

*In the opinion of Hiscock & Barclay, LLP, Bond Counsel, under existing statutes and court decisions, (1) interest on the 2011A Bonds is excluded from gross income for federal income tax purposes, assuming compliance with certain covenants and the accuracy of certain representations, and is not an item of tax preference for purposes of the individual and corporate alternative minimum taxes imposed by the Internal Revenue Code of 1986, as amended (the “Code”); however, for the purpose of computing the alternative minimum tax imposed on certain corporations (as determined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings; and (2) interest on the 2011A Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York and the City of Yonkers). INTEREST ON THE 2011B BONDS IS NOT EXCLUDABLE FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES AND IS NOT EXEMPT FROM PERSONAL INCOME TAXES IMPOSED BY THE STATE OF NEW YORK OR ANY OF ITS POLITICAL SUBDIVISIONS. See “TAX MATTERS” herein.*

## BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION

**\$43,875,000 REVENUE BONDS**

(BUFFALO STATE COLLEGE FOUNDATION  
HOUSING CORPORATION PROJECT), SERIES 2011A  
and

**\$410,000 TAXABLE REVENUE BONDS**

(BUFFALO STATE COLLEGE FOUNDATION  
HOUSING CORPORATION PROJECT), SERIES 2011B

**Buffalo State**  
State University of New York

**Dated: Date of Delivery**  
**Interest Payable: April 1 and October 1**

**Due: October 1, as shown on inside front cover**  
**First Interest Payment Date: April 1, 2012**

The Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2011A (the “2011A Bonds”) and the Taxable Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2011B (the “2011B Bonds” and together with the 2011A Bonds, the “2011 Bonds”) of Buffalo and Erie County Industrial Land Development Corporation (the “Issuer”) are to be issued under the Trust Indenture, dated as of June 1, 2011 (the “Indenture”), between the Issuer and Manufacturers and Traders Trust Company, as trustee (“Trustee”), as fully registered bonds without coupons in denominations of \$5,000 and integral multiples thereof.

All payments of principal of the 2011 Bonds are payable at the trust office of the Trustee described herein, in Buffalo, New York, and interest, payable each April 1 and October 1, commencing April 1, 2012, and the redemption price of 2011 Bonds upon mandatory sinking fund redemption, shall be paid by check of the Trustee mailed to the registered owners of the 2011 Bonds at their registered addresses, or in lieu of a check and (i) if so requested before a Record Date by an Owner of at least \$1,000,000 in principal amount of 2011 Bonds as determined under the terms of the Indenture, by wire transfer of funds, or (ii) for 2011 Bonds registered in the name of Cede & Co., as described below.

The 2011 Bonds and interest thereon are special limited obligations of the Issuer, payable solely from loan payments to be made by, and certain collateral security to be furnished by,

### BUFFALO STATE COLLEGE FOUNDATION HOUSING CORPORATION

a New York not-for-profit corporation (referred to herein as the “Company”), as more fully described herein.

The 2011 Bonds are being issued to pay or reimburse certain costs of, and to refund certain indebtedness previously incurred in connection with, the development by the Company in the City of Buffalo, New York, of an approximately 225,000 square foot student housing complex consisting of three wings of varying heights with approximately 507 beds to serve students of Buffalo State College.

The 2011 Bonds will be subject to redemption prior to maturity, as described under the caption “THE 2011 BONDS – Redemption Prior to Maturity” herein.

**THE 2011 BONDS SHALL NEVER BE A DEBT OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. NONE OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF IS OBLIGATED TO PAY, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF, THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE 2011 BONDS. THE 2011 BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES, RECEIPTS, FUNDS OR MONEYS OF THE ISSUER PLEDGED UNDER THE INDENTURE AND FROM ANY AMOUNTS OTHERWISE AVAILABLE UNDER THE INDENTURE FOR THE PAYMENT OF THE 2011 BONDS. THE 2011 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.**

The purchase of the 2011 Bonds involves certain risks. See the caption “CERTAIN BONDHOLDERS’ RISKS” herein.

The 2011 Bonds will be issued only as fully-registered bonds in book-entry-only form, and when delivered, will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York (“DTC”). Individual purchases of beneficial interests in the 2011 Bonds will be made in book-entry only form (without certificates). So long as DTC or its nominee is the registered owner of the 2011 Bonds, payments of principal, redemption price, and interest on the 2011 Bonds will be made directly to DTC or its nominee. Disbursement of such payments to DTC participants is the responsibility of DTC and disbursements of such payments to the beneficial owners in the responsibility of DTC participants.

The 2011 Bonds are offered, subject to prior sale, when, as and if issued and accepted by the Underwriter, subject to the approving opinion of Hiscock & Barclay, LLP, Buffalo, New York, Bond Counsel, and certain other conditions. In connection with the issuance of the 2011 Bonds, certain legal matters for the Company will be passed on by its counsel, Hodgson Russ LLP, Buffalo, New York, certain legal matters for the Issuer will be passed on by its counsel, Harris Beach, PLLC, Buffalo, New York, and certain legal matters for the Underwriter will be passed on by its counsel, Reed Smith LLP, Philadelphia, Pennsylvania. Delivery and payment in full for the 2011 Bonds are anticipated to occur on or about June 16, 2011.

 **M&T Securities, Inc.**

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE 2011 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME WITHOUT PRIOR NOTICE.

NO DEALER, BROKER, SALESPERSON OR OTHER PERSON HAS BEEN AUTHORIZED BY THE ISSUER, THE COMPANY OR THE UNDERWRITER TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS, OTHER THAN THOSE CONTAINED IN THIS OFFICIAL STATEMENT, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY ANY OF THE FOREGOING. ALL INFORMATION CONTAINED HEREIN HAS BEEN OBTAINED FROM THE ISSUER, THE COMPANY AND OTHER SOURCES WHICH ARE BELIEVED TO BE ACCURATE AND RELIABLE, BUT NO REPRESENTATION, WARRANTY, OR GUARANTEE IS MADE AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION IN THIS OFFICIAL STATEMENT. NOTHING CONTAINED IN THIS OFFICIAL STATEMENT CONSTITUTES AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALE OF THE 2011 BONDS BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH OFFER, SOLICITATION OR SALE. THE INFORMATION AND EXPRESSIONS OF OPINION HEREIN ARE SUBJECT TO COMPLETION AND AMENDMENT. ALL SUMMARIES CONTAINED IN THIS OFFICIAL STATEMENT ARE SUBJECT IN ALL RESPECTS TO THE COMPLETE CONSTITUTIONAL PROVISION, STATUTE, REGULATION, RULE, COURT DECISION, DOCUMENT OR REPORT REFERRED TO. THE INFORMATION AND EXPRESSIONS OF OPINION CONTAINED HEREIN ARE SUBJECT TO CHANGE WITHOUT NOTICE. NEITHER THE DELIVERY OF THIS OFFICIAL STATEMENT NOR ANY STATEMENT NOR ANY SALE MADE HEREUNDER WILL UNDER ANY CIRCUMSTANCES CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY SINCE THE DATE HEREOF.

THE UNDERWRITER HAS PROVIDED THE FOLLOWING FOR INCLUSION IN THIS OFFICIAL STATEMENT: THE UNDERWRITER HAS REVIEWED THE INFORMATION IN THIS OFFICIAL STATEMENT IN ACCORDANCE WITH, AND AS PART OF, ITS RESPONSIBILITIES TO INVESTORS UNDER, THE FEDERAL SECURITIES LAWS AS APPLIED TO THE FACTS AND CIRCUMSTANCES OF THIS TRANSACTION, BUT THE UNDERWRITER DOES NOT GUARANTEE THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

THE 2011 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR HAS THE INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE 2011 BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF SECURITIES LAWS OF THE STATES IN WHICH THE 2011 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN THE OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE 2011 BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

The Issuer assumes no responsibility with respect to the accuracy or completeness of the information contained in this Official Statement, other than information under the captions "THE ISSUER" and "LITIGATION-The Issuer," all of which information has been furnished by others.

This Official Statement contains summaries of certain documents believed to be accurate, but reference is hereby made to the actual documents, copies of which are available at the offices of the Trustee, and all such summaries are qualified in their entirety by this reference. During the initial offering period with respect to the 2011 Bonds, copies of all such documents in draft or executed form may be obtained by contacting the underwriting firm, M&T Securities, Inc., 160 Technology Drive, Suite 201, Canonsburg, Pennsylvania 15317.

**CAUTIONARY STATEMENTS  
REGARDING FORWARD-LOOKING STATEMENTS  
IN THIS OFFICIAL STATEMENT**

This Official Statement contains certain "forward-looking statements" concerning the operations and financial condition of the Project and the Company. These statements are based upon a number of assumptions and estimates which are subject to significant uncertainties, many of which are beyond the control of the Company. The words "may," "would," "could," "will," "expect," "anticipate," "believe," "intend," "plan," "estimate" and similar expressions are meant to identify these forward-looking statements. *The achievement of certain results or other expectations contained in such forward-looking statements involves known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. The Company does not plan to issue any updates or revisions to these forward-looking statements if or when changes to its expectations, or events, conditions or circumstances on which such statements are based, occur.* A number of important factors affecting the Company's financial results could cause actual results to differ materially from those stated in the forward-looking statements.

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\* The Table of Contents does not list all of the subjects in this Official Statement. In all instances, reference should be made to the complete Official Statement to determine the subjects set forth herein.

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## **OFFICIAL STATEMENT**

relating to

**\$43,875,000**

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION  
REVENUE BONDS**

**(BUFFALO STATE COLLEGE FOUNDATION HOUSING CORPORATION PROJECT),  
SERIES 2011A**

**\$410,000**

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION  
TAXABLE REVENUE BONDS**

**(BUFFALO STATE COLLEGE FOUNDATION HOUSING CORPORATION PROJECT),  
SERIES 2011B**

## **INTRODUCTORY STATEMENT**

This Official Statement, including the cover page and appendices, provides certain information with respect to Buffalo and Erie County Industrial Land Development Corporation (the "Issuer") and its \$43,875,000 aggregate principal amount of Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2011A (the "2011A Bonds"), and its \$410,000 aggregate principal amount of Taxable Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2011B (the "2011B Bonds" and, together with the 2011A Bonds, the "2011 Bonds"). The 2011 Bonds are being issued under and pursuant to a Trust Indenture, dated as of June 1, 2011 (the "Indenture"), between the Issuer and Manufacturers and Traders Trust Company, as trustee (the "Trustee"). The 2011 Bonds shall be dated the date of their delivery and shall mature on the dates and bear interest at the rates set forth on the inside front cover hereof. The 2011 Bonds are subject to redemption prior to maturity as set forth more fully herein under "THE 2011 BONDS - Redemption Prior to Maturity."

Capitalized words and terms used in this Official Statement and not otherwise defined herein shall have the meanings assigned to them in APPENDIX B - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES."

The 2011 Bonds are to be issued pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "State"), as amended, and the Resolutions of the Legislature of the County of Erie, New York (the "County"), Nos. 218 and 295 of 2009 and No. 5-3 of 2010, each as amended to date (collectively referred to as the "Act"), and the certificate of incorporation, bylaws and proceedings of the Issuer. The 2011 Bonds will be special, limited obligations of the Issuer payable solely from the moneys received under the Loan Agreement described herein, from the moneys held by the Trustee under the Indenture described herein, and from the other collateral security furnished by the Company as described herein.

The 2011 Bonds are being issued at the request of Buffalo State College Foundation Housing Corporation (the "Company"), a New York not-for-profit corporation and an organization determined by the Internal Revenue Service to be exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the applicable regulations of the United States Treasury Department promulgated thereunder (the "Code"). See the section captioned "THE COMPANY" herein.

The 2011 Bonds are being issued to pay or reimburse certain costs of, and to refinance certain indebtedness of the Company previously incurred in connection with, a project consisting of the acquisition, construction, equipping and furnishing of an approximately 225,000 square foot student housing complex (sometimes referred to in this Official Statement as the "Student Housing Facility", the "Project" or the "Facility") consisting of three wings of varying heights with approximately 507 beds, together with related infrastructure improvements, located on 3.9 acres of land (the "Land") situated at the corner of Letchworth Street and Grant Street in the City of Buffalo,

Erie County, New York and serving students of Buffalo State College (the "College"), a part of the State University of New York ("SUNY") system of higher education. See the sections captioned "THE STUDENT HOUSING FACILITY," "THE COLLEGE" and "STATE UNIVERSITY OF NEW YORK" herein and APPENDIX A hereto. In connection with the development of the Student Housing Facility, SUNY (for and on behalf of the College) leased the Land (the "Leased Premises") to Buffalo State Alumni Association, Inc., a New York not-for-profit corporation (the "Alumni Association") pursuant to a Ground Lease, dated July 1, 2009 (the "Ground Lease"), between SUNY and the Alumni Association. The term of the Ground Lease extends to June 30, 2051, and this term may be extended to June 30, 2059 unless SUNY elects, prior to one year before the expiration of the original term, not to renew the term. The Alumni Association has subleased the Leased Premises to the Company pursuant to a Sublease Agreement, dated as of July 1, 2009 (the "Sublease"), between the Alumni Association and the Company. The Sublease extends for a term ending one day prior to the expiration of the term of the Ground Lease. The Company has constructed the Student Housing Facility on the Leased Premises. Construction of the Student Housing Facility has been substantially completed and the Student Housing Facility is fully assigned for occupancy for the fall 2011 semester of the College. See "THE STUDENT HOUSING FACILITY" herein.

The Company and SUNY (for and on behalf of the College), as Manager (the "Manager"), have entered into a Facility Management Agreement, dated as of July 1, 2009 (the "Facility Management Agreement"). Under the Facility Management Agreement, the Company has appointed the Manager to be the manager of the Student Housing Facility for a term coincident with the term of the Ground Lease. Under the Facility Management Agreement, the Manager agrees, among other things, to cause the College to actively promote and market the Student Housing Facility as an integral part of the overall housing program of the College; to cause the College to establish a schedule of license rates to be charged at the Student Housing Facility sufficient to generate revenues in an amount each year equal to 120% of debt service plus amounts for capital reserves, operating expenses, and certain other expenses and payments; and to cause to be licensed units in the Student Housing Facility to students on a first-priority basis until the Student Housing Facility has attained an occupancy level sufficient to generate revenues sufficient to pay debt service, operating expenses, capital reserves and certain other expenses and payments. See "THE MANAGEMENT AGREEMENT" herein.

In addition, the Company and SUNY (for and on behalf of the College) will enter into an Agreement, dated as of June 1, 2011 (the "SUNY Agreement"), for a term coincident with the term of the Ground Lease, pursuant to which, among other things, SUNY will agree that if at the beginning of the fall or spring semester in any academic year the occupancy of the Student Housing Facility falls below the level that is projected to be necessary to achieve the level of revenues required under the Facility Management Agreement as described above, SUNY will promptly license in its own name those of the unoccupied units in the Student Housing Facility, and pay at such time the then established license rates for the Student Housing Facility, as shall be necessary to achieve the required level of Project Revenues. See "THE SUNY AGREEMENT" herein.

The Issuer and the Company will enter into a Loan Agreement, dated as of June 1, 2011 (the "Loan Agreement"), under which the Company will be obligated to make Loan Payments in amounts sufficient to pay the principal of, premium, if any, and interest on the 2011 Bonds when due. Pursuant to the Indenture, the Issuer will assign and pledge to the Trustee, as security for the payment of the 2011 Bonds and all Additional Bonds issued under the Indenture, all right, title and interest of the Issuer in and to the Loan Agreement, including payments to be made by the Company pursuant to the Loan Agreement (except certain Unassigned Rights including indemnity, payment of fees, and repayment of expenses and advances), and all right, title and interest of the Issuer in and to all money and securities held by the Trustee in any fund or account under the Indenture (other than the Rebate Fund). In order to secure the 2011 Bonds and its obligations under the Loan Agreement, the Company and the Trustee shall enter into a Guaranty Agreement, dated as of June 1, 2011 (the "Guaranty"), under which the Company will unconditionally guarantee the full and prompt payment of debt service on the 2011 Bonds; the Company and the Issuer shall enter into a Leasehold Mortgage and Security Agreement, dated as of June 1, 2011 (the "Leasehold Mortgage"), pursuant to which the Company shall grant to the Issuer (which shall assign to the Trustee) a mortgage lien on and security interest in its interest in the real and personal property comprising the Student Housing Facility; the Company shall enter into an Assignment of Rents and Leases, dated as of June 1, 2011 (the "Assignment of Rents"), pursuant to which the Company shall assign to the Trustee all rents, residency agreements, leases, subleases, licenses or occupancy agreements with regard to the Student Housing Facility; and the Company and the Trustee shall enter into an Assignment of Agreements, dated as of June 1, 2011 (the "Assignment of Agreements"), pursuant to which the Company shall assign to the Trustee all of its right, title and interest under the SUNY Agreement and the Facility Management Agreement. See "SECURITY FOR THE 2011 BONDS" herein and APPENDIX B hereto.

