

**\$85,000,000**

**DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
ROCHESTER INSTITUTE OF TECHNOLOGY  
REVENUE BONDS, SERIES 2008A**

**Dated: Date of Delivery****Due: July 1, as shown below**

**Payment and Security:** The Series 2008A Bonds (the "Series 2008A Bonds") are special obligations of the Dormitory Authority of the State of New York (the "Authority") payable solely from and secured by a pledge of (i) certain payments to be made under the Loan Agreement (the "Loan Agreement"), dated as of September 24, 2008, between Rochester Institute of Technology (the "Institution") and the Authority, and (ii) all funds and accounts (except the Arbitrage Rebate Fund) established under the Authority's Rochester Institute of Technology Revenue Bond Resolution, adopted September 24, 2008 (the "Resolution") and the Series Resolution, adopted on September 24, 2008, authorizing such Series (the "Series 2008A Resolution" and, together with the Resolution, the "Resolutions").

The Loan Agreement is a general, unsecured obligation of the Institution and requires the Institution to pay, in addition to the fees and expenses of the Authority and the Trustee, amounts sufficient to pay, when due, the principal, Sinking Fund Installments, if any, and Redemption Price of and interest on the Series 2008A Bonds.

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

**Description:** The Series 2008A Bonds will be issued as fully registered bonds in denominations of \$5,000 or any integral multiple thereof. Interest (due January 1, 2009 and each July 1 and January 1 thereafter) will be payable by check or draft mailed to the registered owners of the Series 2008A 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 2008A Bonds, by wire transfer to the holder of such Series 2008A 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 2008A Bonds will be payable at the principal corporate trust office of Manufacturers and Traders Trust Company, Buffalo, New York, the Trustee and Paying Agent or, with respect to Redemption Price, at the option of a holder of at least \$1,000,000 in principal amount of Series 2008A Bonds, by wire transfer to the holders of such Series 2008A Bonds as more fully described herein.

The Series 2008A 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 2008A Bonds will be made in Book-Entry form (without certificates). So long as DTC or its nominee is the registered owner of the Series 2008A Bonds, payments of the principal, Redemption Price and Purchase Price of and interest on such Series 2008A 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 2008A BONDS – Book-Entry Only System" herein.

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

**Tax Exemption:** In the opinion of Squire, Sanders & Dempsey L.L.P., Bond Counsel, under existing law, (i) assuming compliance with certain covenants and the accuracy of certain representations, interest on the Series 2008A Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, and (ii) interest on the Series 2008A Bonds is exempt from personal income taxes imposed by the State of New York and political subdivisions thereof, including The City of New York and the City of Yonkers. Interest on the Series 2008A Bonds may be subject to certain federal taxes imposed only on certain corporations, including the corporate alternative minimum tax on a portion of that interest. For a more complete discussion of the tax aspects, see "PART 10 – TAX MATTERS" herein.

**\$26,000,000 Serial Bonds**

<b>Due July 1</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>	<b>CUSIP Number <sup>(1)</sup></b>	<b>Due July 1</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>	<b>CUSIP Number <sup>(1)</sup></b>
2010	\$ 105,000	4.00%	3.18%	6499034W8	2019	\$ 500,000	5.00%	5.23%	6499034Q1
2010	5,295,000	5.00	3.18	6499035B3	2020	500,000	5.25	5.40	6499034R9
2013	500,000	4.00	4.13	6499034J7	2021	500,000	5.375	5.51	6499034S7
2014	500,000	4.25	4.32	6499034K4	2022	500,000	5.50	5.59	6499034T5
2015	500,000	4.50	4.50	6499034L2	2023	4,920,000	5.50	5.72	6499034U2
2016	500,000	5.00	4.67	6499034M0	2024	5,190,000	5.75	5.83	6499034V0
2017	500,000	5.00	4.84	6499034N8	2025	5,490,000	5.75	5.87	6499035C1
2018	500,000	5.00	5.05	6499034P3					

**\$26,000,000 6.25% Term Bonds Due July 1, 2029, Yield 6.00%\* CUSIP Number <sup>(1)</sup> 6499034X6**

**\$33,000,000 6.00% Term Bonds Due July 1, 2033, Yield 6.25% CUSIP Number <sup>(1)</sup> 6499034Y4**

\*Priced to the first par call on July 1, 2018

*The Series 2008A Bonds are offered when, as, and if issued and received by the Underwriters. The offer of the Series 2008A Bonds may be subject to prior sale, or withdrawn or modified at any time without notice. The offer is subject to the approval of legality by Squire, Sanders & Dempsey L.L.P., New York, New York, Bond Counsel, and to certain other conditions. Certain legal matters will be passed upon for the Institution by its counsel, Nixon Peabody LLP, New York, New York. Certain legal matters will be passed upon for the Underwriters by their counsel, Orrick, Herrington & Sutcliffe, LLP, New York, New York. The Authority expects to deliver the Series 2008A Bonds in definitive form in New York, New York, on or about November 13, 2008.*

**RBC Capital Markets****Morgan Stanley**

October 31, 2008

<sup>(1)</sup> CUSIP numbers have been assigned by an independent company not affiliated with the Authority and are included solely for the convenience of the holders of the Series 2008A Bonds. Neither the Authority nor the Underwriters are responsible for the selection or uses of the CUSIP numbers and no representation is made as to their correctness on the Series 2008A Bonds or as indicated above. CUSIP numbers are subject to being changed after the issuance of the Series 2008A Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such Series 2008A Bonds or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of the Series 2008A Bonds.

No dealer, broker, salesperson or other person has been authorized by the Authority, the Institution or the Underwriters to give any information or to make any representations with respect to the Series 2008A Bonds, other than the information and representations contained in this Official Statement. If given or made, any such information or representations must not be relied upon as having been authorized by the Authority, the Institution 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 2008A 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 Institution and other sources that the Authority believes are reliable. Neither the Authority nor the Underwriters guarantee the accuracy or completeness of such information, and such information is not to be construed as a representation of the Authority or the Underwriters.

The Institution has reviewed the parts of this Official Statement describing the Institution, the Principal and Interest Requirements, the 2008 Project, the Estimated Sources and Uses of Funds and Appendix B. As a condition to delivery of the Series 2008A Bonds, the Institution will certify that as of the date of this Official Statement and of delivery of the Series 2008A 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 the light of the circumstances under which the statements are made, not misleading. The Institution makes no representation as to the accuracy or completeness of any other information included in this Official Statement.

The Underwriters have reviewed the information in this Official Statement pursuant to their responsibilities to investors under the federal securities law, but the Underwriters do not guarantee the accuracy or completeness of such information.

References in this Official Statement to the Act, the Resolution, the Series 2008A Resolution and the Loan Agreement do not purport to be complete. Refer to the Act, the Resolution, the Series 2008A Resolution and the Loan Agreement for full and complete details of their provisions. Copies of the Resolution, the Series 2008A Resolution and the Loan 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 will the delivery of this Official Statement or any sale made after its delivery create any implication that the affairs of the Authority or the Institution have remained unchanged after the date of this Official Statement.

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

**TABLE OF CONTENTS**

<b>Part</b>	<b>Page</b>	<b>Part</b>	<b>Page</b>
1. INTRODUCTION .....	1	Fundraising .....	23
Purpose of the Official Statement .....	1	Endowment and Other Investments .....	23
Purpose of the Issue .....	1	Properties and Facilities .....	24
Authorization of Issuance .....	1	Outstanding Indebtedness .....	26
The Authority .....	1	Pension Plans.....	26
The Institution .....	2	Insurance.....	27
The Series 2008A Bonds .....	2	Strategic Plan and Global Initiatives.....	27
Payment of the Series 2008A Bonds .....	2	Future Capital Plans .....	27
Security for the Series 2008A Bonds .....	2	Management Discussion Fiscal Year 2007/08.....	27
Covenants .....	2	<b>LITIGATION</b> .....	28
The 2008 Project .....	3	7. THE AUTHORITY .....	29
2. SOURCE OF PAYMENT AND SECURITY FOR THE		Background, Purposes and Powers .....	29
SERIES 2008A BONDS .....	3	Outstanding Indebtedness of the Authority (Other than	
Payment of the Series 2008A Bonds .....	3	Indebtedness Assumed by the Authority) .....	29
Security for the Series 2008A Bonds .....	3	Outstanding Indebtedness of the Agency	
Covenants .....	4	Assumed by the Authority .....	30
Events of Default and Acceleration .....	5	Governance .....	31
Issuance of Additional Bonds .....	5	Claims and Litigation.....	34
General .....	5	Other Matters.....	35
3. THE SERIES 2008A BONDS .....	6	8. LEGALITY OF THE SERIES 2008A BONDS FOR	
Description of the Series 2008A Bonds .....	6	INVESTMENT AND DEPOSIT .....	35
Redemption and Purchase in Lieu of Redemption Provisions .....	6	9. NEGOTIABLE INSTRUMENTS .....	35
Book-Entry Only System .....	8	10. TAX MATTERS.....	35
Principal and Interest Requirements .....	11	Miscellaneous .....	36
4. THE 2008 PROJECT.....	12	Original Issue Discount and Original Issue Premium.....	37
5. ESTIMATED SOURCES AND USES OF FUNDS .....	12	11. STATE NOT LIABLE ON THE SERIES 2008A BONDS.....	37
6. THE INSTITUTION .....	12	12. COVENANT BY THE STATE .....	38
GENERAL INFORMATION .....	12	13. LEGAL MATTERS.....	38
Introduction .....	12	14. UNDERWRITING .....	38
Governance.....	13	15. CONTINUING DISCLOSURE .....	38
Administration.....	15	16. RATING .....	40
Employees and Employee Relations.....	17	17. MISCELLANEOUS.....	40
OPERATING INFORMATION.....	17	Appendix A – Certain Definitions .....	A-1
Admissions and Student Enrollment.....	17	Appendix B – Financial Statements of Rochester Institute of Technology	
Tuition and Fees and Student Financial Aid.....	19	and Report of Independent Auditors .....	B-1
Faculty.....	19	Appendix C – Summary of Certain Provisions of the Loan Agreement .....	C-1
ANNUAL FINANCIAL STATEMENT INFORMATION.....	20	Appendix D – Summary of Certain Provisions of the Resolution .....	D-1
Budget and Reporting Procedures.....	20	Appendix E– Form of Approving Opinion of Bond Counsel .....	E-1
Summary of Financial Information.....	21		
Management Discussion Fiscal Year 2006/07.....	22		
Government Grants and Contracts.....	22		



**DORMITORY AUTHORITY - STATE OF NEW YORK**  
**PAUL T. WILLIAMS, JR. – EXECUTIVE DIRECTOR**

**515 BROADWAY, ALBANY, NY 12207**  
**GAIL H. GORDON, ESQ – CHAIR**

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**OFFICIAL STATEMENT RELATING TO**  
**\$85,000,000**  
**DORMITORY AUTHORITY OF THE STATE OF NEW YORK**  
**ROCHESTER INSTITUTE OF TECHNOLOGY**  
**REVENUE BONDS, SERIES 2008A**

**PART 1 — INTRODUCTION**

**Purpose of the Official Statement**

The purpose of this Official Statement, including the cover page and appendices, is to provide information about the Authority and the Institution, in connection with the offering by the Authority of \$85,000,000 aggregate principal amount of its Rochester Institute of Technology Revenue Bonds, Series 2008A (the “Series 2008A Bonds”).

The following is a brief description of certain information concerning the Series 2008A Bonds, the Authority and the Institution. A more complete description of such information and additional information that may affect decisions to invest in the Series 2008A 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 2008A Bonds are being issued for the purpose of providing funds which, together with other available moneys, will be used (i) to pay a portion of the Costs of the 2008 Project and (ii) to pay the Costs of Issuance of the Series 2008A Bonds. See “PART 4 — THE 2008 PROJECT” and “PART 5 — ESTIMATED SOURCES AND USES OF FUNDS.”

**Authorization of Issuance**

The Resolution authorizes the issuance of Bonds pursuant to separate Series Resolutions for the benefit of the Institution. The Series 2008A Bonds will be issued pursuant to the Act, the Resolution, and the Series 2008A Resolution. The Series 2008A Bonds are the first Series of Bonds to be issued under the Resolution. In addition to the Series 2008A Bonds, the Resolution authorizes the issuance of other Series of Bonds (collectively, the “Bonds”) to pay other Costs of one or more Projects, to pay the Costs of Issuance of such Series of Bonds and to refund all or a portion of Outstanding Bonds or other notes or bonds of the Authority or other issuers that were issued on behalf of the Institution. Each Series of Bonds will be separately secured from each other Series of Bonds. There is no limit on the amount of additional Bonds that may be issued under the Resolution, which Bonds may be issued at any time after the scheduled delivery date of the Series 2008A Bonds. See “PART 3 — THE SERIES 2008A BONDS.”

**The Authority**

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

## **The Institution**

The Institution is an independent, coeducational, nonsectarian, not-for-profit institution of higher education chartered by the Board of Regents of the State. The Institution is located in Rochester, New York. See “PART 6 — THE INSTITUTION” and “Appendix B — Financial Statements of Rochester Institute of Technology and Report of Independent Auditors.”

## **The Series 2008A Bonds**

The Series 2008A Bonds are dated their date of delivery and bear interest from such date (payable January 1, 2009 and on each July 1 and January 1 thereafter) at the rates and will mature at the times set forth on cover page of this Official Statement. See “PART 3 - THE SERIES 2008A BONDS - Description of the Series 2008A Bonds.”

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

The Series 2008A Bonds are special obligations of the Authority payable solely from the Revenues which consist of certain payments to be made by the Institution under the Loan Agreement, which payments are pledged and assigned to the Trustee. The Loan Agreement is a general, unsecured obligation of the Institution. See “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A BONDS - Payment of the Series 2008A Bonds.”

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

The Series 2008A Bonds are secured by the pledge of the Revenues, the proceeds of the Series 2008A Bonds and, except as otherwise provided in the Resolution, all funds and accounts established by the Resolution and the Series 2008A Resolution (other than the Arbitrage Rebate Fund).

The Loan Agreement is a general, unsecured obligation of the Institution. No security interest in any revenues or assets of the Institution has been granted by the Institution to the Authority under the Loan Agreement. However, the Institution may grant and has granted security interests in certain revenues and assets of the Institution to secure certain of the Institution’s outstanding indebtedness other than the Series 2008A Bonds. See “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A BONDS - Security for the Series 2008A Bonds” and “ - Issuance of Additional Bonds.”

The Series 2008A Bonds will not be a debt of the State nor will the State be liable thereon. The Authority has no taxing power. Neither the State nor the Authority has any responsibility to make payments with respect to the Series 2008A Bonds except for the Authority’s responsibility to make payments from moneys received from the Institution pursuant to the Loan Agreement and from amounts held in the funds and accounts under the Resolution and pledged therefor.

## **Covenants**

The Institution covenants in the Loan Agreement that, so long as the Series 2008A Bonds remain Outstanding, it will demonstrate at the end of each Fiscal Year that (i) Operating Income Available for Debt Service for such Fiscal Year then ended was at least equal to 1.10 times its Annual Debt Service for such Fiscal Year, and (ii) Unrestricted Resources as of the end of such Fiscal Year are at least equal to 75% of outstanding Long-Term Indebtedness. The Institution is required to demonstrate compliance with such covenants by filing annual certificates with the Authority. Failure by the Institution to comply with the foregoing covenants will not constitute an event of default under the Loan Agreement or the Resolution if the Institution complies with the provisions relating to a Management Consultant. See “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A BONDS – Covenants – *Maintenance Covenants*.”

The Institution also covenants in the Loan Agreement that, except to the extent permitted under the Loan Agreement, it will not issue, incur, assume or guarantee any Indebtedness without the prior written consent of the Authority. For a summary of the circumstances in which the Institution may incur such Indebtedness, see “PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2008A BONDS – Financial Covenants – *Additional Indebtedness*.”

## **The 2008 Project**

The 2008 Project consists of the construction of a new mixed-use residential housing complex and the renewal, replacement and expansion of existing heating and cooling infrastructure and energy management systems on the Institution's campus. See "PART 4 — THE 2008 PROJECT."

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

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

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

The Series 2008A Bonds will be special obligations of the Authority. The principal, Sinking Fund Installments, if any, Purchase Price and Redemption Price of and interest on the Series 2008A Bonds are payable solely from the Revenues, which consist of payments to be made by the Institution pursuant to the Loan Agreement on account of the principal, Sinking Fund Installments, if any, Purchase Price and Redemption Price of and interest on the Series 2008A Bonds. The Revenues and the right to receive them have been pledged to the Trustee for the benefit of the Bondholders.

The Loan Agreement is a general, unsecured obligation of the Institution. The Loan Agreement obligates the Institution to make payments to satisfy the principal, Sinking Fund Installments, if any, Purchase Price and Redemption Price of and interest on all Outstanding Series 2008A Bonds. Payments made by the Institution in respect of interest on the Series 2008A Bonds are to be made on the 15th day of each May immediately preceding the July 1 and on the 15th day of each November immediately preceding the January 1 on which interest is payable, in each case in an amount equal to the interest coming due on the next succeeding interest payment date. Payments by the Institution in respect of principal are to be made on the 15th day of each May immediately preceding the July 1 on which such principal becomes due. The Loan Agreement also obligates the Institution to pay, at least 45 days prior to a redemption date or purchase date of Series 2008A Bonds called for redemption or contracted to be purchased, the amount, if any, required to pay the Purchase Price or Redemption Price of such Bonds. See "PART 3 - THE SERIES 2008A BONDS - Redemption and Purchase in Lieu of Redemption Provisions."

The Authority has directed, and the Institution has agreed, to make such payments directly to the Trustee. Such payments are to be applied by the Trustee to the payment of the principal and Redemption Price of and interest on the Series 2008A Bonds.

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

The Series 2008A Bonds are secured by the pledge of the Revenues, the proceeds of the Bonds and, except as otherwise provided in the Resolution, all funds and accounts established by the Resolution and the Series 2008A Resolution (other than the Arbitrage Rebate Fund). Each Series of Bonds issued pursuant to the Resolution will be separately secured from each other Series.

The Series 2008A Bonds will not be a debt of the State nor will the State be liable thereon. The Authority has no taxing power. Neither the State nor the Authority has any responsibility to make payments with respect to the Series 2008A Bonds except for the Authority's responsibility to make payments from moneys received from the Institution pursuant to the Loan Agreement and from amounts held in the funds and accounts under the Resolution and the Series 2008A Resolution and pledged therefor.

The Loan Agreement and the obligation of the Institution to make payments under the Loan Agreement are general, unsecured obligations of the Institution. The obligations of the Institution to make payments or cause the same to be made under the Loan Agreement are absolute and unconditional and the amount, manner and time of making such payments are not to be decreased, abated, postponed or delayed for any cause or by reason of the happening or non-happening of any event, irrespective of any defense or any right of set-off, recoupment or counterclaim which the Institution may otherwise have against the Authority, the Trustee or any Bondholder for any cause whatsoever.

No security interest in any revenues or assets of the Institution has been granted by the Institution to the Authority under the Loan Agreement. However, the Institution may grant and has granted security interests in certain revenues and assets of the Institution to secure certain of the Institution's outstanding indebtedness other than the Bonds. See "PART 6 - THE INSTITUTION - ANNUAL FINANCIAL STATEMENT INFORMATION - Outstanding Indebtedness," for a description of such indebtedness of the Institution secured by certain pledged revenues. In the event of a default under any debt instrument secured by such pledged revenues, the holder or trustee under such debt instrument (including the Authority) will have the right to collect a portion or all of such pledged revenues, and apply the revenues so collected to the payment of amounts due under such debt instrument. Any revenues so collected and applied will not be available for satisfying any of the Institution's obligations under the Loan Agreement.

## **Covenants**

The Loan Agreement contains certain covenants by the Institution wherein the Institution agrees to the following:

### *Maintenance Covenants*

The Institution covenants to charge and maintain during each Fiscal Year, student tuition, fees and other charges sufficient to provide a Debt Service Coverage Ratio of 1.1:1. On or prior to each Reporting Date, the Institution shall file with the Authority a certificate of an Authorized Officer of the Institution stating whether at the immediately preceding Testing Date the Debt Service Coverage Ratio requirement is satisfied and setting forth the calculation upon which such statement is based. If on two consecutive Testing Dates the Institution does not satisfy the Debt Service Coverage Ratio requirement, the Authority may require the Institution to retain a Management Consultant. If on any Testing Date the Debt Service Coverage Ratio falls below 1:1, the Institution shall be required to retain a Management Consultant. As of June 30, 2008, the Institution's Debt Service Coverage Ratio was reported at 3.86:1 (unaudited).

The Institution also covenants to maintain an Unrestricted Resources to Debt Ratio of at least 0.75:1. On or prior to each Reporting Date, the Institution shall file with the Authority a certificate of an Authorized Officer of the Institution stating whether at the immediately preceding Testing Date the Unrestricted Resources to Debt Ratio requirement is satisfied and setting forth the calculation upon which such statement is based. If on any Testing Date the Institution does not satisfy the Unrestricted Resources to Debt Ratio requirement, the Authority may require the Institution to retain a Management Consultant. If on any Testing Date the Institution does not satisfy the Unrestricted Resources to Debt Ratio requirement and the percentage decline from the prior Fiscal Year to the current Fiscal Year is greater than or equal to thirty-five percent (35%), the Institution shall be required to retain a Management Consultant. As of June 30, 2008, the Institution's Unrestricted Resources to Debt Ratio was reported at 3.41:1 (unaudited).

### *Additional Indebtedness*

Except as otherwise described below, the Institution covenants that it will not issue, incur, assume or guarantee any Indebtedness without the prior written consent of the Authority.

The Institution may issue, incur, assume or guarantee Indebtedness without the consent of the Authority provided that (i) it maintains a debt rating in the "A" category without regard for "+" or "-" from at least one Rating Service and (ii) (a) such Long-Term Indebtedness issued in any Fiscal Year is in an amount less than or equal to ten percent (10%) of the amount of its unrestricted net assets as reported for the most recently concluded Fiscal Year for which audited financial statements are available or (b) the Institution provides to the Authority a certificate of an Authorized Officer of the Institution containing pro forma calculations demonstrating that the maintenance covenants described above would be met for the most recently concluded Fiscal Year for which audited financial statements are available taking into account the additional Long-Term Indebtedness proposed to be issued (provided that, for purposes of calculating the Debt Service Coverage Ratio for such pro forma calculations, Annual Debt Service shall be equal to projected Maximum Annual Debt Service).

Notwithstanding the foregoing, the Institution may issue Non-Recourse Indebtedness without limitation provided that any assets pledged as collateral or for the re-payment of such indebtedness must have been acquired by the Institution after the issuance of the Series 2008A Bonds.

The Institution may incur Short-Term Indebtedness without limitation if, with respect to such indebtedness, during any twelve (12) month period, there will be no outstanding balance for a period of not less than thirty (30) days.

For a more complete description of the financial covenants of the Institution contained in the Loan Agreement, see "Appendix C - Summary of Certain Provisions of the Loan Agreement."

## **Events of Default and Acceleration**

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

The Resolution provides that, if an event of default (other than as described in clause (iii) of the preceding paragraph) occurs and continues, the Trustee may, and upon the written request of Holders of not less than 25% in principal amount of the Outstanding Series 2008A Bonds, shall declare the principal of and interest on all the Outstanding Series 2008A Bonds to be due and payable. At any time after the principal of the Series 2008A Bonds shall have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under the Resolution, the Trustee shall, with the written consent of the Holders of not less than 25% in principal amount of Series 2008A Bonds not yet due by their terms and then Outstanding, by written notice to the Authority, annul such declaration and its consequences under the terms and conditions specified in the Resolution with respect to such annulment.

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

## **Issuance of Additional Bonds**

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

## **General**

The Series 2008A Bonds will not be a debt of the State and the State will not be liable on the Series 2008A Bonds. The Authority has no taxing power. The Authority has never defaulted in the timely payment of principal of or interest on its bonds or notes. See "PART 7 — THE AUTHORITY."

### **PART 3 — THE SERIES 2008A BONDS**

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

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

The Series 2008A Bonds will be issued pursuant to the Resolution and the Series 2008A Resolution and will be dated their date of delivery and bear interest from such date (payable January 1, 2009 and on each July 1 and January 1 thereafter) at the rates set forth on the cover page of this Official Statement.

The Series 2008A Bonds will be issued as fully registered bonds in denominations of \$5,000 or any integral multiple thereof.

Interest on the Series 2008A Bonds will be payable by check mailed to the registered owners or, at the option of the registered owner of at least \$1,000,000 of Series 2008A Bonds, by wire transfer to the wire transfer address within the continental United States to which the registered owner has instructed the Trustee to make such payment at least five days prior to the interest payment date. If the Series 2008A Bonds are not registered in the name of DTC or its nominee, Cede & Co., the principal and Redemption Price of the Series 2008A Bonds will be payable in lawful money of the United States of America at the principal corporate trust office of Manufacturers and Traders Trust Company, Buffalo, New York, the Trustee and Paying Agent.

The Series 2008A Bonds will be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York (“DTC”), pursuant to DTC’s Book-Entry Only System. Purchases of beneficial interests in the Series 2008A Bonds will be made in book-entry form, without certificates. So long as DTC or its nominee, Cede & Co., is the registered owner of the Series 2008A Bonds, payments of the principal, Purchase Price and Redemption Price of and interest on the Series 2008A Bonds will be made by the Trustee directly to Cede & Co. Disbursement of such payments to the DTC Participants (as hereinafter defined) is the responsibility of DTC and disbursement of such payments to the Beneficial Owners of the Series 2008A Bonds is the responsibility of the DTC Participants and the Indirect Participants (as hereinafter defined). If at any time the Book-Entry Only System is discontinued for the Series 2008A Bonds, the Series 2008A Bonds will be exchangeable for fully registered Series 2008A Bonds in any authorized denominations of the same maturity without charge except 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 Resolution. See “- Book-Entry Only System” below and “Appendix D - Summary of Certain Provisions of the Resolution.”

For a more complete description of the Series 2008A Bonds, see “Appendix D - Summary of Certain Provisions of the Resolution.”

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

The Series 2008A Bonds are subject to redemption and to purchase in lieu of redemption, as described below. For a more complete description of the redemption and other provisions relating to the Series 2008A Bonds, see “Appendix D— Summary of Certain Provisions of the Resolution.”

##### ***Optional Redemption***

The Series 2008A Bonds maturing on or before July 1, 2018 are not subject to optional redemption prior to maturity. The Series 2008A Bonds maturing after July 1, 2018 are subject to redemption prior to maturity on or after July 1, 2018, in any order at the option of the Authority, as a whole or in part at any time, at a price of par plus accrued interest to the redemption date.

##### ***Purchase in Lieu of Optional Redemption***

The Series 2008A Bonds maturing after July 1, 2018 are also subject to purchase in lieu of optional redemption prior to maturity at the election of the Institution with the consent of the Authority, 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 thereof (the “Purchase Price”), plus accrued interest to the date set for purchase (the “Purchase Date”).



***Mandatory Redemption***

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

<b><u>Series 2008A Bonds Maturing July 1, 2029</u></b>		<b><u>Series 2008A Bonds Maturing July 1, 2033</u></b>	
2026	\$5,915,000	2030	\$7,535,000
2027	6,290,000	2031	7,995,000
2028	6,685,000	2032	8,480,000
2029	7,110,000 <sup>†</sup>	2033	8,990,000 <sup>†</sup>

<sup>†</sup> Final maturity.

The Authority may from time to time direct the Trustee to purchase Series 2008A Bonds with moneys in the Debt Service Fund, at or below par plus accrued interest to the date of such purchase, and apply any Series 2008A Bonds so purchased as a credit, at 100% of the principal amount thereof, against and in fulfillment of a required Sinking Fund Installment on the Series 2008A Bonds. The Institution also may purchase Series 2008A Bonds and apply any Series 2008A Bonds so purchased as a credit, at 100% of the principal amount thereof, against and in fulfillment of a required Sinking Fund Installment on the Series 2008A Bonds. To the extent the Authority’s obligation to make Sinking Fund Installments in a particular year is fulfilled through such purchases, the likelihood of redemption through mandatory Sinking Fund Installments of any Bondholder’s Series 2008A Bonds so purchased will be reduced for such year.

***Special Redemption***

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

***Selection of Bonds to be Redeemed***

In the case of redemptions of Series 2008A Bonds, the Authority will select the maturities of the Series 2008A Bonds to be redeemed. If less than all of the Series 2008A Bonds of a maturity are to be redeemed, the Series 2008A Bonds of such maturity to be redeemed will be selected by the Trustee, by lot, using such method of selection as the Trustee shall consider proper in its discretion.

***Notice of Redemption***

Generally, the Trustee is to give notice of the redemption of the Series 2008A Bonds in the name of the Authority, by first-class mail, postage prepaid, not less than 30 days nor more than 45 days prior to the redemption date to the registered owners of any Series 2008A Bonds which are to be redeemed, at their last known addresses appearing on the registration books of the Authority not more than 10 Business Days prior to the date such notice is given. Each notice of redemption, other than a notice of “Special Redemption,” may state, in addition to any other condition, that the redemption is conditioned upon the availability on the redemption date of sufficient moneys to pay the Redemption Price of the Series 2008A Bonds to be redeemed. The failure of any owner of a Series 2008A Bond to be redeemed to receive notice of redemption will not affect the validity of the proceedings for the redemption of such Series 2008A Bond.

If on the redemption date moneys for the redemption of the Series 2008A 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, and if notice of redemption has been mailed, then interest on the Series 2008A Bonds of such maturity will cease to accrue from and after the redemption date and such Series 2008A Bonds will no longer be considered to be Outstanding.

### ***Notice of Purchase in Lieu of Redemption and its Effect***

Notice of purchase of the Series 2008A Bonds will be given in the name of the Institution to the registered owners of the Series 2008A Bonds to be purchased by first-class mail, postage prepaid, not less than 30 days nor more than 45 days prior to the Purchase Date specified in such notice. The Series 2008A Bonds to be purchased are required to be tendered on the Purchase Date to the Trustee. Series 2008A Bonds to be purchased that are not so tendered will be deemed to have been properly tendered for purchase. If the Series 2008A Bonds are called for purchase in lieu of an optional redemption, such purchase will not extinguish the indebtedness of the Authority evidenced thereby or modify the terms of the Series 2008A Bonds. Such Series 2008A Bonds need not be cancelled, and will remain Outstanding under the Resolution and continue to bear interest.

The Institution'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 2008A 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 2008A Bonds to be purchased, the former registered owners of such Series 2008A 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 2008A 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 2008A Bonds in accordance with their respective terms.

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

For a more complete description of the redemption and other provisions relating to the Series 2008A Bonds, see "Appendix D - 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 2008A 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 securities depository for the Series 2008A Bonds. The Series 2008A Bonds will be issued as fully-registered securities in the name of Cede & Co. (DTC's partnership nominee), or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2008A Bond certificate will be issued for each maturity of the Series 2008A Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Series 2008A Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2008A 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. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2008A 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 2008A Bonds, except in the event that use of the book-entry system for the Series 2008A Bonds is discontinued.

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

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

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

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

Principal, redemption premium, if any, and interest payments on the Series 2008A 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, redemption premium, if any, and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

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

DTC may discontinue providing its service as depository with respect to the Series 2008A Bonds at any time by giving reasonable notice to the Authority and the Trustee. Under such circumstances, in the event that a successor depository is not obtained, the Series 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 in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Authority believes to be reliable, but the Authority takes no responsibility for the accuracy thereof.

