens on its assets and will agree that, under certain circumstances, it will pledge certain of its assets to secure the Center’s obligations under the Loan Agreement.

We are of the opinion that:

1. The Authority is a body corporate and politic constituting a public benefit corporation of the State of New York, with the right and lawful authority and power to adopt the Resolutions and to issue the Series 2008A2 Bonds thereunder.
2. The Series Resolution has been duly adopted by the Authority in accordance with the provisions of the Resolution and is authorized and permitted by the Resolution. The Resolution and the Series Resolution have been duly and lawfully adopted by the Authority, are in full force and effect and are legal, valid and binding obligations of the Authority enforceable in accordance with their respective terms.

3. The Series 2008A2 Bonds have been duly and validly authorized and issued in accordance with the Constitution and statutes of the State of New York, including the Act, and in accordance with the Resolutions. The Series 2008A2 Bonds are legal, valid and binding special obligations of the Authority payable as provided in the Resolutions, are enforceable in accordance with their terms and the terms of the Resolutions and are entitled to the benefits of the Resolution and the Act.

4. The Authority has the right and lawful authority and power to enter into the Loan Agreement and the Inducement Agreement and the Loan Agreement and the Inducement Agreement have been duly authorized, executed and delivered by the Authority and constitute legal, valid and binding obligations of the Authority enforceable in accordance with their respective terms.

5. 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 2008A2 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 2008A2 Bonds to be included in gross income retroactive to the date of issue of the Series 2008A2 Bonds. The Authority has covenanted in the Series Resolution and the Tax Certificate as to Arbitrage and the Provisions of Section 141–150 of the Internal Revenue Code (the “Tax Certificate”) and the Center has covenanted in the Loan Agreement and the Tax Certificate to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the Series 2008A2 Bonds from gross income for federal income tax purposes pursuant to Section 103(a) of the Code. In addition, the Authority and the Center have made certain representations and certifications in the Tax Certificate. We have also relied on the opinion of counsel to the Center as to all matters concerning the status of the Center 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 have not independently verified the accuracy of those certifications and representations or that opinion.

Under existing law and assuming compliance with the tax covenants described above, and the accuracy or the certain representations and certifications made by the Authority and the Center described above, interest on the Series 2008A2 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 Series 2008A2 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. Interest on the Series 2008A2 Bonds is exempt, by virtue of the Act, from personal income taxes of the State of New York and its political subdivisions, including The City of New York and the City of Yonkers.

We have examined an executed Series 2008A2 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 Loan Agreement, the Inducement Agreement and the Series 2008A2 Bonds may be limited by bankruptcy, insolvency, moratorium, reorganization or other laws affecting creditors’ rights generally or as to the availability of any particular remedy. 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 Series 2008A2 Bonds. Furthermore, we express no opinion as to any federal, state or local tax law consequences with respect to the Series 2008A2 Bonds, or the interest thereon, if any action is taken with respect to Series 2008A2 Bonds or the proceeds thereof upon the advice or approval of other counsel.

In connection with the delivery of this opinion, we are not passing upon the authorization, execution and delivery of the Loan Agreement by the Center, the Guaranties by Sloan–Kettering Institute for Cancer Research and S.K.I. Realty, Inc. or the Inducement Agreement by the Hospital. We have assumed due authorization, execution and delivery by the Center, Sloan–Kettering Institute for Cancer Research, S.K.I. Realty, Inc. and the Hospital of the agreements to which they are a party.

Very truly yours,

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