There follow in this Official Statement and in the Appendices hereto descriptions of the 2011 Bonds and the security for the 2011 Bonds; summaries of certain Bond Documents; descriptions of the Company, the Issuer, the Student Housing Facility, the College and SUNY; a summary of certain Bondholders' risks; and certain other information. These summaries and descriptions do not purport to be complete and are expressly made subject to the further provisions of this Official Statement (including the Appendices hereto) as well as to the exact provisions of the complete documents, which may be obtained from the Trustee or, during the offering period for the 2011 Bonds, from the Underwriter.

## THE ISSUER

The Issuer was established as a not-for-profit local development corporation of the State pursuant to the purposes and powers contained within the Act, and pursuant to its certificate of incorporation filed on January 13, 1982, as amended on October 15, 1996, with the authority and power to own, lease and sell personal and real property for the purposes of, among other things, acquiring, constructing and equipping certain projects exclusively in furtherance of the charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest and to issue its revenue bonds in furtherance of the foregoing.

The Act further authorizes the Issuer to lease and sell any or all of its facilities, to issue bonds and to make loans for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon.

The sole member of the Issuer is the County of Erie, New York, acting by and through its County Executive. The Issuer currently has seven (7) directors. The persons currently serving as directors of the Issuer are as follows:

<u>Name</u>	<u>Position</u>
Hon. Chris Collins	Chairperson
Philip C. Ackerman	Director
Philip Corwin	Director
Hon. Byron W. Brown	Director
Hon. Barbara Miller-Williams	Director
Hon. Timothy J. Whalen	Director
Michael Hoffert	Director

The persons currently serving as officers of the Issuer are as follows:

<u>Name</u>	<u>Position</u>
Alfred D. Culliton	Chief Operating Officer
Andrew Schoepich	Treasurer/CFO
John Cappellino	Executive Vice President
David W. Kerchoff	Assistant Treasurer
Karen Fiala	Assistant Treasurer
Shawn M. Griffin	Secretary
Robert G. Murray	Assistant Secreatry

**THE 2011 BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE PAYMENTS MADE BY THE COMPANY UNDER THE LOAN AGREEMENT, FROM THE MONIES HELD BY THE TRUSTEE UNDER THE INDENTURE, AND THE OTHER COLLATERAL SECURITY FURNISHED BY THE COMPANY. THE ISSUER, ITS MEMBER, DIRECTORS AND OFFICERS ARE NOT PERSONALLY LIABLE WITH RESPECT TO THE 2011 BONDS. ACCORDINGLY, NO FINANCIAL INFORMATION WITH RESPECT TO THE ISSUER OR ITS MEMBER, DIRECTORS OR OFFICERS HAS BEEN INCLUDED IN THIS OFFICIAL STATEMENT.**



**THE ISSUER HAS NO TAXING POWER. THE 2011 BONDS SHALL NEVER CONSTITUTE A DEBT OF THE STATE OR THE COUNTY, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, THE COUNTY OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE 2011 BONDS, AND NEITHER THE STATE NOR THE COUNTY SHALL BE LIABLE THEREON NOR SHALL THE 2011 BONDS BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE DULY PLEDGED THEREFOR PURSUANT TO THE INDENTURE.**

The Issuer has not verified, reviewed or approved, and does not make any representations with respect to, the accuracy or completeness of any of the information set forth in this Official Statement, other than information set forth under "THE ISSUER" and "LITIGATION-The Issuer" herein.

#### **THE COMPANY**

The Company is a not-for-profit corporation organized in 2008 under the laws of the State of New York for the purpose of, among other things, supporting the College and Buffalo State College Foundation, Inc. (the "Foundation") by, among other things, providing and maintaining residential and other facilities for the use of students and faculty at the College and obtaining financing to accomplish such purposes. The Internal Revenue Service has determined that the Company is an organization described in Section 501(c)(3) of the Code and is exempt from federal income taxation under Section 501(a) of the Code.

The Company is governed by a seven member board of directors which currently includes the Vice President for Finance and Management of the College, the Vice President for Institutional Advancement of the College, and a member-at-large of the Board of Directors of the Alumni Association.

The development and construction of the Student Housing Facility are the first and only activities undertaken by the Company. The Student Housing Facility and the contract rights of the Company relating thereto constitute the primary assets of the Company, and the revenues from the Student Housing Facility are expected to constitute the primary source of income of the Company.

See APPENDIX A hereto for certain additional information concerning the Foundation and the Company.

#### **THE STUDENT HOUSING FACILITY**

The Student Housing Facility consists of an approximately 225,000 square foot apartment style student housing complex consisting of approximately 507 beds, located on the Land at the western edge of the College's campus at the corner of Letchworth Street and Grant Street in the City of Buffalo, Erie County, New York. The facility consists of three wings of various heights. In keeping with the preferences of today's resident student, each apartment contains four single bedrooms, two full baths, and a full kitchen and living room. The Student Housing Facility has been constructed on land owned by SUNY that has been leased to the Alumni Association pursuant to the Ground Lease and subleased by the Alumni Association to the Company under the Sublease. Construction of the Student Housing Facility began in November 2009 and the facility is now substantially completed, with a certificate of occupancy anticipated to be issued in June 2011. The architect for the project is Cannon Design and the construction manager is LPCiminelli, Inc. The total cost for the design and construction of the Student Housing Facility is approximately \$44,600,000.

The Student Housing Facility is expected to be completed and delivered in June 2011 and to be open for occupancy by students for the fall 2011 semester of the College. The Student Housing Facility is fully assigned for fall 2011 occupancy.

The College has marketed the Student Housing Facility to current and prospective students through the use of a marketing brochure mailed to all newly accepted students and to incoming transfer students; a postcard mailer sent to parents of current upper division students; a web site; virtual and on-site tours; and posters located throughout the College campus.

Housing rates per student per semester for the Student Housing Facility are expected to be initially \$4,400. Other current housing rates for other student residence facilities at the College range from \$3,169 for a standard

double room to \$4,019 for a standard single room to \$3,570 for a Moore Complex double room and \$4,400 for a Moore Complex single room.

Construction of the Student Housing Facility was financed by two series of variable rate bonds and one series of fixed rate bonds, in the aggregate principal amount of \$47,755,000, issued by the Issuer in a private placement on December 31, 2009 (the "Construction Financing"). The 2011 Bonds are being issued to refund the Construction Financing and to pay or reimburse certain remaining costs of the construction and equipping of the Student Housing Facility.

#### THE COLLEGE

The College is a public, coeducational, residential college located on a 125-acre campus in the City of Buffalo, New York. The College was founded in 1871 as the "Buffalo Normal School" for the purpose of training public school teachers. The College became part of the SUNY system in 1948 and is the largest comprehensive college in the SUNY system. The College's enrollment in the fall of 2010 was 11,695 students (9,788 undergraduate and 1,907 graduate). The College offers 166 undergraduate programs (with 11 honors options) and 62 graduate programs. Total enrollment at the College over the past five years is shown in the table below.

Academic Year, <u>Fall:</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Undergraduate	9,314	9,139	9,371	9,822	9,788
Graduate	<u>1,906</u>	<u>1,854</u>	<u>1,863</u>	<u>1,892</u>	<u>1,907</u>
TOTAL	11,220	10,993	11,234	11,714	11,695

More than 2,200 students live on campus at the College in ten residence halls. As many as 275 resident students must be accommodated off-campus each fall semester because of a shortage of on-campus housing. The College anticipates even greater demand for on-campus housing because of planned renovations to four existing dormitory towers and an increased focus on recruiting downstate students. The current campus housing capacity (not taking the Student Housing Facility into account) is comprised of 1000 beds double occupancy/suites; 872 beds double occupancy/corridor; 62 beds single occupancy; 13 beds handicapped-accessible; and 18 beds apartment-style.

Current College housing policy requires first and second-year students residing more than 35 miles from the College to live on campus. The 2013-2023 master plan of the College recommends the demolition of three outmoded, difficult to renovate residential buildings in the campus core, which will require the replacement of 557 beds in the campus inventory.

For more information about the College, see APPENDIX A hereto.

**THE COLLEGE SHALL NOT BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE 2011 BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON.**

#### STATE UNIVERSITY OF NEW YORK

SUNY is a corporate entity created within the Education Department of the State of New York and under the State Board of Regents. SUNY has campuses across the entire State. In carrying out its responsibilities and in order to operate and maintain its facilities, SUNY receives moneys from various sources, a substantial portion of which consists of annual appropriation of State funds. The successful maintenance and operation of the facilities of SUNY and the overall financial viability of SUNY are dependent upon the ability and the willingness of the State Legislature to continue making appropriations of State funds in the amounts required for the operation of SUNY. See APPENDIX A hereto for more information concerning SUNY.

**SUNY SHALL NOT BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE 2011 BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON.**

## THE MANAGEMENT AGREEMENT

Under the Facility Management Agreement, the Company has appointed SUNY as the Manager of the Student Housing Facility for a term coincident with the term of the Ground Lease. Under the Facility Management Agreement, the Manager agrees to cause to be licensed on behalf of the Company units in the Student Housing Facility to students associated with the College's campus until the occupancy is at a level sufficient to generate aggregate license fees and other charges paid by occupants ("Project Revenues") in an amount that will allow the Company to fund all necessary reserves for the capital repair, replacement, alteration or improvement of the Student Housing Facility ("Capital Reserves"), to pay all operating expenses with respect to the Student Housing Facility ("Operating Expenses"), to make all principal and interest payments on the 2011 Bonds ("Debt Service Payments"), to pay all expenses of the College for staff, utilities and non-capital maintenance and repairs at the Student Housing Facility ("College Expenses"), and to make all other payments required under the Indenture, the Ground Lease, the Sublease and the Loan Agreement (the "Principal Agreements").

Under the Facility Management Agreement, a management committee (the "Management Committee") is created comprised of one member appointed by the Company and two appointed by the Manager acting on behalf of the College. The Management Committee oversees the financial aspects of the Facility and sets general operating policies. The Manager will cause the College, through its housing office, to operate the Student Housing Facility under annual budgets submitted by the College to the Management Committee not later than 210 days prior to the beginning of each academic year.

No later than 210 days prior to the commencement of each academic year, the Manager shall cause the College to establish and submit to the Management Committee a schedule setting forth the license rates to be charged at the facility for such academic year, which rates shall be sufficient at historic occupancy levels to generate aggregate Project Revenues in an amount equal to: (a) 120% of all Debt Service Payments scheduled to become due during such year and (b) the total sum needed by the Company in such year to: (i) fund all Capital Reserves, (ii) pay all Operating Expenses, (iii) pay all non-deferred College Expenses, and (iv) make all other payments required under the Principal Agreements.

As provided in the Facility Management Agreement, subject to applicable law:

(a) The Manager will cause to be licensed on behalf of Company units in the Student Housing Facility to students associated with the College campus who desire, or are required by the College's current or future housing policy to occupy housing on the Campus (the "On-Campus Occupants") until the Student Housing Facility has attained occupancy levels sufficient to generate aggregate Project Revenues in an amount which will allow the Company to fund all Capital Reserves, to pay all Operating Expenses, to make all Debt Service Payments, to pay all College Expenses and to make all other payments required under the Principal Agreements during such academic year. Such licensing shall be on a first priority basis such that the College shall refrain from licensing or entering into any other type of use or occupancy arrangement for any other student housing on the campus for such academic year until the Student Housing Facility reaches the occupancy level required by the preceding sentence. Spaces in the Student Housing Facility shall be made available to the On-Campus Occupants as follows:

Each semester, the Manager acting for and on behalf of the College shall permit all On-Campus Occupants, regardless of classification, to apply for occupancy at the Project (the "Applicants"). Based upon the limited availability of the Student Housing Facility, the Manager acting for and on behalf of the College shall have the right, from time to time, to designate certain Applicants as priority occupants (the "Priority Occupants") based upon criteria established by the College (for example, Priority Occupant designation may be given to Applicants who are graduate students, upperclassmen, transfer students, or students that currently reside in College residence halls). The Manager acting for and on behalf of the College may assign Priority Occupants to the Student Housing Facility prior to assigning Applicants who are not Priority Occupants to the Project.

(b) Student license payments will be assessed and collected by the Manager along with student tuition bills and payments.

(c) Any students delinquent in the payment of their student housing license fees will be precluded by the Manager from registering and the Manager will withhold grade reports and transcripts until payment in full has been made by the particular student.

In addition, the Facility Management Agreement provides that the Manager shall cause the College, through its housing office, to manage, operate and maintain the Project in accordance with the requirements of applicable law. In particular, the Manager shall cause the College, through its housing office, to:

(a) Prepare and submit to the Management Committee at least annually, a marketing program (the "Marketing Program") which shall entail license rates, license terms and marketing strategies.

(b) Supervise the preparation of all advertising layouts, brochures, campaigns and model apartments and ensure compliance of all such items with applicable law.

(c) Prepare and submit to the Management Committee an annual budget, which shall describe in detail all of the revenue and expenses entailed in the operation and maintenance of the Project (including capital repairs, replacements and refurbishments) and the provision of all payments required by or in connection with the 2011 Bonds, the Principal Agreements and the Facility Management Agreement.

(d) Implement the Marketing Program and annual budget (the "Management Plans") as approved by the Management Committee.

(e) Institute monthly reports and accounting systems to accurately reflect the implementation of the Management Plans.

(f) Establish requirements for security deposits, in accordance with the Marketing Program, and collecting, holding, applying and refunding security deposits in accordance with applicable law and terms of each license.

(g) Collect all Project Revenues, which shall, upon receipt by the College, be promptly deposited into the College's cash receivables account, and thereafter promptly remitted without set-off or deduction (in any event no later than two weeks after receipt by the College) to the Company.

(h) Take those steps required by the Indenture to assure that all Operating Expenses and other expenses included in an approved Annual Budget are promptly paid by the Owner out of Project Revenues. As used in this Agreement, the term "Operating Expenses" shall mean the aggregate of the following expenses incurred in connection with or arising from the ownership, operation, management, repair, maintenance, and use or occupancy of the Project: (i) license and permit fees, real estate taxes, assessments and payments in lieu thereof, and any other charges of any kind or nature imposed or assessed against the Project by any governmental authority; (ii) legal, accounting, engineering and other professional and consulting fees and disbursements; (iii) accounts payable to third party contractors and vendors providing labor, material, services and equipment to the Project; (iv) premiums for insurance paid with respect to the Project or the operations thereof; (v) costs of capital maintenance, repairs, reserves and replacements of any equipment dedicated to the Project; (vi) service contracts and public utility charges not supplied by the College to the Project; and (vii) costs of credit reports, bank charges and like matters.

(i) Pay when due all College Expenses, defined to include: (i) all payroll costs for on-site staff of the College including wages, salary, incentive bonuses, holiday and vacation pay, insurance benefits, workers' compensation premiums or allocable costs for self insurance of such matters, pension and health and welfare payments, payroll taxes and other governmental assessments so long as such salary and wage costs and benefits conform to the approved Annual Budget or are otherwise approved in writing by the Company; (ii) any backcharge by the College for or with respect to any utilities supplied by the College to the Project; and (iii) costs of non-capital maintenance and repairs at the Project.

(j) Supervise and cause to be made all capital and non-capital repairs, replacements, alterations, additions, improvements, and decorations necessary to keep the Project in good condition and repair and at its optimum operating efficiency and otherwise as specified in the Management Plans, utilizing, in each instance, contractors retained by the College on behalf of the Company to perform such work.

(k) In general, do all things necessary, proper, or expedient in connection with carrying out the spirit and intent of the Facility Management Agreement with respect to the licensing, management, operations and improvement of the Project.

The Facility Management Agreement provides that each month during the term thereof, the Manager shall cause the College to submit an invoice to the Company for all College Expenses incurred during the preceding month. The Company will cause such invoice to be paid on or before the thirtieth day following receipt to the extent of available Project Revenues after making provisions for the funding of all outstanding Capital Reserves, and the payment of all Operating Expenses, Debt Service Payments and other monetary obligations under the Principal Agreements then due and owing. To the extent that available Project Revenues, after making provisions for the payments referenced in this paragraph, are sufficient to pay any portion of the College Expenses, the Company shall pay such portions of such expenses and damages. If at the time of any such invoice, available Project Revenues, after making provisions for the payments referenced in the preceding sentence, are insufficient to pay all invoiced College Expenses, the amount of such insufficiency shall be deferred on a non-interest bearing basis until such time as the Company accumulates sufficient Project Revenues to pay such outstanding expenses.