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

So long as Cede & Co. is the registered owner of the Series 2008A Bonds, as nominee for DTC, references herein to the Bondholders or registered owners of the Series 2008A Bonds (other than under the caption "PART 10 — TAX MATTERS" herein) shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Series 2008A 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 2008A 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 2008A Bonds if the Authority determines that (i) DTC is unable to discharge its responsibilities with respect to the Series 2008A Bonds, or (ii) a continuation of the requirement that all of the Outstanding Series 2008A 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 Resolutions and the Bond Series Certificate.

NEITHER THE AUTHORITY, THE INSTITUTION 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 2008A BONDS UNDER THE RESOLUTIONS; (III) THE SELECTION BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE SERIES 2008 BONDS; (IV) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR REDEMPTION PREMIUM, IF ANY, OR INTEREST DUE WITH RESPECT TO THE SERIES 2008A BONDS; (V) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF THE SERIES 2008A 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 2008A Bonds, required to be paid by the Institution during each twelve month period ending June 30 of the years shown for the payment of the principal of and interest on the Series 2008A Bonds, other indebtedness of the Institution, and the total thereof.

12-Month Period Ending June 30	Series 2008A Bonds				
	Principal Payments	Interest Payments	Total Debt Service on the Series 2008A Bonds	Debt Service on Other Outstanding Indebtedness <sup>(1)</sup>	Total Debt Service <sup>(1)</sup>
2009	-	\$3,168,583	\$ 3,168,583	\$12,006,601	\$15,175,184
2010	\$5,400,000	5,003,025	10,403,025	11,989,976	22,393,001
2011	-	4,734,075	4,734,075	11,977,899	16,711,974
2012	-	4,734,075	4,734,075	11,986,865	16,720,940
2013	500,000	4,734,075	5,234,075	11,977,068	17,211,143
2014	500,000	4,714,075	5,214,075	11,961,509	17,175,584
2015	500,000	4,692,825	5,192,825	11,955,909	17,148,734
2016	500,000	4,670,325	5,170,325	11,952,974	17,123,299
2017	500,000	4,645,325	5,145,325	11,941,939	17,087,264
2018	500,000	4,620,325	5,120,325	11,925,996	17,046,321
2019	500,000	4,595,325	5,095,325	11,919,201	17,014,526
2020	500,000	4,570,325	5,070,325	11,905,439	16,975,764
2021	500,000	4,544,075	5,044,075	11,883,552	16,927,627
2022	500,000	4,517,200	5,017,200	11,000,322	16,017,522
2023	4,920,000	4,489,700	9,409,700	3,712,663	13,122,363
2024	5,190,000	4,219,100	9,409,100	3,708,513	13,117,613
2025	5,490,000	3,920,675	9,410,675	3,703,775	13,114,450
2026	5,915,000	3,605,000	9,520,000	3,693,188	13,213,188
2027	6,290,000	3,235,313	9,525,313	3,681,713	13,207,026
2028	6,685,000	2,842,188	9,527,188	3,670,463	13,197,651
2029	7,110,000	2,424,375	9,534,375	3,667,450	13,201,825
2030	7,535,000	1,980,000	9,515,000	3,646,913	13,161,913
2031	7,995,000	1,527,900	9,522,900	3,639,338	13,162,238
2032	8,480,000	1,048,200	9,528,200	3,623,700	13,151,900
2033	8,990,000	539,400	9,529,400	-	9,529,400

<sup>(1)</sup> The interest on the taxable Series 2004A Bonds is assumed to average 5.25%.

**PART 4 — THE 2008 PROJECT**

The 2008 Project consists of the construction of a new mixed-use residential housing complex, the renewal, replacement and expansion of existing heating and cooling infrastructure and energy management systems on the Institution’s campus and the rehabilitation or renovation of academic, administrative, athletic and residential buildings throughout the main campus.

**PART 5 — ESTIMATED SOURCES AND USES OF FUNDS**

The estimated sources and uses of funds are as follows:

<b>Sources of Funds</b>	
Principal Amount of Series 2008A Bonds ...	\$85,000,000
Net Original Issue Discount.....	<u>(647,716)</u>
Total Sources .....	\$84,352,284
<b>Uses of Funds</b>	
Deposit to the Construction Fund .....	\$82,988,580
Costs of Issuance <sup>1</sup> .....	878,854
Underwriters’ Discount .....	<u>484,850</u>
Total Uses .....	\$84,352,284

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

**PART 6 — THE INSTITUTION**

**GENERAL INFORMATION**

**Introduction**

Since its founding in 1829, Rochester Institute of Technology (“RIT” or the “Institute”) has established a tradition of excellence in professional and career-oriented education with concentrations in engineering, imaging, technology, fine and applied arts, science, business and education for the deaf. In the Fall of 2008, the Institute enrolled 16,494 full and part-time students who represent all 50 states and more than 100 nations. There are currently more than 100,000 RIT alumni worldwide.

RIT offers 91 bachelors degree programs, 73 masters and first professional degree programs and 6 Ph.D. programs. In its 8 colleges, Ph.D. programs are offered in astrophysics, color science, computing and information science, imaging science, microsystems engineering, and sustainability. The range of academic programs at the Institute include: computer sciences, information technologies, engineering and manufacturing technologies, software engineering, computer engineering, artificial intelligence, mechanical engineering, micro-electronic engineering, mini robotics, electrical engineering, film and animation, computer gaming, packaging science, hospitality and service management, premedical, physician assistant, diagnostic medical sonography (ultrasound), clinical chemistry, biomedical computing, medical technology and informatics, nuclear medicine technology, imaging science, new media publishing, medical illustration, biomedical photographic communications, fine arts photography, imaging systems management, digital image technologies, international studies, public policy, criminal justice, and international business. RIT continuously evaluates its program portfolio and develops new academic programs or curriculum revisions to ensure that the Institute is meeting the future career needs and interests of its students and their potential employers.

Under an agreement with the U.S. government, the Institute established the National Technical Institute for the Deaf (NTID) to provide technical training and education for deaf and hard of hearing persons. The federal government pays approximately 70% of total operating costs of NTID. The balance of the operating costs is covered from tuition collected from students and other revenues. The federal appropriation is applied for on an annual basis and its continuation is subject to the federal government’s continued support of the program. The program has been in place since 1968.

The Institute anticipates that enrollment will remain stable and maintains modest enrollment growth targets in the near term. Three critical elements of the Institute's enrollment strategy are developing curricula that will respond to emerging workforce issues, increasing diversity enrollment and improving the diversity of its faculty, staff and student body. In addition, the Institute continues to emerge on a national and international scale reducing its dependency on New York and the Mid-Atlantic and New England regions.

The Institute was one of the first universities in the nation to offer cooperative education. For more than 95 years, RIT students have been combining on-the-job experience with classroom and laboratory instruction. The Institute has the fourth oldest and fifth largest cooperative education program in the nation. In addition to serving as a quality source of practical experience, the co-op program allows RIT students to earn funds to support their education.

The Institute's athletic program includes 23 men's and women's varsity sports competing at the National Collegiate Athletic Association Division III level, and men's hockey competing at the Division I level. These teams include approximately 625 student-athletes. Several teams have reached national playoff competitions, with two teams capturing national titles. The athletics program also includes 60 wellness activity courses, 12 intramural men's, women's, and coed team activities, 16 club sports, and several interactive adventure programs to focus both on groups and individuals to improve intrapersonal and interpersonal skills. These programs as well as other recreation activities are supported by specialized, professional personal services and extensive first class facilities and equipment. The addition of a new field house and activities center in 2004 served to enhance the Institute's athletics programs and help to ensure the Institute's goals for student development and the enhancement of campus spirit are met.

The RIT campus occupies a 1,300-acre site in suburban Rochester, New York. The campus consists of 5.2 million square feet of program space allocated among residential, academic research and administrative buildings. Over the periods 1998 to 2008, the Institute has invested over \$390 million in student residence facilities to increase and enhance the overall residential program consistent with student needs, preferences and enrollment growth, as well as other top facility priorities including increasing student campus life space available for student activities, athletic training and competition, and social functions; improving campus beautification; developing and renovating roads, walkways and lighting; adapting academic space to meet current curricular demands; investing in state-of-the-art/industry technology and applied research labs; and enhancing campus-wide telecommunications and computing equipment and infrastructure.

RIT offers programs in Eastern Europe at the American College of Management and Technology (ACMT) in Dubrovnik, Croatia which opened in 1997 and at the American University in Kosovo in Pristina, Kosovo which opened in 2003. Enrollment for Fall 2008 in Eastern Europe is 942 (816 full-time equivalent (FTE) students). Incoming freshmen for Fall 2008 totaled 260 as compared to 254 for Fall 2007. RIT also offers programs in the United Arab Emirates and the Dominican Republic; these programs currently constitute less than 1% of RIT's total student population.

## Governance

The Institute is governed by a Board of Trustees, consisting of 50 voting members including the President. Board members are elected to four-year terms. The full Board of Trustees meets three times annually, with the official annual meeting occurring in November of each year.

The officers and current members of the Board of Trustees are as follows:

**Richard T. Aab \***  
Vice Chairman  
PAETEC Corporation

**Willem Appelo**  
Senior Vice President  
Xerox Corporation

**Burton S. August \***  
Retired Vice President  
Monro Muffler Brake, Inc.  
Honorary Chair

**Daniel J. Bader '85, '87**  
President  
Helen Bader Foundation, Inc.

**Bruce B. Bates \***  
Senior Vice President  
Smith Barney  
Chair Emeritus

**Richard T. Bourns \***  
Retired Senior Vice President  
Eastman Kodak Company

**Donald N. Boyce '67**  
Retired Chairman of the Board  
IDEX Corporation

**Andrew N. Brenneman '86, '88**  
Senior Account Executive  
Sprint Nextel  
*NTID NAG Representative*

**Joseph C. Briggs \***  
Retired Vice President, Marketing  
Lawyers Cooperative Publishing  
Company

**Paul W. Briggs \***  
Retired Chairman and CEO  
Rochester Gas & Electric  
Corporation

**Charles S. Brown, Jr. '79**  
Director, Center for Excellence in  
Math and Science  
Rochester Area Colleges

**William A. Buckingham '64**  
Retired Executive Vice President  
M&T Bank  
Chair Emeritus

**David J. Burns**  
President and Chief Operating  
Officer  
Ex One Corporation

**Lawrence D. Burns**  
Vice President of Research  
Development and Strategic  
Planning  
General Motors Corporation

**Ann L. Burr**  
Chairman and  
General Manager, Frontier  
Communications of Rochester,  
Frontier Communications Corp.

**Essie L. Calhoun**  
Chief Diversity Officer and  
Director, Community Affairs  
Vice President  
Eastman Kodak Company

**Catherine B. Carlson \*\***

**Colby H. Chandler \***  
Retired Chairman and CEO  
Eastman Kodak Company  
Chair Emeritus

**Arunas A. Chesonis**  
Chairman and CEO  
PAETEC Communications

**Mary Lu Clark \***

**Thomas Curley '77**  
President and CEO  
The Associated Press

**Robert R. Davila \*\***  
President  
Gallaudet University

**Ernest J. Del Monte \*\***  
Chairman  
E. J. Del Monte Corporation

**William W. Destler**  
President  
RIT

**Sudhakar G. Dixit '74**  
Chairman  
Newtex Industries, Inc.

**Ada Frances (Dancy) Duffus \***

**Donna J. Ehrhart**  
Professor of Computer Information  
Systems and Business  
Genesee Community College  
*Women's Council Representative*

**Richard H. Eisenhart \***  
Retired Chairman  
R.H. Eisenhart, Inc.  
Chair Emeritus

**Nancy L. Fein '76**  
Vice President of Lexus Service,  
Parts, Customer Satisfaction &  
Training  
Toyota Motor Sales, USA

**Margie Fitch \***

**James S. Gleason \***  
Chairman  
Gleason Corporation

**B. Thomas Golisano**  
Chairman  
Paychex, Inc.

**Arthur A. Gosnell**  
Chairman and CEO  
Stonehurst Capital LLC

**Thomas H. Gosnell \***  
Retired Chairman and CEO  
Lawyers Cooperative Publishing  
Company  
Chair Emeritus

**Klaus Gueldenpfennig \* '74**  
President and Chairman  
Redcom Laboratories, Inc.

**Bart G. Guerreri '67**  
Chairman and CEO  
DSD Laboratories, Inc.

**William B. Hale \*\***  
Retired Vice President  
Lawyers Cooperative Publishing  
Company

**Brian H. Hall '78**  
Retired Vice Chairman  
The Thomson Corporation

**Alfred M. Hallenbeck \***  
Partner  
Ward Norris Heller & Reidy LLP

**Jeffrey K. Harris '75**  
Corporate Vice President  
Lockheed Martin

**Susan R. Holliday '85**  
President and Publisher  
Rochester Business Journal

**Jay T. Holmes**  
Retired Executive Vice President  
and Chief Administrative Officer  
Bausch & Lomb, Inc.

**John D. Hostutler \***  
Retired President  
Industrial Management Council

**Samuel T. Hubbard, Jr.**  
Chairman  
High Falls Brewing Company LLP

**Frank M. Hutchins \***  
Retired Chairman  
Hutchins/Young & Rubicam  
Chair Emeritus  
Honorary Vice Chair

**Bruce R. James \***  
President and CEO  
Nevada New-Tech Inc.  
*Chair Emeritus*

**Herbert W. Jarvis \***  
Former President and CEO  
Sybron Corporation

**Thomas F. Judson, Jr.**  
Chairman And CEO  
The Pike Company

**Kraig H. Kayser**  
President and CEO  
Seneca Foods Corporation

**Roger W. Kober \* '84**  
Retired Chairman and CEO  
Rochester Gas & Electric  
Corporation

**Robert J. Kohler, Jr.\* '59**  
Retired Executive Vice President  
and General Manager TRW  
Avionics & Surveillance Group

**Gary J. Lindsay '64**  
C.P.A.

**Joseph M. Loboza II '95**  
President and CEO  
JML Optical Industries, Inc.

**Lawrence J. Matteson**  
Retired Vice President  
Imaging & Information Systems  
Eastman Kodak Company

**Thomas C. McDermott \***  
Retired Chairman, CEO, and  
President  
Goulds Pumps, Inc.

**Michael P. Morley '69**  
Retired Chief Administrative  
Officer and Executive Vice  
President  
Eastman Kodak Company  
*Chair*

**Ann M. Mulligan \***



**Brian P. O'Shaughnessy** '81, '84  
Shareholder  
Buchanan Ingersoll & Rooney, PC  
*Alumni Network Board  
Representative*

**Sandra A. Parker**  
CEO  
Rochester Business Alliance, Inc.

**Wolfgang Pfizenmaier**  
Retired Member of the  
Management Board  
Heidelberger Druckmaschinen AG

**Albert T. Pimentel** \*  
Retired Headmaster  
New York School for the Deaf

**Susan M. Puglia**  
Vice President, Global Technical  
Leadership, Sales & Distribution  
IBM Corporation

**Jane Ratcliffe Pulver** \*

**Thomas S. Richards**  
Corporation Counsel  
City of Rochester

**Susan J. Riley** '81  
Executive Vice President  
The Children's Place

**Harris H. Rusitzky** \* '56, '91  
President  
The Greening Group

**Richard E. Sands**  
Chairman  
Constellation Brands, Inc.

**Janet F. Sansone**  
Chief Management Officer  
The United States Government  
Printing Office

**Carl E. Sassano** '72  
Chairman of the Board  
Transcat, Inc.

**E. Philip Saunders**  
Chairman  
Genesee Regional Bank and  
Griffith Energy Inc.

**John M. Summers**  
CEO  
Jasco Tools, Inc.

**Kevin J. Surace** '85  
CEO  
Serious Materials

**Sharon Ting**  
Partner  
Axialent Inc.

**Frederick T. Tucker** \* '63  
Retired Executive Vice President  
and Deputy to the Chief Executive  
Officer  
Motorola, Inc.

**Donald J. Truesdale** '87  
Partner and the Global Head of  
Asset Management Investment  
Banking  
Goldman, Sachs & Co.

**Judy B. von Bucher**

**Chester N. Watson** '74  
General Auditor  
General Motors Corporation

**Robert D. Wayland-Smith**  
Retired Vice President and  
Manager Upstate Trust &  
Investment Division  
Chase Manhattan Bank, N.A.

**William A. Whiteside, Jr.** \*  
Retired Partner  
Fox, Rothschild, O'Brien &  
Frankel  
*Chair Emeritus*

**Christine B. Whitman**  
Chairman and CEO  
Complemar Partners, Inc.  
*Vice Chair*

**Thomas C. Wilmot**  
Chairman  
Wilmorite Management Group  
LLC

**Ronald L. Zarrella**  
Chairman Emeritus  
Bausch & Lomb, Inc.  
*Vice Chair*

\* Emeritus Trustee  
\*\* *Honorary Trustee*

## Administration

The President of the Institute is appointed by the Board of Trustees and, as chief executive officer, is principally responsible for the administration of the Institute. All other senior executive officers are nominated by the President and appointed by the Board of Trustees. The senior executive officers are listed below:

### ***Dr. William W. Destler, President***

Dr. Destler became President of the Institute on July 1, 2007. He is the ninth president in the Institute's 179-year history, and was formerly Senior Vice President for Academic Affairs and Provost of the University of Maryland at College Park. Dr. Destler spent more than 30 years at the University of Maryland, rising from the ranks of Research Associate and Assistant Professor of Electrical Engineering to Senior Vice President and Provost. Dr. Destler is an international authority on high-power microwave sources and advanced accelerator concepts. He is best known for his pioneering work in the collective acceleration of heavy ions, achieving the highest energies to date by this method, and for his development of large orbit microwave devices, including large orbit gyrotrons and rotating beam free electron lasers. He has consulted for government agencies and private firms, published more than 200 journal articles and book chapters, and presented many papers. Dr. Destler has also directed 18 master's and doctoral student theses and earned awards for his teaching. Dr. Destler earned a bachelor's degree from Stevens Institute of Technology and a Ph.D. from Cornell University. Both degrees were in the field of applied physics.

***Dr. Jeremy Haefner, Senior Vice President for Academic Affairs and Provost***

Dr. Haefner was appointed Senior Vice President for Academic Affairs and Provost effective July 1, 2008. Prior to joining RIT, Dr. Haefner served in a number of administrative roles at the University of Colorado at Colorado Springs including concurrent appointments as Vice Chancellor for Research and Innovation, Dean of the Graduate School, Dean of the College of Engineering and Applied Science, and Director of the Colorado Institute for Technology Transfer and Implementation. Dr. Haefner was an American Council on Education Fellow in 2006-2007 and spent his fellowship year under the mentorship of President John C. Cavanaugh at the University of West Florida. Dr. Haefner earned his B.A. in Mathematics at the University of Iowa and his M.S. and Ph.D. in Mathematics at the University of Wisconsin.

***Dr. James G. Miller, Senior Vice President, Enrollment Management and Career Services***

Dr. Miller was appointed to his present position in April 1987. He is responsible for the Institute's undergraduate admissions, undergraduate and graduate financial aid, part-time and graduate enrollment services, cooperative education, placement and career services, student employment and Institute publications. He oversees RIT's Project Lead the Way (PLTW) program, a national program forming partnerships among public schools, higher education institutions and the private sector to increase the quantity and quality of engineers and engineering technologists graduating from the country's educational systems. Dr. Miller holds a B.S. from Pennsylvania State University and an M.S. and Ph.D. in Adult Education and Higher Education Administration, respectively, from Syracuse University.

***Dr. James H. Watters, Senior Vice President for Finance and Administration and Treasurer***

Dr. Watters assumed his current position in 1997. He is responsible for the Institute's operating and capital budgets, publicly issued debt, and endowment and working capital portfolios. Dr. Watters is responsible for establishing the strategic direction for operational units including auxiliary enterprises, human resources, accounting/payroll, insurance, public safety, audit, legal, information technology and security, and facilities operations, design, and construction. Dr. Watters currently serves as the Vice Chair of RIT's Global Delivery Corporation and Treasurer of RIT's High Technology Incubator and the American College of Management and Technology in Croatia. Dr. Watters serves on several non-profit and for-profit boards. He received his B.S., M.A., and Ph. D. from the University of Pittsburgh.

***Dr. Donald Boyd, Vice President for Research***

Dr. Boyd was appointed to his current position in January 2006. He previously held the title of Associate Provost for Outreach Programs. From 1999 to 2000, Dr. Boyd served as President of the RIT Research Corporation. Dr. Boyd's current responsibilities include oversight of sponsored research programs, the RIT High Technology Incubator, the IT Collaboratory, the First in Class program, and the research relations office. Dr. Boyd has more than 30 years of experience in both education and industry. After 5 years at the University of Minnesota, he spent 13 years in research and development at Honeywell as Director of Computer Science Research and later as Director of Engineering at Honeywell's Systems Technology and Engineering Center. Dr. Boyd then worked for eight years at Eastman Kodak Company in software development and business unit management positions. He received his B.S., M.A., and Ph. D. from the University of Iowa.

***Ms. Lisa Cauda, Vice President for Development and Alumni Relations***

Ms. Cauda was named Vice President for Development and Alumni Relations in July 2006. Ms. Cauda joined RIT in December 2000 after serving as the Assistant Vice President of Development and Campaign Director at Stevens Institute of Technology. Ms. Cauda, earned her B.S. from the University of Delaware and her M.S. in Corporate and Public Communications from Seton Hall University.

***Dr. Mary-Beth Cooper, Vice President, Student Affairs***

Dr. Cooper was appointed to her current position in January 2002. She was formerly Associate Provost for Student Services and Dean of Students at the University of Rochester. Immediately prior to that, she was Dean of Students and Chief Student Affairs Officer at St. John Fisher College. Dr. Cooper holds a B.S. from the University of Delaware, an M.B.A. from the University of Rochester, and a Ph.D. in College and University Administration from Michigan State University.

***Dr. T. Alan Hurwitz, President, National Technical Institute for the Deaf, and Vice President and Dean, RIT***

Dr. Hurwitz was named president of RIT's National Technical Institute for the Deaf (NTID) effective July 1, 2008. Dr. Hurwitz joined NTID in 1970. Prior to coming to NTID, Dr. Hurwitz worked as an electronics engineer and programmer/analyst with McDonnell Douglas Corporation. Over the past 38 years, Dr. Hurwitz has held a variety of positions at NTID that spanned the areas of support services, student affairs and academic affairs. He served as Dean of NTID, from 1998 until December 1, 2003, when he was appointed Vice President and Dean of NTID. Dr. Hurwitz holds a

B.S. in Electrical Engineering from Washington University at St. Louis, an M.S. in Electrical Engineering from St. Louis University, and an Ed.D. in Curriculum/Teaching from the University of Rochester.

***Dr. Katherine Mayberry, Vice President for Special Projects***

Dr. Mayberry was appointed to her current position effective July 1, 2008. She previously served as Vice President for Academic Affairs during the period January 2004 - July 2008. Before that, Dr. Mayberry was a member of the RIT faculty. Dr. Mayberry earned a bachelor's degree from Smith College and a Ph.D. in English and American Literature from the University of Rochester.

***Dr. Fred W. Smith, Secretary of the Institute and Assistant to the President***

Dr. Smith joined RIT in 1971 as Vice President for Student Affairs until 1994 and since then, as the Secretary of the Institute and Assistant to the President. Dr. Smith received a B.A. and M.A. from Wheaton College and a Ph.D. in Higher Education Administration from Michigan State University.

***Deborah Stendardi, Vice President for Government and Community Relations***

Ms. Stendardi was named Vice President in 2004. Previously, Ms. Stendardi was appointed the Director of Government and Community Affairs in 1979 and was named interim Vice President for Development and Government Relations in 1995. She became Associate Vice President for Government and Community Relations in 1996. Prior to joining the Institute, she served in a variety of positions for six years with the Commission on Independent Colleges and Universities in Albany. Ms. Stendardi holds a bachelor's degree from the State University of New York at Cortland and a master's degree from SUNY Albany.

**Employees and Employee Relations**

In addition to its 914 full-time and 447 part-time teaching faculty members, RIT has approximately 1,873 full-time and 128 part-time clerical and administrative employees. RIT's employee groups are not covered by collective bargaining agreements. The relationship between RIT and the various employee groups has been good.

**OPERATING INFORMATION**

**Admissions and Student Enrollment**

The Institute's Fall 2008 enrollment was 13,442 FTE students. The Institute has implemented a controlled strategic growth plan resulting in sustained high overall academic quality of the student body, stable selectivity, increased market demand, more diverse student population, and broader national and international market base for student recruitment. While RIT has an undergraduate emphasis, the Institute offers a wide ranging portfolio of 73 graduate programs and 6 doctorate programs. The tables below provide the enrollment for FTE students and total enrolled students, including all full-time and part-time students, and the numbers of first year applications, first year students accepted for admission, and first year full-time students enrolled at the Institute over the past five academic years. Unless otherwise indicated, the data presented below pertaining to RIT's student population include those attending both domestic and international campuses.

**Fall Enrollment**

	<b><u>Fall 2004</u></b>	<b><u>Fall 2005</u></b>	<b><u>Fall 2006</u></b>	<b><u>Fall 2007</u></b>	<b><u>Fall 2008</u></b>
Undergraduate FTE	10,978	10,920	11,186	11,585	11,803
Undergraduate Headcount	13,046	12,933	13,140	13,476	13,861
Graduate FTE	1,358	1,395	1,508	1,543	1,639
Graduate Headcount	2,292	2,267	2,417	2,513	2,633
Total Enrollment FTE	12,336	12,315	12,694	13,128	13,442
Total Headcount	15,338	15,200	15,557	15,989	16,494

### First Year Full-Time Applications and Enrollment

	<u>Fall 2004</u>	<u>Fall 2005</u>	<u>Fall 2006</u>	<u>Fall 2007</u>	<u>Fall 2008</u>
Undergraduate					
Applications	9,409	9,648	10,538	11,336	13,099
Acceptances	6,427	6,783	6,898	7,420	8,003
Acceptance Ratio	68.3%	70.3%	65.5%	65.5%	61.1%
Matriculants	2,598	2,459	2,642	2,776	2,840
Matriculation Ratio	40.4%	36.3%	38.3%	37.4%	35.5%

Approximately 50% of the Fall 2007 matriculants are in the top 20% of their graduating classes, while 53% of the Fall 2008 entering class rank in the top 20%. The Institute competes for these students against public universities and other selective private colleges and universities. RIT's dramatic increase in applications for Fall 2008 is not limited to the freshman class, as transfer and graduate applications have increased 7% and 9%, respectively.

The following table presents the mean combined SAT scores for all of the Institute's first year students for the last five academic years.

#### Mean Combined SAT Scores\*

	<u>Fall 2004</u>	<u>Fall 2005</u>	<u>Fall 2006</u>	<u>Fall 2007</u>	<u>Fall 2008</u>
Mean Combined SAT	1219	1211	1202	1195	1196

\* Excludes writing section and scores from students attending international campuses.

The table below presents the geographic profile of the Institute's students for the past five academic years.

#### Geographic Profile of Entering Freshmen By Percentage of Class

	<u>Fall 2004</u>	<u>Fall 2005</u>	<u>Fall 2006</u>	<u>Fall 2007</u>	<u>Fall 2008</u>
New York State	50%	47%	44%	45%	42%
Other United States	39%	38%	41%	41%	44%
Foreign	<u>11%</u>	<u>15%</u>	<u>15%</u>	<u>14%</u>	<u>14%</u>
Total	100%	100%	100%	100%	100%

The distribution of the Institute's enrollment across the eight colleges is approximately as follows: Applied Science and Technology 25%, Computing and Information Sciences 18%, Imaging Arts and Sciences 15%, Engineering 16%, Business 7%, Science 9%, National Technical Institute for the Deaf 5%, and Liberal Arts 5%. The Institute has conferred an average of 3,770 degrees per year during the last five years. Over this time period 77% of the degrees were awarded to undergraduates. The following table lists the number of undergraduate and graduate degrees conferred for the last five academic years:

#### Degrees Conferred

	<u>2003/04</u>	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>
Undergraduate Degrees *	2,872	2,779	3,009	2,893	2,969
Graduate Degrees	<u>832</u>	<u>784</u>	<u>865</u>	<u>917</u>	<u>933</u>
Total	3,704	3,563	3,874	3,810	3,902

\* Includes certificates and diplomas; during the past five years, on average, approximately 160 certificates and diplomas have been awarded annually.

## Tuition and Fees and Student Financial Aid

Tuition, room and board and other fees for the last five fiscal years are listed below:

### Student Charges

	<u>2003/04</u>	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>
Tuition	\$21,027	\$22,056	\$23,247	\$24,627	\$26,085
Room and Board	7,833	8,136	8,451	8,748	9,054
Other Fees	<u>357</u>	<u>357</u>	<u>372</u>	<u>384</u>	<u>396</u>
Total	\$29,217	\$30,549	\$32,070	\$33,759	\$35,535

The Institute employs a sophisticated strategy to determine the best allocation of Institute, government and other student financial assistance resources with a focus on meeting the students' financial need, optimizing student enrollment (first year student matriculants, as well as student retention), maintaining overall academic quality of the student body, and increasing net tuition revenue. The Institute carefully manages the net tuition revenue as it represents approximately 50% of RIT's operating income. The discount rate, expressed as total Institute scholarships as a percentage of gross tuition revenues, was approximately 32.4% in 2007/08. Management expects that the discount rate will continue to increase slightly over the next several years.

Approximately 75% of full-time undergraduate students received financial assistance from the Institute, state and federal financial aid or loan programs during 2007/08 (the most recent data available). Students received nearly \$3.3 million in scholarships from private organizations not affiliated with the Institute. Approximately 8% of Institute scholarships are funded from endowed scholarship funds and private gifts. In fiscal year 2007/08, students received more than \$52.8 million under the Federal Direct Stafford Student Loan Program, and approximately \$5.1 million through the Institute-administered Federal Perkins Loan Program. Parents received more than \$12.5 million in the Federal Parent Loan for Undergraduate Students (PLUS) Program. The Institute started the RIT Student Loan Program in partnership with Citibank in 2004/05. A total of \$19.6 million in loans have originated since inception funded from Citibank's capital and both the Institute and Citibank share the risk for a percentage of potential uncollectible loans. Of the \$19.6 million disbursed, \$6.2 million are subject to risk sharing with Citibank. This program is subject to annual renewal, and the Institute does not expect that the program will be renewed for academic year 2009/10. Federal grants to students from the Pell Grant, SMART Grant, Supplemental Educational Opportunity Grant (SEOG) and Academic Competitiveness Grant programs amounted to approximately \$12.0 million. Students enrolled at the Institute received approximately \$8.5 million in grants from New York State's Tuition Assistance Program and other State scholarships and grants. In fiscal year 2007/08, students earned approximately \$17.5 million from campus-based employment opportunities, of which approximately \$3.3 million was earned under the Federal Work-Study Program.

Institute scholarship grants came from the following sources in the academic years listed below:

### Sources of Institute Scholarship Grants

*(dollars in thousands)*

	<u>2003/04</u>	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>
Unrestricted Funds	\$67,363	\$68,036	\$72,547	\$80,699	\$90,366
Restricted Funds	<u>7,213</u>	<u>7,542</u>	<u>7,589</u>	<u>7,629</u>	<u>8,329</u>
Total	\$74,576	\$75,578	\$80,136	\$88,328	\$98,695

## Faculty

The teaching faculty included 914 full-time and 447 part-time members for the 2007/08 academic year. Of the full time equivalent faculty, approximately 43% are tenured and approximately 60% hold Ph.D., professional or other advanced degrees. Consistent with its priority objective of ensuring that each student has a high degree of personal attention and substantial regular access to faculty, the Institute maintains a student to faculty ratio of approximately 11 to 1. Ninety-two percent (92%) of RIT's undergraduate classes have fewer than 50 students.