The Company may terminate the Facility Management Agreement for cause at any time during the term by giving to the College and the Manager notice that the Agreement shall cease immediately upon the receipt of such notice. Termination for cause shall consist of the Manager's or the College's (or the Manager's or the College's employees) gross negligence, willful misconduct, malfeasance or fraud. In the event of breach of contract, the Company shall give the Manager notice of such breach and an opportunity to cure the breach within thirty (30) days after the receipt of such notice. If such breach shall continue following such thirty (30) day period, such breach shall constitute grounds for termination for cause.

### **THE SUNY AGREEMENT**

The SUNY Agreement provides that if at the beginning of the fall or spring semester in any academic year during the term thereof occupancy of the Project falls below the level necessary to achieve the level of Project Revenues required under the Facility Management Agreement, including, but not limited to 120% of all Debt Service Payments scheduled to become due and payable during that academic year, measured as of the last day of the calendar month preceding the beginning of the fall or spring semester, as the case may be, SUNY will promptly license in its own name those of the unoccupied units in the Project, and pay at such time the then established license rates for the Project, as shall be necessary to achieve the required level of Project Revenues.

As provided in the SUNY Agreement, upon determination by the Company that occupancy at the Project for any fall or spring semester during the term thereof shall be at a level below that which is required under the terms of the Facility Management Agreement, the Company will within three (3) business days thereafter notify SUNY whereupon SUNY will promptly enter into a license agreement based upon the Company's then current form of student license under which SUNY shall license those portions of the unoccupied units in the Project, provided, however, that notwithstanding any terms and conditions in such license which prohibit subletting or sublicensing, SUNY shall have the unfettered right to sublet or sublicense any such units on such terms and conditions as SUNY shall in its sole discretion determine. Such license shall obligate SUNY to perform all obligations with respect to such units in the manner specified in such license, even if such units are later sublet or sublicensed, including, without limitation, payment of license fees and any other sums due under the license at the times and in matter set forth therein.

### **THE GROUND LEASE AND THE SUBLEASE**

Under the Ground Lease, SUNY has leased the Land to the Alumni Association for a term ending on June 30, 2051, which term may be extended to June 30, 2059 unless SUNY elects, prior to one year before the expiration of the original term, not to renew the term. The rent under the Ground Lease is one dollar per year. The Ground Lease requires the Alumni Association to cause the Company to construct, operate and maintain the Student Housing Facility on the Land, and requires the Alumni Association to cause the Company to enter into the Facility Management Agreement with SUNY. The Ground Lease expressly requires that the use of the Leased Premises shall be limited to the purposes of constructing, developing or operating student housing and such attendant uses as are commonly carried out at SUNY campuses in similar student housing facilities. The Alumni Association agrees in the Ground Lease that any lease, assignment, sublease, foreclosure sale, leasehold mortgage, or any other agreement relating to an interest in the Leased Premises shall be subject to this condition and to all of the terms and conditions of the Facility Management Agreement.

An event of default under the Ground Lease includes the bankruptcy, insolvency or receivership of the Alumni Association and the default by the Alumni Association in fulfilling any of the material covenants or

agreements of the Ground Lease, which material default continues for 30 days after notice from SUNY. No event of default is deemed to occur if the reason for such default is the failure by SUNY to perform any obligation as manager under the Facility Management Agreement. Upon the occurrence of an event of default under the Ground Lease, SUNY may give the Alumni Association a 60-day notice of its intention to terminate the Ground Lease and the Ground Lease will terminate at the expiration of such 60-day period if the event of default still exists.

Under the Ground Lease, the Company, as subtenant of the Alumni Association, has the right with the prior written consent of SUNY to mortgage its interest under the Sublease to a leasehold mortgagee (the "Subleasehold Mortgagee"). The Subleasehold Mortgagee has the right to receive notices of default under the Ground Lease and an additional grace period of 30 days to cure defaults. SUNY agrees that it will take no action to terminate the Ground Lease upon an event of default without giving the Subleasehold Mortgagee reasonable time within which to either obtain possession of the Leased Premises and cure such default or to institute foreclosure proceedings and complete such foreclosure or otherwise acquire the interest of the Company under the Sublease. Also, in the event of termination of the Ground Lease prior to its stated expiration date, and provided the Subleasehold Mortgagee has paid all rent then due and the new lessee agrees to diligently proceed to cure all other defaults capable of being cured by it, SUNY will enter into a new lease with the Subleasehold Mortgagee or its designee upon the same terms. Under the Ground Lease, SUNY reserves the right to approve (such approval not to be unreasonably withheld, conditioned or delayed) any sublessee, or any party which succeeds to the interest of the Company's in the leased premises, by reason of a foreclosure, by reason of a cure of any event of default or by reason of any other means, to ensure that the leased premises are used for the exclusive purpose of developing, constructing and operating student housing.

Under the Sublease, the Alumni Association subleases the Leased Premises to the Company for a term ending one day prior to the end of the term of the Ground Lease. The Company agrees to comply with and be bound by all of the terms, covenants, promises and conditions of the Ground Lease. An event of default under the Sublease includes the occurrence of a default under the Ground Lease caused by the Company; failure by the Company to observe or perform the covenants of the Sublease and the continuance of such default for 20 days after written notice; or bankruptcy, insolvency, dissolution, merger or transfer of substantially all of the assets of the Company. Upon the occurrence of any such event of default, the Alumni Association may terminate the Sublease.

#### **PLAN OF FINANCE**

The proceeds of the 2011A Bonds will be applied to redeem the entire outstanding principal balance of that portion of the Construction Financing constituting tax-exempt bonds, to pay or reimburse certain remaining costs of the construction and equipping of the Student Housing Facility, and to pay a portion of the costs of issuance of the 2011A Bonds. The proceeds of the 2011B Bonds will be applied to redeem the entire outstanding principal balance of that portion of the Construction Financing constituting taxable bonds, together with a portion of the costs of issuance of the 2011 Bonds.

## ESTIMATED SOURCES AND APPLICATION OF FUNDS

The estimated sources and application of funds in connection with the issuance of the 2011 Bonds are anticipated to be as follows:

### SOURCES OF FUNDS

Par Amount of 2011 Bonds .....	\$44,285,000
Plus Net Original Issue Premium.....	<u>1,090,966</u>
TOTAL SOURCES .....	<u>\$45,375,966</u>

### USES OF FUNDS

Redemption of Construction Financing .....	\$39,698,521
Construction Fund .....	5,074,987
Costs of Issuance** .....	<u>602,458</u>
TOTAL USES .....	<u>\$45,375,966</u>

\*\* Includes Underwriter's discount, legal fees, trustee fees, printing costs, rating fees, title insurance premium and miscellaneous expenses.

## THE 2011 BONDS

### General

The 2011A Bonds are authorized to be issued in the aggregate principal amount of \$43,875,000 and the 2011B Bonds are authorized to be issued in the aggregate principal amount of \$410,000. The 2011 Bonds are to be dated the date of issuance and are to bear interest payable semiannually on April 1 and October 1 of each year, commencing April 1, 2012, at the rates per annum, according to years of maturity, as set forth on the inside front cover hereof. The 2011 Bonds are to mature on October 1 of the years and in the principal amounts set forth on the inside front cover hereof, and will be subject to redemption prior to maturity, including optional redemption, extraordinary redemption and mandatory redemption, as applicable, as set forth below under "Redemption Prior to Maturity."

Interest payable on each Interest Payment Date for the 2011 Bonds is to be paid to the persons in whose names the 2011 Bonds are registered on the bond register maintained by the Trustee (sometimes referred to herein as the "Holders") on the 15th calendar day of the month (regardless of whether such day is a Business Day) immediately preceding the relevant Interest Payment Date, or, in certain events, if payment of the 2011 Bonds is not deposited with the Trustee on or before any such Interest Payment Date, to the Holders at the close of business on a Special Record Date established by the Trustee, notice of which shall have been mailed to all Owners not less than 15 days prior to such date.

The 2011 Bonds are to be issued in the form of fully registered 2011 Bonds, without coupons, each in minimum denominations of \$5,000 and integral multiples thereof. Each 2011 Bond shall be transferable only on the books of the Issuer as maintained by the Trustee in its capacity as bond registrar, upon surrender thereof at the designated office of the Trustee, together with a written instrument of transfer satisfactory to the Trustee duly executed by the Owner or his attorney duly authorized in writing. Upon the transfer of any registered 2011 Bond, the Issuer shall issue in the name of the transferee a new registered 2011 Bond or 2011 Bonds, of the same series, aggregate principal amount, maturity and rate of interest as the surrendered 2011 Bond.

The Issuer, the Trustee and any paying agent may deem and treat the Person in whose name any 2011 Bond shall be registered upon the books of the Issuer as the absolute owner thereof, whether such 2011 Bond shall be overdue or not for the purpose of receiving payment of the principal or redemption price of and interest on such 2011 Bond and for all other purposes. All such payments so made to any such Owner or upon his order shall be

valid and effectual to satisfy and discharge the liability of the Issuer upon such 2011 Bond to the extent of the sum or sums so paid. Neither the Issuer, the Trustee nor any paying agent shall be affected by any notice to the contrary.

In all cases in which the privilege of exchanging or transferring 2011 Bonds is exercised, the Issuer shall execute and the Trustee shall authenticate and deliver 2011 Bonds in accordance with the provisions of the Indenture. For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for (i) any tax, fee or other governmental charge required to be paid with respect to the delivery of definitive 2011 Bonds in exchange for temporary 2011 Bonds, (ii) the reasonable cost of preparing each new 2011 Bond, and (iii) any other expenses of the Issuer or the Trustee incurred in connection therewith.

Neither the Issuer nor the Trustee shall be obligated to exchange or transfer any 2011 Bond during the ten (10) days next preceding (i) principal or interest payment date or (ii) in the case of any proposed redemption of 2011 Bonds, the date of the first mailing of notice of such redemption.

In the event any 2011 Bond is mutilated, lost, stolen or destroyed, the Trustee will authenticate a new 2011 Bond in accordance with the provisions of the Indenture, and the Trustee may charge the owner of such 2011 Bond with its reasonable fees and expenses in connection therewith and require indemnity reasonably satisfactory to the Trustee.

#### **Redemption Prior to Maturity**

Optional Redemption of 2011A Bonds. The 2011A Bonds maturing on or after October 1, 2021, are subject to redemption at the option of the Company, in whole or in part at any time on or after April 1, 2021, at the par amount of the 2011A Bonds to be redeemed, without premium, plus accrued interest to the Redemption Date.

Mandatory Sinking Fund Redemption of 2011A Bonds. The 2011A Bonds are subject to scheduled mandatory sinking fund redemption pursuant to the operation of the mandatory sinking fund, as provided for in the Indenture, from payments to be made by the Company under the Loan Agreement, as follows:

The 2011A Bonds maturing on October 1, 2026 shall be subject to redemption on October 1 of each year, and in the principal amounts each year, as set forth below, at a Redemption Price equal to their principal amount plus accrued interest to the Redemption Date.

<u>Year</u>	<u>Principal Amount</u>
2022	\$1,005,000
2023	1,060,000
2024	1,125,000
2025	1,190,000
2026*	1,265,000

\* Maturity

The 2011A Bonds maturing on October 1, 2031 shall be subject to redemption on October 1 of each year, and in the principal amounts each year, as set forth below, at a Redemption Price equal to their principal amount plus accrued interest to the Redemption Date.

<u>Year</u>	<u>Principal Amount</u>
2027	\$1,340,000
2028	1,420,000
2029	1,510,000
2030	1,605,000
2031*	1,700,000

\* Maturity



The 2011A Bonds maturing on October 1, 2041 shall be subject to redemption on October 1 of each year, and in the principal amounts each year, as set forth below, at a Redemption Price equal to their principal amount plus accrued interest to the Redemption Date.

<u>Year</u>	<u>Principal Amount</u>
2032	\$1,800,000
2033	1,900,000
2034	2,005,000
2035	2,115,000
2036	2,235,000
2037	2,355,000
2038	2,485,000
2039	2,625,000
2040	2,770,000
2041*	2,925,000

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\* Maturity

Extraordinary Redemption. The 2011 Bonds are subject to redemption prior to maturity (1) as a whole, without premium, in the event of (i) a taking in Condemnation of, or failure of title to, all or substantially all of the Project, (ii) damage to or destruction of part or all of the Project and the election by the Company to redeem the 2011 Bonds, or (iii) a taking in Condemnation of part of the Project and election by the Company to redeem the 2011 Bonds; (2) as a whole, without premium, in the event that any court or administrative body shall enter a judgment or decree requiring the Company to cease all or any substantial part of its operations at the Project; or (3) in part, without premium, in the event that (i) excess moneys remain in the Insurance and Condemnation Fund established under the Indenture following damage or Condemnation of a portion of the Project and completion of the repair, rebuilding or restoration of the Project by the Company, and (ii) such excess moneys are not paid to the Company. In any such event, the 2011 Bonds shall be redeemed, as a whole or in part, as the case may be, in the manner provided in the Indenture, on the earliest practicable date for which the Trustee can give notice of redemption at a redemption price equal to the principal amount thereof, plus accrued interest to the Redemption Date, without premium.

Notice of and Procedures for Redemption. In the event of any partial redemption, the particular 2011 Bonds or portions thereof to be redeemed shall be selected by the Trustee not more than sixty (60) days prior to the Redemption Date in inverse order of maturity, and within each maturity by lot or by such other method as the Trustee shall deem fair and appropriate. The Trustee shall apply any partial redemption payments made with respect to any 2011 Bonds subject to mandatory sinking fund installments to the schedule of mandatory sinking fund installments for such 2011 Bonds in inverse order of maturity. Further, the Trustee may provide for the selection of redemption of portions (equal to \$5,000 or any integral multiple of \$5,000 in excess thereof) of 2011 Bonds. In no event shall the principal amount of 2011 Bonds subject to any partial redemption be other than a whole multiple of \$5,000. When 2011 Bonds are to be redeemed, the Trustee shall give written notice to the Bondowners in the name of the Issuer, which notice shall identify the 2011 Bonds to be redeemed, state the date fixed for redemption and specify the office of the Trustee at which such 2011 Bonds will be redeemed. The notice shall further state that on such date there shall become due and payable upon each 2011 Bond to be redeemed the Redemption Price thereof together with interest accrued to the Redemption Date, and that moneys therefor having been deposited with the Trustee, from and after such date, interest thereon shall cease to accrue and that the 2011 Bonds or portions thereof called for redemption shall cease to be entitled to any benefit under the Indenture except the right to receive payment of the Redemption Price, together with interest accrued to the Redemption Date. All such notices shall be given not less than thirty (30) days prior nor more than sixty (60) days prior to the date fixed for redemption. Failure to mail notice to a particular Bondowner, or any defect in the notice to such Bondowner, shall not affect the redemption of any other 2011 Bond. If at the time of mailing of notice of any optional redemption there shall not have been deposited moneys in the Bond Fund available for payment sufficient to redeem all the 2011 Bonds called for redemption, such notice may state that it is conditional in that it is subject to the deposit of the redemption moneys in the Bond Fund available for payment not later than the opening of business on the Redemption Date, in which case such notice shall be of no effect unless moneys are so deposited.

## **Book-Entry Only System**

Unless otherwise noted, the following description of the procedures and record keeping with respect to beneficial ownership interests in the 2011 Bonds, payment of interest and other payments on the 2011 Bonds to Participants or Beneficial Owners (as such terms are defined below) of the 2011 Bonds, confirmation and transfer of beneficial ownership interests in the 2011 Bonds and by and between DTC, Participants and Beneficial Owners of the 2011 Bonds is based solely on information furnished by DTC. Accordingly, the Issuer, the Company, and the Underwriter do not and cannot make any independent representations concerning these matters.

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the 2011 Bonds. The 2011 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity (and, if appropriate, each fixed interest rate within a maturity) of each separate series of the 2011 Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the State's banking law (the "Banking Law"), a "banking organization" within the meaning of the Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the State's 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. 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 2011 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2011 Bonds on DTC's records. The ownership interest of each actual purchaser of each 2011 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 2011 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 2011 Bonds, except in the event that use of the book-entry system for the 2011 Bonds is discontinued.

To facilitate subsequent transfers, all 2011 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 2011 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 2011 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2011 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 2011 Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to 2011 Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Company 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 2011 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and principal and interest payments on the 2011 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 Issuer 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 Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer 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.

DTC may discontinue providing its services as depository with respect to the 2011 Bonds at any time by giving reasonable notice to Issuer or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, 2011 Bond certificates are required to be printed and delivered.

The Company may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, 2011 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 Company believes to be reliable, but the Company takes no responsibility for the accuracy thereof.

*Use of Certain Terms in Other Sections of the Official Statement.* In reviewing this Official Statement, it should be understood that while the 2011 Bonds are in the Book-Entry System, references in other sections of this Official Statement to Owners of the 2011 Bonds or Bondholders shall refer to Cede & Co., as nominee of DTC, and should be read with the understanding that (a) all rights of the Beneficial Owners must be exercised through DTC and the Book-Entry System and (b) notices that are to be given to Holders by the Trustee will be given only to DTC. DTC will forward (or cause to be forwarded) the notices to the Direct Participants by its usual procedures so that the Direct Participants may forward (or cause to be forwarded) such notices to the Beneficial Owners.

## **SECURITY FOR THE 2011 BONDS**

### **Limited Obligations**

THE 2011 BONDS SHALL NEVER BE A DEBT OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. NONE OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF IS OBLIGATED TO PAY, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF, THE PRINCIPAL OR REDEMPTION PRICE, IF ANY, OF OR INTEREST ON, THE 2011 BONDS. THE 2011 BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES OR OTHER RECEIPTS, FUNDS OR MONEYS OF THE ISSUER PLEDGED UNDER THE INDENTURE AND FROM ANY AMOUNTS OTHERWISE AVAILABLE UNDER THE INDENTURE FOR THE PAYMENT OF THE 2011 BONDS. THE 2011 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

## **Trust Estate**

Under the Indenture, the Issuer assigns and pledges to the Trustee, and grants to the Trustee a security interest in, for the benefit of the owners and future owners of the Bonds issued under the Indenture, (A) all right, title and interest of the Issuer in and to the Loan Agreement (except for the Unassigned Rights expressly retained by the Issuer), the present and continuing right to make claim for, collect, receive and receipt for any of the Pledged Revenues and other sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Loan Agreement or the Indenture (except for amounts payable to the Issuer with respect to Unassigned Rights), the exclusive right to bring actions and proceedings thereunder or for the enforcement thereof (except as otherwise specifically provided with respect to Unassigned Rights), the right to grant consents and waivers and to enter into amendments and to do any and all things which the Issuer is or may become entitled to do thereunder; (B) all right, title and interest of the Issuer in and to all moneys and securities held by the Trustee under the terms of the Indenture or credited to any fund or account established thereunder (except moneys and securities in the Rebate Fund); (C) any and all other property of every name and nature from time to time by delivery or by writing of any kind given, granted, sold, conveyed, mortgaged, pledged, assigned or transferred, or as to which a Lien is granted, as and for additional security under the Indenture by the Issuer or by anyone on its behalf or with its written consent or by the Company, subject to the Unassigned Rights, in favor of the Trustee; and (D) any and all proceeds (including real property) acquired by the Issuer or the Trustee as a result of the exercise of any remedies under the Loan Agreement or the other security documents.

## **Loan Agreement**

Under the Loan Agreement, the Company shall agree to pay to the Trustee, on the tenth day preceding a principal or interest payment date for the 2011 Bonds, an amount sufficient to pay the principal of and interest on the 2011 Bonds on such payment date. The obligations of the Company to make payments under the Loan Agreement are absolute and unconditional. See APPENDIX B hereto.

## **Security Interest in Gross Revenues**

Under the Loan Agreement and the Leasehold Mortgage, as security for the payment of all liabilities and the performance of all obligations of the Company pursuant thereto, the Company pledges, grants a Lien on and assigns to the Issuer the Gross Revenues, together with the Company's right to receive and collect the Gross Revenues and the proceeds of the Gross Revenues. The Company covenants that, except in connection with the issuance of Additional Bonds pursuant to the Indenture, it shall not create or permit the creation of any Lien in or other commitment of or with respect to the Gross Revenues or the Project. For purposes of the Lien granted by the Company, "Gross Revenues" is defined to mean all Project Revenues, issues, profits, revenues, income, receipts, moneys and royalties derived from all license, lease or rental arrangements for dormitory rooms in the Project, operating revenues and gains from or relating to the Project, determined in accordance with generally accepted accounting principles, including Federal or State grant or other programs, insurance and condemnation payments and awards and amounts received under the SUNY Agreement and Facility Management Agreement, and also including investment income on all funds and accounts (except the Rebate Fund) held by the Trustee under the Indenture, and all proceeds thereof and rights to receive the same, but excluding (i) any Restricted Gift, or (ii) any income derived from the investment of any such Restricted Gift.

## **Leasehold Mortgage; Assignment of Rents**

Under the Leasehold Mortgage, the Company grants to the Issuer a first priority mortgage lien on all of its right, title and interest in and to the real and personal property comprising the Student Housing Facility, including its leasehold interest under the Sublease. The Issuer shall assign its rights under the Leasehold Mortgage to the Trustee.

Under the Assignment of Rents, the Company assigns to the Trustee all rents, issues, fees, sums, amounts, profits and, to the extent permitted by law, security deposits of and from the Student Housing Facility, and all residency agreements, leases, subleases, licenses or occupancy agreements of all or part of the Student Housing Facility. See APPENDIX B hereto.

## **Indenture Funds**

The Trustee will establish various funds and accounts under the Indenture. Pursuant to the Loan Agreement, the Company agrees to collect the Gross Revenues and transfer them to the Trustee for deposit to the Pledged Revenue Fund.

Except as otherwise provided in the Indenture, on September 25 (or if not a Business Day, the next succeeding Business Day) and March 25 (or if not a Business Day, the next succeeding Business Day), commencing September 25, 2011 (each such date being referred to as a "Transfer Date"), the Trustee will withdraw moneys from the Pledged Revenue Fund and transfer them to the following funds in the following order of priority:

FIRST, to the Rebate Fund to pay any Rebate Amount then owing;

SECOND, commencing with the Transfer Date on March 25, 2012 (there being no transfer to the Bond Fund on the first Transfer Date) (a) to the Interest Account of the Bond Fund, until there is on deposit therein amounts sufficient to fund the next succeeding Debt Service Payment attributable to interest on the 2011 Bonds; and (b) to the Principal Account of the Bond Fund, until there shall be on deposit therein amounts sufficient to fund one-half of the next succeeding Debt Service Payment attributable to principal on the 2011 Bonds;

THIRD, to the Repair and Replacement Fund Requirement an amount equal to one-half of the amount of the Repair and Replacement Fund Requirement allocable to such Fiscal Year (together with an amount equal to any amount withdrawn from the Repair and Replacement Fund and not previously replenished). Once an amount equal to the full Repair and Replacement Fund Requirement has been deposited into the Repair and Replacement Fund (which amount is \$4,600,000), no further funds shall be transferred into the Repair and Replacement Fund pursuant to this clause THIRD;

FOURTH, to the Operation and Maintenance Fund until there is on deposit therein an amount equal to one-half of the budgeted Operating Expenses for the current Fiscal Year; and

FIFTH, after the Fiscal Year ending June 30, 2017, to the Repair and Replacement Fund any amount necessary to fully fund such Fund at the Repair and Replacement Fund Requirement.

On April 15 of each Fiscal Year, the Trustee shall transfer all remaining amounts on deposit in the Pledged Revenue Fund to the Surplus Fund. See "APPENDIX B – CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES".

## **Guaranty**

Pursuant to the Guaranty, the Company irrevocably guarantees to the Trustee the full and prompt payment of principal of and interest and premium, if any, due on the 2011 Bonds and all other sums payable by the Issuer to the Trustee under any Bond Documents when and as the same shall become due.

## **Assignment of Agreements**

Under the Assignment of Agreements, the Company assigns to the Trustee all of its rights under the Facility Management Agreement and the SUNY Agreement.

## **Financial Covenants**

Under the Loan Agreement, the Company agrees that it shall cause the Project to maintain at all times while the Bonds remain Outstanding a Debt Service Coverage Ratio of 1.10 to 1.00. In addition, the Company agrees in the Loan Agreement that so long as any of the Bonds shall remain Outstanding, the Company shall not, nor shall it permit any subsidiary to, directly or indirectly, create, assume, incur or in any manner become or remain liable in respect to, any Indebtedness secured by the Project or the Gross Revenues, or create, assume, incur or suffer to exist or allow to be created, assumed or incurred or suffered to exist any Lien upon any of the Project or the Gross Revenues, now owned or hereafter acquired, excepting, however, Permitted Encumbrances. See APPENDIX B hereto.

The Company has estimated that all initial rates, revenues and expenses of the Project, together with anticipated future increases to such variables, will allow the Project to be self-supporting. The Company has projected revenues and expenses when planning the Project to achieve a Debt Service Coverage Ratio in excess of 1.25 to 1.00. Furthermore, the Company estimates that the Debt Service Coverage Ratio will range between 1.30 to 1.00 and 1.60 to 1.00 during the first five years of operation, but no assurances can be given that such estimated results will actually be achieved.

### CASH FLOW FORECAST

A Cash Flow Forecast (the "Cash Flow Forecast") relating to the Project and the Company's ability to generate revenues from the operations of the Project sufficient to pay principal and interest on the 2011 Bonds for each of the fiscal years ending June 30 of the years 2012 through 2021 has been prepared by the Company based on projected occupancy and is presented below. The Cash Flow Forecast assumes that the 2011 Bonds will be issued in the aggregate principal amount of \$45,585,000, will bear interest at a yield of approximately 5.60% and will be structured to produce approximately level annual debt service. The Rental Revenues which are estimated in the Cash Flow Forecast are based on the following assumed rent levels:

Number of <u>Units</u>	Number of <u>Beds</u>	Academic Year <u>Rents</u>	Summer Term <u>Rents</u>	Vacancy Rate <u>(Yr/Sum)</u>	<u>Total Rents</u>
125	507	\$8,800	\$1,800	3%/60%	\$4,683,536

Vacancies of 3% during the academic year and 60% during the summer term are assumed based on the experience of the College at its other residence halls. Income and expense estimates are escalated at an assumed rate of 5% and 4%, respectively, per annum.

The achievement of any financial forecast is dependent upon future events, the occurrence of which cannot be assured. Therefore, the actual results achieved may vary from the forecast. Such variation could be material.

The Cash Flow Forecast and underlying assumptions have been developed by the Company based upon projected occupancy.

# Buffalo State College Foundation Housing

Cash Flow Pro-Forma Summary											
Fiscal Year Ending June 30,											Year 1 2012*
Revenues: (assumed 5% Inflation Rate)											
Rent Rental Income	4,683,516	\$4,917,212.80	\$5,163,508.44	5,421,778	5,692,867	5,977,511	6,276,386	6,590,205	6,919,716	7,265,702	
Damages/Cancellation/Termination Fees	23,418	24,589	25,818	27,109	28,464	29,888	31,382	32,951	34,599	36,329	
Interest Income on Repair/Replace Fund @ 1%		6,000	12,000	19,000	27,000	36,000	46,000	46,000	46,000	46,000	
Total	4,706,934	4,948,301	5,201,416	5,467,887	5,748,332	6,043,398	6,353,768	6,669,157	7,000,314	7,348,030	
Expenditures: (assumed 4% Inflation Rate)											
Insurance	70,000	72,800	75,712	78,740	81,890	85,166	88,572	92,115	95,800	99,632	
Audit	7,500	7,800	8,112	8,456	8,774	9,125	9,490	9,869	10,264	10,675	
Subordinated Expenditures: (assumed 4% Inflation Rate)											
Staffing	50,500	61,880	64,355	66,929	69,607	72,391	75,286	78,298	81,430	84,687	
Security	9,000	9,568	9,734	10,124	10,529	10,940	11,368	11,813	12,317	12,810	
Leasing Promotion (level)	10,000	10,400	10,816	11,249	11,699	12,167	12,653	13,159	13,686	14,233	
Fringe Benefits	20,000	20,800	21,632	22,497	23,397	24,333	25,306	26,319	27,371	28,466	
Annual Repairs / Maintenance	45,000	46,800	48,672	50,619	52,644	54,749	56,939	59,217	61,586	64,049	
Utilities	275,000	286,000	297,410	309,338	321,711	334,580	347,963	361,881	376,356	391,411	
Laundry	20,000	20,800	21,632	22,497	23,397	24,333	25,306	26,319	27,371	28,466	
Cable	18,000	19,344	20,118	20,922	21,759	22,630	23,535	24,476	25,455	26,471	
Internet	10,000	10,400	10,816	11,249	11,699	12,167	12,653	13,159	13,686	14,233	
Contract Services	62,500	65,000	67,600	70,304	73,116	76,041	79,082	82,246	85,536	88,957	
Programming	10,000	10,400	10,816	11,249	11,699	12,167	12,653	13,159	13,686	14,233	
CD & RA Waivers	52,800	54,912	57,108	59,393	61,769	64,239	66,809	69,481	72,260	75,151	
Total Expenses Before Debt Service	669,900	696,696	724,564	753,546	783,688	815,036	847,637	881,543	916,804	953,477	
Excess Revenue Available to Pay Debt Service	4,037,034	4,251,605	4,476,853	4,714,341	4,964,643	5,228,362	5,506,131	5,787,614	6,083,510	6,394,553	
Coverage and Fund Analysis											
Excess Revenue Available to Pay Debt Service	4,037,034	4,251,605	4,476,853	4,714,341	4,964,643	5,228,362	5,506,131	5,787,614	6,083,510	6,394,553	
Total Funds Available to Pay Debt Service	4,037,034	4,251,605	4,476,853	4,714,341	4,964,643	5,228,362	5,506,131	5,787,614	6,083,510	6,394,553	
Net Annual Debt Service	1,854,319	3,003,902	3,003,019	3,002,169	3,000,719	2,999,344	2,999,244	3,003,144	3,001,144	3,002,019	
Debt Service Coverage	2.18	1.42	1.49	1.57	1.65	1.74	1.84	1.93	2.03	2.13	

**DEBT SERVICE REQUIREMENTS FOR THE 2011A BONDS**

<b><u>Fiscal Year</u></b> <b><u>(June 30)</u></b>	<b><u>Principal</u></b>	<b><u>Interest</u></b>	<b><u>Total</u></b>
2011	-----	-----	-----
2012	-----	\$1,849,407.55	\$1,849,407.55
2013	\$ 260,000.00	2,332,193.76	2,592,193.76
2014	685,000.00	2,318,018.76	3,003,018.76
2015	705,000.00	2,297,168.76	3,002,168.76
2016	725,000.00	2,275,718.76	3,000,718.76
2017	750,000.00	2,249,843.76	2,999,843.76
2018	780,000.00	2,219,243.76	2,999,243.76
2019	820,000.00	2,183,143.76	3,003,143.76
2020	860,000.00	2,141,143.76	3,001,143.76
2021	905,000.00	2,097,018.76	3,002,018.76
2022	950,000.00	2,050,643.76	3,000,643.76
2023	1,005,000.00	1,998,000.01	3,003,000.01
2024	1,060,000.00	1,938,631.26	2,998,631.26
2025	1,125,000.00	1,875,812.51	3,000,812.51
2026	1,190,000.00	1,809,256.26	2,999,256.26
2027	1,265,000.00	1,738,675.01	3,003,675.01
2028	1,340,000.00	1,662,106.26	3,002,106.26
2029	1,420,000.00	1,579,306.26	2,999,306.26
2030	1,510,000.00	1,491,406.26	3,001,406.26
2031	1,605,000.00	1,397,956.26	3,002,956.26
2032	1,700,000.00	1,298,806.26	2,998,806.26
2033	1,800,000.00	1,199,431.26	2,999,431.26
2034	1,900,000.00	1,099,993.76	2,999,993.76
2035	2,005,000.00	995,046.88	3,000,046.88
2036	2,115,000.00	884,321.88	2,999,321.88
2037	2,235,000.00	767,415.63	3,002,415.63
2038	2,355,000.00	644,059.38	2,999,059.38
2039	2,485,000.00	513,984.38	2,998,984.38
2040	2,625,000.00	376,653.13	3,001,653.13
2041	2,770,000.00	231,662.51	3,001,662.51
2042	2,925,000.00	78,609.38	3,003,609.38

**DEBT SERVICE REQUIREMENTS FOR THE 2011B BONDS**

<b><u>Fiscal Year</u></b> <b><u>(June 30)</u></b>	<b><u>Principal</u></b>	<b><u>Interest</u></b>	<b><u>Total</u></b>
2011	-----	-----	-----
2012	-----	\$4,911.45	\$ 4,911.45
2013	\$410,000.00	1,708.32	411,708.32



## CERTAIN BONDHOLDERS' RISKS

### General

AN INVESTMENT IN THE 2011 BONDS INVOLVES CERTAIN RISKS AND EACH INVESTOR SHOULD CONSIDER THE RISKS INVOLVED TO DETERMINE THE SUITABILITY OF INVESTING IN THE 2011 BONDS. Each prospective investor should also carefully examine this Official Statement and his or her own financial condition (including the diversification of his or her investment portfolio) in order to make a judgment as to whether the 2011 Bonds are an appropriate investment.