The following table sets forth the faculty profile for the past five academic years.

### Teaching Faculty

	<u>2003/04</u>	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>
Full-Time	848	872	879	892	914
Part-Time & Adjunct	<u>465</u>	<u>403</u>	<u>421</u>	<u>446</u>	<u>447</u>
Total	1,313	1,275	1,300	1,338	1,361
Faculty FTE	1,007	1,017	1,015	1,032	1,073

## ANNUAL FINANCIAL STATEMENT INFORMATION

### Budget and Reporting Procedures

The Finance Committee of the Board of Trustees is actively involved in the major financial decisions of the Institute and through careful oversight ensures that financial resources are managed effectively and allocated appropriately according to established priorities.

The budget process begins in the fall of the previous academic year. The Budget Committee, consisting of the President, Provost, the Senior Vice President for Finance and Administration and the Budget Director, distributes the spending priorities for the next fiscal year to the various division heads based on projected enrollment and other revenue streams. Budget requests are prepared on the basis of needs assessments and in accordance with the Institute's strategic plan.

The revenue projections and spending priorities are reviewed with the Finance Committee of the Board of Trustees during the planning process. Budget hearings are held with the vice presidents and academic deans along with the Budget Committee. Following this review, the spending allocations across colleges, divisions and programs are communicated to each vice president and dean. Individual unit budgets are reviewed and processed through the divisional vice presidents.

The next year's budget is then finalized and recommended to the Finance Committee of the Board of Trustees and the full Board of Trustees for final approval.

The current operating budget for fiscal year 2008/09 provides for a balanced budget. The Institute monitors its actual budget results monthly and performs periodic interim analysis and review of operating results. Interim results and projected year-end results are communicated to the Finance Committee of the Board of Trustees at their regularly scheduled meetings.

## Summary of Financial Information

The Institute's financial statements are prepared on the accrual basis of accounting. The following tables present summaries extracted from the Institute's audited financial statements for the fiscal years ended June 30, 2003 through June 30, 2007. These tables are derived from, and should be read in conjunction with, the Institute's fiscal year 2007 audited financial statements included in Appendix B to this Official Statement.

### Summary of Activities

As of June 30,

(dollars in thousands)

	2003	2004	2005	2006	2007
Operating revenues:					
Tuition and fees, net	\$156,989	\$161,912	\$167,413	\$175,329	\$191,288
Sales and services of auxiliary enterprises	46,584	48,691	56,581	59,037	62,183
National Technical Institute for the Deaf	53,351	52,008	53,585	56,378	56,950
Government grants and contracts	22,115	23,864	24,318	25,761	25,342
Private gifts, grants and contracts	14,345	15,197	15,917	16,843	16,808
Investment return	25,222	22,991	24,421	25,396	27,723
Other sources	8,191	10,285	11,981	11,916	13,814
Total operating revenues	326,797	334,948	354,216	370,660	394,108
Operating expenses:					
Instruction	149,914	144,924	160,404	163,000	166,959
Research	25,222	27,374	27,749	28,719	25,638
Public service	10,550	12,569	11,653	13,296	16,254
Academic support	31,753	35,256	32,192	33,899	35,200
Student services	28,333	29,447	29,726	31,201	34,373
Institutional support	24,817	23,463	23,610	27,230	27,664
Auxiliary enterprises	55,669	63,805	65,523	68,897	71,560
Total operating expenses	326,258	336,838	350,857	366,242	377,648
Net operating activities	539	(1,890)	3,359	4,418	16,460
Nonoperating activities:					
Investment return	8,440	52,537	19,491	41,357	82,402
Capital contributions	12,772	7,519	12,099	11,530	18,364
Government grants and contracts	834	1,389	4,166	13,113	3,545
Revaluation and loss on disposal of property, plant and equipment		(12,983)			
Postretirement benefit expense	(12,810)	(13,631)	(7,599)	(12,028)	(7,018)
Beneficiary payments and change in value of deferred giving arrangements	(925)	(637)	(702)	(841)	(276)
Change in value of interest rate swap Agreement	-	-	-	(526)	900
Other	-	-	(709)	(4,870)	(4,417)
Net nonoperating activities	8,311	34,194	26,746	47,735	93,500
Increase in net assets before cumulative effect change in accounting principle	8,850	32,304	30,105	52,153	109,960
Cumulative effect of change in accounting principle	-	-	-	(7,060)	(6,249)
Increase in net assets	8,850	32,304	30,105	45,093	103,711
Net assets at beginning of year	730,700	739,550	771,854	801,959	847,052
Net assets at end of year	\$739,550	\$771,854	\$801,959	\$847,052	\$950,763

## Management Discussion Fiscal Year 2006/07

The Institute's operating margin for fiscal year ending June 30, 2007 was \$15.7 million or 4% (compared to 1.7% in 2006) due primarily to a \$16.0 million (9.1%) increase in net tuition revenue. Total operating revenues increased 5.5%, while total operating expenses increased only 3.1%.

Total net assets increased by \$103.7 million (including a one-time charge of \$6.2 million to the postretirement liability) driven by an improved operating margin, an increase of \$90.5 million in the endowment fund, net of a spending distribution of \$20.7 million, and capital contributions and government grants for construction totaling \$21.9 million.

Free cash<sup>(1)</sup> generated from operations, after debt service and other claims, was \$29.7 million and \$18.5 million in 2007 and 2006, respectively. The 2007 amount exceeded planned capital requirements, equipment purchases and facilities repairs, as well as additions to reserves for facilities renewal and replacement and strategic initiatives. Results continue the trend of an improving operating margin consistent with the Institute's projections and financial planning objectives.

The Institute adopted FAS 158 effective June 30, 2007. As such, 100% of the Institute's accrued postretirement benefit obligation (APBO) is now included on its balance sheet. In the year-ended June 30, 2007, the Institute recognized \$2.8 million in operating expense and \$7.0 million in non-operating expense associated with postretirement benefits. The APBO liability was \$105.7 million.

<sup>(1)</sup> An internal measure of the Institute's performance calculated as follows: Net operating surplus plus depreciation/amortization plus/minus the difference between interest paid and interest expense and the difference between postretirement benefits service expense and premiums paid less capital equipment purchases and long-term debt principal payments. This analysis reflects the amount of cash available from annual operations to transfer to reserves for future/planned capital expenditures.

## Government Grants and Contracts

In fiscal year 2006/07 the Institute received a total of \$39.6 million in new awards, reflecting the efforts of 216 principal investigators. This represents a 12.6% increase in awarded funds over fiscal year 2005/06. The following table summarizes awards by funding source for the last five years:

### Awards by Funding Source Type As of June 30, (dollars in thousands)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Federal agencies	\$19,294	\$15,191	\$20,094	\$17,383	\$24,328
New York State	4,867	8,313	2,351	6,153	5,833
Corporations	3,819	4,795	7,352	6,856	7,269
Foundations	2,689	1,345	1,385	4,422	1,384
Other	<u>607</u>	<u>607</u>	<u>1,287</u>	<u>376</u>	<u>802</u>
Total	\$31,276	\$30,251	\$32,469	\$35,190	\$39,616

Revenue from grants and contracts are generally recognized as earned in the Institute's audited financial statements as the related costs are incurred under the grant or contract agreements. Amounts received in advance are reported as deferred revenues.



## Fundraising

The Institute regularly receives annual support from private gifts and grants. In addition, the Institute receives capital gifts from private sources, primarily for the endowment or for specific facilities projects. The following table summarizes the total amount reported (including net pledges) in unrestricted and restricted private gifts, grants and contracts for the last five years as recorded in the audited financial statements of the Institute:

### Private Gifts, Grants and Contracts\*

As of June 30,

(dollars in thousands)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Unrestricted gifts, grants and contracts	\$10,476	\$13,665	\$13,693	\$15,871	\$13,796
Temporarily restricted gifts	13,840	5,883	8,588	8,802	15,506
Permanently restricted gifts	<u>2,801</u>	<u>3,168</u>	<u>5,735</u>	<u>3,700</u>	<u>5,870</u>
Total	\$27,117	\$22,716	\$28,016	\$28,373	\$35,172

\* With the exception of philanthropic grants from foundations, private grants and contracts, as reported in the Institute's audited financial statements, are excluded from fund raising activities.

## Endowment and Other Investments

### Endowment

At June 30, 2006, the Institute's endowment fund had a fair value of \$566.7 million. The June 30, 2006 fair value was comprised of \$181.0 million of the original contributed value and \$385.7 million of investment appreciation. At June 30, 2007, the Institute's endowment fund had a fair value of \$657.2 million, comprised of \$187.6 million of the original contributed value and \$469.6 million of investment appreciation.

The endowment portfolio is comprised of over 667 individual endowment funds. Each fund is either a true endowment, having been specifically endowed by its donor(s), or a quasi-endowment, having been designated for long-term investment by the Institute's Board of Trustees. Depending upon the terms of the original gift, each fund's income is either restricted to a particular purpose, or is used to support the overall operations of the Institute, including the provision of future debt service payments (see "Endowment Spending Policy" below). As of June 30, 2007 45% of the fund consisted of true endowments (of which 80% had income restrictions) and 55% of quasi-endowment (of which 100% is unrestricted). Total restricted and unrestricted endowment funds provided over \$20.7 million of annual support to the operation of the Institute in fiscal year 2006/07.

The Endowment Committee of the Board of Trustees establishes the investment and spending policies for the endowment and similar funds and oversees their implementation, in conjunction with the Institute's external consultant. The Trustees' investment policies address such considerations as asset allocation, risk, and manager selection. The investment policy asset allocation targets are: domestic public equity 15%, international public equity 15%, domestic and international fixed income 15%, and alternative investments 55%. Alternative investment targets include allocations to private equity (15%), real assets (15%), and hedge funds (25%). The total numbers of managers in the alternative asset category were 41 and 28 at June 30, 2007 and 2006, respectively. On a strategic view, the policy allocations are: growth assets 45%, risk protection assets 35% and inflation protection assets 20%.

### Endowment Spending Policy

In 1993, the Institute's Endowment Committee adopted a total return endowment spending policy whereby 5% of the average market value of the endowment fund over the previous 20 quarters is distributed to the operating budget and related restricted accounts. In 2005/06, the Institute amended its spending policy to ensure that the total spending distribution is at least equal to 3.50% but not greater than 5.25% of the beginning of the year portfolio market value. The objective of the policy is to preserve the value of the endowment fund and stabilize operating support for the Institute's budget. The spending policy is based upon the premise that the real value of the endowment will be preserved if the

nominal earnings on the portfolio over a period of years equals or exceeds the sum of the spending rate plus inflation. For fiscal years 1993 through 2007, the actual endowment spending rate has averaged 4.35% annually.

*Total Cash, Cash Equivalents, and Investments*

In addition to the endowment portfolio discussed above, the Institute maintains a working capital investment portfolio, investments pursuant to underlying donor deferred giving agreements, and moneys on deposit with the Trustees for the Institute's outstanding debt. The schedule below breaks down the total investments by these categories as of June 30, 2003 through 2007:

**Cash, Cash Equivalents and Long-Term Investments**

**As of June 30,**  
*(dollars in thousands)*

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Endowment	\$414,869	\$471,270	\$502,503	\$566,746	\$657,230
Working capital	104,029	102,869	107,454	102,584	124,389
Deferred giving	12,895	12,959	13,904	14,663	14,780
Tax-exempt debt trustee holdings	<u>27,320</u>	<u>8,718</u>	<u>12,295</u>	<u>9,550</u>	<u>8,657</u>
Total	\$559,113	\$595,816	\$636,156	\$693,543	\$805,056

The working capital portfolio consists of cash and cash equivalents, and liquid short- and intermediate-term investments used for ongoing operations and funding of capital projects.

The deferred giving investments represent assets of various charitable remainder trusts, gift annuity agreements and other deferred giving instruments. These investments are temporarily or permanently restricted in accordance with the terms of the trust or gift annuity agreements, and are not immediately available for operating or capital purposes. Upon termination of the underlying deferred gift agreements, the trust investments are available for use or investment pursuant to the donors' restrictions.

The investments held by the trustees of RIT's outstanding debt are for the purposes of building and equipment renewal and replacements, debt service (principal and interest) payments, and unused bond proceeds available for respective project construction costs.

**Properties and Facilities**

The Institute's facilities include more than 200 buildings (over 5 million square feet of space) situated on 1,300 acres as well as student housing for approximately 6,850 students and state-of-the-art technology.

Students have access to high-tech learning centers, smart classrooms with state-of-the-art computers, software, and multimedia technologies across all eight colleges including, computer engineering facilities, digital printing presses, a laser optics lab, and a robotics program. RIT's students explore the creative aspects of many industries with a balance of technological and theoretical approaches, using the latest equipment and technology in its computer facilities and studios.

During the last five years, the Institute received support totaling approximately \$15 million from the State of New York for the construction of two new facilities for academic and research programs in microelectronics engineering and biosciences. The 20,000 square foot Information Technology Collaboratory building opened in March 2006. The facility contains a clean room and academic space at a cost of approximately \$7 million. The Center for Biosciences Education and Training, a 37,500 square foot facility, opened during the summer of 2006. The state-of-the-art facility houses research and teaching laboratories for biosciences work force training and research at a cost of \$12.8 million, \$8 million from the State of New York and the remainder from the Institute's resources.

The CSD Student Development Center at NTID was also completed during the summer of 2006. This building, designed to serve the deaf and hard-of-hearing student community, was made possible by federal funding from the Department of Education and a generous contribution of \$2 million from CSD (Communication Service for the Deaf).

In the spring of 2008, the new College of Applied Science and Technology (CAST) building opened, adding another 36,500 square feet of academic space to the campus. The CAST building is home to the OSHA Training Center and academic departments including Civil Engineering Technology, Environmental Management and Safety and Electrical,

Computer, and Telecommunications Engineering Technology. It's also the "greenest" building on campus; the newest campus building received the prestigious LEED-gold certification for implementing a wide range of sustainable strategies. CAST, which cost \$10.2 million, also houses the William G. McGowan Center for Telecommunications, was made possible by a generous gift of \$2 million from the McGowan Foundation; the remaining funding of \$8.2 million came from Institute resources.

The 149,000 square foot Gordon Fieldhouse and Activity Center (Center or Fieldhouse), which opened in May 2004, provides athletic, intramural and recreation facilities designed to contribute to programmatic goals for student services and enhance growth in student enrollment. A key element of the Center is a 6,000 seat indoor complex designed to house campus events including academic convocation and graduation. The Fieldhouse includes a 60,000 square foot field and event venue, 16,000 square foot fitness center, and aquatics center with both competition and recreation pools. The Institute's original Student Life Center opened in 1992, providing recreational facilities that include a gymnasium, fitness center, racquetball courts and an indoor track. Other indoor facilities include a second gym, an ice arena, wrestling rooms and weight training facilities. Outdoor facilities include lighted tennis courts, an all-weather track, artificial and natural turf playing fields and a fitness trail.

RIT has answered the needs of the professional community with degrees in interactive and interdisciplinary programs to match the changing requirements of future industry and government employers. The challenge for RIT is to provide students with learning experiences that leverage the advantages of the new technology. The Institute continuously adapts its curriculum to de-emphasize the teaching of isolated tool-based skills and concentrates on higher-level processes that integrate the diverse knowledge base necessary to be successful in today's and tomorrow's industries. The new Game Design and Development Program in the Golisano College of Computing and Information Sciences integrates strong programming skills with the design and collaborative skills that are essential to succeeding in the games industry, where multi-faceted professionals work on development teams.

The concentration of industry equipment at RIT is one example of the Institute's commitment to providing students with a world-class education. RIT's partnership with Heidelberg, Inc. was renewed in 2001 with a donation of a world-class Sunday 2000 press system. An addition to the Louise Slaughter Center for Integrated Manufacturing Studies Building was built to house this state-of-the-industry equipment, which is used for teaching, research and training.

The Wallace Library is a high technology, multimedia resource center. The Library's online menu provides access to a wide selection of up to date electronic resources in Web-based or text formats. Library users can access the library's catalog, search many electronic commercial databases, access graphic interface workstations, image scanning and a host of interactive CD titles. The Library's Center for the Visually Impaired houses an Arkenstone Reader and other technology resources for individuals with visual impairments and contains periodicals that are in Braille. A smaller library within Wallace Library, the Melbert B. Cary Jr. Library, is one of the nation's premier libraries dedicated to the history and practice of printing and graphic arts. The library contains more than 14,000 volumes of rare books and other impressive holdings on fine printing, bookbinding, papermaking, type design, calligraphy, book illustration and other aspects of the graphic arts. The library's digital image database enables users all over the world to sample the materials housed in the collection.

The Institute's residence facilities, including residence halls and apartments, serve approximately 6,850 students. Students may choose living arrangements according to their personal preferences, including single gender, co-educational, intensified study, over 21 years of age, Greek fraternities and sororities, and special interest houses such as Art, Computer Science, Engineering and Photo. Some of the on-campus townhouses were developed and are owned by an independent not-for-profit organization on land leased from the Institute. This organization independently financed the construction costs of approximately \$27 million for these facilities, and accordingly, their underlying long-term debt is excluded from the Institute's financial statements. RIT has continued to operate a hotel and conference center it received as a donation in 2002. Two thirds of the rooms in the facility (170 rooms) are dedicated to student housing providing additional student residence capacity for 332 students.

## Property, Plant and Equipment

As of June 30,

(dollars in thousands)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Land and site improvements	\$ 35,957	\$ 36,620	\$ 37,271	\$ 40,587	\$ 42,328
Buildings and building improvements	432,733	460,431	464,000	483,983	522,731
Equipment, library, software and works of art	203,061	132,963	123,387	122,907	119,405
Construction in progress	<u>13,500</u>	<u>1,451</u>	<u>8,290</u>	<u>18,738</u>	<u>5,922</u>
	685,251	631,465	632,948	666,215	690,386
Less: Accumulated depreciation depreciation	<u>(282,127)</u>	<u>(231,011)</u>	<u>(237,322)</u>	<u>(256,261)</u>	<u>(276,580)</u>
Property, plant and equipment, net	\$403,124	\$400,454	\$395,626	\$409,954	\$413,806

The Institute has a long-term capital improvement schedule which is comprised of routine repair items as well as major renewal or new facility development projects. The funding for this capital improvement plan comes from multiple sources including renewal and replacement reserves, donor contributions, external sponsors, and the issuance of tax-exempt debt. Management incorporates in the Institute's annual operating budget the incremental amounts necessary to maintain all new facilities, and factors these increased costs into the overall capital planning process. The base operating budget carries between \$15 million and \$20 million for capital purposes including annual funding of the repair and renewal reserves, acquisition of equipment and current capital improvement projects.

### Outstanding Indebtedness

Long-term debt (in thousands) at June 30, 2007 is summarized as follows:

DASNY Rochester Institute of Technology Insured Revenue Bonds	
Series 1997, 6.00%	\$ 2,505 *
Series 1999, 4.50% to 5.25%	12,542 **
Series 2002A, 5.25%	41,234
Series 2002B, 4.00% to 5.00%	15,357
Series 2006, 4.00% to 5.25%	61,430
Taxable Adjustable Rate Bonds, Series 2004	12,640
Capital leases	<u>174</u>
Total	\$145,882

\* Paid in full July 2007.

\*\* Secured by a pledge of tuition and fees of the Institution.

All DASNY issues are insured fixed rate bonds. The Institute maintains a self-liquidity plan, monitored and approved by Moody's Investors Service, Inc., for its Series 2004A taxable variable rate demand bonds. Total average annual debt service is approximately \$11.9 million over the next 16 years. Total annual debt service is incorporated in the Institute's operating budget.

On May 22, 2006, the Institute entered into an interest rate swap agreement with a notional amount of \$40 million with JP Morgan Chase Bank, NA (counterparty). Refer to "Management Discussion Fiscal Year 2007/08" below for additional information.

### Pension Plans

All full-time or extended part-time (approximately 1,040 hours per year) employees who have completed one year of service at the Institute or who have worked one full year at a college or university immediately preceding employment at RIT are eligible for the Institute's 403(b) retirement plan (the "Plan"). Under the Plan, employees must elect a minimum of a 2% salary deferral to obtain an Institute match. For employees hired prior to January 1, 2006, the Institute contribution is 10% of eligible compensation for those employees electing a 2% salary deferral. Employees hired on or after January 1,

2006, are eligible for a graduated Institute match ranging from 4% to 9% when the employee elects a salary deferral from 2% to 5%. All retirement benefits are funded and fully vested under a defined contribution program. Employees may participate in the program through TIAA-CREF or through Fidelity Investment Corp. Total pension expense for 2006/7 fiscal year was \$14 million.

### **Insurance**

The Institute carries a broad range of property and general liability coverage, including Directors and Officers liability coverage, in amounts customary for universities of the size of the Institute. Insurance presently in effect on the Institute's property is written on an all-risk policy with a limit of \$500 million on buildings and contents.

### **Strategic Plan and Global Initiatives**

In July 2004, the Institute adopted a new 10-year strategic plan. The plan includes several guiding principles meant to maintain the Institute's growth strategy and its unique ability to offer technology-based and experiential education programs. Special emphasis is directed towards establishing a curriculum focused on innovation and creativity and emerging career areas to support the Institute's mission to prepare students for careers in a global society. The Institute places increased importance on student retention and success, community, global education, scholarship and research.

In response to the Institute's 10-year strategic plan, RIT has developed a global presence in Croatia, the United Arab Emirates, Kosovo, and the Dominican Republic. These international markets align the Institute's existing and projected academic strengths with demand. The presence of the international programs provides opportunities for faculty and students to travel, study, live and work abroad. These venues provide an enriched academic curriculum with courses and programs addressing a broad understanding of global issues.

### **Future Capital Plans**

In addition to the construction of a new mixed-use commercial, academic support and residential housing complex, the renewal, replacement and expansion of the heating and cooling plants and related infrastructure located throughout the main campus, and the rehabilitation or renovation of academic, administrative, athletic and residential buildings from the proceeds of the Series 2008A Bonds, the Institute estimates that it will spend an additional \$90 million over the next five to seven years on its capital plan. The plan addresses facility needs including research-oriented and academic space, student programming and common space, and various repair and renewal projects. Funding will come from a combination of external sponsors, donor contributions and Institute resources.

Construction is currently underway for a 52,000 square foot administrative building which will also be home to the Institute's new Innovation Center, a space dedicated to showcasing the many creative and innovative ventures of RIT students, faculty and staff. The \$15.6 million building, funded with Institute resources, will open in the spring of 2009, freeing up much needed space in existing buildings to accommodate new faculty hired to fill positions created by continued enrollment growth. The Golisano Institute for Sustainability, a new research and education initiative at RIT focusing on critical sustainability issues threatening environmental quality, the competitiveness of industrial systems and associated national infrastructure, has received donations of \$13 million and is seeking \$12 million in grant funding from the State of New York to begin Phase I of a two-phase design and construction project for a new state-of-the-art facility. Phase II of the project is estimated to cost another \$25 million and will follow as funding is secured for its construction.

### **Management Discussion Fiscal Year 2007/08**

#### *Enrollment*

The Institute's Fall 2008-2009 enrollment is 13,442 FTE students. Headcount is 16,494. As of Fall 2007, RIT was the 12<sup>th</sup> largest private university in the country based on full-time undergraduate enrollment and awards the 3rd largest number of undergraduate degrees in science, technology, engineering, and mathematics (the critical STEM areas) among all private universities.<sup>1</sup> Applications for Fall undergraduate admission grew by approximately 14% (15,780 in Fall 2008 as compared to 13,848 in Fall 2007). The increase in applications came primarily as a result of increased interest in the Institute's programs from women, minorities, and applicants from outside of the Mid-Atlantic and New England regions. Applications to RIT's graduate programs grew by approximately 9% (4,345 in Fall 2008 as compared to 3,991 in Fall 2007). The percentage of Freshmen that returned to RIT for their second year is approximately 89%.

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<sup>1</sup> Integrated Postsecondary Education Data System (IPEDS) Peer Analysis System

### *Financial Results*

Preliminary financial data compiled by management for the fiscal year ending June 30, 2008 indicates an operating margin of \$11.8 million or 2.9% (compared to 4.0% in 2007). Net tuition revenue grew by \$14.8 million or 7.7% in 2008 compared to a 9.1% increase in 2007, driven by a net increase in enrollment of 163 FTE and a 5.9% tuition rate increase offset by a planned increase in the net tuition discount from 31.6% to 32.4%. Total operating revenue increased by \$18.2 million or 4.6%, while expenses increased by 5.9%. Primary contributors to the increase in expenses include increased salary expenses of 4.4% due to a planned addition of research faculty and the reduction of teaching workloads for selected faculty in support of the Institute's plan for increasing sponsored research. Current staff and faculty received an average increase in compensation of 3.0%. Faculty and staff FTE increased by 52. The Institute incurred higher energy costs, higher cost of goods and non-capital equipment replacement and renovation expenses.

At June 30, 2008, the Institute's endowment fund had a fair value of \$675.0 million as compared to \$657.2 million in 2007. The total numbers of managers in the alternative asset category were 51 and 41 at June 30, 2008 and 2007, respectively. In general, no individual investment in this category exceeds greater than 2% of the endowment portfolio. At August 31, 2008, the Institute's endowment fund had a fair value of \$650.6 million (unaudited). The decrease in the endowment fund from June 30, 2008 to August 31, 2008 reflects the recent volatility in the financial markets.

Total net assets increased by \$36.8 million in 2008 compared to \$103.7 million in 2007. The changes in total net assets from 2007 to 2008 primarily resulted from three factors: a \$4.8 million reduction in operating margin, a \$12.0 million actuarial gain on the accrued postretirement benefits obligation, and a \$79.9 reduction in investment return (investment return was \$2.5 million and \$82.4 million in 2008 and 2007, respectively), net of a spending distribution of \$21.6 million (and a \$20.7 million spending distribution in 2007).

In fiscal year 2005/06 the University entered into an interest rate swap agreement with a notional amount of \$40.0 million with JP Morgan Chase Bank, NA (counterparty). Under the agreement the counterparty pays the University a quarterly interest payment based on 70.6% of the weighted average of weekly resets of 5-year LIBOR. The University pays the counterparty a weighted average of weekly resets of SIFMA. Subsequent to fiscal year 2007/08 the University amended its interest rate swap agreement to reflect a decrease in the notional amount to \$38.1 million and a change to the amortization schedule. Under the amended agreement, the quarterly interest swap payments will recommence effective October 1, 2015. The agreement will continue in effect until July 1, 2032. The Institute has a collateral posting requirement at its current rating level when the market-to-market valuation of the swap is greater than or equal to a \$10.25 million liability to the Institute. As of October 6, 2008 the mark-to-market valuation was a liability of \$1.2 million to the Institute. Certain events may trigger an early termination under the agreement at which time the Institute may be required to make a termination payment to the swap counterparty.

As a subsequent disclosure to fiscal year-end 2008, the restrictions on the Commonfund Short Term Fund will have no impact on the operations of the Institute. As of September 30, 2008 the Institute had approximately \$1.3 million invested in the Commonfund Short Term Fund. The Commonfund estimates that 57% of the holdings will be liquid by the end of calendar year end 2008.

### *Fundraising*

In the first year of his Presidency, Dr. Destler set both annual and five-year stretch goals for many areas throughout the campus including fundraising, alumni giving rate, and sponsored research. The total amount received in unrestricted and restricted private gifts, grants and contracts for fiscal year 2007/08 was \$33.1 million (unrestricted gifts, grants and contracts of \$14.8 million; temporarily restricted gifts of \$11.5 million and permanently restricted gifts of \$6.8 million).

## **LITIGATION**

Litigation and other claims incident to the operation of the Institute are pending against the Institute. While the ultimate liability of the Institute, if any, is not presently determinable, such litigation and other claims, in the judgment of the Institute, will not in the aggregate have a material adverse effect on the Institute's current financial position.

## PART 7 — AUTHORITY

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

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

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

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

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

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

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





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

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

**Governance**

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

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

The current members of the Authority are as follows:

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

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

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

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

Business. Mr. Johnson was awarded an Honorary Doctor of Science degree from Clarkson University. Mr. Johnson's term expires on March 31, 2010.

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

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

BRIAN RUDER, Scarsdale.

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

ANTHONY B. MARTINO, CPA, Buffalo.

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

SANDRA M. SHAPARD, Delmar.

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

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

Dr. Hedges was appointed as a Member of the Authority by the Speaker of the State Assembly on February 24, 2003. Dr. Hedges serves on the Legislative Advisory Task Force on Demographic Research and Reapportionment. He is the former Deputy Secretary of the New York State Assembly Committee on Ways and Means. Dr. Hedges previously served as the Director of Fiscal Studies of the Assembly Committee on Ways and Means. He was an Associate Professor of Political Science and Public Policy at the State University of New York at Albany where he taught graduate and

undergraduate courses in American politics, research methodology, and public policy. Dr. Hedges holds a Doctor of Philosophy and a Master of Arts degree from the University of Rochester and a Bachelor of Arts degree from Knox College.

KEVIN R. CARLISLE, Averill Park.

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

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

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

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

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

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

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

The principal staff of the Authority is as follows:

PAUL T. WILLIAMS, JR. is the Executive Director and chief administrative and operating officer of the Authority. Mr. Williams is responsible for the overall management of the Authority's administration and operations. He most recently served as Senior Counsel in the law firm of Nixon Peabody LLP. Prior to working at Nixon Peabody, Mr. Williams helped to establish a boutique Wall Street investment banking company. Prior thereto, Mr. Williams was a partner in, and then of

counsel to, the law firm of Bryan Cave LLP. He was a founding partner in the law firm of Wood, Williams, Rafalsky & Harris, which included a practice in public finance and served there from 1984-1998. Mr. Williams began his career as an associate at the law firm of Walker & Bailey in 1977 and thereafter served as a counsel to the New York State Assembly. Mr. Williams is licensed to practice law in the State of New York and holds professional licenses in the securities industry. He holds a Bachelor's degree from Yale University and a Juris Doctor degree from Columbia University School of Law.

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

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

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

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

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

### **Claims and Litigation**

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

## **Other Matters**

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

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

### *Independent Auditors*

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

## **PART 8 — LEGALITY OF THE SERIES 2008A BONDS FOR INVESTMENT AND DEPOSIT**

Under New York State law, the Series 2008A 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 2008A Bonds may be deposited with the State Comptroller to secure deposits of State moneys in banks, trust companies and industrial banks.

## **PART 9 — NEGOTIABLE INSTRUMENTS**

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

## **PART 10 — TAX MATTERS**

In the opinion of Squire, Sanders & Dempsey L.L.P., Bond Counsel, under existing law (i) interest on the Series 2008A Bonds is excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations and (ii) interest on the Series 2008A Bonds is exempt from personal income taxes imposed by the State of New York and political subdivisions thereof, including The City of New York and the City of Yonkers. Bond Counsel will express no opinion as to any other tax consequences regarding the Series 2008A Bonds.

The opinion on federal tax matters will be based on and will assume the accuracy of (i) certain representations and certifications, and compliance with certain covenants, of the Authority and the Institution to be contained in the transcript of proceedings and that are intended to evidence and assure the foregoing, including that the Series 2008A Bonds are and will remain obligations the interest on which is excluded from gross income for federal income tax purposes and (ii) the opinions of Counsel to the Institution regarding, among other things, the current qualification of the Institution as an organization described in section 501(c)(3) and exempt from taxation under section 501(a) of the Code. Bond Counsel has

not given any opinion or assurance concerning Section 513(a) of the Code or the effect of any future activities of the Authority or the Institution. Failure of the Institution to maintain its status as an organization described in Section 501(c)(3) of the Code, or to operate the facilities financed by the Series 2008A Bonds in a manner that is substantially related to the Institution's charitable purpose under Section 513(a) of the Code, may cause interest on the Series 2008A Bonds to be included in gross income retroactively to the date of the issuance of the Series 2008A Bonds. Bond Counsel will not independently verify the accuracy of the Authority's and the Institution's certifications and representations or the continuing compliance with the Authority's and the Institution's covenants and will not independently verify the accuracy of the opinion of the Institution's counsel.