The Company has identified and summarized below a number of "Bondholders' Risks" that could adversely affect the operation of the Project and/or the 2011 Bonds which should be considered by prospective investors. The following discussion is not intended to be exhaustive, but includes certain major factors which should be considered along with other factors set forth elsewhere in this Official Statement, including the Appendices hereto.

If the Company is unable to generate sufficient revenues from the operation of the Student Housing Facility to pay its operating expenses and principal of and interest on the 2011 Bonds, an event of default will occur under the Bond Documents. Upon such an event of default, the 2011 Bonds may be paid before maturity or applicable Redemption Dates. The Company's ability to generate revenues and its overall financial condition may be adversely affected by a wide variety of future events and conditions including (i) a decline in the enrollment of the College, (ii) increased competition from other schools or student housing facilities, (iii) loss of accreditation of the College's programs, (iv) failure of the College to meet applicable federal guidelines or some other event which results in students of the College being ineligible for federal financial aid, and (v) the overall financial viability of SUNY and the ability and willingness of the State Legislature to continue making appropriations of State funds in the amounts required for the operation of SUNY. See APPENDIX A hereto for more information concerning SUNY.

### Limited Obligations of the Issuer

The 2011 Bonds constitute special limited obligations of the Issuer and have two potential sources of payment. The sources of payment are as follows:

- (1) Loan Payments received by the Trustee from the Company pursuant to the terms of the Indenture and the Loan Agreement.

The Issuer has no obligation to pay the 2011 Bonds except from the Trust Estate assigned and pledged under the Indenture, including Loan Payments derived from the Loan Agreement. The 2011 Bonds are special limited obligations of the Issuer, are not a debt of the County of Erie, the State of New York or any political subdivision thereof and are payable solely from the sources referred to in the 2011 Bonds as described herein. Neither the general credit of the Issuer nor the credit or taxing power of the County of Erie, the State of New York or any political subdivision thereof is pledged to the payment of the principal or Redemption Price of, or interest on, the 2011 Bonds. The Issuer has no taxing power. Under the Loan Agreement, the Company will be required to make Loan Payments to the Trustee, as the assignee of the Issuer, in amounts sufficient to enable the Trustee to pay the principal of, premium, if any, and interest on the 2011 Bonds. The Loan Payments are anticipated, however, to be derived solely from the operation of the Project. Furthermore, the Company's ability to meet its obligations under the Loan Agreement will depend upon achieving and maintaining certain occupancy levels at the Student Housing Facility throughout the term of the 2011 Bonds. However, no assurance can be made that the Company will generate sufficient revenues from the Project to pay maturing principal of, premium, if any, and interest on the 2011 Bonds when due after payment of operating expenses of the Student Housing Facility.

- (2) Proceeds realized from the sale or lease of Company's interest in the Student Housing Facility to a third party by the Trustee at or following foreclosure by the Trustee of the Leasehold Mortgage and proceeds realized from the liquidation of other security for the 2011 Bonds.

Debtors frequently employ defensive measures, such as protracted litigation and bankruptcy proceedings, in response to lenders' efforts to foreclose on real property or otherwise to realize upon collateral to satisfy indebtedness which is in default. Such defensive measures can prevent, or greatly increase the expense and time

involved in achieving, such foreclosure or other realization. In addition, the Trustee could experience difficulty in selling or leasing the real and personal property portion of the Student Housing Facility upon foreclosure due to the special purpose nature of a student housing facility, and the proceeds of such sale may not be sufficient to pay fully the owners of the 2011 Bonds. See "CERTAIN BONDHOLDERS' RISKS - Liquidation of Security may not be Sufficient in the Event of a Default" herein. Accordingly, prospects for uninterrupted payment of principal and interest on the 2011 Bonds in accordance with their terms are largely dependent upon the Loan Payments described in paragraph (1) above, which are wholly dependent upon the success of the Project. Even if the Project is operating in an efficient manner, other factors could affect the Company's ability to make Loan Payments under the Loan Agreement.

Moreover, subject to the terms of the Loan Agreement, the Company also may become engaged in other ventures in the future. If losses are experienced in such other future ventures, the Company might default in payments under the Loan Agreement, regardless of the successful operation of the Project. The filing by, or against, the Company for relief under the United States Bankruptcy Code (the "Bankruptcy Code") in connection with any other project may have an adverse effect on the ability of the Trustee and Bondholders to enforce their claim or claims to the security granted by the Indenture and the Leasehold Mortgage which secure the Project, and their claim or claims to moneys owed them as unsecured claimants, if any. Such a filing would generally operate as an automatic stay of the commencement or continuation of any judicial or other proceeding against the Company and its property and as an automatic stay of any act or proceeding to enforce a lien against such property, which may include the Project even though the Project is not pledged to secure any other indebtedness. Further, once a bankruptcy court has acquired jurisdiction over the Company in connection with this Project or any other project or venture, such court would likely have the ability to exercise its jurisdiction generally in respect of the Company and its assets, including the Project and any other project.

#### **Limited Resources of the Company**

Other than its ownership of the Student Housing Facility, the Company has no substantial revenues or assets. Therefore, timely payment of principal of, premium, if any, and interest on the 2011 Bonds will be dependent upon the Company's ability to generate revenues from the Project sufficient to pay its operating expenses and Loan Payments under the Loan Agreement. If after payment of operating expenses, net revenues are insufficient to pay the debt service on the 2011 Bonds, the Company likely will have no moneys or assets other than the Project from which to make the payments required under the Loan Agreement.

#### **No Recourse Against the College or SUNY**

Neither the College nor SUNY will be liable for the payment of the principal of, premium, if any, or interest on the 2011 Bonds, nor shall the College or SUNY be responsible or liable for any other obligations of the Company, except as may otherwise be expressly stated herein, under the Loan Agreement or any of the other Bond Documents, either as principal or guarantor.

#### **Liquidation of Security may not be Sufficient in the Event of a Default**

The Project is specifically designed and constructed as a student housing facility, is located on the campus of the College, and may not be suitable for other uses. The Ground Lease restricts the use of the Leased Premises to the operation of a student housing facility subject to the Facility Management Agreement. Under the Ground Lease, SUNY reserves the right to approve any party which succeeds to the interest of the Company's in the Leased Premises, by reason of a foreclosure, by reason of a cure of any event of default or by reason of any other means, to ensure that the Leased Premises are used for the exclusive purpose of developing, constructing and operating student housing. The number of entities that could be expected to purchase or lease the Company's interest in the Student Housing Facility is therefore limited, and thus the ability of the Trustee to realize funds from the sale or lease of such interest upon an event of default may be limited. Such value may be also limited by actual or alleged rights of residents. Any foreclosure proceeding may be subject to substantial delays. In addition, the Leasehold Mortgage is on the Company's subleasehold interest in the Project rather than fee simple title to the Project. The term of the Ground Lease (and the Sublease) extends to 2051, but the Ground Lease (and the Sublease) could be terminated under certain circumstances prior to the final maturity of the 2011 Bonds and such termination will extinguish the Company's interest in the Student Housing Facility. The ability of the Trustee to receive funds sufficient to pay the

2011 Bonds from any sale or foreclosure of the Company's leasehold interest in the Project may be limited by a number of factors, including the limited operational use of the Project as a student housing facility and the fact that the purchaser of such interest may control the Project only for a limited period of time.

#### **Required Occupancy Levels and Rents**

In order for the Company to generate sufficient revenues to enable it to make Loan Payments under the Loan Agreement at the times required under the Loan Agreement, the Project must meet certain assumed occupancy levels and achieve certain assumed rents during each academic school year. There can be no assurance, however, that the Project will be able to meet and maintain such required occupancy and rent levels during any academic school year.

#### **Special Use Nature of the Project**

The Student Housing Facility has been constructed to serve as a student housing facility and is located on the campus of the College. If it were necessary to sell the Company's interest in the Sublease pursuant to the Leasehold Mortgage upon an event of default, the special use nature of the Project as a student housing facility, its location and the fact that the interest to be sold is in the nature of a leasehold interest and subject to the terms of the Ground Lease, the Facility Management Agreement and the Sublease may limit the purchase price that could be obtained, and the net proceeds received may be less than the principal amount of 2011 Bonds Outstanding. For all practical purposes, payment of the 2011 Bonds will be almost solely dependent upon the continued operation of the Student Housing Facility as housing for students of the College.

#### **Clean-up Costs and Liens under Environmental Statutes**

There are potential risks relating to environmental liability associated with the ownership or operation of, or secured lending with respect to, any real property. If hazardous substances are found to be located on real property, owners or operators of, or secured lenders regarding, such property may be held liable for costs and other liabilities relating to such hazardous substances on a strict liability basis. In the event of repossession, purchase or participation in the management of the Project by the Trustee or the Bondholders, the Trustee and/or the Bondholders may be held liable for costs and other liabilities relating to hazardous substances, if any, on the site of the Project on a strict liability basis and such costs might exceed the value of such property.

The Company is not aware of any enforcement actions currently in process with respect to any releases of pollutants or contaminants at the site of the Project. However, there can be no assurance that an enforcement action or actions will not be instituted under such statutes at a future date. In the event such enforcement actions were initiated, the Company could be liable for the costs of removing or otherwise treating pollutants or contaminants located at the Project. In addition, under applicable environmental statutes, in the event an enforcement action were initiated, a lien superior to the Trustee's lien on behalf of the Bondholders could attach to the Project, which would adversely affect the Trustee's ability to realize value from the disposition of the Company's interest in the Project upon foreclosure of the Leasehold Mortgage. Furthermore, in determining whether to exercise any foreclosure rights with respect to the Project under the Leasehold Mortgage, the Trustee and the Bondholders would need to take into account the potential liability of any tenant of the Project, including a tenant by foreclosure, for clean-up costs with respect to such pollutants and contaminants.

#### **Pledge, Assignment, and Grant of Security Interest in Future Revenues**

Under the Loan Agreement and the Leasehold Mortgage, the Company shall grant to the Issuer (which shall assign to the Trustee) a lien on and security interest in the Gross Revenues and all other personal property of the Company relating to the Student Housing Facility. Nevertheless, certain interests and claims of others may be on a parity with or prior to the pledge, assignment, and grant of a security interest made in the Loan Agreement and/or the Leasehold Mortgage and in the Indenture and certain statutes and other provisions may limit the Company's right to make such pledges, assignments, and grants of security interests. Examples of such claims, interests, and provisions are:

- (1) statutory liens;

- (2) rights arising in favor of the United States of America or any agency thereof;
- (3) present or future prohibitions against assignment contained in any federal statutes or regulations;
- (4) the New York Uniform Commercial Code may not recognize a security interest in future revenues derived from the Project;
- (5) Permitted Encumbrances;
- (6) any parity or subordinated lien permitted under the Loan Agreement;
- (7) constructive trusts, equitable liens, or other rights impressed or conferred by any state or federal court in the exercise of its equitable jurisdiction;
- (8) federal bankruptcy laws as they affect amounts earned with respect to the Project after any effectual institution of bankruptcy proceedings by or against the Company or the Issuer;
- (9) as to those items in which a security interest can be perfected only by possession, including items converted to cash, the rights of third parties in such items not in the possession of the Trustee;
- (10) items not in possession of the Trustee, the records to which are located or moved outside the State of New York, which are thereby not subject to or are removed from the operation of the State of New York; and
- (11) the requirement that appropriate continuation statements be filed in accordance with the New York Uniform Commercial Code as from time to time in effect.

#### **Enforceability of Remedies**

The 2011 Bonds are payable from the Trust Estate pledged under the Indenture, including payments to be made under the Loan Agreement and the proceeds of the collateral security pledged to secure the 2011 Bonds. See "SECURITY FOR THE 2011 BONDS" herein. The practical realization of value upon any default will depend upon the exercise of various remedies specified by the Bond Documents. These and other remedies may, in many respects, require judicial actions, which are often subject to discretion and delay. Under existing law (including, particularly, the Bankruptcy Code), the remedies specified by the Bond Documents may not be readily available or may be limited. A court may decide not to order the specific performance of the covenants contained in the Bond Documents. The various legal opinions to be delivered concurrently with the delivery of the 2011 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by state and federal laws, rulings, and decisions affecting remedies, including judicial discretion in the application of the principles of equity, and by bankruptcy, reorganization, or other laws affecting the enforcement of creditors' rights generally.

#### **Effect of Determination of Taxability**

The Company will covenant not to take any action that would cause the 2011A Bonds to be arbitrage bonds or that would otherwise adversely affect the federal income tax status of interest in the 2011A Bonds. The Company has also made representations with respect to certain matters within its knowledge which have been relied on by Bond Counsel and which Bond Counsel has not independently verified. Failure to comply with such covenants could cause interest on the 2011A Bonds to become subject to federal income taxation retroactively from their date of issuance.

It is possible that a period of time may elapse between the occurrence of the event which causes interest to become taxable and the determination that such an event has occurred. In such a case, interest previously paid on the 2011A Bonds could become retroactively taxable from the date of their issuance. Additionally, certain owners of 2011A Bonds are subject to possible adverse tax consequences. See "TAX MATTERS" herein.

## **Risks Relating to the College**

The ability of the Company to pay debt service on the 2011 Bonds depends upon its ability to market the Project to students of the College. The economic feasibility of the Project depends upon the ability of the College to enroll students seeking campus housing and upon the ability of the Company to attract sufficient those students to the Student Housing Facility and to maintain substantial occupancy at projected rent levels throughout the term of the 2011 Bonds. The College and its operations are subject to regulation, certification and accreditation by various federal, state and local government agencies and by certain nongovernmental agencies. No assurance can be given as to the effect on future operations of existing laws, regulations and standards for certification or accreditation or of any future changes in such laws, regulations and standards. The College could face additional competition in the future from both private and public educational institutions that offer comparable services and programs to the population which the College presently serves. This could include the establishment of new programs and the construction, renovation or expansion of competing educational institutions.

The recent global economic downturn and market dislocation over the past two years has effected higher education in a number of ways, including (1) a decrease in the funds spent by families on higher education, causing many colleges and universities to increase institutional scholarships, which are funded in part or in whole through an institution's operating budget; (2) fewer eligible students applying to some colleges and universities; and (3) certain student loan providers choosing not to participate in various state and federal student loan programs. There is no guaranty that a continuation or worsening of the overall economic situation will not have a negative effect on enrollment or the affordability of education offered by the College.

Additional factors may affect future operations of the College to an extent that cannot be determined at this time. These factors include, among others, (1) changes in the demand for higher education in general or for programs offered by the College in particular; (2) cost and availability of energy; (3) high interest rates, which could prevent borrowing for needed capital expenditures; (4) a decrease in student loan funds or other aid that permits many students the opportunity to pursue higher education; (5) claims presently unknown to the College; (6) increased competition from both public and private institutions of higher learning which may offer similar academic programs or may recruit similar students; (7) reduced availability of qualified faculty to teach the programs offered by the College; (8) an inability to retain students, resulting in enrollment losses and reduced revenues; (9) a downgrade in the State's bond rating to a level which prevents SUNY from being able to borrow at affordable rates in the future; and (10) reductions or delays in appropriations by the State to SUNY.

## **Additional Bonds**

The Issuer has the right to issue Additional Bonds under the Indenture which will be equally and ratably secured on a parity basis with the 2011 Bonds. SUCH ADDITIONAL BONDS COULD DILUTE THE SECURITY FOR THE 2011 BONDS. Such Additional Bonds may be issued to refund other Bonds issued under the Indenture or to finance improvements or repairs to the Project or the acquisition of furniture, fixtures, machinery or other tangible personal property for installation in the Project or use at the Project. One of the conditions precedent to the issuance of Additional Bonds is the delivery of a Company Certificate that the Debt Service Coverage Ratio of the Company for the Fiscal Year prior to the Fiscal Year in which such Additional Bonds are to be issued is equal to or greater than 1.10:1.00 and a Company Certificate accompanied by a Certificate of a firm of independent accountants of recognized standing that the Debt Service Coverage Ratio of the Company for the Fiscal Year during which such Additional Bonds are being issued (taking into account Debt Service Payments on such Additional Bonds) will be equal to or greater than 1.10:1.00.