The opinion of Bond Counsel is based on current legal authority and covers certain matters not directly addressed by such authority. It represents Bond Counsel's legal judgment as to exclusion of interest on the Series 2008A Bonds from gross income for federal income tax purposes but is not a guaranty of that conclusion. The opinion is not binding on the Internal Revenue Service ("IRS") or any court. Bond Counsel expresses no opinion about (i) the effect of future changes in the Code and the applicable regulations under the Code or (ii) the interpretation and the enforcement of the Code or those regulations by the IRS.

The Code prescribes a number of qualifications and conditions for the interest on state and local government obligations to be and to remain excluded from gross income for federal income tax purposes, some of which, require future or continued compliance after issuance of the Series 2008A Bonds in order for the interest to be and to continue to be so excluded from the date of issuance. Noncompliance with these requirements by the Authority or the Institution may cause the interest on the Series 2008A Bonds to be included in gross income for federal income tax purposes and thus to be subject to federal income tax retroactively to the date of their issuance. The Authority and the Institution have each covenanted to take the actions required of it for the interest on the Series 2008A Bonds to be and to remain excluded from gross income for federal income tax purposes, and not to take any actions that would adversely affect that exclusion. After the date of issuance of the Series 2008A Bonds, Bond Counsel will not undertake to determine (or to so inform any person) whether any actions taken or not taken, or any events occurring or not occurring, or any other matters coming to Bond Counsel's attention, may adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2008A Bonds or the market value of the Series 2008A Bonds.

A portion of the interest on the Series 2008A Bonds earned by certain corporations may be subject to a federal corporate alternative minimum tax. In addition, interest on the Series 2008A Bonds may be subject to a federal branch profits tax imposed on certain foreign corporations doing business in the United States and to a tax imposed on excess net passive income of certain S corporations.

Under the Code, the exclusion of interest from gross income for federal income tax purposes may have certain adverse federal income tax consequences on items of income, deduction or credit for certain taxpayers, including financial institutions, certain insurance companies, recipients of Social Security and Railroad Retirement benefits, those that are deemed to incur or continue indebtedness to acquire or carry tax-exempt obligations, and individuals otherwise eligible for the earned income tax credit. The applicability and extent of these or other tax consequences will depend upon the particular tax status or other tax items of the owner of the Series 2008A Bonds. Bond Counsel will express no opinion regarding those consequences.

Payments of interest on tax-exempt obligations, including the Series 2008A Bonds, are generally subject to IRS Form 1099-INT information reporting requirements. If a Series 2008A Bond owner is subject to backup withholding under those requirements, then payments of interest will also be subject to backup withholding. Those requirements do not affect the exclusion of such interest from gross income for federal income tax purposes.

### **Miscellaneous**

Legislation affecting tax-exempt obligations is regularly considered by the United States Congress, and legislation affecting the exemption of interest thereon for purposes of taxation by the State may be considered by the State legislature. Court proceedings may also be filed the outcome of which could modify the tax treatment of obligations such as the Series 2008A Bonds. There can be no assurance that legislation enacted or proposed, or actions by a court, after the date of issuance of the Series 2008A Bonds will not have an adverse effect on the tax status of interest on the Series 2008A Bonds or the market value of the Series 2008A Bonds.

Prospective purchasers of the Series 2008A Bonds should consult their own tax advisers regarding pending or proposed federal and state tax legislation and court proceedings, and prospective purchasers of the Series 2008A Bonds at other than their original issuance at the price indicated on the cover of this Official Statement should also consult their own tax

advisers regarding other tax considerations such as the consequences of market discount, as to all of which Bond Counsel expresses no opinion.

Bond Counsel's engagement with respect to the Series 2008A Bonds ends with the issuance of the Series 2008A Bonds, and, unless separately engaged, Bond Counsel is not obligated to defend the Authority, the Institution or the owners of the Series 2008A Bonds regarding the tax status of interest thereon in the event of an audit examination by the IRS. The IRS has a program to audit tax-exempt obligations to determine whether the interest thereon is includable in gross income for federal income tax purposes. If the IRS does audit the Series 2008A Bonds, under current IRS procedures, the IRS will treat the Authority as the taxpayer and the beneficial owners of the Series 2008A Bonds will have only limited rights, if any, to obtain and participate in judicial review of such audit. Any action of the IRS, including but not limited to selection of the Series 2008A Bonds for audit, or the course or result of such audit, or an audit of other obligations presenting similar tax issues, may affect the market value of the Series 2008A Bonds.

### **Original Issue Discount and Original Issue Premium**

Certain of the Series 2008A Bonds ("Discount Bonds") as indicated on the cover of this Official Statement were offered and sold to the public at an original issue discount ("OID"). OID is the excess of the stated redemption price at maturity (the principal amount) over the "issue price" of a Discount Bond. The issue price of a Discount Bond is the initial offering price to the public (other than to bond houses, brokers or similar persons acting in the capacity of underwriters or wholesalers) at which a substantial amount of the Discount Bonds of the same maturity is sold pursuant to that offering. For federal income tax purposes, OID accrues to the owner of a Discount Bond over the period to maturity based on the constant yield method, compounded semiannually (or over a shorter permitted compounding interval selected by the owner). The portion of OID that accrues during the period of ownership of a Discount Bond (i) is interest excluded from the owner's gross income for federal income tax purposes to the same extent, and subject to the same considerations discussed above, as other interest on the Series 2008A Bonds, and (ii) is added to the owner's tax basis for purposes of determining gain or loss on the maturity, redemption, prior sale or other disposition of that Discount Bond. A purchaser of a Discount Bond in the initial public offering at the price for that Discount Bond stated on the cover of this Official Statement who holds that Discount Bond to maturity will realize no gain or loss upon the retirement of that Discount Bond.

Certain of the Series 2008A Bonds ("Premium Bonds") as indicated on the cover of this Official Statement were offered and sold to the public at a price in excess of their stated redemption price (the principal amount) at maturity. That excess constitutes bond premium. For federal income tax purposes, bond premium is amortized over the period to maturity of a Premium Bond, based on the yield to maturity of that Premium Bond (or, in the case of a Premium Bond callable prior to its stated maturity, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on that Premium Bond), compounded semiannually. No portion of that bond premium is deductible by the owner of a Premium Bond. For purposes of determining the owner's gain or loss on the sale, redemption (including redemption at maturity) or other disposition of a Premium Bond, the owner's tax basis in the Premium Bond is reduced by the amount of bond premium that accrues during the period of ownership. As a result, an owner may realize taxable gain for federal income tax purposes from the sale or other disposition of a Premium Bond for an amount equal to or less than the amount paid by the owner for that Premium Bond. A purchaser of a Premium Bond in the initial public offering at the price for that Premium Bond stated on the cover of this Official Statement who holds that Premium Bond to maturity (or, in the case of a callable Premium Bond, to its earlier call date that results in the lowest yield on that Premium Bond) will realize no gain or loss upon the retirement of that Premium Bond.

***Owners of Discount and Premium Bonds should consult their own tax advisers as to the determination for federal income tax purposes of the amount of OID or bond premium properly accruable or amortizable in any period with respect to the Discount or Premium Bonds and as to other federal tax consequences and the treatment of OID and bond premium for purposes of state and local taxes on, or based on, income.***

## **PART 11 — STATE NOT LIABLE ON THE SERIES 2008A BONDS**

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

Certain legal matters incidental to the authorization and issuance of the Series 2008A Bonds by the Authority are subject to the approval of Squire, Sanders & Dempsey L.L.P., New York, New York, Bond Counsel, whose approving opinion will be delivered with the Series 2008A Bonds. The proposed form of Bond Counsel's opinion is set forth in Appendix E hereto.

Certain legal matters will be passed upon for the Institution by its Counsel, Nixon Peabody LLP, New York, New York. Certain legal matters will be passed upon 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 2008A Bonds or questioning or affecting the validity of the Series 2008A Bonds or the proceedings and authority under which they are to be issued.

## **PART 14 — UNDERWRITING**

The Underwriters have agreed, subject to certain conditions, to purchase the Series 2008A Bonds from the Authority at an aggregate purchase price of \$83,867,433.70 and to make a public offering of Series 2008A Bonds at prices that are not in excess of the public offering prices stated on the cover page of this Official Statement. The Underwriters will be obligated to purchase all such Series 2008A Bonds if any are purchased.

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

## **PART 15 — CONTINUING DISCLOSURE**

In order to assist the Underwriters in complying with Rule 15c2-12 promulgated by the Securities and Exchange Commission ("Rule 15c2-12"), the Institution has undertaken in a written 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 of its fiscal years, commencing with the fiscal year ending June 30, 2008, for filing by DAC with each Nationally Recognized Municipal Securities Information Repository (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 — THE INSTITUTION" of this Official Statement (the "Annual Information"), together with the Institution's annual financial statements prepared in accordance with generally accepted accounting principles and audited by an independent firm of certified public accountants in accordance with U.S. generally accepted auditing standards; 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 Institution, DAC has undertaken in the Continuing Disclosure Agreement, on behalf of and as agent for the Institution 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 Institution, with each such Repository and to the State Information Depository.

The Institution will also 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 and the Trustee have undertaken, for the benefit of the Bondholders, to provide such Notices to DAC should they have actual knowledge of the occurrence of a Notice Event (as hereinafter defined), in a timely manner, the notices required to be provided by Rule 15c2-12 described below (the "Notices"). Upon receipt of Notices from the Authority, the Institution and the Trustee, DAC will file the Notices to each such Repository or to the Municipal Securities Rulemaking Board (the "MSRB"), and to the State Information Depository, in a timely manner. With respect to the Series 2008A 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 it has been provided such information 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 Institution, the Trustee or the Authority and shall not be deemed to be acting in any fiduciary capacity for the Authority, the Institution, the Holders of the Series 2008A Bonds or any other party. DAC has no responsibility for the Authority's failure 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 Institution, the Trustee or the Authority has complied with the Continuing Disclosure Agreement and DAC may conclusively rely upon certifications of the Institution, the Trustee 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 the type included in this Official Statement in "PART 6 - THE INSTITUTION" under the headings "OPERATING INFORMATION" and "ANNUAL FINANCIAL STATEMENT INFORMATION" relating to: (1) *student enrollment*, similar to that set forth under the heading "**Fall Enrollment**," (2) *student admissions*, similar to that set forth under the heading "**First Year Full-Time Applications And Enrollment**," "**Mean Combined Sat Scores**," "**Geographic Profile of Entering Freshmen By Percentage of Class**" and "**Degrees Conferred**" (3) *tuition and other student charges*, similar to that set forth under the heading "**Student Charges**," (4) *financial aid*, similar to that set forth under the subheading "**Sources of Institute Scholarship Grants**," (5) *faculty*, similar to that set forth under the heading "**Teaching Faculty**," (6) *employee relations*, including material information about union contracts and, unless such information is included in the audited financial statements of the Institution, retirement plans; (7) *investments*, unless such information is included in the audited financial statements of the Institution; (8) *plant values*, unless such information is included in the audited financial statements of the Institution; and (9) *outstanding long-term indebtedness*, unless such information is included in the audited financial statements of the Institution; together with (b) a narrative explanation, if necessary to avoid misunderstanding and to assist the reader in understanding the presentation of financial and operating data concerning the Institution and in judging the financial and operating condition of the Institution.

The Notices include notices of any of the following events with respect to the Series 2008A 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 2008A Bonds; (7) modifications to the rights of holders of the Series 2008A Bonds; (8) bond calls; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Series 2008A Bonds; and (11) rating changes. In addition, DAC will undertake, for the benefit of the Holders of the Series 2008A Bonds, to provide to each Repository or the MSRB and to the State Information Depository, in a timely manner, notice of any failure by the Institution to provide the Annual Information and annual financial statements by the date required in the Institution's undertaking described above.

The sole and exclusive remedy for breach or default under the agreement to provide continuing disclosure described above is an action to compel specific performance of the undertaking of DAC, the Institution and/or the Authority, and no person, including any Holder of the Series 2008A Bonds, may recover monetary damages thereunder under any circumstances. A breach or default under the agreement shall not constitute an Event of Default under the Resolution, the

Series 2008A Resolution or the 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 agreement, insofar as the provision of Rule 15c2-12 no longer in effect required the providing of such information, shall 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. As a result, the parties to the agreement do not anticipate that it often will be necessary to amend the informational undertaking. The agreement, however, may be amended or modified without Bondholders consent under certain circumstances set forth therein. Copies of the agreement when executed by the parties thereto upon the delivery of the Series 2008A Bonds will be on file at the principal office of the Authority.

The Institution has complied with its prior ongoing disclosure undertakings related to bonds issued by the Authority for the benefit of the Institution in 2002 and 2006 (the "Series 2002 Bonds" and the "Series 2006 Bonds"), which require that its annual report be filed within 165 days of the end of the Institution's fiscal year. While the Institution also filed its annual report pursuant to its ongoing disclosure undertakings related to bonds issued by the Authority for the benefit of the Institution in 1999 (the "Series 1999 Bonds"), the Institution filed such report later than the time required by the undertakings related to such bonds, which require that the annual report be filed within 120 days of the end of the Institution's fiscal year. The Institution plans to file the annual report for its fiscal year ended June 30, 2008 on or about November 18, 2008, following the Institution's regularly scheduled Board of Trustees meeting, which will be before the deadline included in the undertakings related to the Series 2002 Bonds and the Series 2006 Bonds but later than the deadline in the undertaking for the Series 1999 Bonds. A failure by the Institution to comply with the Continuing Disclosure Agreement will not constitute an Event of Default under the Loan Agreement or the Resolution, and the Holders of the Series 2008A Bonds will have only the remedies set forth in the Continuing Disclosure Agreement itself. Nevertheless, a failure must be reported in accordance with Rule 15c2-12 and may be expected to be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Series 2008A Bonds in the secondary market.

## **PART 16 — RATING**

The Series 2008A Bonds have been assigned a long-term rating of "A1" by Moody's Investors Service, Inc. ("Moody's"). Such rating reflects only the view of Moody's and any desired explanation of the significance of such rating should be obtained from Moody's at the following address: Moody's, 7 World Trade Center at 250 Greenwich Street, New York, New York 10007. There is no assurance that such rating will prevail for any given period of time or that it will not be revised downward or withdrawn entirely by Moody's if, in the judgment of Moody's, circumstances so warrant. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the Series 2008A Bonds.

## **PART 17 — MISCELLANEOUS**

References in this Official Statement to the Act, the Resolution, the Series 2008A Resolution and the Loan Agreement do not purport to be complete. Refer to the Act, the Resolution, the Series 2008A Resolution and the Loan Agreement for full and complete details of their provisions. Copies of the Resolution, the Series 2008A Resolution and the Loan Agreement are on file with the Authority and the Trustee.

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

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

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

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

"Appendix A — Certain Definitions," "Appendix C — Summary of Certain Provisions of the Loan Agreement," "Appendix D — Summary of Certain Provisions of the Resolution" and "Appendix E — Form of Approving Opinion of Bond Counsel" have been prepared by Squire, Sanders & Dempsey L.L.P., New York, New York, Bond Counsel.

"Appendix B — Financial Statements of Rochester Institute of Technology and Report of Independent Auditors" contains the audited financial statements of the Institution as of and for the years ended June 30, 2007 and 2006 and the report of the Institution's independent accountants, PricewaterhouseCoopers LLP, on such financial statements.

The Institution has reviewed the parts of this Official Statement describing the Institution, the Principal and Interest Requirements, the 2008 Project, the Estimated Sources and Uses of Funds and Appendix B. The Institution, as a condition to issuance of the Series 2008A Bonds, is required to certify that as of the date of this Official Statement and as of the date of issuance of the Series 2008A Bonds, such parts do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in the light of the circumstances under which the statements are made, not misleading.

The Institution 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.

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

**DORMITORY AUTHORITY OF  
THE STATE OF NEW YORK**

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

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**CERTAIN DEFINITIONS**

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## CERTAIN DEFINITIONS

The following are definitions of certain of the terms defined in the Resolution or Loan Agreement and 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 Title 4 of Article 8 of the Public Authorities Law of the State, as amended, including without limitation by the Health Care Financing Construction Act, being Title 4-B of Article 8 of the Public Authorities Law of the State.

**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 and established by a Series Resolution pursuant to the Resolution.

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

**Authority Fee** means 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 of a Series and the construction of the Project, as more particularly described in Schedule B to the Loan Agreement and made a part of the Loan Agreement.

**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, Vice-Chair, Secretary, an Assistant Secretary and Assistant Secretaries, Treasurer and Assistant Treasurers, Executive Director, Deputy Executive Director, Chief Financial Officer, Managing Director of Public Finance and Portfolio Monitoring, Managing Director of Construction and General Counsel, and when used with reference to any act or document also means any other person authorized by a resolution or the by-laws of the Authority to perform such act or execute such document; (ii) in the case of the Institution, when used with reference to any act or document, means the person or persons authorized by a resolution or the by-laws of the Institution to perform such act or execute such document; and (iii) in the case of the Trustee, any officer within the corporate trust department of the Trustee having direct

## *Appendix A*

responsibility for the administration of the applicable series of Bonds, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject.

**Bond** or **Bonds** means any of the bonds of the Authority authorized and issued pursuant to the Resolution and to a Series Resolution, and for purposes of Appendix C, means the Series 2008A Bonds.

**Bond Counsel** means Squire, Sanders & Dempsey L.L.P. or an attorney or other law firm appointed by the Authority with respect to a Series of Bonds, having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds.

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

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

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

**Book Entry Bond** means a Bond of a Series 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** means, unless otherwise defined in connection with Bonds of a particular Series, any day which is not a Saturday, Sunday or a day on which the Trustee or banking institutions chartered by the State or the United States of America are legally authorized to close in The City of New York.

**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.

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

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

**Continuing Disclosure Agreement** means the agreement, if any, entered into in connection with the issuance of one or more Series of Bonds, by and among the Authority, the Institution and the Trustee, or such other parties thereto designated at such times, providing for continuing disclosure.

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

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



**Cost or Costs of the Project** means when used in relation to a Project the costs and expenses or the refinancing of costs and expenses determined by the Authority to be necessarily or appropriately incurred in connection with the Project, including, but not limited to, (i) costs and expenses of the acquisition of the title to or other interest in real property, including easements, rights-of-way and licenses, (ii) costs and expenses incurred for labor and materials and payments to contractors, builders and materialmen, for the acquisition, construction, reconstruction, rehabilitation, repair and improvement of the Project, (iii) the cost of surety bonds and insurance of all kinds, including premiums and other charges in connection with obtaining title insurance, that may be required or necessary prior to completion of the Project, which is not paid by a contractor or otherwise provided for, (iv) the costs and expenses for design, environmental inspections and assessments, test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction of the Project, (v) costs and expenses required for the acquisition and installation of equipment or machinery, (vi) all other costs which the Institution shall be required to pay or cause to be paid for the acquisition, construction, reconstruction, rehabilitation, repair, improvement and equipping of the Project, (vii) any sums required to reimburse the Institution or the Authority for advances made by them for any of the above items or for other costs incurred and for work done by them in connection with the Project (including interest on money borrowed from parties other than the Institution), (viii) interest on the Bonds of a Series, bonds, notes or other obligations of the Authority issued to finance Costs of the Project that accrued prior to, during and for a reasonable period after completion of the acquisition, construction, reconstruction, rehabilitation, repair, improvement or equipping of the Project, and (ix) fees, expenses and liabilities of the Authority incurred in connection with the Project or pursuant 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, with respect to a Series of Bonds, an irrevocable letter of credit, surety bond, loan agreement, or other agreement, facility or insurance or guaranty arrangement pursuant to which the Authority is entitled to obtain money to pay the principal and Sinking Fund Installments of and interest on particular Bonds whether or not the Authority is in default under the Resolution, which is issued or provided by:

- (i) a bank, a trust company, a national banking association, an organization subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provisions of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provisions of law, a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, a savings bank or a saving and loan association;
- (ii) an insurance company or association chartered or organized under the laws of any state of the United States of America;
- (iii) the Government National Mortgage Association or any successor thereto;
- (iv) the Federal National Mortgage Association or any successor thereto; or
- (v) any other federal agency or instrumentality approved by the Authority.

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

**Debt Service Fund** means the fund so designated and established by the Series Resolution pursuant to the Resolution.

**Defeasance Security** means:

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

## *Appendix A*

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

(iii) 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 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 and January 1 of each Bond Year.

**Depository** means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State, or its nominee, 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.

**Event of Default**, when used in connection with the Resolution, means each event summarized in Appendix D under the heading “**Events of Default**” and, when used in connection with the Loan Agreement, means each event summarized in Appendix C under the heading “**Defaults and Remedies.**”

**Exempt Obligation** means:

(i) an obligation of any state or territory of the United States of America, any political subdivision of any state or territory of the United States of America, or any agency, authority, public benefit corporation or instrumentality of such state, territory or political subdivision, the interest on which is excludable from gross income under Section 103 of the Code, which is not a “specified private activity bond” within the meaning of Section 57(a)(5) of the Code and which, at the time an investment therein is made or such obligation is deposited in any fund or account under the Resolution, is rated, without regard to qualification of such rating by symbols such as “+” or “-” and numerical notation, no lower than the second highest rating category for such obligation by at least two Rating Services;

(ii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing; and

(iii) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

**Federal Agency Obligation** means:

(i) an obligation issued by any federal agency or instrumentality approved by the Authority;

(ii) an obligation the principal of and interest on which are fully insured or guaranteed as to payment by a federal agency approved by the Authority;

(iii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing; and

(iv) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

**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 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.

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

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

**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 Rate Exchange Agreement** means (i) an agreement entered into by the Authority or the Institution in connection with the issuance of or which relates to Bonds of a Series which provides that during the term of such agreement the Authority or the Institution is to pay to the counterparty thereto interest accruing at a fixed or variable rate per annum on an amount equal to a principal amount of such Bonds and that such counterparty is to pay to the Authority or the Institution 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

## *Appendix 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 money with a Qualified Financial Institution.

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

- (i) a bank, a trust company, a national banking association, an organization subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provisions of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provisions of law, a 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 bank or a savings and loan association;
- (ii) an insurance company or association chartered or organized under the laws of any state of the United States of America;
- (iii) the Government National Mortgage Association or any successor thereto;
- (iv) the Federal National Mortgage Association or any successor thereto; or
- (v) any other federal agency or instrumentality approved by the Authority.

**Loan Agreement** means a Loan Agreement, by and between the Authority and the Institution in connection with the issuance of a Series of Bonds, as the same from time to time shall have been amended, supplemented or otherwise modified as permitted by the Resolution and by such Loan Agreement.

**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.

**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.

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

**Outstanding**, when used in reference to Bonds of a Series, means, as of a particular date, all Bonds of such Series authenticated and delivered under the Resolution and under 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 a Series of Bonds, the Trustee and any other bank or trust company and its successor or successors, appointed pursuant to the provisions of the Resolution or of a Series Resolution, a Bond Series Certificate or any other resolution of the Authority adopted prior to authentication and delivery of such Series of Bonds for which 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 Obligation;

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

(iii) commercial paper that (a) matures within two hundred seventy (270) days after its date of issuance, (b) is rated in the highest short term rating category by at least one Rating Service and (c) is issued by a domestic corporation whose unsecured senior debt is rated by at least one Rating Service no lower than in the second highest rating category; 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 Rating Service in the highest rating category.

**Permitted Encumbrances** means when used in connection with a Project 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 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;

(v) Any instrument recorded pursuant to Section 21 of the Loan Agreement summarized in Appendix C under the heading "**Restrictions on Religious Use**"; and

## *Appendix A*

(vi) Such other encumbrances, defects and irregularities to which the prior written consent of the Authority has been obtained.

**Permitted Investments** means:

(i) Government Obligations;

(ii) Federal Agency Obligations;

(iii) Exempt Obligations;

(iv) Uncollateralized certificates of deposit that are fully insured by the Federal Deposit Insurance Corporation and issued by a banking organization authorized to do business in the State;

(v) Collateralized certificates of deposit that are (a) issued by a banking organization authorized to do business in the State that has an equity capital of not less than \$125,000,000, whose unsecured senior debt, or debt obligations fully secured by a letter or credit, contract, agreement or surety bond issued by it, are rated by at least one Rating Service in at least the second highest rating category, and (b) fully collateralized by Permitted Collateral;

(vi) Investment Agreements that are fully collateralized by Permitted Collateral; and

(vii) A share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

**Project** means the Project described in Schedule C to the Loan Agreement.

**Provider** means the issuer or provider 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 Institution 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.

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

(i) a securities dealer, the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation, and (a) that is on the Federal Reserve Bank of New York list of primary government securities dealers and (b) whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one Rating Service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one Rating Service no lower than in the highest rating category for such short term debt; **provided, however**, that no short term rating may be utilized to determine whether an entity qualifies under this paragraph as a Qualified Financial Institution if the same would be inconsistent with the rating criteria of any Rating Service or credit criteria of an entity that provides a Credit Facility or financial guaranty agreement in connection with Outstanding Bonds of a Series;

(ii) a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provisions of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provisions of law, a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, a savings bank, a savings

and loan association, an insurance company or association chartered or organized under the laws of the United States of America, any state of the United States of America or any foreign nation, whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one Rating Service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one Rating Service no lower than in the highest rating category for such short term debt; **provided, however,** that no short term rating may be utilized to determine whether an entity qualifies under this paragraph as a Qualified Financial Institution if the same would be inconsistent with the rating criteria of any Rating Service or credit criteria of an entity that provides a Credit Facility or financial guaranty agreement in connection with Outstanding Bonds of a Series;

(iii) a corporation affiliated with or which is a subsidiary of any entity described in (i) or (ii) above or which is affiliated with or a subsidiary of a corporation which controls or wholly owns any such entity, whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one Rating Service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one Rating Service no lower than in the highest rating category for such short term debt; **provided, however,** that no short term rating may be utilized to determine whether an entity qualifies under this paragraph as a Qualified Financial Institution if the same would be inconsistent with the rating criteria of any Rating Service or credit criteria of an entity that provides a Credit Facility or financial guaranty agreement in connection with Outstanding Bonds of a Series;

(iv) the Government National Mortgage Association or any successor thereto, the Federal National Mortgage Association or any successor thereto, or any other federal agency or instrumentality approved by the Authority; or

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

**Rating Service** 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, unless a Series Resolution authorizing Variable Interest Rate Bonds or Option Bonds or a Bond Series Certificate relating thereto provides otherwise with respect to such Variable Interest Rate Bonds or Option Bonds, the fifteenth (15th) day (whether or not a Business Day) of the calendar month next preceding an interest payment date.

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

**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 Institution and the Remarketing Agent, relating to the remarketing of such Bonds.

## *Appendix A*

**Resolution** means the Authority's Rochester Institute of Technology Revenue Bond Resolution, adopted by the Authority September 24, 2008, as from time to time amended or supplemented by Supplemental Resolutions or Series Resolutions in accordance with the terms and provisions thereof.

**Revenues** means, with respect to a Series of Bonds, all payments received or receivable by the Authority that pursuant to the applicable Loan Agreement are required to be paid to the Trustee for such Series of Bonds (except payments to the Trustee for the administrative costs and expenses or fees of the Trustee and payments to the Trustee for deposit to the Arbitrage Rebate Fund).

**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 of such Series thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Resolution, regardless of variations in maturity, interest rate, Sinking Fund Installments, if any, or other provisions.

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

**Series 2008A Bonds** means the Bonds authorized by Article II of the Series 2008A Resolution.

**Series 2008A Resolution** means the Series 2008A Resolution Authorizing Up To \$85,000,000 Rochester Institute of Technology Revenue Bonds, Series 2008A.

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

(i) when used with respect to any Bonds of such Series, other than Option Bonds or Variable Interest Rate Bonds, so long as any such Bonds are Outstanding, the amount of money required by the 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

(ii) when used with respect to Option Bonds or Variable Interest Rate Bonds of a Series, so long as such Bonds are Outstanding, the amount of money required by the 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, with respect to a Series of Bonds, an agreement pursuant to which a person is obligated to purchase an Option Bond or a Variable Interest Rate Bond tendered for purchase.

**State** means the State of New York.

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

**Tax Certificate** means each certificate of the Authority, including the appendices, schedules and exhibits thereto, executed in connection with the issuance of Bonds in which the Authority makes representations and agreements as to arbitrage and compliance with the provisions of Sections 141 through 150, inclusive, of the Internal



Revenue Code of 1986, or any similar certificate, agreement or other instrument made, executed and delivered in lieu of said certificate, in each case as the same may be amended or supplemented.

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

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

**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.

**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; 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, however**, that in each case such variable interest rate may be subject to a Maximum Interest Rate and a Minimum Interest Rate as provided in the Series Resolution authorizing such Bonds or the Bond Series Certificate relating thereto, and that Series Resolution or Bond Series Certificate shall also specify either (x) the particular period or periods of time or manner of determining such period or periods of time for which each variable interest rate shall remain in effect or (y) the time or times at which any change in such variable interest rate shall become effective or the manner of determining such time or times.

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

**ADDITIONAL DEFINITIONS FROM SCHEDULE D TO THE LOAN AGREEMENT**

**Annual Debt Service** when used in connection with any Indebtedness, means as of any particular date of calculation the amount required to be paid by the Institution during the then current Fiscal Year to pay the principal, whether at maturity or upon mandatory redemptions and prepayments, of and interest on such Indebtedness.

**Debt Service Coverage Ratio** is the ratio of Operating Income Available for Debt Service to Annual Debt Service.

**Fiscal Year** means a twelve month period beginning on July 1<sup>st</sup> of a calendar year and ending on June 30<sup>th</sup> of the next succeeding calendar year, or such other twelve month period as the Institution may elect as its fiscal year.

**Indebtedness** means, without duplication, indebtedness for borrowed money incurred or guaranteed by the Institution, 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 the Institution in accordance with generally accepted accounting principles then applicable to the Institution.

**Long-Term Indebtedness** means Indebtedness having an original maturity of greater than one year or Indebtedness on which the Institution has an option to extend the maturity thereof for a period of greater than one year beyond the date of the original incurrence thereof.

**Maximum Annual Debt Service** when used in connection with any Indebtedness means as of any particular date of calculation the greatest amount required to be paid by the Institution during the then current or any future calendar year to pay the principal, whether at maturity or upon mandatory redemptions and prepayments, of and interest on such Indebtedness.

**Management Consultant** means a nationally recognized accounting or management consulting firm or other similar firm, experienced in reviewing and assessing the Institution's operations, acceptable to the Authority.

**Non-Recourse Indebtedness** means indebtedness secured by a mortgage or other lien on property on which the creditor has agreed that it will not seek to enforce or collect such indebtedness out of any property or assets of the Institution other than the property securing the same or to collect any deficiency upon a foreclosure, forced sale or other realization upon such property out of any other property or assets of the Institution

**Operating Income Available for Debt Service** means total unrestricted operating revenues *minus* total unrestricted operating expenses, exclusive of depreciation and interest paid, all as shown on the audited financial statements of the Institution stated in accordance with generally accepted accounting principals then applicable to the Institution.

**Plant Equity** means property, plant and equipment, net *minus* Long-Term Indebtedness.

**Reporting Date** means the first business day that is 120 days after such Testing Date.

**Short-Term Indebtedness** means any Indebtedness that is not Long-Term Indebtedness.

**Testing Date** means the last day of the Institution's Fiscal Year.

**Unrestricted Resources** means as of any particular date of calculation the sum of all unrestricted net assets, exclusive of Plant Equity, in each case determined in accordance with generally accepted accounting principles then applicable to the Institution.

**Unrestricted Resources to Debt Ratio** is the ratio of Unrestricted Resources to Long-Term Indebtedness.

**FINANCIAL STATEMENTS OF ROCHESTER INSTITUTE OF TECHNOLOGY,  
AND REPORT OF INDEPENDENT AUDITORS**

*Appendix B*

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**Report of Independent Auditors**

To the Board of Trustees  
Rochester Institute of Technology

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of activities and cash flows present fairly, in all material respects, the financial position of Rochester Institute of Technology (the "University") at June 30, 2007 and 2006 and the changes in its net assets, and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the University's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit 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.

As discussed in Note 1 to the consolidated financial statements, at June 30, 2006, the University changed its method of accounting for conditional asset retirement obligations. Also discussed in Note 1, effective June 30, 2007, the University changed the manner in which it accounts for defined benefit plans and other postretirement plans.

*PricewaterhouseCoopers LLP*

August 31, 2007

**Rochester Institute of Technology**  
**Consolidated Balance Sheets**  
**June 30, 2007**

(in thousands of dollars)

	2007	2006
<b>Assets</b>		
Cash and cash equivalents	\$ 2,152	\$ 2,490
Cash and cash equivalents on deposit with bond trustees	5,507	8,421
Student accounts receivable, net of allowance of \$1,691 and \$1,569, respectively	11,086	10,726
Inventories and other assets	7,104	8,536
Contributions receivable, net	25,745	18,127
Collateral held under securities lending	26,816	26,630
Investments, at fair value	797,397	682,632
Notes and other accounts receivable, net of allowance of \$2,383 and \$2,308, respectively	42,048	46,671
Property, plant and equipment, net	413,806	409,954
Total assets	<u>\$ 1,331,661</u>	<u>\$ 1,214,187</u>
<b>Liabilities and Net Assets</b>		
<b>Liabilities</b>		
Accounts payable and accrued expenses	\$ 33,977	\$ 34,504
Deferred revenues and other liabilities	47,362	40,887
Payable under securities lending	26,816	26,630
Accrued postretirement benefits	105,739	92,245
Federal Perkins Loan Program advances	21,122	20,930
Long-term debt	145,882	151,939
Total liabilities	<u>380,898</u>	<u>367,135</u>
<b>Net assets</b>		
<b>Unrestricted</b>		
Expendable resources	474,247	407,734
Net investment in plant	267,924	258,015
Total unrestricted	742,171	665,749
Temporarily restricted	101,782	82,028
Permanently restricted	106,810	99,275
Total net assets	<u>950,763</u>	<u>847,052</u>
Total liabilities and net assets	<u>\$ 1,331,661</u>	<u>\$ 1,214,187</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Rochester Institute of Technology**  
**Consolidated Statements of Activities**  
**Year Ended June 30, 2007**  
**(With comparative totals for 2006)**

(in thousands of dollars)

	2007			2006	
	Unrestricted	Temporarily Restricted	Permanently Restricted	Total	Total
<b>Operating revenues</b>					
Tuition and fees, net of scholarships of \$88,328 and \$80,136, respectively	\$ 191,288	\$ -	\$ -	\$ 191,288	\$ 175,329
Sales and services of auxiliary enterprises	62,183	-	-	62,183	59,037
National Technical Institute for the Deaf federal appropriation	56,950	-	-	56,950	56,378
Government grants and contracts	25,342	-	-	25,342	25,761
Private grants and contracts	10,216	-	-	10,216	10,188
Private gifts	2,986	3,606	-	6,592	6,655
Investment return	19,356	8,367	-	27,723	25,396
Other sources	13,814	-	-	13,814	11,916
Net assets released from restrictions or reclassified	11,226	(11,226)	-	-	-
<b>Total operating revenues</b>	<b>393,361</b>	<b>747</b>	<b>-</b>	<b>394,108</b>	<b>370,660</b>
<b>Operating expenses</b>					
Salaries	191,031	-	-	191,031	182,901
Benefits	55,079	-	-	55,079	50,896
Postretirement benefits	2,799	-	-	2,799	4,128
Purchased services	26,274	-	-	26,274	25,970
Materials and supplies	41,181	-	-	41,181	39,370
Depreciation	25,596	-	-	25,596	25,296
Interest	6,381	-	-	6,381	6,549
Utilities, taxes and insurance	14,123	-	-	14,123	14,491
Travel for scholarship, professional development and recruitment	8,012	-	-	8,012	7,942
Other	7,172	-	-	7,172	8,699
<b>Total operating expenses</b>	<b>377,648</b>	<b>-</b>	<b>-</b>	<b>377,648</b>	<b>366,242</b>
<b>Net operating activities</b>	<b>15,713</b>	<b>747</b>	<b>-</b>	<b>16,460</b>	<b>4,418</b>
<b>Nonoperating activities</b>					
Investment return	45,818	35,517	1,067	82,402	41,357
Net assets released from restrictions or reclassified	28,329	(28,329)	-	-	-
Capital contributions	594	11,900	5,870	18,364	11,530
Government grants and contracts	2,613	-	932	3,545	13,113
Postretirement benefit expense	(7,018)	-	-	(7,018)	(12,028)
Beneficiary payments and change in value of deferred giving arrangements	-	(81)	(195)	(276)	(841)
Change in value of interest rate swap agreement	900	-	-	900	(526)
Other	(4,278)	-	(139)	(4,417)	(4,870)
<b>Net nonoperating activities</b>	<b>66,958</b>	<b>19,007</b>	<b>7,535</b>	<b>93,500</b>	<b>47,735</b>
<b>Increase in net assets before cumulative effect of change in accounting principle</b>	<b>82,671</b>	<b>19,754</b>	<b>7,535</b>	<b>109,960</b>	<b>52,153</b>
<b>Cumulative effect of change in accounting principle</b>	<b>(6,249)</b>	<b>-</b>	<b>-</b>	<b>(6,249)</b>	<b>(7,060)</b>
<b>Increase in net assets</b>	<b>76,422</b>	<b>19,754</b>	<b>7,535</b>	<b>103,711</b>	<b>45,093</b>
<b>Net assets at beginning of year</b>	<b>665,749</b>	<b>82,028</b>	<b>99,275</b>	<b>847,052</b>	<b>801,959</b>
<b>Net assets end of year</b>	<b>\$ 742,171</b>	<b>\$ 101,782</b>	<b>\$ 106,810</b>	<b>\$ 950,763</b>	<b>\$ 847,052</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Rochester Institute of Technology**  
**Consolidated Statement of Activities**  
**Year Ended June 30, 2006**

(in thousands of dollars)

	2006			Total
	Unrestricted	Temporarily Restricted	Permanently Restricted	
<b>Operating revenues</b>				
Tuition and fees, net of scholarships of \$80,136	\$ 175,329	\$ -	\$ -	\$ 175,329
Sales and services of auxiliary enterprises	59,037	-	-	59,037
National Technical Institute for the Deaf federal appropriation	56,378	-	-	56,378
Government grants and contracts	25,761	-	-	25,761
Private grants and contracts	10,188	-	-	10,188
Private gifts	4,204	2,451	-	6,655
Investment return	17,260	8,136	-	25,396
Other sources	11,916	-	-	11,916
Net assets released from restrictions or reclassified	12,611	(12,611)	-	-
Total operating revenues	<u>372,684</u>	<u>(2,024)</u>	<u>-</u>	<u>370,660</u>
<b>Operating expenses</b>				
Salaries	182,901	-	-	182,901
Benefits	50,896	-	-	50,896
Postretirement benefits	4,128	-	-	4,128
Purchased services	25,970	-	-	25,970
Materials and supplies	39,370	-	-	39,370
Depreciation	25,296	-	-	25,296
Interest	6,549	-	-	6,549
Utilities, taxes and insurance	14,491	-	-	14,491
Travel for scholarship, professional development and recruitment	7,942	-	-	7,942
Other	8,699	-	-	8,699
Total operating expenses	<u>366,242</u>	<u>-</u>	<u>-</u>	<u>366,242</u>
Net operating activities	<u>6,442</u>	<u>(2,024)</u>	<u>-</u>	<u>4,418</u>
<b>Nonoperating activities</b>				
Investment return	24,309	16,838	210	41,357
Net assets released from restrictions or reclassified	27,990	(27,990)	-	-
Capital contributions	1,479	6,351	3,700	11,530
Government grants and contracts	12,698	-	415	13,113
Postretirement benefit expense	(12,028)	-	-	(12,028)
Beneficiary payments and change in value of deferred giving arrangements	-	(358)	(483)	(841)
Change in value of interest rate swap agreement	(526)	-	-	(526)
Other	(4,752)	-	(118)	(4,870)
Net nonoperating activities	<u>49,170</u>	<u>(5,159)</u>	<u>3,724</u>	<u>47,735</u>
Increase in net assets before cumulative effect of change in accounting principle	55,612	(7,183)	3,724	52,153
Cumulative effect of change in accounting principle	(7,060)	-	-	(7,060)
Increase in net assets	<u>48,552</u>	<u>(7,183)</u>	<u>3,724</u>	<u>45,093</u>
Net assets at beginning of year	<u>617,197</u>	<u>89,211</u>	<u>95,551</u>	<u>801,959</u>
Net assets end of year	<u>\$ 665,749</u>	<u>\$ 82,028</u>	<u>\$ 99,275</u>	<u>\$ 847,052</u>

The accompanying notes are an integral part of these consolidated financial statements.



**Rochester Institute of Technology**  
**Consolidated Statements of Cash Flows**  
**Years Ended June 30, 2007 and 2006**

<i>(in thousands of dollars)</i>	<b>2007</b>	<b>2006</b>
<b>Cash flows from operating activities</b>		
Change in net assets	\$ 103,711	\$ 45,093
Adjustments to reconcile change in net assets to net cash provided by operating activities		
Depreciation, amortization and accretion expense	26,241	25,390
(Gain) loss on disposal of property, plant and equipment	(1,503)	508
Realized and unrealized net gains on investments	(91,896)	(53,136)
Contributions and government grants restricted for long term purposes	(16,596)	(24,822)
Loss on extinguishment of debt	-	2,257
Asset retirement obligation adjustment	5,579	-
Cumulative effect of change in accounting principles	6,249	7,060
(Increases) / decreases in		
Students accounts receivable	(360)	(335)
Inventories, prepaids and deferred charges	1,230	(7)
Contributions receivable	(7,616)	3,526
Other assets	3,523	(1,491)
Increases / (decreases) in		
Accounts payable and accruals	(525)	2,666
Deferred revenues	(393)	6,205
Accrued postretirement benefits	7,246	13,014
Net cash provided by operating activities	<u>34,890</u>	<u>25,928</u>
<b>Cash flows from investing activities</b>		
Purchases of investments	(265,106)	(182,276)
Proceeds from the sales and maturities of investments	242,238	178,775
Decrease in student loans	1,096	997
(Increase) / decrease in cash and cash equivalents held with bond trustees	2,914	(489)
Acquisition of property, plant and equipment	<u>(27,078)</u>	<u>(37,955)</u>
Net cash used in investing activities	<u>(45,936)</u>	<u>(40,948)</u>
<b>Cash flows from financing activities</b>		
Contributions and government grants restricted for long term purposes	16,317	23,719
Principal repayments of debt	(5,801)	(68,764)
Proceeds from issuance of long-term debt	-	61,880
Payment of bond issuance costs	-	(1,411)
Increase in refundable government grants for student loans	<u>192</u>	<u>23</u>
Net cash provided by financing activities	<u>10,708</u>	<u>15,447</u>
Net increase (decrease) in cash and cash equivalents	(338)	427
Cash and cash equivalents - beginning of year	<u>2,490</u>	<u>2,063</u>
Cash and cash equivalents - end of year	<u>\$ 2,152</u>	<u>\$ 2,490</u>
<b>Supplemental disclosures</b>		
Interest paid (including capitalized interest of \$726 and \$723 in 2007 and 2006, respectively)	\$ 7,089	\$ 7,319
Gifts of property, plant and equipment	279	1,102
Increase / (decrease) in construction-related payables	(905)	46

The accompanying notes are an integral part of these consolidated financial statements.

# Rochester Institute of Technology

## Notes to Consolidated Financial Statements

### June 30, 2007 and 2006

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*(in thousands of dollars)*

#### 1. Summary of Significant Accounting Policies

##### (a) Organization

Rochester Institute of Technology (the "University") is a privately endowed, co-educational university comprised of eight colleges: Applied Science and Technology, Business, Computing and Information Sciences, Engineering, Imaging Arts and Sciences, Liberal Arts, National Technical Institute for the Deaf ("NTID") and Science. Occupying 1,250 acres in Rochester, New York, the University has approximately 16,000 full and part-time graduate and undergraduate students and approximately 2,900 employees.

##### (b) University Affiliates

The financial position and results of operations of the following affiliates are consolidated into the financial results of the University:

- The 5257 West Henrietta Road, LLC (the "Inn" or the "LLC"), doing business as the RIT Inn & Conference Center, is a split-use 305-room full service hotel. Approximately 235 rooms are dedicated to student housing during the academic year. The Inn is a single member limited liability company with the University as its sole member. The Inn is exempt from taxation under Section 501(c)(3) of the IRC, but subject to unrelated business income tax on activities not related to the University's exempt purpose.
- Rochester Institute of Technology Global Delivery Corporation ("GDC") is a not-for-profit subsidiary of the University established to strategically develop global instructional delivery opportunities. Included in the GDC affiliate is the American College of Management and Technology ("ACMT"), a not-for-profit entity that delivers instructional services in Croatia. GDC is exempt from taxation under Section 501(c)(3) of the IRC.
- RIT High Technology Incubator, Inc. ("HTI"), doing business as Venture Creations, is a not-for-profit wholly owned subsidiary of the University. HTI was established to promote an environment for new and technologically innovative business through the use of research created by the University, its faculty, staff and students. HTI is exempt from taxation under Section 501(c)(3) of the IRC.

##### (c) Basis of Accounting

The consolidated financial statements of the University are prepared on the accrual basis of accounting and in conformity with generally accepted accounting principles in the United States of America. All significant intercompany transactions and accounts have been eliminated. Certain amounts for 2006 have been reclassified to conform to the current year presentation.

##### (d) Classifications of Net Assets

The University reports its net assets and changes therein according to three classifications: unrestricted, temporarily restricted and permanently restricted based upon the existence or absence of donor-imposed restrictions.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

---

*(in thousands of dollars)*

***Unrestricted Net Assets***

Unrestricted net assets represent resources that are generally available for support of the University's activities. Uses of certain unrestricted net assets are committed through contractual agreements. Such amounts consist primarily of matching funds under student loan programs of the federal government and required trustee balances under long-term debt agreements. In addition, grants and contracts received for the performance of certain services or functions are reported in unrestricted net assets. The Board of Trustees, through voluntary resolutions, has set aside portions of the University's unrestricted net assets for long-term investment purposes, acquisition of property, plant and equipment, and ongoing maintenance of plant facilities. Net investment in plant includes net property, plant and equipment less corresponding long-term debt.

***Temporarily Restricted Net Assets***

The University reports gifts of cash and other assets as restricted support when they are received with donor stipulations, including contributions via certain deferred giving trusts that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated or implicit time restriction ends or purpose restriction is accomplished, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the consolidated statement of activities as net assets released from restrictions.

***Permanently Restricted Net Assets***

Permanently restricted net assets result from gifts, deferred giving trusts and pledges in which donors stipulate that the principal be held permanently. The University expends part or all of the income derived from its endowment investments in accordance with donor restrictions and the University's total return spending policy.

Revenues are reported as increases in unrestricted net assets unless use of the related assets is limited by donor-imposed restrictions. Expenses are reported as decreases in unrestricted net assets. Gains and losses on investments and other assets or liabilities are reported as nonoperating increases or decreases in unrestricted net assets unless their use is restricted by explicit donor stipulation or by law.

At June 30, 2006, certain permanently restricted net assets had fair market values less than their respective original contributed values by an aggregate amount of \$469. These aggregate losses are reflected as a reduction of unrestricted net assets in the nonoperating investment return in the financial statements in the year incurred. Subsequent market value gains on these funds have been recorded as increases to unrestricted net assets until the original contributed value of each fund was restored. There were no such permanently restricted net assets at June 30, 2007.

Revenues earned and expenses incurred during the year are classified on the University's consolidated statement of activities as either operating or nonoperating. Operating revenues consist primarily of those items attributable to the University's education programs or research conducted by the academic departments. Operating expenses are associated with the education programs, research conducted, University administration, and the operation and maintenance of the University's plant, including interest and depreciation expense.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

---

*(in thousands of dollars)*

Nonoperating activities consist primarily of: (1) realized and unrealized gains or losses on investments, assets, liabilities; (2) investment return on endowed and funds functioning as endowed net assets, net of amounts released for current operations; (3) contributions for long-term investment purposes; (4) contributions of property, plant and equipment and gifts designated for acquisition of long-lived assets; (5) government grants and contracts awarded for the renovation and construction of on-campus facilities; (6) the components of the postretirement benefit expense associated with the prior service cost and associated actuarial gains and losses due to changes in actuarial assumptions and plan amendments; (7) gain or loss on disposal of property, plant and equipment; (8) changes in estimate for conditional asset retirement obligations; (9) changes to the actuarial liability and payments to beneficiaries of annuity and life income net assets; and (10) changes in the fair value of derivative instruments within the University's long-term debt portfolio.

**Revisions to Net Assets**

In 2007, certain prior-year board-designated and endowed funds were deemed to require reclassification from temporarily restricted net assets to unrestricted net assets. The "Net assets released from restriction or reclassified" in the nonoperating section of the 2006 Consolidated Statement of Activities has been revised to include \$13,826 relating to these reclassified amounts. Additionally, the operating section of the 2006 Consolidated Statement of Activities was revised to reflect \$2,033 in additional unrestricted investment return with a corresponding reduction in net assets released from restrictions or reclassified.

**(e) Cash and Cash Equivalents**

Cash and cash equivalents are carried at fair value, and include cash on deposit with financial institutions and money market funds with maturities of three months or less when purchased. Cash and cash equivalents on deposit with bond trustees include cash, money market funds and U.S. government securities with maturities of three months or less when purchased and are limited as to use for payments of debt principal and interest. Securities and cash and cash equivalents maintained by the University's investment managers as part of the intermediate and long-term investment portfolios and are included in investments in the Consolidated Balance Sheets. For the Statement of Cash Flows, the University considers all cash and cash equivalent balances, except for those on deposit with bond trustees and those included within investments on the Balance Sheet.

**(f) Contributions**

Contributions, including unconditional promises to give, are recognized as revenues in the period received. Conditional promises to give are not recognized until the conditions on which they depend are substantially met. Contributions to be received after one year are discounted using a risk-free interest rate, which ranges from 2.3% to 6.3%, based upon the fiscal year in which the contribution was received. Amortization of discount is recorded as additional contribution revenue in accordance with donor-imposed restrictions, if any, on the contributions. An allowance for potentially uncollectible contributions receivable is provided based upon management's judgment including such factors as prior collection history, type of contribution and nature of fundraising activity.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

---

*(in thousands of dollars)*

Contributions to acquire property, plant and equipment are recorded as temporarily restricted net assets and are released from restrictions at the time the asset is placed in service. As a result, \$24,400 and \$14,810 of assets contributed to acquire property, plant and equipment are recorded as temporarily restricted net assets as of June 30, 2007 and 2006, respectively:

	<b>2007</b>	<b>2006</b>
Unexpended gifts	\$ 3,708	\$ 4,608
Pledges receivable	<u>20,692</u>	<u>10,202</u>
	<u>\$ 24,400</u>	<u>\$ 14,810</u>

Contributions of property, plant and equipment have been recognized as revenues and assets at their estimated fair value at the date of receipt based upon appraisals or similar valuations. The assets are depreciated over their estimated useful lives.

Contributions of works of art, historical treasures and similar assets held as part of a collection - for education, research or public exhibition rather than for sale - have been recognized as revenues and assets at their estimated fair value at the date of receipt based upon appraisals or similar valuations. In addition, purchased works of art, historical treasures and similar assets that are held as part of a collection have been capitalized.

**(g) Inventories**

Inventory for the University's bookstore is valued at cost using the first-in, first-out ("FIFO") retail method. Other inventories are stated at the lower of cost, generally on a FIFO basis, or market value. In fiscal year 2007, the University entered into an agreement with Barnes & Noble College Booksellers, Inc. ("Barnes & Noble") to begin operating portions of the University's bookstore effective July 1, 2007. The agreement anticipated the purchase by Barnes & Noble of textbook and related inventories on-hand as of that date, including the method by which the purchase price would be calculated. In accordance with those terms, the inventories shown as of June 30, 2007 are net of an allowance of \$200.

**(h) Investments**

Investments are reported at their estimated fair value. Marketable securities are valued at the last reported sales price on the last business day of the fiscal year. Quotations are obtained from national securities exchanges. Purchases and sales of securities are recorded on a trade date basis. Dividend income is recorded on the ex-dividend date.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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*(in thousands of dollars)*

Fair value of certain private equity, hedge fund, and real asset investments (collectively referred to as "alternative investments"), held through limited partnerships or commingled funds are based on current information obtained from the general partner or investment manager or, when available, from readily determinable market values. Factors used by the investment managers or general partners to value such non-marketable investments include, but are not limited to, restrictions affecting marketability, operating results, financial condition of the issuers, transactions of similar issues, industry standard valuation methodologies, and the price of the most recent financing. The University believes that these valuations are a reasonable estimate of fair value as of June 30, 2007 and 2006; but are subject to uncertainty and, therefore, may differ from the value that would have been used had a ready market for all of the investments existed.

With regard to certain net assets restricted to or designated for long-term investment, the University distributes an amount of investment return to operations based on 5% of a rolling 20-quarter average of the fair value of these investments. Effective as of March 2006, the University amended its spending policy to ensure that the total spending distribution is at least equal to 3.50% but not greater than 5.25% of the beginning of year portfolio market value. During periods when investment income exceeds the distribution, such excess income is added to these investments. Likewise, when investment income is less than the distribution, such deficit is funded by accumulated excess income or accumulated gains.

**(i) Property, Plant and Equipment**

Land, site improvements, buildings, building improvements, equipment, gifts of software and construction-in-progress are stated at cost or fair value (if donated), less accumulated depreciation. Depreciation is recognized using the straight-line method with useful lives of 30 to 50 years for buildings, 10 to 30 years for site improvements, 5 to 20 years for furniture, fixtures and equipment, and 4 to 10 years for software. Land, works of art, historical treasures and similar assets are not depreciated. The cost and accumulated depreciation of property, plant and equipment sold or retired are eliminated from the accounts. Costs incurred for maintenance, repairs and renewals of relatively minor items are expensed as incurred.

In July 1998, the University entered into a long-term ground lease with Collegiate Housing Foundation ("the Foundation"), a national not-for-profit organization, for the construction of 768 on-campus residential housing units. Pursuant to this 30-year agreement, the financing and construction of these facilities is the exclusive responsibility of the Foundation and is reflected by the University as an operating lease. The Foundation owns these units and independently financed the construction costs of approximately \$27,000. As a result, the assets, related long-term debt and associated results of operations for the apartments are excluded from the University's financial statements.

**(j) Grants and Contracts**

Revenues from grants and contracts are generally recognized as earned, that is, as the related costs are incurred under the grant or contract agreements. Amounts received in advance are reported as deferred revenues.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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*(in thousands of dollars)*

**(k) Classification of Operating Expenses**

Operating expenses are reported in the consolidated statements of activities by natural classification.

**(l) Income Taxes**

The University is exempt from taxation under Section 501(c)(3) of the IRC.

**(m) Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and changes therein, and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from estimates.

**(n) Derivative Instruments**

The University maintains an interest rate risk management strategy that provides for maximum flexibility within its debt structure, seeks to lower its cost of capital, and manages risk on a portfolio basis. The University does not hold or issue derivative financial instruments for trading purposes.

All derivative instruments are recognized as assets or liabilities in the consolidated balance sheets and measured at fair value. Changes in the fair value of derivative instruments are included in nonoperating activities in change in value of interest rate swap agreement in the consolidated statement of activities.

The University will discontinue the use of a derivative instrument when the derivative expires or is sold, is terminated, or when management determines that the derivative is no longer appropriate as a hedge instrument.

By using an interest rate swap to lower the University's cost of capital and to hedge exposures to changes in interest rates on its tax-exempt debt, the University is exposed to credit risk and basis risk. Credit risk is the risk that the swap counterparty will not fulfill its obligations under the terms of the derivative contract. The University's policy for minimizing its exposure to credit risk requires it to enter into transactions with high-quality counterparties who are rated in the AA/Aa category, limit the amount of its exposure to each counterparty and monitor the financial condition of its counterparties. Basis risk is the risk that the value of a financial instrument might be adversely affected by a change in interest rates and a change in the relationship in the underlying indices. The University manages basis risk by establishing and monitoring parameters that limit the types and degree of basis risk that may be undertaken.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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(in thousands of dollars)

**(o) Accounting Pronouncements**

***FASB Interpretation No. 47***

At June 30, 2006, the University adopted FASB Interpretation No. 47 (FIN 47), *Accounting for Conditional Asset Retirement Obligations*. FIN 47 requires an entity to recognize a liability for the fair value of conditional asset retirement obligations (AROs) if the fair value of the liability can be reasonably estimated. The fair value of a liability for conditional AROs must be recognized when incurred, generally upon acquisition, construction, or development and/or through the normal operation of the asset. In accordance with the requirements of FIN 47, the University recorded asset retirement costs of \$2,982, net of accumulated depreciation of \$1,907 and conditional AROs of \$8,135 on its consolidated Balance Sheet as of June 30, 2006. These conditional AROs relate to the costs associated with asbestos abatement and PCB removal. In addition, the University recorded a \$7,060 reduction in unrestricted net assets as a cumulative effect of a change in accounting principle for the fiscal year ended June 30, 2006.

The University recalculates its AROs annually and adjusts both the liability and the associated asset retirement cost. The following schedule shows the changes in ARO from June 30, 2006 to June 30, 2007:

ARO Balance as of June 30, 2006	\$	8,135
Change in estimate		6,167
Accretion expense		701
ARO Balance as of June 30, 2007	<u>\$</u>	<u>15,003</u>

The above change in estimate was made in conjunction with the associated changes in asset retirement cost and accumulated depreciation as follows:

	Asset Retirement Cost	Accumulated Depreciation
Balance as of June 30, 2006	\$ 2,982	\$ 1,907
Change in estimate	2,027	1,343
Depreciation expense		97
Balance as of June 30, 2007	<u>\$ 5,009</u>	<u>\$ 3,347</u>

The following table illustrates the effect on net operating activities as if this interpretation had been applied for the fiscal year ended June 30, 2006:

Net operating activities, as reported	\$ 4,418
Less: Total depreciation and interest accretion costs	<u>(406)</u>
Pro forma net operating activities	<u>\$ 4,012</u>

There is no proforma impact for the fiscal year 2007 as the depreciation and accretion expenses for the year have been adjusted to include the effect of the most recent ARO estimates.



**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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*(in thousands of dollars)*

**SFAS No. 158**

Effective June 30, 2007, the University adopted SFAS 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans*, including both the recognition and measurement date provisions. SFAS No. 158 requires employers to recognize the overfunded or underfunded status of postretirement plans as an asset or liability in its balance sheet and to recognize changes in that funded status in the year in which the changes occur through changes in unrestricted net assets. This statement also requires an employer to measure the funded status of the plans as of the date of its year-end balance sheet.

Upon adoption, the liability shown on the University's Balance Sheet as of June 30, 2007 has been stated at the actuarially determined accumulated postretirement benefit obligation, measured as of the financial statement date. The adoption of this pronouncement resulted in the recognition of a cumulative effect of a change in accounting principle of \$6,249. Further disclosures on the University's postretirement benefit obligations, as required by SFAS 158, are included in Footnote 8.

**(p) Risks and Uncertainties**

The University's investments are exposed to various risks, such as interest rate, market and credit. Due to the level of risk associated with certain investments and the level of uncertainty related to changes in the value of investments, it is at least possible that changes in risks in the near term would materially affect the amounts reported in the financial statements.

**(q) Revisions to Consolidated Statement of Cash Flows**

In 2007, certain 2006 contributions and government grants amounting to \$3,349 were determined not to be restricted for long-term purposes and were subject to incorrect reclassification from "Cash flows from operating activities" to "Cash flows from financing activities" in the 2006 Consolidated Statement of Cash Flows. Other items totaling \$713 overstated "Net cash provided by operating activities" and overstated "Net cash used in investing activities". The 2006 Statement of Cash Flows has been revised to properly reflect these changes.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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(in thousands of dollars)

**2. Contributions Receivable**

Contributions receivable and related allowances for uncollectible receivables and discounts for present value on long-term pledges are summarized as follows at June 30:

	2007	2006
Unconditional promises expected to be collected in		
Less than one year	\$ 9,667	\$ 10,524
One year to five years	13,106	9,027
Over five years	7,605	1,836
	<u>30,378</u>	<u>21,387</u>
Less:		
Allowance for uncollectible contributions receivable	(1,664)	(2,202)
Discount for present value	(2,969)	(1,058)
	<u>\$ 25,745</u>	<u>\$ 18,127</u>

At June 30, 2007, the University had also received bequest intentions and certain other conditional promises to give totaling \$4,235. These intentions and conditional promises are not recognized as assets. If received, generally, contributions will be restricted for purposes stipulated by the donor.

**3. Investments**

Investments held by the University consist of the following at June 30:

	2007		2006	
	Cost	Fair Value	Cost	Fair Value
Cash and cash equivalents	\$ 25,001	\$ 25,001	\$ 6,961	\$ 6,961
Fixed Income	217,681	228,277	213,181	222,738
Equities	180,811	251,797	229,982	291,112
Alternatives				
Private equity	47,788	50,460	46,891	43,352
Hedge funds	135,554	172,072	51,172	64,478
Real assets	57,172	69,790	46,493	53,991
Total Alternatives	<u>240,514</u>	<u>292,322</u>	<u>144,556</u>	<u>161,821</u>
Total Investments	<u>\$ 664,007</u>	<u>\$ 797,397</u>	<u>\$ 594,680</u>	<u>\$ 682,632</u>

Certain fixed income investments with original maturities greater than three months represent amounts for building and equipment renewals and replacements and retirement of indebtedness costs under financing agreements with the Dormitory Authority of the State of New York ("DASNY") required to be held by trustees (Note 6). Amounts held in these accounts on June 30, 2007 and 2006 were \$3,176 and \$1,134, respectively.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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*(in thousands of dollars)*

Certain investments pertaining to deferred giving trusts are included in cash and cash equivalents, fixed income and equity securities at fair value totaling \$14,780 and \$14,323 at June 30, 2007 and 2006, respectively.

**Total Investment Return**

The following schedule summarizes the total investment return and its classification in the consolidated statements of activities for the fiscal years ended June 30:

	2007	2006
Dividends and interest	\$ 23,689	\$ 19,238
Realized and unrealized gains on investments, net of investment management fees and other expenses	<u>86,436</u>	<u>47,515</u>
Total investment return	<u>110,125</u>	<u>66,753</u>
Spending policy allocated for operating activities	20,712	20,672
Interest and dividends on working capital and facilities reserves	<u>7,011</u>	<u>4,724</u>
Total operating investment return	<u>27,723</u>	<u>25,396</u>
Investment return allocated for non-operating activities	<u>\$ 82,402</u>	<u>\$ 41,357</u>

Certain of the University's managers use derivative financial instruments as a part of their overall investment strategy. These strategies include the use of mortgage-backed securities and collateralized mortgage obligations in the endowment and working capital portfolio. These derivatives are highly liquid exchange-traded securities that are issued by government agencies or other high quality corporate issues. The use of these derivative instruments is not believed to materially increase the credit or market risk of the University's investments.