## **Consequences of Changes in the Company's Tax Status**

The Company has obtained a determination letter from the Internal Revenue Service stating that it will be treated as an exempt organization as described in §501(c)(3) of the Code and not a "private foundation". In order to maintain its exempt status and to not be considered a private foundation, the Company is subject to a number of requirements affecting its operation. The possible modification or repeal of certain existing federal income tax laws, the change of Internal Revenue Service policies or positions, the change of the Company's method of operations, purposes or character or other factors could result in loss by the Company of its tax-exempt status.

The Company has covenanted to remain eligible for such tax-exempt status and to avoid operating the Project as an unrelated trade or business (as determined by applying §512(a) of the Code). Failure of the Project to remain so qualified or of the Company so to operate the Project could affect the funds available to the Company for payments under the Loan Agreement by subjecting the Company to federal income taxation and could result in the loss of the excludability of interest on the 2011A Bonds from gross income for purposes of federal income taxation. See "CERTAIN BONDHOLDERS' RISKS - Effect of Determination of Taxability" above.

#### **Taxation of Interest on 2011A Bonds**

An opinion of Bond Counsel will be delivered as described under "TAX MATTERS" herein. Such an opinion is not binding on the Internal Revenue Service. Application for a ruling from the Internal Revenue Service regarding the status of the interest on the 2011A Bonds has not been made. The opinion of Bond Counsel contains certain exceptions and is based on certain assumptions described herein under the heading "TAX MATTERS". Failure by the Issuer or the Company to comply with certain provisions of the Code and covenants contained in the Indenture and the Loan Agreement could result in interest on the 2011A Bonds becoming includable in gross income for federal tax purposes.

An opinion of Bond Counsel has been obtained regarding the exemption of interest on the 2011 Bonds from certain taxation by the State of New York and its political subdivisions, as described under "TAX MATTERS" herein. Bond Counsel has not opined as to whether interest on the 2011 Bonds is subject to state or local income taxation in jurisdictions other than New York. Interest on the 2011 Bonds may or may not be subject to state or local income taxation in jurisdictions other than New York under applicable state or local laws. Each purchaser of the 2011 Bonds should consult his or her own tax advisor regarding the taxable status of the 2011 Bonds in a particular state or local jurisdiction.

#### **New York Foreclosure Procedures**

In order to recover the debt due on a defaulted mortgage loan, the holder of the mortgage loan may either commence an action on the mortgage debt or commence an action to foreclose the mortgage. State law restricts the ability of the holder of a mortgage loan to simultaneously bring an action to recover the mortgage debt and foreclose the mortgage. For purposes of these restrictions, actions to recover the mortgage debt include actions against the party primarily liable on the mortgage debt, actions against any guarantor of the mortgage debt and certain actions on title insurance policies insuring the mortgage premises. If an election is made to commence an action to foreclose the mortgage, no other action on the mortgage debt may be commenced to recover any part of the mortgage debt without leave of the court. If an election is made to commence an action on the mortgage debt, where final judgment has been rendered in such an action, an action may not be commenced to foreclose the mortgage unless an execution has been issued against the property of the defendant, which has been returned wholly or partially unsatisfied. In addition, there is case law indicating that if an action is commenced on the mortgage debt where final judgment has not been rendered and a subsequent action is commenced to foreclose the mortgage, then the action on the mortgage debt may be stayed or discontinued to prevent the mortgagee from pursuing both actions simultaneously.

Where a foreclosure action is brought, every person having an estate or interest in possession or otherwise in the property whose interest is claimed to be subject and subordinate to the mortgage must be made a party defendant to the action in order to have its interest in the property extinguished. Judicial foreclosure in the State is a lengthy process, as judicial intervention is required at all stages, including, but not limited to: (i) the appointment of a referee to compute the amount due; (ii) the appointment of a receiver to operate the property during the pendency of the action; (iii) the confirmation of the referee's oath and report; (iv) the issuance of the judgment of foreclosure and sale; (v) the confirmation of the sale; and (vi) the issuance of a deficiency judgment and/or rights to surplus monies. If during the pendency of the action the mortgagor pays into court the amount due for principal, interest, the costs of the action and the expenses of the proceedings to sell, if any, the court will: (i) dismiss the complaint without costs against the mortgagee if the payment is made before judgment directing the sale; or (ii) stay all proceedings upon judgment if the payment is made after judgment directing sale but before sale.

Where the mortgage debt remains partly unsatisfied after the sale of the property, the court, upon application, may award the mortgagee a deficiency judgment for the unsatisfied portion of the mortgage debt, or as

much thereof as the court may deem just and equitable, against a mortgagor who has appeared or has been personally served in the action. Prior to entering a deficiency judgment the court determines the fair and reasonable market value of the mortgaged premises as of the date such premises were bid in at auction or as of such nearest earlier date upon which there shall have been any market value thereof. In calculating the deficiency judgment, the court will reduce the amount to which the mortgagee is entitled by the higher of the bid price of the mortgaged property or the fair market value of the mortgaged property, as determined by the court.

The mortgagee may also, at its discretion, negotiate with the delinquent mortgagor to offer a deed in lieu of foreclosure to the mortgagee, subject to existing Liens. In some situations this would allow the mortgagee to reduce the cost of, and the time involved in, acquiring the property.

## **TAX MATTERS**

### **2011A Bonds**

In the opinion of Bond Counsel, under existing statutes and court decisions, interest on the 2011A Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended to the date hereof (the "Code"); interest on the 2011A Bonds is not treated as a preference item in calculating the federal alternative minimum tax imposed on individuals or corporations; however, for the purpose of computing the alternative minimum tax imposed on certain corporations (as determined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings.

The Code imposes various requirements that must be met in order that interest on the 2011A Bonds will be and remain excludable from gross income for federal income tax purposes. Included among these requirements are restrictions on the investment and use of proceeds of the 2011A Bonds and the rebate of certain earnings in respect of such investments to the United States. Failure to comply with the requirements of the Code may cause interest on the 2011A Bonds to be includable in gross income for purposes of federal income tax retroactive to the date of original execution and delivery of the 2011A Bonds, regardless of the date on which the event causing such inclusion occurs. The Issuer and the Company have made certain covenants contained in the Indenture, Loan Agreement and Tax Compliance Agreement to comply with the requirements of the Code and have made representations in the Indenture, Loan Agreement and Tax Compliance Agreement addressing various matters relating to the requirements of the Code. The opinion of Bond Counsel assumes continuing compliance with such covenants as well as the accuracy of such representations made by the Issuer and the Company.

Certain requirements and procedures contained or referred to in the Indenture, Loan Agreement and Tax Compliance Agreement may be changed, and certain actions may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of Bond Counsel. The opinion of Hiscock & Barclay, LLP states that such firm, as Bond Counsel, expresses no opinion as to any 2011A Bond or the interest thereon if any such change occurs or action is taken upon the advice or approval of Bond Counsel other than Hiscock & Barclay, LLP.

Prospective purchasers of the 2011A Bonds should be aware that ownership of, accrual or receipt of interest on, or disposition of the 2011A Bonds may have collateral federal income tax consequences for certain taxpayers, including financial institutions, insurance companies, Subchapter S Corporations, certain foreign corporations, individual recipients of social security or railroad retirement benefits, individuals benefiting from the earned income credit and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. Prospective purchasers should consult their tax advisors as to any possible collateral consequences of their ownership of, accrual or receipt of interest on, or disposition of the 2011A Bonds. Bond Counsel expresses no opinion regarding any such collateral federal income tax consequences.

Interest paid on tax-exempt obligations is subject to information reporting to the Internal Revenue Service (the "IRS") in a manner similar to interest paid on taxable obligations. Although information reporting does not, in and of itself, affect the excludability of such interest from gross income for federal income tax purposes, the reporting requirement causes payment of interest on the bonds to be subject to backup withholding. Interest on the 2011A Bonds may be subject to backup withholding if such interest is paid to a registered owner who or which (i) fails to provide certain identifying information (such as the registered owner's taxpayer identification number) in the

manner required by the IRS, or (ii) has been identified by the IRS as being subject to backup withholding. Amounts withheld under the backup withholding rules will be paid to the IRS as federal income tax withheld on behalf of the registered owner of the 2011A Bonds and will be allowed as a refund or credit against such owner's federal income tax liability (or the federal income tax liability of the beneficial owner of the 2011A Bonds, if other than the registered owner).

In the opinion of Bond Counsel, interest on the 2011A Bonds is exempt, under existing statutes, from personal income taxes of the State of New York or its political subdivisions (including the City of New York and the City of Yonkers). See "APPENDIX C – Proposed Form of Opinion of Bond Counsel". The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the 2011A Bonds for federal income tax purposes. It is not binding on the IRS or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the Issuer or the Company, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS.

### **Premium Bonds**

Certain maturities of the 2011A Bonds (the "Premium Bonds") may be sold to the initial purchasers at prices greater than the stated principal amount thereof. The Premium Bonds will be subject to requirements under the Code relating to tax cost reduction associated with the amortization of bond premium and, under certain circumstances, the initial owner of a Premium Bond may realize taxable gain upon disposition of Premium Bonds even though sold or redeemed for an amount less than or equal to such owner's original cost of acquiring Premium Bonds. The amortization requirements may also result in the reduction of the amount of stated interest that an owner of Premium Bonds is treated as having received for federal tax purposes (and an adjustment to basis). Owners of Premium Bonds are advised to consult with their own tax advisors with respect to the tax consequences of owning such Premium Bonds.

### **Original Issue Discount**

"Original issue discount" ("OID") is the excess of the sum of all amounts payable at the stated maturity of a 2011 Bond (excluding certain "qualified stated interest" that is unconditionally payable at least annually at prescribed rates) over the issue price of that maturity. In general, the "issue price" of a maturity means the first price at which a substantial amount of the 2011A Bonds of that maturity was sold (excluding sales to bond houses, brokers, or similar persons acting in the capacity as underwriters, placement agents, or wholesalers). In general, the issue price for each maturity of the 2011A Bonds is expected to be the initial public offering price set forth on the inside cover page of this Official Statement. Bond Counsel further is of the opinion that, for any 2011 Bond having OID (a "Discount Bond"), OID that has accrued and is properly allocable to the owners of the Discount Bonds under Section 1288 of the Code is excludable from gross income for federal income tax purposes to the same extent as other interest on the 2011A Bonds.

In general, under Section 1288 of the Code, OID on a Discount Bond accrues under a constant yield method, based on periodic compounding of interest over prescribed accrual periods using a compounding rate determined by reference to the yield on that Discount Bond. An owner's adjusted basis in a Discount Bond is increased by accrued OID for purposes of determining gain or loss on sale, exchange, or other disposition of such Bond. Accrued OID may be taken into account as an increase in the amount of tax-exempt income received or deemed to have been received for purposes of determining various other tax consequences of owning a Discount Bond even though there will not be a corresponding cash payment.

Owners of Discount Bonds should consult their own tax advisors with respect to the treatment of original issue discount for federal income tax purposes, including various special rules relating thereto, and the state and local tax consequences of acquiring, holding, and disposing of Discount Bonds.



## **2011B Bonds**

The following discussion is a brief summary of the principal federal income tax consequences of the acquisition, ownership and disposition of 2011B Bonds by original purchasers of the 2011B Bonds who are "U.S. Holders", as defined herein. This summary (i) is based on the Code, Treasury Regulations, revenue rulings and court decisions, all as currently in effect and all subject to change at any time, possibly with retroactive effect; (ii) assumes that the 2011B Bonds will be held as "capital assets"; and (iii) does not discuss all of the federal income tax consequences that may be relevant to a holder in light of its particular circumstances or to holders subject to special rules, such as insurance companies, financial institutions, tax-exempt organizations, dealers in securities or foreign currencies, persons holding the 2011B Bonds as a position in a "hedge" or "straddle", holders whose functional currency (as defined in Section 985 of the Code) is not the United States dollar, holders who acquire 2011B Bonds in the secondary market, or individuals, estates and trusts subject to the tax on unearned income imposed by Section 1411 of the Code.

Holders of 2011B Bonds should consult with their own tax advisors concerning the federal income tax and other consequences with respect to the acquisition, ownership and disposition of the 2011B Bonds as well as any tax consequences that may arise under the laws of any state, local or foreign tax jurisdiction.

### **Disposition and Defeasance**

Generally, upon the sale, exchange, redemption, or other disposition (which would include a legal defeasance) of a 2011B Bond, a holder generally will recognize taxable gain or loss in an amount equal to the difference between the amount realized (other than amounts attributable to accrued interest not previously includable in income) and such holder's adjusted tax basis in the 2011B Bond.

For federal income tax purposes, the defeasance of 2011B Bonds pursuant to the Indenture could result in a deemed exchange under Section 1001 of the Code and a recognition by such owner of taxable income or loss, without any corresponding receipt of moneys. In addition, the character and timing of receipt of payments on the 2011B Bonds subsequent to any such defeasance could also be affected.

### **Backup Withholding and Information Reporting**

In general, information reporting requirements will apply to non-corporate holders with respect to payments of principal, payments of interest, and the proceeds of the sale of a 2011B Bond before maturity within the United States. Backup withholding may apply to holders of 2011B Bonds under Section 3406 of the Code. Any amounts withheld under the backup withholding rules from a payment to a beneficial owner, and which constitutes over-withholding, would be allowed as a refund or a credit against such beneficial owner's federal income tax provided the required information is furnished to the Internal Revenue Service.

### **U.S. Holders**

The term "U.S. Holder" means a beneficial owner of a 2011B Bond that is: (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or of any political subdivision thereof, (iii) an estate the income of which is subject to United States federal income taxation regardless of its source or (iv) a trust whose administration is subject to the primary jurisdiction of a United States court and which has one or more United States fiduciaries who have the authority to control all substantial decisions of the trust.

In the opinion of Bond Counsel, interest on the 2011B Bonds is not exempt from personal income taxes imposed by the State or any of its political subdivisions.

## **LEGAL MATTERS**

The 2011 Bonds are offered, subject to prior sale, when, as and if issued and accepted by the Underwriter, subject to the approving opinion of Hiscock & Barclay, LLP, Buffalo, New York, Bond Counsel, and certain other

conditions. In connection with the issuance of the 2011 Bonds, certain legal matters for the Company will be passed upon by its counsel, Hodgson Russ LLP, Buffalo, New York, certain legal matters for the Issuer will be passed upon by its counsel, Harris Beach, PLLC, Buffalo, New York, and certain legal matters for the Underwriter will be passed upon by its counsel, Reed Smith LLP.

The various legal opinions to be delivered concurrently with the delivery of the 2011 Bonds express the professional judgment of the attorneys rendering the opinion as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or the future performance of the parties to the transaction. In addition, the rendering of an opinion does not guarantee the outcome of any legal dispute that may arise out of the transaction.

## **LITIGATION**

### **The Issuer**

There is not now pending or, to the knowledge of the Issuer, threatened any litigation restraining or enjoining the issuance or delivery of the 2011 Bonds or questioning or affecting the validity of the 2011 Bonds or the proceedings or authority under which they are to be issued. Neither the creation, organization or existence of the Issuer nor the title of any of the present member, directors or other officials of the Issuer to their respective offices is being contested. There is no litigation pending or, to the Issuer's knowledge, threatened which in any manner questions the right of the Issuer to enter into the any of the Bond Documents or to secure the 2011 Bonds in the manner provided in the Indenture or the Act.

### **The Company**

There is not now pending or, to the knowledge of the Company, threatened any litigation restraining or enjoining the execution or delivery by the Company of any of the Bond Documents, or questioning or affecting the validity of the Bond Documents, or the proceedings or authority under which the Bond Documents are to be executed and delivered by the Company. Neither the creation, organization or existence of the Company nor the title of any of the present members of the board of directors of the Company to their respective offices is being contested. There is no litigation pending or, to the Company's knowledge, threatened which in any manner questions the right of the Company to enter into any of the Bond Documents.

## **UNDERWRITING**

The 2011 Bonds are being purchased by the Underwriter shown on the cover page (the "Underwriter"). The Underwriter has agreed to purchase the 2011 Bonds for an aggregate purchase price of \$45,156,755.35. Such purchase price represents the par amount of the 2011 Bonds (\$44,285,000), less underwriter's discount (\$219,210.75), and plus net original issue premium (\$ 1,090,966.10).

The Underwriter will be obligated to purchase all of the 2011 Bonds if any of such 2011 Bonds are purchased. The 2011 Bonds may be offered and sold to certain dealers (including dealers depositing such 2011 Bonds into investment trusts) at prices lower than the initial public offering prices, and such public offering prices may be changed, from time to time, by the Underwriter. The Company has agreed to indemnify the Issuer and the Underwriter against losses, claims and liabilities arising out of any materially incorrect statement or information with respect to the Company contained in or material information omitted from this Official Statement.

Subject to prevailing market conditions, the Underwriter intends, but is not obligated, to maintain a secondary market for the 2011 Bonds. The Underwriter is not, however, obligated to repurchase any 2011 Bonds at the request of any Holder thereof.

## **CONTINUING DISCLOSURE**

The substantial form of the Continuing Disclosure Agreement to be entered into between the Company and the Trustee is attached hereto as APPENDIX D to this Official Statement (the "Continuing Disclosure Agreement").

Pursuant to the Continuing Disclosure Agreement, the Company will covenant and agree to provide (a) annual financial information and operating data to the Trustee within 150 days after the end of each fiscal year of the Company and (b) quarterly financial information to the Trustee within 45 days after the end of each fiscal quarter of the Company. Annual financial information shall include, collectively, (i) the annual financial statements of the Company, as audited by a firm of independent certified public accountants, (ii) the computation of the Debt Service Coverage Ratio for the fiscal year of the Company covered by the relevant Audited Financial Statements as described in the section of this Official Statement captioned "SECURITY FOR THE 2011 BONDS – Financial Covenants", (iii) information detailing the occupancy of the Student Housing Facility for the fiscal year of the Company covered by the relevant audited financial statements, (iv) an annual update of the information in the sections captioned "BUFFALO STATE COLLEGE – Enrollment" and -- "Demand" in APPENDIX A to this Official Statement, and (v) certain information regarding amendments to the Continuing Disclosure Agreement. Quarterly financial information shall include unaudited quarterly financial statements of the Company and information detailing the occupancy of the Student Housing Facility for the fiscal quarter covered by the quarterly financial statements, including without limitation the number of units, if any, licensed by SUNY pursuant to the SUNY Agreement.

The Trustee shall provide such annual financial information and quarterly financial information to the Municipal Securities Rulemaking Board (the "MSRB") through its Electronic Municipal Market Access ("EMMA") system within five business days after receipt by the Trustee.

In addition, the Company will agree in the Continuing Disclosure Agreement that, if an event listed below occurs, the Company shall provide, in a timely manner (but in all cases in sufficient time for the Trustee to send notice thereof to the MSRB through the EMMA system within ten business days after the occurrence of such event), written notice of such event to the Trustee. The Trustee shall send notice of such event to the MSRB through the EMMA system not later than three business days after receipt of notice of such event. These notice events include the following:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) modifications to rights of security holders, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Bonds, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or a similar event of the obligated person;

(xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material.

The Continuing Disclosure Agreement may be amended, by written agreement of the parties, without the consent of the holders of the 2011 Bonds (except to the extent described below), if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the Company or the type of business conducted thereby, (2) the Continuing Disclosure Agreement as so amended would have complied with the requirements of SEC Rule 15c2-12 (the "Rule") as of the date of the Continuing Disclosure Agreement, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the Company shall have delivered to the Trustee an opinion of counsel, addressed to the Company and the Trustee, to the same effect as set forth in clause (2) above, (4) either (i) the Company shall have delivered to the Trustee an opinion of counsel or a determination by a person, in each case unaffiliated with the Issuer or the Company (such as bond counsel or the Trustee) and acceptable to the Company, addressed to the Company and the Trustee, to the effect that the amendment does not materially impair the interests of the holders of the 2011 Bonds or (ii) the holders of the 2011 Bonds consent to the amendment to this Agreement pursuant to the same procedures as are required for amendments to the Indenture with consent of holders of 2011 Bonds pursuant to the Indenture, and (5) the Trustee shall have delivered copies of such opinion(s) and amendment to the MSRB through the EMMA system and to the Issuer. The Trustee shall so deliver such opinion(s) and amendment with one business day after receipt by the Trustee.

The provisions of the Continuing Disclosure Agreement shall inure to the benefit of the holders from time to time of the 2011 Bonds, including beneficial owners of 2011 Bonds held in a book-entry system by a securities depository. The obligations of the Company to comply with the provisions of the Continuing Disclosure Agreement shall generally be enforceable by any holder of Outstanding 2011 Bonds, or by the Trustee on behalf of the holders of Outstanding 2011 Bonds; *provided, however*, that the Trustee shall not be required to take any enforcement action except at the direction of the holders of not less than a majority in aggregate principal amount of the 2011 Bonds at the time Outstanding, who shall have provided the Trustee with adequate security and indemnity. The holders' and Trustee's rights to enforce the provisions of the Continuing Disclosure Agreement shall be limited solely to a right, by action for specific performance, to compel performance of the Company's obligations under the Continuing Disclosure Agreement. Any failure by the Company or the Trustee to perform in accordance with the Continuing Disclosure Agreement shall not constitute a default or an Event of Default under the Indenture or the Loan Agreement, and the rights and remedies provided by the Indenture or the Loan Agreement upon the occurrence of a default or an Event of Default shall not apply to any such failure.

#### **CERTAIN RELATIONSHIPS AMONG FINANCING PARTICIPANTS**

The Trustee under the Indenture (Manufacturers and Traders Trust Company) and the Underwriter of the 2011 Bonds (M&T Securities, Inc.) are affiliates. Manufacturers and Traders Trust Company is also the holder of a portion of the Construction Financing that will be refunded by the 2011 Bonds. An officer of M&T Bank is a member of the College Council of the College and another officer of M&T Bank is a member of the board of directors of the Foundation. A partner in the firm of Hodgson Russ LLP (which is acting as counsel to the Company in this transaction) is also a member of the board of directors of the Foundation.

#### **RATING**

Standard & Poor's Ratings Group ("S&P") has given the 2011 Bonds a rating of "A+" with a "Stable Outlook" based upon the rating agency's analysis of the structure of the financing, the agreements between the Company and SUNY, and information provided by the Company and the College, and a meeting with representatives of the Company and the College. Such rating and outlook reflects only the view of S&P and its

rationale for such rating, and any desired explanation of the significance of such rating or rationale should be obtained from S&P. There is no assurance that such rating will apply for any given period of time or that it will not be lowered or withdrawn entirely if, in the judgment of S&P, circumstances so warrant. The Underwriter has undertaken no responsibility to bring to the attention of the holders of the 2011 Bonds any proposed revision or withdrawal of the rating on the 2011 Bonds or to oppose any such proposed revision or withdrawal. Any downward revision or withdrawal of such rating and/or outlook could have an adverse effect on the market price of the 2011 Bonds. Such rating should not be taken as a recommendation to buy or hold the 2011 Bonds.

#### MISCELLANEOUS

The references herein to laws and various of the Bond Documents are brief summaries of certain provisions thereof. Such summaries do not purport to be complete and, accordingly, are qualified by reference and are subject to the full texts thereof.

Neither this Official Statement nor any other disclosure in connection with the 2011 Bonds is to be construed as a contract with the holders of the 2011 Bonds. Any statements made in this Official Statement involving matters of opinion or estimates, whether or not expressly so identified, are intended merely as such and not as representations of fact. No representation is made that any of such statements will be realized.

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The Issuer has consented to the use of this Official Statement, but has not participated in the preparation of this Official Statement and has made no independent investigation with respect to the information contained in this Official Statement and, accordingly, the Issuer assumes no responsibility for the sufficiency, accuracy or completeness of such information, other than information set forth under "THE ISSUER" and "LITIGATION-The Issuer" herein. The Company has authorized the distribution of this Official Statement.

**BUFFALO STATE COLLEGE FOUNDATION  
HOUSING CORPORATION**

By: /s/Stanley Kardonsky  
Vice President

**BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION**

By: /s/David W. Kerchoff  
Assistant Treasurer

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**APPENDIX A**

**CERTAIN INFORMATION CONCERNING SUNY, THE COLLEGE,  
THE FOUNDATION AND THE COMPANY**



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## **APPENDIX A**

### **CERTAIN INFORMATION CONCERNING SUNY, THE COLLEGE, THE FOUNDATION AND THE COMPANY**

#### **STATE UNIVERSITY OF NEW YORK**

##### **General**

The State University of New York ("SUNY" or the "University") is a corporate entity created within the Education Department of the State of New York and under the State Board of Regents. Created in 1948, today SUNY has 64 campuses across the entire State. In carrying out its responsibilities and in order to operate and maintain its facilities, SUNY receives moneys from various sources, a substantial portion of which consists of annual appropriation of State funds. The successful maintenance and operation of the facilities of SUNY and the overall financial viability of SUNY are dependent upon the ability and the willingness of the State Legislature to continue making appropriations of State funds in the amounts required for the operation of SUNY.

SUNY is assigned the responsibility for the planning, supervision and administration of facilities enabling programs in accordance with a master plan to be proposed by the University and approved by the Board of Regents. The University is governed by a Board of Trustees comprised of 17 members, 15 appointed by the Governor with the advice and consent of the Senate, the president of the University-wide Student Assembly, ex officio and voting, and the president of the University Faculty Senate, ex officio and non-voting. The Chairman and Vice-Chairman of the Board are designated by the Governor. The 15 Trustees appointed by the Governor currently serve overlapping terms of seven years, the student Trustee a one-year term, and the faculty Trustee a two-year term. Trustees receive no compensation for their services other than reimbursement of expenses. The Board of Trustees appoints its own officers, the Chancellor, the senior System Administration staff and campus Presidents.

On April 1, 1949, the University assumed jurisdiction over the 29 existing State-supported institutions of higher education. These institutions were primarily professional and technical schools, placing emphasis on applied arts and sciences and the training of teachers. In the period between 1957 and 1962, the Trustees established three university centers: the State University of New York at Albany, the State University of New York at Binghamton, and the State University of New York at Stony Brook. In addition, the former private University of Buffalo was merged into the University system and became the State University of New York at Buffalo. Two health science centers were added, one in Brooklyn serving the New York City metropolitan area and one in Syracuse serving upstate New York. In 1961, the University Trustees set into motion a plan under which the teachers colleges included in the system became multipurpose institutions offering baccalaureate preparation in liberal arts, business and technologies, as well as education courses. In 1964, the six, two-year Agricultural and Technical Institutes became Agricultural and Technical Colleges and in 1987 were redesignated either Colleges of Technology or Colleges of Agriculture and Technology. Two additional colleges of arts and sciences were opened in 1968, the State University College at Old Westbury and the State University College at Purchase.

Other components of the present University system are the State University Institute of Technology at Utica/Rome, the Empire State College in Saratoga Springs, the Maritime College at Fort Schuyler, the State University of New York College of Environmental Science and Forestry at Syracuse, the College of Optometry at New York City, the five statutory colleges - four at Cornell University (College of Veterinary Medicine, School of Industrial and Labor Relations, College of Agriculture and Life Sciences, and College of Human Ecology) and one at Alfred University (College of Ceramics), and the New York State Agricultural Experiment Station at Geneva. The statutory colleges are administered by the private universities under the general supervision of the University Board of Trustees.

Each University Center and College of the University is administered locally although subject to overall review and supervision by the University's Board of Trustees. Graduate study at the doctoral level is offered by the University at 15 of its institutions, and graduate work at the master's level at 30 campuses. The University is

continuing to broaden and expand overall opportunities for advanced degree study. Graduate study areas embrace a wide spectrum including agriculture, business administration, criminal justice, dentistry, education, engineering, forestry, law, library science, medicine, nursing, optometry, pharmacy, social work, and veterinary medicine as well as the liberal arts and sciences. Four-year programs strongly emphasize the liberal arts and sciences and also include specialization in teacher education, business, forestry, maritime service, ceramics, and the fine and performing arts. Two-year programs include nursing and liberal arts transfer programs and a wide variety of technical curriculums such as agriculture, business, and the industrial and medical technologies. The University Educational Opportunity Centers located throughout the State provide training for skilled and semiskilled occupations and college foundation courses. In addition to courses such as high school equivalency, college preparation, typing, bookkeeping, and vending and business machine repair, these centers provide a broad range of services, including personal counseling, diagnostic testing, placement and referral services.

Since 1952, the University as an entity has maintained accreditation by the Middle States Association of Colleges and Secondary Schools. This accreditation applies to all State-operated colleges of the University.

### **University Centers**

State University of New York at Albany  
State University of New York at Binghamton

State University of New York at Buffalo  
State University of New York at Stony Brook

### **Health Sciences Centers**

Health Science Center at Brooklyn  
Health Science Center at Syracuse

Health Science Center at Buffalo University Center  
Health Science Center at Stony Brook University Center

### **University Colleges**

State University College at Brockport  
**State University College at Buffalo**  
State University College at Cortland  
State University College at Fredonia  
State University College at Geneseo  
State University College at New Paltz

State University College at Old Westbury  
State University College at Oneonta  
State University College at Oswego  
State University College at Plattsburgh  
State University College at Potsdam  
State University College at Purchase Empire State College

### **Fiscal Structure**

The University has several sources of revenue. Revenues and expenditures relating to the University's core instructional budget, (i.e., tuition and fees and State general fund support), dormitory operations, and hospital and clinics, and certain user fees are subject to State appropriation. Revenues generated from sponsored research and food service and bookstore operations that are administered by legally separate not-for-profit organizations are not subject to State appropriations.

The University Controller's Office prepares annual statements of revenues and expenditures that include all programs operated at the various University campuses. The financial statements include current operations financed predominantly from appropriations of State funds, tuition and fees, dormitory room rents, dining and food service fees, hospital and clinical fees and restricted revenues financed from federal, State and other sources.

The University receives a large percentage of its State funds from the State's General Fund. The major source of revenues for the General Fund is State tax moneys which are supplemented by certain transfers from other funds and miscellaneous revenue sources. Appropriations to the University from the State, along with tuition and fees, comprise the University's core instructional budget, and are expended within the requirements of the State Finance Law. These expenditures are subject to the pre-audit of the State Comptroller. Post-audits are also conducted periodically at the various campuses of the University by the State Comptroller. The University's internal audit staff also conducts periodic audits of campus activities. In addition, the University obtains an audit of the

University's annual financial statements in accordance with generally accepted accounting principles by independent certified public accountants.

The annual budget request of the University contains its estimated financial requirements for all programs for which expenditures are subject to State appropriations, existing and proposed, and is submitted to the Governor and the legislative fiscal committees. The Governor prepares recommendations on the requests of all agencies and departments (including the University) which comprise the Executive Budget as submitted to the State Legislature. The State Legislature in turn may approve or reduce individual items presented in the Executive Budget and may enact separate appropriations bills. In addition to the so-called regular budget bills, the State Legislature has also enacted from time to time a "deficiency" budget bill, covering obligations incurred near the close of a fiscal period and, in some years, a "supplemental" budget bill containing amendments to the "regular" bill. The State's fiscal year begins on April 1st and ends on March 31st, while the University's fiscal year begins on July 1st and ends on June 30th.

The majority of sponsored research that generates restricted grant revenue is operated through The Research Foundation of State University of New York (the "Research Foundation"). The Research Foundation is a separate, not-for-profit educational corporation, chartered by the State Board of Regents in 1951 to administer gifts, grants and contracts for the University's campuses, with particular emphasis on federally-sponsored research grants. Annual audits of the financial activities of the Research Foundation are performed by independent certified public accountants, and periodic audits are performed by the State Comptroller and the Research Foundation's internal audit staff. Other programs supported by restricted revenues are operated through State treasury funds which are subject to normal State fiscal controls.

### **Appropriations of State Funds to the University**

In addition to its own sources of revenues, the successful maintenance and operation of the University and its overall financial viability are dependent upon the ability and willingness of the State to continue making appropriations of State funds in the amounts which, together with other available revenues of the University, are sufficient to pay the operating expenses and to meet other financial obligations of the University. Appropriations of State funds have historically constituted a significant portion of the University's revenues, and no assurance can be given that State funds will be available in the future in the amounts contemplated or required by the University or which have been historically appropriated and paid to the University. The State has made appropriations to the University from the General Fund. These appropriations are made in connection with the State's annual budget process and are therefore dependent upon the availability of budgetary resources and the allocation thereof.

A portion of the total State appropriation to the University is offset by the application of other University income for operating expenses and the remainder of the appropriation constitutes the State-funded portion. The appropriations of this State-funded portion from the State to support the University core operating budget made directly to the University (exclusive of Student Aid appropriations, fringe benefits budgeted separately, debt service for educational facilities, community colleges and other special programs) were as follows for the indicated State fiscal years:

#### **State-Funded University Appropriations**

<b><u>Fiscal Year</u></b>	<b><u>Appropriated from State Purposes Account</u></b>
2006-07	\$ 1,212,440,000
2007-08	1,340,363,000
2008-09	1,255,125,000*
2009-10	1,223,540,000**
2010-11	1,086,314,000

\* Available State support net of one-time collective bargaining funding.

\*\* State-supported appropriation was reduced by \$90 million due to mid-year reductions in the State budget.