The University's asset allocation to alternative investment categories was adopted to achieve higher expected total returns over the long-term, while improving the overall risk profile of the portfolio. The asset strategy takes into account market risks and diversification as well as the historical and expected correlation of the various asset categories in an effort to lower the total market risks. The total numbers of managers in the alternative asset category were 41 and 28 at June 30, 2007 and 2006, respectively.

Certain investments are pooled on a fair value basis, with each individual fund subscribing to or disposing of units on the basis of the fair value per unit at the end of the calendar quarter within which the transaction takes place. The University established a separate investment pool ("Pool II") for NTID during 1989 in accordance with the federal program established by Public Law 99-371 (August 4, 1986) to support NTID.

The federal program stipulates that the investment of annual additions to Pool II is restricted to IRC 501(f) investment organizations. After a period of 10 years, the University can elect to invest the funds consistent with the University's overall long-term investment strategy. At June 30, 2007 and 2006, the federal endowment was comprised of 22,397 and 22,397 units of Pool I, respectively, and 56,315 and 51,735 units of Pool II, respectively.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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(in thousands of dollars)

The following schedule summarizes certain information about pooled assets on a per unit basis:

	Pool I		Pool II	
	2007	2006	2007	2006
Number of Units	1,000,813	985,781	56,315	51,735
Fair value per unit	\$ 635.07	\$ 560.27	\$ 365.47	\$ 316.65
Average earnings per unit, exclusive of realized and unrealized gains	\$ 15.75	\$ 14.13	\$ 8.35	\$ 6.34

**Spending Policy**

The Board of Trustees authorized a total return spending policy for Pool I, under which allowable income utilization is defined as 5% of the average unit values for the last 20 quarters ending March 31 of the preceding year. Effective as of March 2006 the University amended its spending policy to ensure that the total spending distribution is at least equal to 3.50% but not greater than 5.25% of the beginning of year portfolio market value. New gifts to the endowment participate in the spending policy in the quarter that begins subsequent to the date of the gift. The federal guidelines authorize a spending distribution from Pool II of not more than 50% of current year's investment income (interest and dividends only).

**Securities Lending**

The University participates in a securities lending program in which it lends a portion of its investments to third-party borrowers through a lending agent. All securities on loan are collateralized by securities with a market value of at least 102% of the borrowed securities. These investments consist primarily of U.S. dollar-denominated fixed income (or adjustable rate) securities and U.S. government-backed obligations with generally short maturities. The lending agent is responsible for ensuring the credit worthiness of the borrowers, maintaining the collateral assets in high quality investments and marking the collateral to market on a daily basis. The University is indemnified against borrower default by the lending agent. The securities lending transactions as of and for the fiscal years ended June 30 are as follows:

	2007	2006
Investments loaned to brokers	\$ 26,108	\$ 25,801
Investments collateral	26,816	26,630
Income from securities lending	49	84

**4. Student Loan Advances**

Federal Perkins Loan Program advances of \$21,122 and \$20,930 at June 30, 2007 and 2006, respectively, are ultimately refundable to the U.S. government and are classified as liabilities. Due to the nature and terms of student loans that are subject to significant restrictions, it is not practicable to determine the fair values of such receivables.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

(in thousands of dollars)

**5. Property, Plant and Equipment**

Property, plant and equipment at June 30 are as follows:

	2007	2006
Land and site improvements	\$ 42,328	\$ 40,587
Buildings and building improvements	522,731	483,983
Equipment, library, software and works of art	119,405	122,907
Construction-in-progress	5,922	18,738
	<u>690,386</u>	<u>666,215</u>
Less: Accumulated depreciation	(276,580)	(256,261)
Property, plant and equipment, net	<u>\$ 413,806</u>	<u>\$ 409,954</u>

**6. Long-Term Debt**

Long-term debt at June 30 is as follows:

	2007	2006
DASNY Rochester Institute of Technology		
Insured Revenue Bonds:		
Series 1997, 6.00%	\$ 2,505	\$ 7,221
Series 1999, 4.50% to 5.25%	12,542	12,541
Series 2002A, 5.25%	41,234	41,283
Series 2002B, 4.00% to 5.00%	15,357	15,718
Series 2006, 4.00% to 5.25%	61,430	61,667
Taxable Adjustable Rate Bonds, Series 2004	12,640	13,260
Capital leases	174	249
	<u>\$ 145,882</u>	<u>\$ 151,939</u>

**DASNY - 1997**

The University has an agreement with DASNY whereby DASNY issued \$66,740 in insured revenue bonds (Series 1997). These bonds were comprised of 15 serial bonds and 3 term bonds. Bond proceeds were used to refund the remaining obligation of \$4,865 on the general and unconditional obligation Series E revenue bonds on September 1, 1997 at par value. Proceeds were also used to renovate campus housing and improve the technological infrastructure of the University.

During the year ended June 30, 2006, the University advance refunded \$58,115 of the outstanding Series 1997 (see DASNY – 2006 below). Net proceeds from the issuance of Series 2006 were used to purchase U.S. government obligations. Those securities were deposited in an irrevocable trust to provide for all future debt service payments on the refunded bonds callable on July 1, 2007. As a result, the refunded debt is considered to be defeased, and the liability for the advanced refunded bond and the assets of the irrevocable trust are excluded from the financial statements. This series matures on July 1, 2007. The outstanding obligation is reported net of an unamortized discount of \$30 and \$59 at June 30, 2007 and 2006, respectively.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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*(in thousands of dollars)*

Under the agreement, the University had on deposit with a trustee at June 30, 2007 and 2006, certain securities having a fair value of \$3,880 and \$7,065, respectively. These assets are pledged as collateral to the bonds.

**DASNY – 1999**

The University has an agreement with DASNY whereby DASNY issued \$15,320 in insured revenue bonds (Series 1999). These bonds are comprised of 12 serial bonds. Bond proceeds were used for the construction and renovation of various academic buildings and upgrading of campus-wide communication networks. This issue matures on July 1, 2014. The outstanding balance is reported net of an unamortized discount of \$8 and \$9 at June 30, 2007 and 2006, respectively.

Under the agreement, the University had on deposit with a trustee at June 30, 2007 and 2006, certain securities having a fair value of \$1,614 and \$307, respectively. These assets are pledged as collateral to the bonds.

**DASNY – 2002A and B**

The University has an agreement with DASNY whereby DASNY issued \$60,000 in insured revenue bonds comprised of \$40,000 fixed rate bonds and \$20,000 variable rate demand bonds (Series 2002A and Series 2002B, respectively). The Series 2002A bonds are comprised of 9 serial bonds and 2 term bonds.

During the year ended June 30, 2006, the University reoffered \$15,545 of Series 2002B in fixed rate mode. The reoffered Series 2002B bonds are comprised of 16 serial bonds and 2 term bonds. Series 2002B was reoffered at a premium of \$174. The University contemporaneously redeemed \$3,015 in outstanding principal with the conversion.

The Series 2002B bonds were originally issued as variable rate demand bonds bearing interest determined weekly based on the market, unless converted to a fixed rate. The Series 2002B bonds were subject to tender for purchase at the option of the holders with seven-day notice and mandatorily upon conversion to a fixed rate or upon the expiration or termination of the liquidity facility. Purchases were payable from proceeds available from the remarketing of tendered Series 2002B bonds, from monies obtained under the liquidity facility, or from monies furnished by or on behalf of the University in accordance with the bond documents.

Proceeds of Series 2002A and 2002B were used for the construction and renovation of various campus buildings. These issues mature on July 1, 2032. The balance includes an unamortized premium of \$1,401 and \$1,457 at June 30, 2007 and 2006, respectively.

Under the agreement, the University had on deposit with a trustee at June 30, 2007 and 2006, certain securities having a fair value of \$1,760 and \$1,599, respectively. These assets are pledged as collateral to the bonds.

**DASNY – 2006**

The University has an agreement with DASNY whereby DASNY issued \$57,675 in insured revenue bonds (Series 2006). These bonds are comprised of 15 serial bonds. Series 2006 was issued at a premium of \$4,031. Proceeds were used to advance refund a substantial portion of the outstanding aggregate principal amount of Series 1997. Series 2006 matures on July 1, 2022. The outstanding balance includes an unamortized premium of \$3,755 and \$3,992 at June 30, 2007 and 2006, respectively.

# Rochester Institute of Technology

## Notes to Consolidated Financial Statements

### June 30, 2007 and 2006

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(in thousands of dollars)

Under the agreement, the University had on deposit with a trustee at June 30, 2007 and 2006, certain securities having a fair value of \$1,429 and \$584, respectively. These assets are pledged as collateral to the bonds.

#### **Taxable Adjustable Rate Bonds – Series 2004**

During fiscal 2002, the University received a donation of a former franchise hotel subject to a long-term capital lease. As of February 2004, the capital lease was terminated and title to the building was conveyed to the University's subsidiary, The 5257 West Henrietta Road, LLC (d/b/a "The RIT Inn & Conference Center"). The Inn assumed the underlying debt balance. During November 2004, the University refinanced this note payable through the issuance of taxable adjustable rate bonds (Series 2004).

The University has an agreement with First Albany Capital Inc. whereby First Albany Capital Inc. issued \$13,935 in taxable adjustable rate bonds (Series 2004). The Series 2004 bonds are variable rate demand bonds bearing interest determined weekly by a Remarketing Agent. The University has the option to convert the bonds to a fixed rate. This issue matures on November 1, 2021.

The Series 2004 bonds are subject to tender for purchase at the option of the holders with seven days notice and are subject to mandatory tender for purchase upon conversion to a fixed rate or upon the substitution of the liquidity facility as defined in the bond documents. Purchases are payable from proceeds available from the remarketing of tendered Series 2004 bonds, from monies obtained under the liquidity facility, or from monies furnished by or on behalf of the University in accordance with the bond documents. The outstanding obligation is reported net of an unamortized discount of \$75 and \$80 at June 30, 2007 and 2006, respectively.

Under the agreement, the University has established a self-liquidating agreement consenting to continuously own qualified investments in at least the coverage amount as of each valuation date. The coverage amount is defined as the fair market value of the qualified investments in an amount equal to 120% of the outstanding principal amount of the bonds.

#### **Capital Leases**

The University has entered into various capital equipment and furniture lease agreements.

#### **Required Principal Payments**

The required principal payments for long-term debt for each of the years in the five-year period ending June 30, 2012 and thereafter are as follows:

2008	\$	5,214
2009		5,576
2010		5,772
2011		5,961
2012		6,191
Thereafter		117,168
	\$	<u>145,882</u>

#### **Estimated Fair Value**

At June 30, 2007, the fair value of the University's long-term debt instruments totaled \$146,519.

# Rochester Institute of Technology

## Notes to Consolidated Financial Statements

### June 30, 2007 and 2006

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*(in thousands of dollars)*

#### **Interest Rate Swap**

On May 22, 2006, the University entered into an interest rate swap agreement with a notional amount of \$40,000 with a third party (counterparty). The University entered into the interest rate swap agreement to reduce the effective interest rate on its fixed rate debt without the exchange of the underlying principal amount. Under this agreement the counterparty will pay the University a quarterly interest payment based on 70.6% of the weighted average of weekly resets of the USD-ISDA-swap rate with a designated maturity of 5 years (5-year LIBOR). The University will pay the counterparty a weighted average of weekly resets of the BMA Municipal Swap Index (BMA). The net settlement under the swap agreement is recorded in nonoperating activities as an adjustment to the change in value of the interest rate swap agreement. As of June 30, 2007, the fair value of the interest rate swap was an asset of \$350 and was recorded in Notes and Other Accounts Receivable on the consolidated Balance Sheet. This agreement continues in effect until July 1, 2032.

#### **7. National Technical Institute for the Deaf (NTID)**

Under an agreement with the U. S. government, the University has established NTID to provide technical training and education for deaf and hard of hearing persons. The federal government pays approximately 72% of total operating costs of NTID. These costs include direct operating expenses plus reimbursement to the University for indirect costs, tuition, fees, and room and board for NTID students using University facilities. The balance of the operating costs is covered from tuition collected from students and other revenues. The federal appropriation is applied for on an annual basis and its continuation is subject to the federal government's continued support of the program.

#### **8. Retirement Plans**

##### **Pension Plan**

The University participates in contributory, defined contribution pension plans that are in accordance with IRC Section 403(b). These plans are administered by the Teachers Insurance Annuity Association--College Retirement Equities Fund (TIAA-CREF) and Fidelity Investments for substantially all full-time employees. It is the University's policy to currently fund defined contribution pension costs. Total pension contribution expense for 2007 and 2006 was \$14,013 and \$13,435, respectively.

##### **Postretirement Benefits**

The University sponsors a defined benefit postretirement medical plan that covers substantially all employees. During fiscal 1995 the University amended its postretirement medical plan contribution schedule to require premium contributions until age 65 from all employees who retire after July 1, 1996. Under the prior plan, the University paid 100% of premiums for any employee retiring after age 60. Under the revised plan, an employee who retires before age 65 must contribute to premium payments until age 65.

Employees may retire if they are at least 55 years old (50 if hired prior to July 1996) with at least 10 years of full-time service (5 years if hired prior to July 1, 1990) and age plus service totals at least 70 at retirement. The plan is contributory and retiree contributions are assumed to increase at the same rate as active employee contributions. The University's postretirement medical plan is not funded.



**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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*(in thousands of dollars)*

During fiscal 2004, the University approved plan amendments to replace the existing contributory plan with employer funded retiree medical accounts (RMA) for employees hired on or after January 1, 2004. Employees hired on or after January 1, 2004 are subject to the same plan eligibility criteria pursuant to the existing plan as amended in 1995. The University will fund nominal RMAs for employees in accordance with an established funding schedule. Future retirees participating in this RMA plan will have access to the medical insurance plans offered by the University to its active employees and retirees and are fully responsible for the cost of their elected coverage. The funds in the RMAs can only be used for Medicare and private medical insurance premiums.

The 2004 plan amendments also included changes to retiree contribution requirements for employees hired before January 1, 2004 and for retirees and dependents who become Medicare eligible on or after January 1, 2005.

Another element of the 2004 plan amendments included the adoption of a self-insured prescription drug plan, effective January 1, 2005, managed by a third-party pharmacy benefit manager. This drug plan covers all eligible active employees and retirees.

The impact of these negative plan amendments was a reduction of the plan's accumulated postretirement benefit obligation of \$24,680, at June 30, 2004.

The following table reflects the plans' funded status at June 30:

	<b>2007</b>	<b>2006</b>
Change in projected benefit obligation		
Projected benefit obligation at beginning of year	\$ 113,581	\$ 129,752
Service cost	2,799	4,123
Interest cost	6,189	6,527
Participants' contributions	303	284
Actuarial gain	(14,258)	(23,678)
Benefits paid	(2,875)	(3,427)
Projected benefit obligation at end of year	<u>\$ 105,739</u>	<u>\$ 113,581</u>
Funded status		
Projected benefit obligation	\$105,739	\$113,581
Unamortized prior service benefit	-	5,318
Unrecognized net actuarial loss	-	(26,654)
Accrued benefit cost	<u>\$105,739</u>	<u>\$92,245</u>
Discount rates		
Net periodic benefit cost	6.25%	5.25%
Year-end benefit obligation	6.33%	6.25%

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

(in thousands of dollars)

In fiscal 2007, the University adopted FAS 158 and recognized a cumulative effect of a change in accounting principle of \$6,249 comprised of (\$4,439) in unrecognized prior service credit and \$10,688 of unrecognized actuarial loss. The components of net periodic postretirement benefit costs are as follows at June 30:

	2007	2006
Service cost	\$ 2,799	\$ 4,123
Interest cost	6,189	6,527
Amortization of unrecognized prior service benefit	(879)	(879)
Amortization of loss	1,708	6,385
Net periodic postretirement benefit cost	<u>9,817</u>	<u>16,156</u>
Net periodic postretirement benefit cost allocated for operating activities	2,799	4,128
Net periodic postretirement benefit cost allocated for nonoperating activities	<u>\$7,018</u>	<u>\$12,028</u>

For measurement purposes, a 10% and 11% annual rate of increase in the per capita cost of covered medical and prescription drug benefits, respectively, was assumed for fiscal year 2007. The corresponding rates for fiscal year 2006 were 11% and 13%, respectively. For the 2007 projections, these rates were assumed to decrease gradually to 5% by 2012 and remain at that level thereafter. The change in net periodic postretirement cost from 2006 to 2007 is largely attributable to a change in delivery of prescription benefits and an increase in the employee population eligible for the Retiree Medical Account.

The health care cost trend rate assumption has a significant effect on the amounts reported. A one-percentage-point change in the assumed health care cost trend rates would have the following effects:

	1% Point Increase	1% Point Decrease
Effect on total of service and interest cost components	\$ 1,800	\$ (1,370)
Effect on postretirement benefit obligation	18,003	(14,560)

**Benefit Payments**

At June 30, 2007, the aggregated future estimated benefit payments, which reflect future services, are as follows:

Fiscal Year(s)	Employer Payments
2008	\$ 3,076
2009	3,179
2010	3,870
2011	3,256
2012	3,339
2013-2017	<u>\$ 16,635</u>

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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(in thousands of dollars)

The University expects to recognize postretirement benefit amortization in fiscal 2008 of \$459, comprised of (\$879) for prior service credit and \$1,338 for actuarial loss.

**Contributions**

The University's contributions to the plan, net of participant contributions and the Medicare subsidy, are estimated to be \$3,076 for fiscal year 2008.

**Medicare Prescription Drug Act**

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 provides for a direct government subsidy for employers who continue to offer a retiree drug program that is deemed to be actuarially equivalent to the government plan. Prior to January 1, 2007, the University qualified for the Medicare Part D prescription drug federal subsidy. In accordance with FASB Staff Position 106-2, *Accounting and Disclosure Requirements Related to the Medicare Prescription Drug, Improvement and Modernization Act (FSP 106-2)*, the University recorded the impact of the Act in its June 30, 2005 financial statements. The effect of the subsidy on the measurement of the net periodic postretirement benefit cost for fiscal year 2006 was a decrease in expense of \$6,700.

Effective January 1, 2007, the University changed the prescription drug coverage for Medicare-eligible retirees to insured Medicare Prescription Plans and, therefore, no longer qualifies for the employer subsidy under Medicare Part D. As such, the actuarial determination of the University's periodic postretirement benefit cost no longer includes the effect of any subsidy.

**9. Statement of Activities – Operating Expenses by Function**

	2007	2006
Instruction	\$ 166,959	\$ 163,000
Research	25,638	28,719
Public service	16,254	13,296
Academic support	35,200	33,899
Student services	34,373	31,201
Institutional support	27,664	27,230
Auxiliary enterprises	71,560	68,897
	<u>\$ 377,648</u>	<u>\$ 366,242</u>

Institutional support includes fundraising expenses of \$4,454 and \$4,255 in 2007 and 2006, respectively. For purposes of reporting fundraising expenses, the University includes costs incurred by its Development Office and a portion specifically identifiable as fundraising assets within its Alumni Relations Office.

**10. Commitments and Contingencies**

The University is involved in legal actions arising in the normal course of activities and is subject to periodic audits and inquiries by various regulatory agencies. Although the ultimate outcome of such matters is not determinable at this time, management, after taking into consideration advice of legal counsel, believes that the resolution of pending matters will not have a materially adverse effect, individually or in the aggregate, upon the University's financial statements.

**Rochester Institute of Technology**  
**Notes to Consolidated Financial Statements**  
**June 30, 2007 and 2006**

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*(in thousands of dollars)*

The University is obligated, under certain limited partnership agreements, to make additional capital contributions up to contractual levels. The timing and amounts of the contributions will be determined by the general partners. Such commitments were approximately \$52,287 and \$30,967 at June 30, 2007 and 2006, respectively.

The University was committed under several construction contracts amounting to approximately \$13,498 and \$17,426 at June 30, 2007 and 2006, respectively. These contracts relate to the renovations and construction of various on-campus facilities.

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

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

The following is a brief summary of certain provisions of the Loan Agreement. This summary does not purport to be complete and reference is made to the Loan Agreement for full and complete statements of such and all provisions. The headings below are not part of the Loan Agreement but have been added for ease of reference. Defined terms used herein shall have the meaning ascribed to them in Appendix A.

### **Construction or Acquisition of the Project**

The Institution 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 Institution 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 Institution to be reimbursed for, or pay, any costs and expenses incurred by the Institution which constitute Costs of the Project, provided such costs and expenses are approved by the Authority, which approval shall not be unreasonably withheld.

*(Section 5)*

### **Amendment of the Project**

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

*(Section 6)*

### **Financial Obligations**

(a) Except to the extent that moneys are available therefor under the Resolution or the Series Resolution or the Loan Agreement, including moneys in the Debt Service Fund, and interest accrued but unpaid on investments held in the Debt Service Fund, the Institution unconditionally agrees to pay or cause to be paid, so long as 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 the Authority Fee agreed to by the Authority and the Institution in connection with issuance of the Bonds;

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

## Appendix C

- (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 November 15, 2008, and on each May 15 and November 15 thereafter, the interest coming due on Outstanding Bonds that are not Variable Interest Rate Bonds on the immediately succeeding interest payment date;
- (v) On May 15, 2009, and on each May 15 thereafter, the principal and Sinking Fund Installments, if any, on the Outstanding Bonds coming due during the immediately succeeding Bond Year;
- (vi) Except as provided below, by 1:30 p.m., New York City time, on the day on which payment of the purchase price of an Option Bond tendered for purchase which has not been remarketed or remarketed at less than the principal amount thereof and for which there is no Liquidity Facility then in effect, is due, the purchase price of such Option Bond, which shall be paid in immediately available funds; **provided, however,** that (A) if the Institution has received notice that such payment is due after 10:00 a.m., New York City time, but prior to 3:00 p.m., New York City time, on such day, then payment by the Institution 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 Institution shall be made by 10:00 a.m. on the next succeeding Business Day;
- (vii) At least forty-five (45) days prior to any date on which the Redemption Price or purchase price of Bonds previously called for redemption or contracted to be purchased, other than an Option Bond to be purchased or redeemed pursuant to an optional or mandatory tender thereof or Bonds being redeemed pursuant to Sinking Fund Installments in accordance with clause (v) above, is to be paid, the amount required to pay the Redemption Price or purchase price of such Bonds;
- (viii) On December 10 of each Bond Year one-half (1/2) of the Annual Administrative Fee payable during such Bond Year in connection with the Bonds, and on June 10 of each Bond Year the balance of the Annual Administrative Fee payable during such Bond Year; **provided, however,** that the Annual Administrative Fee with respect to the Bonds payable during the Bond Year during which such Annual Administrative Fee became effective shall be equal to the Annual Administrative Fee with respect to such Bonds multiplied by a fraction the numerator of which is the number of calendar months or parts thereof remaining in such Bond Year and the denominator of which is twelve (12);
- (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 provisions of the Loan Agreement summarized in paragraph (e) below and any expenses or liabilities incurred by the Authority pursuant to provisions of the Loan Agreement summarized under the headings “**Covenant as to Insurance**” and “**Taxes and Assessments**” below and other provisions of the Loan Agreement related to indemnity by the Institution, (C) to reimburse the Authority for any external costs or expenses incurred by it attributable to the issuance of the Bonds or the financing or construction of the Project, including but not limited to any fees or other amounts payable by the Authority under a Remarketing Agreement, a Liquidity Facility, or a Credit Facility, (D) for the costs and expenses incurred by the Authority to compel full and punctual performance by the Institution of all the provisions of the Loan Agreement or of the Resolution in accordance with the terms thereof, (E) for the fees and expenses of the Trustee and any Paying Agent in connection with performance of their duties under the Resolution, and (F) to pay any Provider Payments then due and unpaid;



(x) Promptly upon demand by the Authority (a copy of which shall be furnished to the Trustee), all amounts required to be paid by the Institution as a result of an acceleration pursuant to the provisions of the Loan Agreement summarized under the heading “**Defaults and Remedies**” below;

(xi) Promptly upon demand by the Authority, the difference between the amount on deposit in the Arbitrage Rebate Fund available to be rebated in connection with the Bonds 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;

(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) To the extent not otherwise set forth in this paragraph (a), including without limitation, in the event of any insufficiency, any amounts necessary to pay the principal, Sinking Fund Installment, or Redemption Price, if any, of, and interest on, the Bonds, on the dates, in the amounts, at the times and in the manner provided in or pursuant to the Resolution and the Series Resolution, whether at maturity, upon acceleration, redemption or otherwise.

Subject to the provisions of the Loan Agreement and of the Resolution or the Series Resolution, the Institution shall receive a credit against the amount required to be paid by the Institution during a Bond Year pursuant to the provisions of the Loan Agreement summarized in 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 Institution delivers to the Trustee for cancellation one or more Bonds of the 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 Institution, and the Institution agrees, to make the payments required by the provisions of the Loan Agreement summarized in this paragraph (a) as follows: (i) the payments required by paragraphs (a)(iii), (a)(iv), (a)(v), (a)(vii), and (a)(x) directly to the Trustee for deposit and application in accordance with the Resolution; (ii) the payments required by paragraph (a)(ii) directly to the Trustee for deposit in the Construction Fund or other fund established under the Resolution, as directed by the Authority; (iii) the payments required by paragraphs (a)(i), (a)(viii) and (a)(ix) directly to the Authority; and (iv) except as otherwise provided by the Loan Agreement, the payments required by paragraphs (a)(vi), (a)(xi), (a)(xii) and (a)(xiii) 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 Institution to the Trustee pursuant to the Loan Agreement or otherwise held by the Trustee shall be applied in reduction of the Institution’s indebtedness to the Authority under the Loan Agreement, first, with respect to interest and, then, with respect to the principal amount of such indebtedness, but only to the extent that, with respect to interest on such indebtedness, such moneys are applied by the Trustee for the payment of interest on Outstanding Bonds, and, with respect to the principal of such indebtedness, such moneys have been applied to, or are held for, payments in reduction of the principal amount of Outstanding Bonds and as a result thereof Bonds have been paid or deemed to have been paid in accordance with the provisions of the Resolution summarized in Appendix D under the heading “Defeasance.” 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.

## Appendix C

(c) The obligations of the Institution 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 Institution may otherwise have against the Authority, the Trustee or any Holder of Bonds for any cause whatsoever including, without limiting the generality of the foregoing, failure of the Institution to complete the Project or the completion thereof with defects, failure of the Institution to occupy or use the Project, any declaration or finding that the Bonds are or the Resolution is invalid or unenforceable or any other failure or default by the Authority or the Trustee; **provided, however**, that nothing in the Loan Agreement shall be construed to release the Authority from the performance of any agreements on its part contained in the Loan Agreement or any of its other duties or obligations, and in the event the Authority shall fail to perform any such agreement, duty or obligation, the Institution may institute such action as it may deem necessary to compel performance or recover damages for non-performance. Notwithstanding the foregoing, the Authority shall have no obligation to perform its obligations under the Loan Agreement to cause advances to be made to reimburse the Institution for, or to pay, the Costs of the Project beyond the extent of moneys in the Construction Fund established for such Project available therefor.

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

(d) The Authority, for the convenience of the Institution, shall furnish to the Institution statements of the due date, purpose and amount of payments to be made pursuant to the Loan Agreement. 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 by the Loan Agreement. The Institution shall notify the Authority as to the amount and date of each payment made to the Trustee by the Institution.

(e) The Authority shall have the right in its sole discretion to make on behalf of the Institution any payment required pursuant to the provisions of the Loan Agreement summarized herein which has not been made by the Institution when due. No such payment by the Authority shall limit, impair or otherwise affect the rights of the Authority under the provisions of the Loan Agreement summarized under the heading **“Defaults and Remedies”** below arising out of the Institution’s failure to make such payment and no payment by the Authority shall be construed to be a waiver of any such right or of the obligation of the Institution to make such payment.

(f) The Institution, if it is not then in default under the Loan Agreement, shall have the right to make voluntary payments in any amount to the Trustee. In the event of a voluntary payment, the amount so paid shall be deposited in 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 Institution or any payment made pursuant to the provisions of the Loan Agreement summarized under the heading **“Sale of the Project”** below, the Authority agrees to direct the Trustee to purchase or redeem Bonds in accordance with the Resolution or to give the Trustee irrevocable instructions in accordance with the Resolution with respect to such Bonds; **provided, however**, that in the event such voluntary payment is in the sole judgment of the Authority sufficient to pay all amounts then due under the Loan Agreement and under the Resolution, including the purchase or redemption of all Bonds Outstanding, or to pay or provide for the payment of all Bonds Outstanding in accordance the Resolution, the Authority agrees, in accordance with the instructions of the Institution, to direct the Trustee to purchase or redeem all Bonds Outstanding, or to cause all Bonds Outstanding to be paid or to be deemed paid in accordance with the Resolution.

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

(Section 9)

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

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

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

*(Section 13)*

### **Additional Representation and Covenants**

The Institution warrants and represents that (i) it has the requisite power and authority (A) to authorize, execute and deliver, and to perform its obligations under, the Loan Agreement and the Related Agreements, and (B) to incur the indebtedness contemplated by the Loan Agreement and thereby, (ii) the Loan Agreement and the Related Agreements constitute valid and binding obligations of the Institution enforceable in accordance with their terms and (iii) the execution and delivery of, consummation of the transaction contemplated by and performance of the Institution's obligations under the Loan Agreement and each of the Related Agreements, do not violate, conflict with or constitute a default under the charter or by-laws of the Institution or any indenture, mortgage, trust, or other commitment or agreement to which the Institution is a party or by which it or any of its properties are bound, or any existing law, rule, regulation, judgment, order, writ, injunction or decree of any governmental authority, body, agency or other instrumentality or court having jurisdiction over the Institution or any of its properties.

*(Section 15)*

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

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

*(Section 16)*

## *Appendix C*

### **Securities Acts Status**

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

*(Section 17)*

### **Maintenance of Corporate Existence**

The Institution covenants that it will (i) maintain its corporate existence, (ii) continue to operate as a non-profit educational organization, (iii) obtain, maintain and keep in full force and effect such governmental approvals, consents, licenses, permits and accreditation as may be necessary for it to continue to so operate, (iv) except as expressly permitted by the Loan Agreement, not dissolve or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another person or permit one or more persons to consolidate with or merge into it. The Institution, with 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 Loan Agreement shall be permitted unless (1) the same would not in the opinion of Bond Counsel adversely affect the exclusion of interest on any Bond from gross income for purposes of federal income taxation, (2) the Institution will not as a result thereof be in default under the Loan Agreement or under any Related Agreement, (3) the surviving, resulting or transferee corporation, as the case may be, is incorporated under the laws of the State and is qualified as an organization described in Section 501(c)(3) of the Code or any successor provision of federal income tax law, and (4) the surviving, resulting or transferee corporation of the Institution assumes in writing all of the obligations of the Institution under the Loan Agreement, under the Continuing Disclosure Agreement, and under the Related Agreements, and furnishes to the Authority (x) a certificate to the effect that upon such sale, transfer, consolidation, merger or acquisition such corporation will be in compliance with each of the provisions of the Loan Agreement and of the Related Agreements, and will meet the requirements of the Act, and (y) such other certificates and documents as the Authority may reasonably require to establish compliance with the Loan Agreement.

*(Section 18)*

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

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

*(Section 19)*

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

Subject to the rights, duties and remedies of the Authority under the Loan Agreement, the Institution shall have sole and exclusive control and possession of and responsibility for (i) the Project, (ii) the operation of the Project and supervision of the activities conducted therein or in connection with any part thereof and (iii) the maintenance, repair and replacement of the Project; **provided, however**, that, except as otherwise limited by the Loan Agreement, the foregoing shall not prohibit use of the Project by persons other than the Institution or its

students, staff or employees in furtherance of the Institution's corporate purposes, if such use will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes.

*(Section 20)*

### **Restrictions on Religious Use**

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

*(Section 21)*

### **Sale of the Project**

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

Notwithstanding the foregoing, the Institution may remove equipment, furniture or fixtures that is part of the Project and was financed with the proceeds of Bonds provided that the Institution substitutes for such equipment, furniture or fixtures additional equipment, furniture or fixtures having a value and utility at least equal to the equipment, furniture or fixtures removed or replaced.

*(Section 22)*

## *Appendix C*

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

The Institution agrees that, throughout the term of the Loan Agreement, it shall, at its own expense, hold, operate and maintain the Project in a careful, prudent and economical manner, and keep the same, with the appurtenances and every part and parcel thereof, in good repair, working order and safe condition and shall from time to time make all necessary and proper repairs, replacements and renewals so that at all times the operation thereof may be properly and advantageously conducted. The Institution shall give the Authority not less than fifteen (15) days prior written notice of its intention to make a change or alteration that materially alters the scope or nature of the Project or a portion thereof. The Institution shall have the right to remove or replace any type of fixtures, furnishings and equipment in the Project which may have been financed by the proceeds of the sale of Bonds provided the Institution substitutes for any such removed or replaced fixtures, furnishings and equipment, additional fixtures, furnishings and equipment having equal or greater value and utility than the fixtures, furnishings and equipment so removed or replaced.

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

*(Section 23)*

### **Covenant as to Insurance**

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

(b) The Institution shall furnish to the Authority annually (1) a certificate or report of an Insurance Consultant that the insurance coverage maintained by the Institution is adequate and in accordance with the standards above, and (2) any certificates of workers' compensation insurance and disability benefits insurance coverage required by the New York State Workers' Compensation Board.

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

*(Section 24)*

### **Damage or Condemnation**

In the event of a taking of the Project or any portion thereof by eminent domain or condemnation, or of damage or destruction affecting all or part thereof, all property casualty insurance, condemnation or eminent domain proceeds shall, if in excess of \$250,000 and not applied to reimburse the Institution 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 Institution may agree) after the Authority receives actual notice or knowledge of the taking or damage, the Institution and the Authority agree in writing that the property or the affected portion thereof shall be repaired, replaced or restored, the Institution 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 Institution and approved in writing by 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 Institution.

(ii) If no agreement for the repair, restoration or replacement of the property or affected portion shall have been reached by the Authority and the Institution within such period, the proceeds then held by the Institution 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 25)*

### **Taxes and Assessments**

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

*(Section 26)*

### **Defaults and Remedies**

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

(i) the Institution shall (A) default in the timely payment of any amount payable pursuant to the Loan Agreement (other than as described in subsection (B) below, or the payment of any other amounts required to be delivered or paid by or on behalf of the Institution in accordance with the Loan Agreement or with the Resolution or Series Resolution, and such default continues for a period in excess of seven (7) days or (B) default in the timely payment of interest payable on Outstanding Variable Interest Rate Bonds or the purchase price of Option Bonds tendered for purchase, in accordance with the terms of the Loan Agreement; or

(ii) the Institution defaults in the due and punctual performance of any other covenant contained in the Loan Agreement and such default continues for thirty (30) days after written notice requiring the same to be remedied shall have been given to the Institution by the

## Appendix C

Authority or the Trustee or, if such default is not capable of being cured within thirty (30) days, the Institution fails to commence within said thirty (30) days to cure the same and to diligently prosecute the cure thereof; or

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

(iv) the Institution shall (A) be generally not paying its debts as they become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, (C) make a general assignment for the benefit of its general creditors, (D) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (E) be adjudicated insolvent or be liquidated or (F) take corporate action for the purpose of any of the foregoing; or

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

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

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

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

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

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

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



(A) such judgment shall not have been discharged or paid, or (B) the Institution shall not have taken and be diligently prosecuting an appeal therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, and shall not have caused, within forty-five (45) days, the execution of or levy under such judgment, order, decree or process or the enforcement thereof to have been stayed pending determination of such appeal.

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

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

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

(v) to the extent permitted by law, (A) enter upon the Project and complete the construction thereof in accordance with the plans and specifications with such changes therein as the Authority may deem appropriate and employ watchmen to protect the Project, all at the risk, cost and expense of the Institution, consent to such entry being by the Loan Agreement given by the Institution, (B) at any time discontinue any work commenced in respect of the construction of the Project or change any course of action undertaken by the Institution 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 Institution in any way relating to the construction of the Project and take over and use all or any part of the labor, materials, supplies and equipment contracted for by the Institution, whether or not previously incorporated into the construction of such Project, and (D) in connection with the construction of the Project undertaken by the Authority pursuant to the provisions summarized in this subparagraph (v), (1) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment in connection with the construction of such Project, (2) pay, settle or compromise all bills or claims which may become liens against the Project or against any moneys of the Authority applicable to the construction of such Project, or which have been or may be incurred in any manner in connection with completing the construction of the Project or for the discharge of liens, encumbrances or defects in the title to the Project or against any moneys of the Authority applicable to the construction of such Project, and (3) take or refrain from taking such action under the Loan Agreement as the Authority may from time to time determine. The Institution shall be liable to the Authority for all sums paid or incurred for construction of the Project whether the same shall be paid or incurred pursuant to the provisions summarized in this subparagraph (v) or otherwise, and all payments made or liabilities incurred by the Authority under the Loan Agreement of any kind whatsoever shall be paid by the Institution to the Authority upon demand. The Institution irrevocably constitutes and appoints the Authority its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Institution for the purpose of exercising the rights granted to the Authority by provisions summarized in this subparagraph (v) during the term of the Loan Agreement;

## **Appendix C**

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

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.

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 summarized in paragraph (b) above and its consequences if such Event of Default shall be cured. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereto.

*(Section 30)*

### **Investment of Moneys**

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

*(Section 32)*

### **Limitation on Agreements**

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

*(Section 34)*

### **Arbitrage; Tax Exemption**

Each of the Institution and the Authority covenants that it shall take no action, nor shall it approve the Trustee's taking any action or making any investment or use of the proceeds of the Bonds, which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code, and any proposed or final regulations thereunder as are applicable to the Bonds at the time of such action, investment or use. Neither the Institution nor any "related person" (as such term is defined in Section 147(a)(2) of the Code) shall purchase Bonds other than for delivery to and cancellation by the Trustee, unless the Trustee shall receive an opinion of Bond Counsel to the effect that the purchase by the Institution or by a related person of Bonds will not cause interest on the Bonds to be included in the gross income of the owners of such Bonds for purposes of federal income taxation.

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

The Authority has undertaken full responsibility for performing rebate calculations that may be required to be made from time to time with respect to the Bonds. Upon request, the Institution covenants that it will provide such information as the Authority deems necessary to calculate the yield on the Bonds and any other information as may be necessary to prepare the rebate calculation to the Authority or an entity which the Authority has designated no less than once a year measured from the date of issuance of the Bonds. The Institution shall be obligated to pay the costs in connection therewith in accordance with the Loan Agreement. The Authority shall retain in its possession, so long as required by the Code, copies of all documents, reports and computations made by it in connection with the calculation of excess earnings and the rebate of all or a portion thereof to the Department of the Treasury of the United States of America, which shall be subject at all reasonable times to the inspection of the Institution and its agents and representatives, any of whom may make copies thereof. Upon written request from the Institution, the Authority shall as soon as practicable provide the Institution with a copy of such documents, reports and computations.

*(Section 35)*

### **Limitation on Authority Rights**

As long as no Event of Default has occurred and is continuing, and no event has occurred that, with the giving of notice or lapse of time, or both, would constitute an Event of Default, the Authority will not, without the prior written consent of the Institution (i) change the dates on which an Option Bond is to be tendered for purchase or the period during which a Variable Interest Rate Bond is to bear interest at a particular rate, (ii) convert a Variable Interest Rate Bond to bear interest at a fixed rate to its maturity, (iii) seek the removal or resignation of a Remarketing Agent or appoint a successor Remarketing Agent, (iv) amend or modify the dates on or Redemption Price at which a Variable Interest Rate Bond after its conversion to bear interest at a fixed rate to the maturity date thereof may be redeemed at the election or direction of the Authority in accordance with the Resolution or (v) remarket at a price other than par any Option Bond tendered or deemed to have been tendered for purchase. The Institution may, at any time no Event of Default, or an event that, with the giving of notice or lapse of time, or both, would constitute an Event of Default, has occurred and is continuing, request the Authority to take such action as may be required by the Resolution or the Series Resolution or the Bond Series Certificate to change the dates on which such Option Bonds are to be tendered for purchase or the period during which such Variable Interest Rate Bonds shall bear interest at a particular rate or to convert such Variable Interest Rate Bonds to bear interest at a fixed rate to their maturity.

*(Section 36)*

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

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

*(Section 39)*

### **Further Assurances**

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

*(Section 42)*

## *Appendix C*

### **Amendments to Loan Agreement**

The Loan Agreement may be amended only in accordance with the Resolution and each amendment shall be made by an instrument in writing signed by the Institution and the Authority, an executed counterpart of which shall be filed with the Trustee.

*(Section 43)*

### **Termination**

The Loan Agreement shall remain in full force and effect until no Bonds are Outstanding and until all other payments, expenses and fees payable under the Loan Agreement by the Institution shall have been made or provision made for the payment thereof; **provided, however**, that the liabilities and the obligations of the Institution under the Loan Agreement relating to the prompt payment of arbitrage rebate and to provide reimbursement for or indemnification against expenses, costs or liabilities made or incurred pursuant to provisions of the Loan Agreement summarized under the headings **“Covenant as to Insurance”** and **“Taxes and Assessments”** above and provisions of the Loan Agreement related to indemnity by the Institution and disclaimer of personal liability shall nevertheless survive any such termination. Upon such termination, the Authority shall promptly deliver such documents as may be reasonably requested by the Institution to evidence such termination and the discharge of the Institution’s duties under the Loan agreement and the release or surrender of any security interests granted by the Institution to the Authority pursuant to the Loan Agreement.

*(Section 44)*

## SUMMARY OF FINANCIAL COVENANTS (SCHEDULE D TO THE LOAN AGREEMENT)

### **Maintenance Covenants**

The Institution covenants to charge and maintain during each Fiscal Year, student tuition, fees and other charges sufficient to provide a Debt Service Coverage Ratio of 1.1:1. On or prior to each Reporting Date, the Institution shall file with the Authority a certificate of an Authorized Officer of the Institution stating whether at the immediately preceding Testing Date the Debt Service Coverage Ratio requirement is satisfied and setting forth the calculation upon which such statement is based.

If on two consecutive Testing Dates the Institution does not satisfy the Debt Service Coverage Ratio requirement, the Authority may require the Institution to retain a Management Consultant; or if on any Testing Date the Debt Service Coverage Ratio falls below 1:1, the Institution shall be required to retain a Management Consultant.

The Institution covenants to have available on each Testing Date, Unrestricted Resources at least equal to 75% of the Institution's Long-Term Indebtedness. On or prior to each Reporting Date, the Institution shall file with the Authority a certificate of an Authorized Officer of the Institution stating whether at the immediately preceding Testing Date the Unrestricted Resources to Debt Ratio requirement is satisfied and setting forth the calculation upon which such statement is based.

If on any Testing Date the Institution does not satisfy the Unrestricted Resources to Debt Ratio requirement, the Authority may require the Institution to retain a Management Consultant; and if on any Testing Date the Institution does not satisfy the Unrestricted Resources to Debt Ratio requirement and the percentage decline from the prior Fiscal Year to the current Fiscal Year is greater than or equal to thirty-five percent (35%), the Institution shall be required to retain a Management Consultant.

*(Section 2 of Schedule D to the Loan Agreement)*

### **Management Consultant Call-In**

If the Authority elects to require the Institution to retain the services of a Management Consultant in accordance with provisions of Section 2 of Schedule D to the Loan Agreement, then the Authority shall, at its election which shall be exercised in writing within sixty days of notice of the applicable covenant failure, request the Institution to engage, at the Institution's expense, a Management Consultant to review the fees and tuition, operations and management of the Institution and any other matter deemed appropriate by the Authority and to make such recommendations with respect to such fees and tuition, operations, management and other matters as will enable the Institution to comply with such covenants within a reasonable period. The Institution shall engage a Management Consultant within sixty days of such request by the Authority.

If the Institution is required to retain the services of a Management Consultant pursuant to Section 2 of Schedule D to the Loan Agreement, the Institution shall engage within sixty days of the applicable covenant failure, at the Institution's expense, a Management Consultant to review the fees and tuition, operations and management of the Institution and any other matter deemed appropriate by the Authority and to make such recommendations with respect to such fees and tuition, operations, management and other matters as will enable the Institution to comply with such covenants within a reasonable period acceptable to the Authority. The Institution shall immediately notify an Authorized Officer of the Authority of such engagement.

Whenever a Management Consultant is required to be engaged by the Institution pursuant to Section 3 of Schedule D to the Loan Agreement, copies of the report and recommendations of such Management Consultant shall be filed with the Authority, the Trustee, the Board of Trustees of the Institution and an Authorized Officer of the Institution no later than one hundred twenty days following the date of the engagement of such Management Consultant. The Institution shall, to the extent feasible, promptly upon its receipt of such recommendations, and subject to applicable requirements or restrictions imposed by law or regulation, revise its tuition, fees and charges, its methods of operation or collections or its debt and investment management and shall take such other action as shall be in conformity with such recommendations. The Institution shall deliver to the Authority and the Trustee within forty-

## *Appendix C*

five days of receipt of such Management Consultant's report: (A) a report setting forth in reasonable detail the steps the Institution proposes to take to implement the recommendations of such Management Consultant; and (B) a certified copy of a resolution adopted by the Board of Trustees of the Institution accepting both the Management Consultant's report and the report prepared by the Institution as required in clause (A) above; and, subsequently, (C) quarterly reports demonstrating the progress made by the Institution in implementing the recommendations of the Management Consultant.

If the Institution complies in all material respects with the reasonable recommendations of the Management Consultant, the Institution will be deemed to have complied with the covenants contained in Section 2 of Schedule D to the Loan Agreement for the Institution's Fiscal Year in which the Management Consultant's report is delivered.

*(Section 3 of Schedule D to the Loan Agreement)*

### **Additional Indebtedness**

Except as otherwise provided in Section 4 of Schedule D to the Loan Agreement, the Institution will not after the date of the Loan Agreement issue, incur, assume or guarantee any Indebtedness without the prior written consent of the Authority.

The Institution may issue, incur, assume or guarantee Indebtedness without the consent of the Authority provided that (i) it maintains a debt rating in the "A" category without regard for "+" or "-" from at least one Rating Service **and** (ii) (a) such Long-Term Indebtedness issued in any Fiscal Year is in an amount less than or equal to ten percent (10%) of the amount of its unrestricted net assets as reported for the most recently concluded Fiscal Year for which audited financial statements are available **or** (b) the Institution provides to the Authority a certificate of an Authorized Officer of the Institution containing pro forma calculations demonstrating that the maintenance covenants described in Section 2 of Schedule D to the Loan Agreement would be met for the most recently concluded Fiscal Year for which audited financial statements are available taking into account the additional Long-Term Indebtedness proposed to be issued (provided that, for purposes of calculating the Debt Service Coverage Ratio for such pro forma calculations, Annual Debt Service shall be equal to projected Maximum Annual Debt Service).

Notwithstanding the foregoing, the Institution may issue Non-Recourse Indebtedness without the Authority's consent provided that any assets pledged as collateral or for the re-payment of such indebtedness must have been acquired by the Institution after the issuance of the Series 2008A Bonds.

The Institution may incur Short-Term Indebtedness without the Authority's consent if, with respect to such indebtedness, during any twelve month period, there will be no outstanding balance for a period of not less than thirty days.

*(Section 4 of Schedule D to the Loan Agreement)*

**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. This summary does not purport to be complete and reference is made to the Resolution for full and complete statements of such and all provisions. The headings below are not part of the Resolution but have been added for ease of reference only. Defined terms used herein shall have the meanings ascribed to them in Appendix A or in the body of this Official Statement.

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

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

*(Section 1.03)*

### **Assignment of Certain Rights and Remedies**

With respect to each Series of Bonds, as security for the payment of the principal Sinking Fund Installments, if any, and Redemption Price of, and interest on, the Outstanding Bonds of such Series and for the performance of each other obligation of the Authority under the Resolution and under a Series Resolution, the Authority may, and upon the occurrence of an event of default under the Resolution 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, together with all rights, powers, security interests, privileges, options and other benefits of the Authority under such Loan Agreement, including, without limitation, the immediate and continuing right to receive, enforce and collect (and to apply the same in accordance with the Resolution) all Revenues, insurance proceeds, sale proceeds and other payments and other security now or hereafter payable to or receivable by the Authority under the Loan Agreement, 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 of such Series, and to perform all other necessary and appropriate acts under the Loan Agreement, subject to the following conditions, that (i) the Holders of such Bonds of such Series, 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 Trustee, in its discretion exercised following an "Event of Default" under the Loan Agreement that is continuing, so elects, by an instrument in writing delivered to the Authority and the Institution (and then, only to the extent that the Trustee so elects), 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 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, provided to be observed and performed by it; and (iii) that any grant, pledge and assignment of money, revenues, accounts, rights or other property of the Institution made with respect to the Loan Agreement pursuant to the Resolution as summarized herein shall secure, in the case of the Loan Agreement, only the payment of the amounts payable under the Loan Agreement.

## *Appendix D*

Any grant, pledge or assignment made pursuant to the Resolution as summarized herein, shall be made by instruments in form and substance reasonably satisfactory to the Trustee executed and delivered by the Authority as soon as practicable after the occurrence of an event of default under the Resolution, but in no event more than thirty (30) days thereafter. The Trustee shall accept such grant, pledge and assignment which acceptance shall be evidenced in writing and signed by an Authorized Officer of the Trustee in form and substance reasonably satisfactory to the Authority.

If an event of default under the Resolution has been cured and is no longer continuing, the Trustee, as soon as practicable after the written request of the Authority, shall re-grant and re-assign to the Authority, and release from any pledge made by the Authority pursuant to the Resolution as summarized herein, all of the Authority's estate, right, title, interest and claim in, to and under the Loan Agreement, 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 the Resolution. The Trustee shall execute such instruments as the Authority may reasonably require to effect or evidence such re-grant, re-assignment or release.

*(Section 1.04)*

### **Refunding Bonds**

All or any portion of one or more Series of Refunding Bonds may be authenticated and delivered upon original issuance to refund all Outstanding Bonds, one or more Series of Outstanding Bonds, a portion of a Series of Outstanding Bonds or a portion of a maturity of a Series of Outstanding Bonds. The Authority may issue Refunding Bonds of a Series in an aggregate principal amount sufficient, together with other money available therefor, to accomplish such refunding and to make such deposits required by the Resolution and by the Series Resolution authorizing such Series of Refunding Bonds.

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

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

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

*(Section 2.04)*

### **Additional Obligations**

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, 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.

*(Section 2.05)*

## **Redemption and Purchase of Bonds**

### **Authorization of Redemption**

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

*(Section 4.01)*

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

In the case of any redemption of Bonds of a Series other than as summarized in the following paragraph, the Authority shall give written notice to the Trustee and each applicable Provider of its election or direction to redeem, of the Series and of the principal amounts of the Bonds of each maturity of such Series to be redeemed. The Series, maturities and principal amounts thereof to be redeemed at the election or direction of the Authority shall be determined by the Authority in its sole discretion, subject to any limitations with respect thereto contained in the Resolution or in the Series Resolution authorizing such Series or the applicable Bond Series Certificate. Such notice shall be given to the Trustee and each applicable Provider at least sixty (60) days prior to the date on which such Bonds are to be redeemed, or such lesser number of days as shall be acceptable to the Trustee. Unless the notice of redemption required by the Resolution provides that the redemption is subject to the condition that money for payment of the Redemption Price is available on the redemption date, such notice shall not be given unless prior to the date such notice is given, the Authority shall have paid or caused to be paid to the Trustee an amount which, in addition to other amounts available therefor held by the Trustee, is sufficient to redeem, on the redemption dates at the Redemption Price thereof, together with interest accrued and unpaid thereon to the redemption date, all of the Bonds of such Series to be so redeemed.

*(Section 4.02)*

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

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

*(Section 4.03)*

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

Unless otherwise provided in the Series Resolution authorizing the issuance of Bonds of a Series or the Bond Series Certificate relating to such Bonds, in the event of redemption of less than all of the Outstanding Bonds of like Series, maturity and tenor, the Trustee shall assign to each Outstanding Bond of the Series, maturity and

## *Appendix D*

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

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

*(Section 4.04)*

### **Notice of Redemption**

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

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

notice shall not affect the validity of the proceedings for the redemption of the Bonds. If directed in writing by an Authorized Officer of the Authority, the Trustee shall also give such notice by publication thereof once in an Authorized Newspaper, such publication to be not less than thirty (30) days nor more than forty-five (45) days prior to the redemption date or, in the case of Variable Interest Rate Bonds or Option Bonds, such shorter period as shall be established by the Series Resolution authorizing such Bonds or the Bond Series Certificate relating thereto, but in no event less than fifteen (15) days prior to the redemption date; **provided, however**, that such publication shall not be a condition precedent to such redemption, and failure to so publish any such notice or a defect in such notice or in the publication thereof shall not affect the validity of the proceedings for the redemption of the Bonds.

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

*(Section 4.05)*

#### **Payment of Redeemed Bonds**

Notice having been given by mail in the manner provided in the Resolution, the Bonds of a Series or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender of such Bonds, other than Book Entry Bonds of like Series, maturity and tenor to be redeemed in part, at the office or offices specified in such notice, and, in the case of Bonds presented by other than the registered owner, together with a written instrument of transfer duly executed by the registered owner or his duly authorized attorney, such Bonds, or portions thereof, shall be paid at the Redemption Price plus interest accrued and unpaid to the redemption date. Payment of the Redemption Price shall be made, upon the request of the registered owner of one million dollars (\$1,000,000) or more in principal amount of Bonds to be redeemed, by wire transfer to such registered owner at the wire transfer address in the continental United States to which such registered owner has, at the time such Bonds are surrendered to the Trustee, directed in writing the Trustee to wire such Redemption Price. If there shall be drawn for redemption less than all of the principal amount of a registered Bond of a Series, the Authority shall execute and the Trustee shall authenticate and deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the registered Bond so surrendered, Bonds of like Series, maturity and tenor in any of the authorized denominations. If, on the redemption date, money for the redemption of all Bonds of a Series or portions thereof of any like Series, maturity and tenor to be redeemed, together with interest accrued and unpaid thereon to the redemption date, shall be held by the Trustee and Paying Agents so as to be available therefor on such date and if notice of redemption shall have been mailed as aforesaid, then, from and after the redemption date, interest on such Bonds or portions thereof so called for redemption shall cease to accrue and such Bonds shall no longer be considered to be Outstanding under the Resolution. If such money shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

*(Section 4.06)*

#### **Purchase of Purchased Bonds**

Whenever Bonds are to be purchased at the election of the Institution, written notice thereof and of the Bonds of the Series and maturity to be so purchased having been given by the Institution to the Authority, the Trustee, and each applicable Provider, the Trustee shall select the particular Bonds of such Series and maturity to be so purchased in the same manner as provided in the Resolution for the selection of Bonds to be redeemed in part. Promptly thereafter the Trustee shall give notice of the purchase of the Bonds at the times and in the manner provided in the Series Resolution authorizing such Bonds or the Bond Series Certificate related thereto. The Trustee

## ***Appendix D***

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

*(Section 4.07)*

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

#### **Pledge of Revenues**

The proceeds from the sale of a Series of Bonds, the applicable Revenues and, except as otherwise provided in the Resolution, all funds and accounts established by the Resolution, other than the Arbitrage Rebate Fund, are pursuant to the Resolution subject to the adoption of a Series Resolution pledged and assigned to the Trustee as security for the payment of the principal and Redemption Price of and interest on such Series of Bonds, all in accordance with the Resolution and the Series Resolution. The pledge made pursuant to the Resolution shall relate only to the Bonds of a Series authorized by such Series Resolution and no other Series of Bonds and such pledge shall not secure any such other Series of Bonds. 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 a Series of Bonds, the applicable Revenues and all funds and accounts established by the Resolution and by a Series Resolution which are pledged by the Resolution shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. No instrument by which such pledge is created nor any financing statement need be recorded or filed. The Bonds of each Series shall be special obligations of the Authority payable solely from and secured by a pledge of the proceeds from the sale of such Series of Bonds, the applicable Revenues and the funds and accounts established by the Resolution and a Series Resolution and which are pledged by the Resolution as provided in the Resolution, which pledge shall constitute a first lien thereon.

*(Section 5.01 of the Resolution)*

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

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

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 for purposes of internal accounting establish

such other accounts and subaccounts as the Authority or the Trustee deems proper, necessary or desirable. All money at any time deposited in any fund, account or subaccount created and pledged hereby or by 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, unless otherwise provided in the applicable Series 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 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 of Option Bonds so tendered or deemed to have been tendered, shall not be held in trust for the benefit of the Holders of Bonds other than such Option Bonds and are pledged by the Resolution for the payment of the purchase price of such Option Bonds.

*(Section 5.02)*

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

As soon as practicable after the delivery of each Series of Bonds, the Trustee shall deposit in the Construction Fund the amount required to be deposited therein pursuant to the Series Resolution authorizing such Series or the Bond Series Certificate relating to such Series. In addition, the Authority shall pay over to the Trustee and the Trustee shall deposit in the Construction Fund any money paid to the Authority pursuant to provisions of the Resolution summarized under the heading “**Deposit of Certain Money in the Construction Fund**” below, and all amounts paid by the Institution which by the terms of the Loan Agreement are required to be deposited therein.

Except as otherwise provided in the Resolution and in any applicable Series Resolution or Bond Series Certificate, money deposited in the Construction Fund shall be used only to pay the Costs of Issuance and the Costs of the Project with respect to such Series of Bonds.

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

Any proceeds of insurance, condemnation or eminent domain awards received by the Trustee, the Authority or the Institution with respect to a Project shall be deposited in the Construction Fund and, if necessary, such fund may be re-established for such purpose.

The Project shall be deemed to be complete upon delivery to the Authority and the Trustee of a certificate signed by an Authorized Officer of the Institution, which certificate shall be delivered as soon as practicable after the date of completion of such Project, or upon delivery to the Institution and the Trustee of a certificate signed by an Authorized Officer of the Authority which certificate may be delivered at any time after completion of such Project. Each such certificate shall state that such Project has been completed substantially in accordance with the plans and specifications, if any, applicable to such Project and that such Project is ready for occupancy or use, and, in the case of a certificate of an Authorized Officer of the Institution, shall specify the date of completion.

Upon receipt by the Trustee of a certificate relating to the completion of a Project, the money, if any, then remaining in the Construction Fund relating to the 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:

## *Appendix D*

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

First: To the 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 of a Series 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 of a Series 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 of a Series and Variable Interest Rate Bonds of a Series payable on or prior to the next succeeding January 1 and (c) the purchase price or Redemption Price of Outstanding Bonds of a Series theretofore contracted to be purchased or called for redemption pursuant to Section 5.06 hereof 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 Section 5.06 hereof 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 amount set forth in such direction;

Fourth: To the Authority, unless otherwise paid, such amounts as are payable to the Authority relating to such Series for: (i) any expenditures of the Authority for fees and expenses of auditing, and fees and expenses of the Trustee and Paying Agents, all as required hereby, (ii) all other expenditures reasonably and necessarily incurred by the Authority in connection with the financing of the Project, including expenses incurred by the Authority to compel full and punctual performance of all the provisions of the applicable Loan Agreement in accordance with the terms thereof, and (iii) any fees of the Authority; but only upon receipt by the Trustee of a certificate signed by an Authorized Officer of the Authority, stating in reasonable detail the amounts payable to the Authority pursuant to this paragraph Fourth.

The Trustee shall, promptly after making the above required payments, notify the Authority and the Institution of any balance of Revenues 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



Institution, in the respective amounts set forth in such direction. Any amounts paid to the Institution shall be free and clear of any pledge, lien, encumbrance or security interest created hereby or by the applicable Loan Agreement.

*(Section 5.05)*

**Debt Service Fund**

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

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

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

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

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

(b) Notwithstanding the provisions of the Resolution summarized in paragraph (a) above, the Authority may, at any time subsequent to the first day of July of any Bond Year but in no event less than forty-five (45) days prior to the succeeding date on which a Sinking Fund Installment is scheduled to be due, direct the Trustee to purchase, with money on deposit in the Debt Service Fund, at a price not in excess of par plus interest accrued and unpaid to the date of such purchase, Term Bonds to be redeemed from such Sinking Fund Installment. In addition, the Institution pursuant to the Loan Agreement may deliver, at any time subsequent to July 1 of any Bond Year, but in no event less than forty-five (45) days prior to the succeeding date on which a Sinking Fund Installment is scheduled to be due, to the Trustee for cancellation one or more Term Bonds of the Series and maturity to be so redeemed on such date from such Sinking Fund Installment. Any Term Bond so purchased and any Term Bond so delivered to the Trustee shall be canceled upon receipt thereof by the Trustee and evidence of such cancellation shall be given to the Authority. The principal amount of each Term Bond so canceled shall be credited against the Sinking Fund Installment due on such date; **provided, however**, that such Term Bond is canceled by the Trustee prior to the date on which notice of redemption is given.

(c) Any Term Bond so delivered to the Trustee shall be canceled upon receipt thereof by the Trustee and evidence of such cancellation shall be given to the Authority. The principal amount of each Term Bond so canceled shall be credited against the Sinking Fund Installment due on such date, **provided, however**, that such Term Bond is canceled by the Trustee prior to the date on which notice of redemption is given.

(d) Money 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 January 1 or July 1, assuming that a Variable Interest Rate Bond will bear interest, from and after the next date on which the rate at which such Variable Interest Rate Bond bears interest is to be adjusted, at a rate per annum equal to the rate per annum at which such Bonds then bear interest, plus one percent (1%) per annum, and the purchase price or Redemption Price of Outstanding Bonds of a Series theretofore contracted to be purchased or called for redemption, plus accrued interest thereon to the date of purchase or redemption, shall be applied by the Trustee in accordance with the direction of an Authorized Officer of the Authority to the purchase of Outstanding Bonds of 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 money 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

## ***Appendix D***

Bonds as provided in the redemption provisions of the Resolution, at the Redemption Prices specified in the Series Resolution authorizing the issuance of the Bonds to be redeemed or the Bond Series Certificate relating to such Bonds.

*(Section 5.06)*

### **Arbitrage Rebate Fund**

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

Money on deposit in the Arbitrage Rebate Fund shall be applied by the Trustee in accordance with the direction of an Authorized Officer of the Authority to make payments to the Department of the Treasury of the United States of America at such times and in such amounts as the Authority shall determine to be required by the Code to be rebated to the Department of the Treasury of the United States of America. Money which an Authorized Officer of the Authority determines to be in excess of the amount required to be so rebated shall, first, be applied to reimburse, pro rata, each Provider for money advanced under 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 written direction of such Authorized Officer.

The Authority shall periodically determine the amount which may be required by the Code to be rebated to the Department of the Treasury of the United States of America with respect to 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 money to the Department of the Treasury of the United States of America with respect to such Series of Bonds and (ii) if and to the extent required by the Code, pay out of the Arbitrage Rebate Fund to the Department of the Treasury of the United States of America the amount, if any, required by the Code to be rebated thereto.

*(Section 5.07)*

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

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

*(Section 5.08)*

### **Transfer of Investments**

Whenever money in any fund or account established under the Resolution or under a Series Resolution is to be paid in accordance with the Resolution to another such fund or account, such payment may be made, in whole or

in part, by transferring to such other fund or account investments held as part of the fund or account from which such payment is to be made, whose value, together with the money, if any, to be transferred, is at least equal to the amount of the payment then to be made; **provided, however**, that no such transfer of investments would result in a violation of any investment standard or guideline applicable to such fund.

*(Section 5.09)*

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

### **Security for Deposits**

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

*(Section 6.01)*

### **Investment of Funds and Accounts**

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

(b) In lieu of the investments of money in obligations authorized in paragraph (a) summarized above, the Trustee shall, to the extent permitted by law, upon direction of the Authority given or confirmed in writing, signed by an Authorized Officer of the Authority, invest money in the Construction Fund in any Permitted Investment; **provided, however**, that each such investment shall permit the money so deposited or invested to be available for use at the times at which the Authority reasonably believes such money will be required for the purposes of the Resolution; **provided, further**, that (x) any Permitted Collateral required to secure any Permitted Investment shall have a market value, determined by the Trustee or its agent periodically, but no less frequently than weekly, at least equal to the amount deposited or invested including interest accrued thereon, (y) the Permitted Collateral shall be deposited with and held by the Trustee or an agent of the Trustee approved by an Authorized Officer of the Authority, and (z) the Permitted Collateral shall be free and clear of claims of any other person.

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

(d) 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.

## ***Appendix D***

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

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

*(Section 6.02)*

### **Particular Covenants**

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

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

*(Section 7.01)*

#### **Further Assurance**

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

*(Section 7.04)*

#### **Accounts and Audits**

The Authority shall keep proper books of records and accounts (separate from all other records and accounts), which may be kept on behalf of the Authority by the Trustee, in which complete and correct entries shall be made of its transactions relating to a Series of Bonds including but not limited to the objects and purposes for which proceeds of such Bonds were expended and the respective amounts expended for such objects and purposes. Such books and accounts, at reasonable hours and subject to the reasonable rules and regulations of the Authority, shall be subject to the inspection of the Institution, the Trustee or of any Holder of a Bond of a Series or his representative duly authorized in writing. The Trustee shall annually prepare a report which shall be furnished to the Authority, to each Provider and to the Institution. Such report shall include at least: a statement of all funds (including investments thereof) held by such Trustee and the Authority pursuant to the provisions of the Resolution and the applicable Series Resolution; a statement of the Revenues collected in connection with the Resolution and each Series Resolution; and complete and correct entries of the Authority’s transactions relating to each Series of

Bonds. A copy of such report shall, upon receipt of a written request therefor, and payment of any reasonable fee or charge made in connection therewith, be furnished to the registered owner of a Bond of a Series or any beneficial owner of a Book Entry Bond requesting the same.

*(Section 7.05)*

### **Creation of Liens**

Except as permitted by the Resolution or a Series Resolution, the Authority shall not create, cause to be created or suffer or permit the creation of any lien or charge prior or equal to that of the Bonds of a Series on the proceeds from the sale of such Bonds, the applicable Revenues, the rights of the Authority to receive payments to be made under a Loan Agreement that are to be deposited with the Trustee or the funds and accounts established by the Resolutions or by any Series Resolution which are pledged by the Resolution; **provided, however**, that nothing contained in the Resolution shall prevent the Authority from (i) issuing bonds, notes or other obligations or otherwise incurred indebtedness under another and separate resolution so long as the charge or lien created by such resolution is not prior to the charge or lien created by the Resolution and the Series Resolution and (ii) incurring obligations with respect to a Credit Facility or a Liquidity Facility which are secured by a lien upon and pledge of the applicable Revenues of equal priority with the lien created and the pledge made by the Resolution and by the applicable Series Resolution.

*(Section 7.06)*

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

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

*(Section 7.07)*

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

In addition to the proceeds of Bonds of a Series to be deposited in the Construction Fund, any moneys paid to the Authority for the acquisition, construction, reconstruction, renovation or equipment of a Project, including the proceeds of any insurance or condemnation award to be so applied shall be deposited in the Construction Fund.

*(Section 7.08)*

## *Appendix D*

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

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

*(Section 7.09)*

### **Amendment of Loan Agreement**

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

The Loan Agreement may be amended, changed, modified or altered (i) to make changes necessary or appropriate in connection with the acquisition, construction, reconstruction, rehabilitation and improvement, or otherwise providing, furnishing and equipping of any facilities constituting a part of any Project or to otherwise amend the Project or (ii) with the consent of the Trustee, to cure any ambiguity, or to correct or supplement any provisions contained in the Loan Agreement which may be defective or inconsistent with any other provisions contained in the Resolution or in the Loan Agreement. Except as otherwise provided in the paragraph summarized herein, the Loan Agreement may be amended, changed, modified or altered without the consent of the Holders of Outstanding Bonds or the Trustee. Prior to execution by the Authority of any amendment, a copy thereof certified by an Authorized Officer of the Authority shall be filed with the Trustee.

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

In addition, the Holder of an Outstanding Auction Rate Bond of a Series shall be deemed to have consented to an amendment, change, modification, alteration or termination permitted by this Section if (i) the Trustee has mailed notice of such proposed amendment to the Holder of such Bonds in the same manner required by the portion of the Resolution addressing amendments of the Resolution for an amendment to the Resolution, (ii) on the first Auction Date for such Bond occurring at least twenty (20) days after the date on which the aforementioned notice is given by the Trustee the interest rate determined on such date is the Winning Bid Rate and (iii) there is delivered to the Authority and the Trustee an opinion of Bond Counsel to the effect that such amendment shall not adversely affect the validity of such Auction Rate Bond or any exemption from federal income tax to which the interest on such Auction Rate Bond would otherwise be entitled. The following terms shall have the respective meanings:

“Auction Rate Bond” means a Variable Interest Rate Bond of a Series that is not an Option Bond, and that bears interest at rates determined by periodic auctions in accordance with procedures therefore established by the Series Resolution authorizing such Bond or the Bond Series Certificate related thereto; “Auction Date” means, with respect to particular any Auction Rate Bond, the date on which an auction is held or required to be held for such Bond in accordance with the procedures established therefore; and “Winning Bid Rate” when used with respect to an auction held for any particular Auction Rate Bond, shall have the meaning given to such term in the Series Resolution authorizing such Auction Rate Bond or the Bond Series Certificate related thereto, or, if not otherwise defined, means the lowest rate specified in any purchase bid submitted in such auction, which, if selected, would cause the aggregate principal amount of Auction Bonds offered to be sold in such auction to be subject to purchase bids at rates no greater than the rate specified in such purchase bid.

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

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

*(Section 7.11)*

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

The Authority shall notify the Trustee in writing that an “Event of Default” under the Loan Agreement, as such term is defined in the Loan Agreement, has occurred and is continuing, which notice shall be given as soon as practicable after the Authority has obtained actual knowledge thereof.

*(Section 7.12)*

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

#### **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 of a Series, provided such additional covenants and agreements are not contrary to or inconsistent with the covenants and agreements of the Authority contained in the Resolution;
- (c) To prescribe further limitations and restrictions upon the issuance of Bonds of a Series and the incurring of indebtedness by the Authority which are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect;

## *Appendix D*

(d) To surrender any right, power or privilege reserved to or conferred upon the Authority by the terms of the Resolution, provided that the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Authority contained in the Resolution;

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

(g) To modify or amend the Project; or

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

*(Section 9.01)*

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

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

*(Section 9.02)*

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

The Resolution or a Series Resolution shall not be modified or amended in any respect except in accordance with and subject to the provisions of the Resolution. Nothing contained the Resolution shall affect or limit the rights or obligations of the Authority to adopt, make, do, execute or deliver any resolution, act or other instrument pursuant to the provisions of the Resolution summarized under the heading “**Further Assurance**” above, or the right or obligation of the Authority to execute and deliver to the Trustee or any Paying Agent any instrument elsewhere provided in the Resolution or permitted to be delivered to the Trustee or any Paying Agent.

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

The Trustee is authorized to accept delivery of a certified copy of any Series Resolution or Supplemental Resolution permitted or authorized pursuant to the provisions of the Resolution and to make all further agreements



and stipulations which may be contained therein, and, in taking such action, the Trustee shall be fully protected in relying on the opinion of Bond Counsel that such series resolution or Supplemental Resolution is authorized or permitted by the provisions of the Resolution.

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

*(Section 9.03)*

## **Amendments of Resolution**

### **Powers of Amendment**

Any modification or amendment of the Resolution and of the rights and obligations of the Authority and of the Holders of the Bonds under the Resolution or of any Series Resolution, in any particular, may be made by a Supplemental Resolution, with the written consent given as provided in the Resolution and summarized in the following paragraph, (i) of the Holders of at least a majority in principal amount of the Bonds of a Series Outstanding at the time such consent is given or (ii) in case the modification or amendment changes the amount or date of any Sinking Fund Installment, of the Holders of at least 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. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond of a Series or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof or in the rate of interest thereon without the consent of the Holder of such Bond, or shall reduce the percentages or otherwise affect the classes of Bonds the consent of the Holders of which is required to effect any such modification or amendment. For the purposes of the provisions of the Resolution summarized in this paragraph, a Series shall be deemed to be affected by a modification or amendment 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 of such Series. The Trustee may receive an opinion of counsel, including an opinion of Bond Counsel, as conclusive evidence as to whether the Bonds of any particular Series or maturity would be so affected by any such modification or amendment of the Resolution. The Trustee shall transmit a copy of such Supplemental Resolution to the Institution upon its becoming effective.

*(Section 10.01)*

### **Consent of Bondholders**

The Authority may at any time adopt a Supplemental Resolution making a modification or amendment permitted by the provisions of the Resolution summarized in the preceding paragraph to take effect when and as provided in the Resolution. A copy of such Supplemental Resolution (or brief summary thereof or reference thereto in form approved by the Trustee) together with a request to the Bondholders of a Series for their consent thereto in form satisfactory to the Trustee, shall promptly after adoption be mailed by the Authority to such Bondholders (but failure to mail such copy and request to any particular Bondholder shall not affect the validity of the Supplemental Resolution when consented to as provided in the Resolution). Such Supplemental Resolution shall not be effective unless and until (i) there shall have been filed with the Trustee (a) the written consent of the Holders of the percentages of Outstanding Bonds of a Series specified in the Resolution as summarized in the preceding paragraph 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 as summarized below. Each such consent shall be effective only if accompanied by proof of the holding or owning at the date of such consent, of the Bonds of a Series with respect to which such consent is given, which proof shall be such as is permitted by the Resolution. A certificate or certificates by the Trustee filed with the Trustee that it has examined such proof and that such proof is

## *Appendix D*

sufficient in accordance with the Resolution shall be conclusive proof that the consents have been given by the Holders of the Bonds of a Series described in the certificate or certificates of the Trustee.

Any consent given by the a Bondholder shall be binding upon the Bondholder giving such consent and, anything in the Resolution to the contrary notwithstanding, upon any subsequent Bondholder and of any Bonds of a Series issued in exchange therefor (whether or not such subsequent Insurer or Holder thereof has notice thereof), unless such consent is revoked in writing by the Bondholder giving such consent or a subsequent Holder thereof by filing with the Trustee, prior to the time when the written statement of the Trustee 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 the Holders of the required percentages of Bonds of a Series shall have filed their consents to the Supplemental Resolution, the Trustee shall make and file with the Authority and the Trustee a written statement that such Holders of such required percentages of Bonds have filed such consents. Such written statement shall be conclusive evidence that such consents have been so filed.

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

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

*(Section 10.02)*

### **Modifications by Unanimous Consent**

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

*(Section 10.03)*

### **Consent of Provider**

Whenever by the terms of the Resolution relating to amendments of the Resolution the consent of any of the Holders of the Bonds of a Series to a modification or amendment hereof made by a Series Resolution or Supplemental Resolution is required, such modification or amendment shall not become effective until the written consent of each applicable Provider has been obtained. No modification or amendment hereof which adversely affects a Provider shall be made without the written consent thereto of the Provider affected thereby. Notice of the adoption of any such Series Resolution or Supplemental Resolution and of the effectiveness of the modification or amendment made thereby shall be given to each applicable Provider by mail at the times and in the manner provided herein with respect to notices thereof required to be given to the Holders of the Bonds of a Series. Notice thereof shall also be given to each Rating Service as soon as practical after adoption of such Series Resolution or Supplemental Resolution and of the effectiveness thereof.

*(Section 10.04)*

## **Defaults and Remedies**

### **Events of Default**

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

- (a) With respect to a Series of Bonds, payment of the principal, Sinking Fund Installments or Redemption Price of any Bond shall not be made by the Authority when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or
- (b) With respect to a Series of Bonds, payment of an installment of interest on any Bond shall not be made by the Authority when the same shall become due and payable; or
- (c) With respect to a Series of Bonds, the Authority shall default in the due and punctual performance of any covenants contained in the Series Resolution authorizing the issuance thereof to the effect that the Authority shall comply with the provisions of the Code applicable to such Bonds necessary to maintain the exclusion of interest therein from gross income under Section 103 of the Code and shall not take any action which would adversely affect the exclusion of interest on such Bonds from gross income under Section 103 of the Code and, as a result thereof, the interest on the Bonds of such Series shall no longer be excludable from gross income under Section 103 of the Code; or
- (d) With respect to a Series of Bonds, the Authority shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Resolution or in such Bonds or in 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 per centum (25%) in principal amount of the Outstanding Bonds of such Series, or if such default is not

## ***Appendix D***

capable of being cured within thirty (30) days, if the Authority fails to commence within said thirty (30) days and diligently prosecute the cure thereof; or

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

*(Section 11.02)*

### **Acceleration of Maturity**

Upon the happening and continuance of any event of default specified in the Resolution, other than an event of default specified in the Resolution as summarized in paragraph (c) under the heading “**Events 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 per centum (25%) in principal amount of the Outstanding Bonds of a Series shall, by notice in writing to the Authority, declare the principal of and interest on all of the Outstanding Bonds of such Series to be immediately due and payable. At the expiration of thirty (30) days after notice of such declaration has been given, such principal and interest shall become and be immediately due and payable, anything in the Resolution or in a Series Resolution or in the Bonds of a Series to the contrary notwithstanding. At any time after the principal of such Bonds shall have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under the Resolution, the Trustee shall, with the written consent of the Holders of not less than twenty-five per centum (25%) in principal amount of the Bonds of such Series not then due by their terms and then Outstanding, by written notice to the Authority, annul such declaration and its consequences if: (i) money shall have accumulated in the Debt Service Fund sufficient to pay all arrears of interest, if any, upon all of the Outstanding Bonds of such Series (except the interest accrued on such Bonds since the last interest payment date); (ii) money shall have accumulated and be available sufficient to pay the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee and any Paying Agent; (iii) all other amounts then payable by the Authority under the Resolution and under the 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 Series Resolution or in such Bonds (other than a default in the payment of the principal of such Bonds then due only because of a declaration and acceleration under the Resolution) shall have been remedied to the reasonable satisfaction of the Trustee. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

*(Section 11.03)*

### **Enforcement of Remedies**

Upon the happening and continuance of any event of default specified in the Resolution, then and in every such case, the Trustee may proceed, and upon the written request of the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds of the Series affected thereby, shall proceed (subject to the provisions of the Resolution relating to the compensation of the Trustee or any Paying Agent) to protect and enforce its rights and the rights of the Bondholders under the Resolution or under the applicable Series Resolution or under the laws of the State by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant contained under the Resolution or under the Series Resolution or in aid or execution of any power in the Resolution or therein granted, or for an accounting against the Authority as if the Authority were the trustee of an express trust, or for the enforcement of any proper legal or equitable remedy as the Trustee shall deem most effectual to protect and enforce such rights.

In the enforcement of any remedy under the Resolution and under a Series Resolution the Trustee shall be entitled to sue for, enforce payment of, and receive any and all amounts then, or during any default becoming, and at any time remaining, due from the Authority for principal or interest or otherwise under any of the provisions of the Resolution or of a Series Resolution or of the Bonds of a Series, with interest on overdue payments of the principal

of or interest on the Bonds at the rate or rates of interest specified in such Bonds, together with any and all costs and expenses of collection and of all proceedings under the Resolution and under a Series Resolution and under such Bonds, without prejudice to any other right or remedy of the Trustee or of the Holders of such Bonds, and to recover and enforce judgment or decree against the Authority but solely as provided in the Resolution, in a Series Resolution and in such Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect in any manner provided by law, the money adjudged or decreed to be payable.

*(Section 11.04)*

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

No Holder of any of the Bonds of a Series shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust under the Resolution, or for any other remedy under the Resolution unless such Holder previously shall have given to the Trustee written notice of the event of default on account of which such suit, action or proceeding is to be instituted, and unless also the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds of a Series affected thereby shall have made written request to the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers granted 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 declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of the Resolution or for any other remedy under the Resolution and in equity or at law. It is understood and intended that no one or more Holders of the Bonds of a Series secured by the Resolution and by a Series Resolution shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Resolution or of a Series Resolution or to enforce any right under the Resolution or a Series Resolution except in the manner in the Resolution and any Series Resolution provided, and that all proceedings at law or in equity shall be instituted and maintained for the benefit of all Holders of the Outstanding Bonds of such Series. Notwithstanding any other provision of the Resolution, the Holder of any Bond of a Series shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and interest on such Bond on the stated maturity expressed in such Bond (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

*(Section 11.08)*

#### **Defeasance**

(a) If the Authority shall pay or cause to be paid to the Holders of Bonds of a Series the principal, Sinking Fund Installments, if any, or Redemption Price of and interest thereon, at the times and in the manner stipulated therein, in the Resolution, and in the applicable Series Resolution and Bond Series Certificate, then the pledge of the Revenues or other money and securities pledged to such Bonds and all other rights granted 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 money or securities held by it pursuant to the Resolution and to the applicable Series Resolution which are not required for the payment or redemption of Bonds of such Series shall be paid or delivered by the Trustee as follows: first, to the Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to the applicable Provider the Provider Payments which have not been repaid, pro rata based upon the respective Provider Payments then unpaid to each such Provider; third, to the Authority the amount certified by an Authorized Officer of the Authority to be then due or past due pursuant to the Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, then, the balance thereof to the Institution. Such 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.

(b) Bonds for the payment or redemption of which money shall have been set aside and shall be held in trust by the Trustee (through deposit of money for such payment or redemption or otherwise) at the maturity or

## *Appendix D*

redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in the Resolution. All Outstanding Bonds of any Series or any maturity within such Series or a portion of a maturity within a Series shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in the preceding paragraph (a) if (i) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Authority shall have given to the Trustee, in form satisfactory to it, irrevocable instructions to give as provided in the Resolution notice of redemption on said date of such Bonds, (ii) there shall have been deposited with the Trustee either money in an amount which shall be sufficient, or Defeasance Securities the principal of and interest on which when due will, provide money which, together with the money, if any, deposited with the Trustee at the same time, shall be sufficient to pay when due the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be, (iii) the Trustee shall have received the written consent to such defeasance of each applicable Provider which has given written notice to the Trustee and the Authority that amounts advanced under a Credit Facility or Liquidity Facility issued by it or the interest thereon have not been repaid to such Provider, and (iv) in the event said Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, the Authority shall have given the Trustee, in form satisfactory to it, irrevocable instructions to give, as soon as practicable, by first class mail, postage prepaid, to the Holders of said Bonds at their last known addresses, appearing on the registration books, and, if directed by the Authorized Officer of the Authority, by publication, at least twice, at an interval of not less than seven (7) days between publications, in an Authorized Newspaper, a notice to the Holders of such Bonds that the deposit required by clause (ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with the Resolution and stating such maturity or redemption date upon which money is to be available for the payment of the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on said Bonds. The Authority shall give written notice to the Trustee of its selection of the Series and maturity the payment of which is to be made in accordance with the Resolution. The Trustee shall select the Bonds of like Series and maturity payment of which shall be made in accordance with the Resolution in the manner provided in the Resolution. Neither Defeasance Securities nor money deposited with the Trustee pursuant to the provisions of the Resolution summarized in this paragraph nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on said Bonds; **provided, however**, that any money received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Defeasance Securities maturing at times and in amounts sufficient to pay when due the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest to become due on said Bonds on and prior to such redemption date or maturity date thereof, as the case may be; **provided, further**, that money and Defeasance Securities may be withdrawn and used by the Authority for any purpose upon (i) the simultaneous substitution therefor of either money in an amount which shall be sufficient, or Defeasance Securities the principal of and interest on which when due will provide money which without regard to reinvestment, together with the money, if any, held by or deposited with the Trustee at the same time, shall be sufficient to pay when due the principal, Sinking Fund Installments, if any, or Redemption price, if applicable, and interest due and to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, and (ii) receipt by the Trustee of a letter or other written report of a firm of independent certified public accountants verifying the accuracy of the arithmetical computations which establish the adequacy of such money and Defeasance Securities for such purpose. Any income or interest earned by, or increment to, the investment of any such money so deposited, shall, to the extent certified by the Trustee to be in excess of the amounts required 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 applicable Provider the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Provider; third, to the Authority the amount certified by an Authorized Officer of the Authority to be then due or past due pursuant to the Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, then, the balance thereof to the Institution, and any such money 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.

(c) 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 money, or Defeasance Securities and money, if any, in accordance with the provisions of the Resolution summarized in clause (ii) of the

second sentence of the preceding paragraph (b), the interest to come due on such Variable Interest Rate Bonds on or prior to the maturity date or redemption date thereof, as the case may be, shall be calculated at the Maximum Interest Rate permitted by the terms thereof; **provided, however,** that if on any date, as a result of such Variable Interest Rate Bonds having borne interest at less than such Maximum Interest Rate for any period, the total amount of money and Defeasance Securities on deposit with the Trustee for the payment of interest on such Variable Interest Rate Bonds is in excess of the total amount which would have been required to be deposited with the Trustee on such date in respect of such Variable Interest Rate Bonds in order to satisfy the provisions of the Resolution summarized in clause (ii) of the second sentence of the preceding paragraph (b), the Trustee shall, if requested by the Authority, pay the amount of such excess as follows: first, to the Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to each applicable Provider the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Provider; third, to the Authority the amount certified by an Authorized Officer of the Authority to be then due or past due pursuant to the Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, then, the balance thereof to the Institution, and any such money so paid by the Trustee shall be released of any trust, pledge, lien, encumbrance or security interest created by the Resolution.

(d) Option Bonds of a Series shall be deemed to have been paid in accordance with the provisions of the Resolution summarized in clause (ii) of the second sentence of the paragraph (b) of this section only if, in addition to satisfying the requirements of clauses (i) and (iii) of such sentence, there shall have been deposited with the Trustee money in an amount which shall be sufficient to pay when due the maximum amount of principal of and premium, if any, and interest on such Bonds which could become payable to the Holders of such Bonds upon the exercise of any options provided to the Holders of such Bonds; **provided, however,** that if, at the time a deposit is made with the Trustee pursuant to the provisions of the Resolution summarized in the preceding paragraph (b), 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 the provisions summarized in this paragraph. If any portion of the money deposited with the Trustee for the payment of the principal of and premium, if any, and interest on Option Bonds is not required for such purpose, the Trustee shall, if requested by the Authority, pay the amount of such excess as follows: first, to the Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to each applicable Provider the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Provider; third, to the Authority the amount certified by an Authorized Officer of the Authority to be then due or past due pursuant to the Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, then, the balance thereof to the Institution, and any such money so paid by the Trustee shall be released of any trust, pledge, lien, encumbrance or security interest created by the Resolution.

(e) Anything in the Resolution to the contrary notwithstanding, any money held by the Trustee or a Paying Agent in trust for the payment and discharge of any of the Bonds of a Series or the interest thereon which remain unclaimed for one (1) year after the date when all of the Bonds of such Series have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such money were held by the Trustee or Paying Agent at such date, or for one (1) year after the date of deposit of such money if deposited with the Trustee or Paying Agent after said date when all of the Bonds of such Series become due and payable, shall, at the written request of the Authority, be repaid by the Trustee or Paying Agent to the Authority as its absolute property and free from trust, and the Trustee or Paying Agent shall thereupon be released and discharged with respect thereto and the Holders of Bonds shall look only to the Authority for the payment of such Bonds; **provided, however,** that, before being required to make any such payment to the Authority, the Trustee or Paying Agent may, at the expense of the Authority, cause to be published in an Authorized Newspaper a notice that such money 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 money then unclaimed shall be returned to the Authority.

*(Section 12.01)*

**FORM OF APPROVING OPINION  
OF BOND COUNSEL**



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**FORM OF APPROVING OPINION OF BOND COUNSEL**

Squire, Sanders & Dempsey L.L.P.  
1095 Avenue of the Americas  
New York, New York 10036

November \_\_, 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 \$85,000,000 aggregate principal amount of Rochester Institute of Technology Revenue Bonds, Series 2008A (the "Series 2008A 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, created and existing under and pursuant to the Constitution and statutes 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 (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 2008A Bonds are issued under and pursuant to the Act, and the Rochester Institute of Technology Revenue Bond Resolution and the Series 2008A Resolution Authorizing Up To \$85,000,000 Rochester Institute of Technology Revenue Bonds, Series 2008A, both adopted on September 24, 2008 (collectively, the "Resolution"). The Series 2008A Bonds are being issued for the purposes set forth in the Resolution. Capitalized terms used and not otherwise defined herein have the respective meanings given to them in the Resolution or the Loan Agreement (as defined herein).

The Series 2008A Bonds are dated their date of delivery and bear interest from such date payable on January 1, 2009 and semi-annually thereafter on July 1 and January 1 in each year until final maturity thereof. The Series 2008A Bonds mature on the date and in the years and amounts, and bear interest at the rates and are subject to redemption and purchase prior to maturity, all as set forth in the Bond Series Certificate executed in connection therewith.

The Authority and Rochester Institute of Technology (the "Institution") have entered into a Loan Agreement, dated as of September 24, 2008 (the "Loan Agreement"), providing, among other things, for a loan to the Institution for the purposes permitted thereby and by the Resolution. Pursuant to the Loan Agreement, the

## *Appendix E*

Institution is required to make payments sufficient to pay the principal and Sinking Fund Installments, if any, and the redemption price of, and interest on the Series 2008A Bonds, which payments have been pledged by the Authority to the Trustee for the benefit of the Holders of the Series 2008A Bonds.

We are of the opinion that:

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

2. The Resolution has been duly and lawfully adopted by the Authority. The Resolution is in full force and effect, and is a legal, valid and binding obligation of the Authority enforceable in accordance with its terms.

3. The Series 2008A Bonds have been duly and validly authorized and issued in accordance with the Constitution and statutes of the State of New York, including the Act, and in accordance with the Resolution. The Series 2008A Bonds are legal, valid and binding special obligations of the Authority payable as provided in the Resolution, are enforceable in accordance with their terms and the terms of the Resolution and are entitled to the equal benefits of the Resolution and the Act.

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

5. Assuming compliance by the Authority and the Institution with the covenants described below, interest on the Series 2008A Bonds is excluded from gross income for federal income tax purposes. The interest on the Series 2008A Bonds will not be treated as a specific preference item for purposes of computing the federal alternative minimum tax. However, we note a portion of the interest on Series 2008A Bonds earned by certain corporations may be subject to the federal alternative minimum tax, which is based in part on adjusted current earnings.

We are further of the opinion that the difference between the principal amount of the Series 2008A Bonds maturing on July 1, 2013, July 1, 2014, July 1, 2018, July 1, 2019, July 1, 2020, July 1, 2021, July 1, 2022, July 1, 2023, July 1, 2024, July 1, 2025 and July 1, 2033 (“Discount Bonds”) and the initial offering price to the public (excluding bond houses, brokers or similar persons acting in the capacity of underwriters or wholesalers) at which a substantial amount of such Discount Bonds of the same maturity was sold constitutes original issue discount (“OID”). For federal income tax purposes, OID accrues to the owner of a Discount Bond over the period to maturity based on the constant yield method, compounded semiannually (or over a shorter permitted compounding interval selected by the owner). The portion of OID that accrues during the period of ownership of a Discount Bond (i) is interest excluded from the owner’s gross income for federal income tax purposes to the same extent and subject to the same considerations discussed above, as other interest on the Series 2008A Bonds, and (ii) is added to the owner’s tax basis for purposes of determining gain or loss on the maturity, redemption, prior sale or other disposition of that Discount Bond. A purchaser of a Discount Bond at its issue price in the initial public offering who holds that Discount Bond to maturity will realize no gain or loss upon the retirement of that Discount Bond. Initial purchasers of the Series 2008A Bonds maturing on July 1, 2010, July 1, 2016, July 1, 2017 and July 1, 2029, whose initial adjusted basis in such Bonds exceeds the respective principal amount of such Bonds (“Premium Bonds”) will have bond premium to the extent of that excess. For federal income tax purposes, bond premium is amortized over the period to maturity of a Premium Bond, based on the yield to maturity of that Premium Bond (or, in the case of a Premium Bond callable prior to its stated maturity, the amortization period and yield must be determined on the basis of an earlier call date that results in the lowest yield on that Premium Bond), compounded semiannually. No portion of that bond premium is deductible by the owner of a Premium Bond. For purposes of determining the owner’s gain or loss on the sale, redemption (including redemption at maturity) or other disposition of a Premium Bond, the owner’s tax basis in the Premium Bond is reduced by the amount of bond premium that accrues during the period of ownership.

6. We are also of the opinion that interest on the Series 2008A Bonds is exempt, under existing law, 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.

With respect to the opinions in paragraphs 5 and 6, the Internal Revenue Code of 1986 (the “Code”) imposes certain requirements that must be met subsequent to the issuance and delivery of the Series 2008A 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 2008A Bonds to be included in gross income retroactively to the date of issue of the Series 2008A Bonds. The Authority and the Institution have covenanted to take all actions necessary to maintain, and to avoid taking any actions that would impair, the exclusion of the interest on the Series 2008A Bonds from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

In rendering the opinion set forth in paragraphs 5 and 6, we have relied upon representations made by the Institution with respect to certain material facts within their knowledge and also upon the opinion of Nixon Peabody LLP, counsel to the Institution, and we have made no independent investigation thereof regarding, among other matters, the current qualification of the Institution as an organization described in Section 501(c)(3), and exempt from federal income tax pursuant to Section 501(a) of the Code. We note that such opinion is subject to a number of qualifications and limitations. Failure of the Institution to be organized and operated in accordance with the Internal Revenue Service’s requirements for maintenance of its status as an organization described in Section 501(c)(3), and exempt from federal income tax pursuant to Section 501(a), of the Code may result in interest on the Series 2008A Bonds being included in gross income for federal income tax purposes, possibly retroactively from the original delivery of the Series 2008A Bonds.

We have examined an executed Series 2008A Bond and, in our opinion, the form of said bond and its execution are regular and proper.

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 2008A Bonds. Furthermore, we express no opinion as to any federal, state or local tax law consequences with respect to the Series 2008A Bonds, or the interest thereon, if any action is taken with respect to the Series 2008A Bonds or the proceeds thereof upon the advice or approval of other bond counsel.

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

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

We express no opinion in this letter as to the accuracy, completeness, fairness or sufficiency of the Official Statement, or any appendices thereto.

Very truly yours,