Source: College Officials

## **BUFFALO STATE COLLEGE**

### **General**

Buffalo State College, State University of New York (the "College"), is a public, coeducational, residential college located on a 125-acre campus in the City of Buffalo, New York. The College was founded in 1871 as the "Buffalo Normal School" for the purpose of training public school teachers. The College became part of the SUNY system in 1948 and is the largest comprehensive college in the SUNY system. The College's enrollment in the fall of 2010 was 11,695 students (9,788 undergraduate and 1,907 graduate). The College offers 166 undergraduate programs (with 11 honors options) and 62 graduate programs.

The College is accredited by the Middle States Association of Colleges and Schools as well as numerous professional organizations for specific academic programs. The Middle States Association is an institutional accrediting agency recognized by the United States Secretary of Education and the Commission on Recognition and Postsecondary Accreditation.

Through the SUNY Research Foundation, the College receives more grants and research support than all other SUNY comprehensive colleges combined. Many of the College's faculty members conduct applied research that makes a direct and immediate impact in the Buffalo Niagara community. Each year, hundreds of undergraduate students gain hands-on experience in their fields by partnering with faculty members on research projects. In addition, the College is a leader in human services research and training.

### **Mission Statement**

The College is committed to the intellectual, personal, and professional growth of its students, faculty, and staff. The goal of the College is to inspire a lifelong passion for learning, and to empower a diverse population of students to succeed as citizens of a challenging world. Toward this goal, and in order to enhance the quality of life in Buffalo and the larger community, the College is dedicated to excellence in teaching and scholarship, cultural enrichment, and service.

### **Vision Statement**

The College's vision statement is that the College will be a nationally recognized leader in public higher education, known for the intellectual and creative accomplishments of its faculty, staff, and students, a caring academic environment where lives are transformed through education and each individual is valued, and an institution that serves to improve our region, our nation, and our world, one student at a time.

### **Organization and Governance**

The College Council is responsible for the "operations and affairs" of the College. It is composed of ten members --- nine appointees of the Governor of New York, and one elected student representative. Appointees serve seven-year terms, and student representatives are elected for one-year terms.

<u>Name</u>	<u>Occupation</u>
John T. Hoskins, <i>Chair</i>	Chairman and CEO, Curtis Screw Co., Inc.
Howard A. Zemsky, <i>Vice Chair</i>	President, Taurus Capital Partners, LLC
William J. Bissett	President, Delaware North Companies Gaming & Entertainment
James Bradys, '71, '73	Senior Vice President, Investment Wealth Management Advisor, Merrill Lynch
Melissa Brinson	Board of Education President, Town of Tonawanda, NY Town Clerk, Town of Tonawanda, NY
Robert D. Bulman, '84	Partner, Capitol Public Strategies, LLC
Charles J. Naughton, '85	Director of Labor Relations, Town of Tonawanda, NY
Alphonso O'Neil-White	President and CEO, HealthNow New York, Inc.
Gerald C. Saxe	Insurance Sales-President, M&T Bank
Renea A. Johnson	Student Representative

## **Administration**

**Aaron Podolefsky, Ph.D., President of the College.** Aaron Podolefsky was named President of the College in 2010. President Podolefsky received his B.A. in Mathematics at San Jose University. He then went on to receive an M.A. in Liberal Studies, M.A. in Anthropology, and a Ph.D. with distinction in Anthropology at the State University of New York at Stony Brook. Prior to being named President at the College, President Podolefsky was a professor of anthropology as well as the President at the University of Central Missouri from 2005 until 2010. There he created and implemented new strategic and campus master plans, oversaw the first major campus construction and renovation since 1999, and emphasized diversity and sustainability as campus priorities through a 24-month, \$36 million project to dramatically reduce energy consumption and carbon footprint of the university. President Podolefsky is also a member of the Board of Directors for the Missouri Biotechnology Council, the Missouri Council on Transfer and Articulation, the Mid-America Intercollegiate Athletic Association Council, the Board of Directors for the General Anthropology Division of the American Anthropological Association and a book review editor of *General Anthropology*.

**Dennis Ponton, Ph.D., Provost.** Dr. Ponton has been the Provost at the College since 2003, and has served as Interim President preceding the appointment of President Podolefsky. He attended Marshall University from 1962 to 1965. Dr. Ponton later received his A.B. in Biology, M.S. in Zoology, and Ph.D. in Agricultural Biochemistry from West Virginia University. In addition to his duties as Provost, Dr. Ponton is also the Operations Manager for the Buffalo State College Research Foundation, Accreditation Liaison Officer to the Middle States Commission on Higher Education, and Convener of the Buffalo-Niagara Council of Chief Academic Officers (BNCCAO). Prior to being named Provost at the College, Dr. Ponton held the positions of Associate Vice President for Budget and Planning of Academic Affairs, Interim Provost and Vice President for Academic Affairs, and Interim Dean for the Faculty of Applied Science and Education, all at the College.

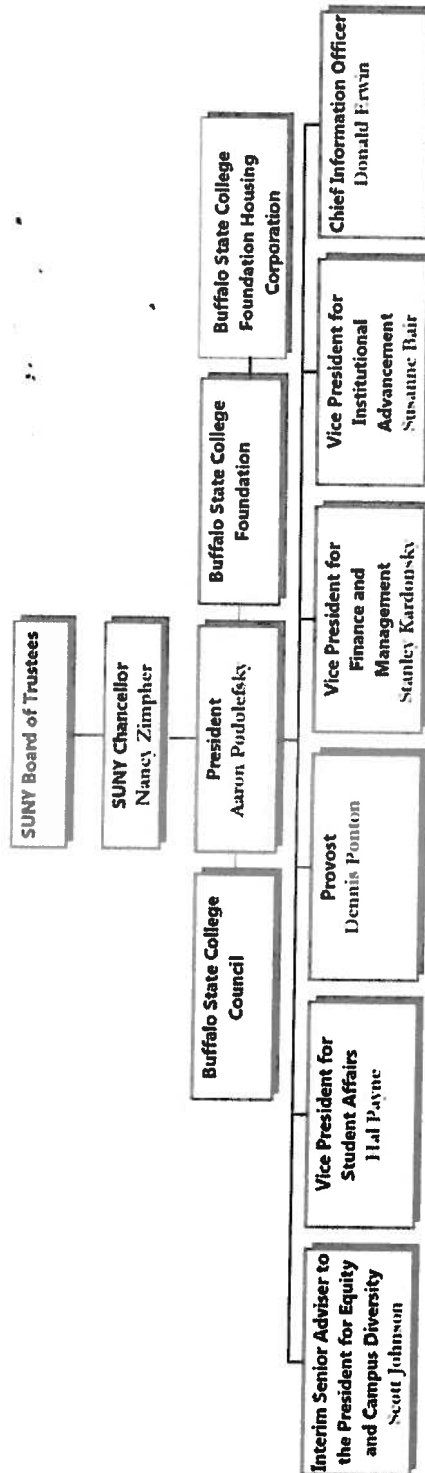
**Stanley Kardonsky, Ph.D., Vice President for Finance and Management.** Dr. Kardonsky has been the Vice President for Finance and Management since 1993. He received his B.S. in Chemistry at Long Island University, his M.S. in Chemistry at University of Florida, and his Ph.D. in Physical/Nuclear Chemistry at the City University of New York. Dr. Kardonsky is responsible for the development, implementation control, and reconciliation of a \$140,000,000 annual budget including both state purpose and income funds. He provides leadership and management relating to the College's business and finance operations; human resources; internal

controls; facilities design construction and operations; University Police; and the Burchfield Penney Art Center. Concurrent with his position as Vice President for Finance and Management at the College, he was also Interim Vice President for Institutional Advancement from 2006-2007. Prior to joining the College, Dr. Kardonsky was the Vice President for Administration and Professor of Chemistry at San Francisco State University. He is currently a member of the Eastern Association of College and University Business Officers (EACUBO), the Society for College and University Planning (SCUP), the American Association of University Administrators (AAUA), and the National Association of College and Business Officers (NACUBO).

***Hal D. Payne, J.D., Vice President for Student Affairs.*** Hal D. Payne was named Vice President for Student Affairs in 1991. He received his B.A. in History at Adelbert College, and his J.D. at the Cleveland-Marshall College of Law. As Vice President for Student Affairs, he is responsible for the supervision of all student affairs functions, which include the counseling and health centers, residence life, career development, international student affairs, intercollegiate athletics, and student life. He is also responsible for the development and administration of policies and practices for the Student Affairs staff and student development programs. Prior to his current position at the College, Mr. Payne was Acting Vice President for Student Affairs and Assistant Vice President for Student Affairs. He was also a Senior Associate for the Council for Opportunity in Education (COE). Mr. Payne is a member of the Administrative Assistants Association for the U.S. House of Representatives, the National Student Aid Coalition, the Committee for Educational Funding, the Mid-America Association of Educational Opportunity Program Personnel, the American Association of Higher Education, and the Association of College Personnel Administrators.

***Susanne P. Bair, DPE., Vice President for Institutional Advancement.*** Dr. Bair has been the Vice President for Institutional Advancement since 2007. Dr. Bair received a B.S. in Physical Education with a Coaching Specialization and a minor in Business, as well as an M.S. in Physical Education with Athletic Administration Emphasis, at Indiana State University. She then went on to Indiana University, where she acquired a Doctorate in Physical Education. Dr. Bair is responsible for a forty person staff comprised of Advancement Services, Alumni Affairs, College Relations, Events and Protocol, Government Relations, and Major and Planned Giving. As Vice President for Institutional Advancement, she has doubled funding for the All College Honors Program, lead the largest fundraising year in the history of the College with more than \$8 million raised, and completed a Mellon matching grant campaign to provide an endowed chair at the College. Dr. Bair has been Vice President for Development at Fletcher Allen Health Care, Vice President of Development for the Indian University Foundation, and Assistant Dean and Director of Development and Affairs at the Indiana University School of Health, Physical Education and Recreation, prior to her current position. She is a member of the College Planning Council, the College Senate, and the Vice President's Council at the College.

Buffalo State College Table of Organization  
January 2011





## Tuition and Housing Cost Comparison of Regional Higher Education Institutions

Tuition & Housing Cost Comparison: Full-Time, Undergraduate	Academic Year Tuition	Per Semester Housing Costs
<b>Buffalo State College (SUNY), in-state student</b>	<b>\$4,970</b>	<b>\$3,196 to \$4,400</b>
Medaille College (local, private)	\$10,285	\$3,805 to \$4,875
D'Youville College (local, private)	\$10,400	\$4,000 to \$6,480
Niagara University (local, private)	\$25,600	\$5,325 to \$5,875
Canisius College (local, private)	\$29,020	\$3,845 to \$4,400
University of Buffalo (SUNY), in-state student	\$4,970	\$5,098 to \$6,848
Average, state university, in-state student	\$7,605	\$4,367
Average, private college	\$27,293	\$4,850

Source: College Officials

## Enrollment

Total enrollment at the College over the past five years is shown in the table below.

	<u>Fall 2006</u>	<u>Fall 2007</u>	<u>Fall 2008</u>	<u>Fall 2009</u>	<u>Fall 2010</u>
Undergraduate	9,314	9,139	9,371	9,822	9,788
Graduate	<u>1,906</u>	<u>1,854</u>	<u>1,863</u>	<u>1,892</u>	<u>1,907</u>
<b>TOTAL</b>	<b>11,220</b>	<b>10,993</b>	<b>11,234</b>	<b>11,714</b>	<b>11,695</b>

Source: College Officials

## Demand

<b>UNDERGRADUATE</b>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Applications	9,791	9,762	10,304	11,132	12,184
Accepts	4,507	4,631	4,662	4,749	5,149
Enrolled	1,495	1,450	1,559	1,530	1,490
<b>GRADUATE</b>					
Applications	860	876	879	876	980
Accepts	726	721	603	606	672
Enrolled	452	400	502	443	464

Source: College Officials

## Faculty

The College has 425 full-time faculty members, and about 80% hold terminal degrees. Of the full-time faculty, 61% have tenure, while 30% are on track for tenure. The SUNY Chancellor's Award for Excellence in Teaching has been given to 45 faculty members, and seven faculty members have been honored as SUNY Distinguished Teaching Professors. The College has 412 part-time faculty members, 796 full-time staff and 185 part-time staff.

## BUFFALO STATE COLLEGE FOUNDATION

### General

The Buffalo State College Foundation was incorporated in New York State on March 15, 1963.

### Mission Statement

The mission of the Foundation is to advance the welfare and development of Buffalo State College and to support its goals of excellence in teaching and scholarship, cultural enrichment and service. The Foundation furthers its mission by fostering private sector participation in the College's endeavors, particularly in the areas of philanthropy and fundraising, and by providing various support services to the College.

### Board of Directors

<u>Name</u>	<u>Occupation</u>
Linda A. Dobmeier, '71, <i>President</i>	Vice President, Dobmeier Janitor Supply, Inc.
Dorothy T. Ferguson, <i>Vice Chair</i>	
Ross B. Kenzie, <i>Vice Chair</i>	Retired Chairman and CEO, Goldome Bank
Robert M. Zak, <i>Treasurer</i>	President and CEO, Merchants Insurance Group
Anthony J. Baynes, '79, <i>Secretary</i>	Extra Mile Transportation, LLC
Cindy Abbott Letro	Law Offices of Francis M. Letro
Susanne P. Bair	Vice President, Buffalo State College
C. Teo Balbach	Mercury Capital Partners
Shelby Kay Baldwin	Student Representative, Buffalo State College
Timothy P. Balkin	Treasurer, Moog, Inc.
Todd W. Brason, '85	CEO, Willcare
Tim L. Brenner	Senior Vice President, M&T Bank
Gary M. Brost	Chairman and CEO, Strategic Investments & Holdings, Inc.
Gerald L. Cornish, '90	1 <sup>st</sup> Vice President, Wealth Management Advisor
Jacqueline S. Culliton	Senior Vice President, First Niagara Financial Group
Wanda M. Davis	Professor, Buffalo State College
James F. Dentinger	President, McGuire Development Co.
Rock D. Doyle, '99	Assistant Director Health Services, Buffalo State College
Judy L. Elliot, '82	Chief Academic Officer, Los Angeles Unified School District
Gretchen Fierle	Interim Chief Communications Officer, BlueCross BlueShield of WNY
Allen F. Grum	President, Rand Capital
Paul R. Hojnacki, '84	President, Curtis Screw Company, LLC
William N. Hudson, Jr.	CEO, Hudson Advisor Services, Inc.
Stanley Kardonsky	Vice President, Buffalo State College
Robert J. Lamendola, '72	Consultant Services to Renaissance Reinsurers, Ltd.
Paul J. Lamparelli, '82	President, Lamparelli Construction Co., Inc.
Jacqueline V. LoRusso, '62, '64	JVL Management Co.
Russell J. Maxwell	President, Medical Answering Services, LLC
Thomas J. Murrer	President and CEO, Renold Global Gears & Coupling Group
Arthur F. D. Musarra	Musarra Law Offices
Aaron Podolefsky	President, Buffalo State College
Matthew E. Ryan, '99	Senior Financial Advisor, Merrill Lynch Global Wealth Management
Benjamin M. Zuffranieri, '80	Partner, Hodgson Russ, LLP

## BUFFALO STATE COLLEGE FOUNDATION HOUSING CORPORATION

### Purpose

The Company was incorporated in 2008 to support the College and the Foundation by providing and maintaining residential and other facilities for the use of the students and faculty of the College, and by obtaining financing to accomplish this.

### Board of Directors

#### Name

Ross B. Kenzie, *President*  
Stanley Kardonsky, *Vice President*  
Gerald L. Cornish '90, *Secretary*  
Anthony J. Baynes '79, *Treasurer*  
Susanne P. Bair  
Timothy P. Balkin  
Richard J. Trigilio '90

#### Occupation

Retired Chairman and CEO, Goldome Bank  
Vice President for Finance and Management, Buffalo State College  
First Vice President-Wealth Management Advisor, Merrill Lynch  
CEO, Owner and Founder, the A.J. Baynes Group  
Vice President for Institutional Advancement, Buffalo State College  
Treasurer, Moog Inc.  
President and CEO, Medical Management Services

### Housing

More than 2,200 students live on campus at the College in ten residence halls. As many as 275 resident students must be accommodated off-campus each fall semester because of a shortage of on-campus housing. The College anticipates even greater demand for on-campus housing due to increased recruitment of students in downstate New York. The current campus housing capacity is comprised of 1000 beds double occupancy/suites; 872 beds double occupancy/corridor; 62 beds single occupancy; 13 beds handicapped-accessible; and 18 beds apartment-style.

Current College housing policy requires first and second-year students residing more than 35 miles from the College to live on campus. The 2013-2023 master plan of the College recommends the demolition of three outmoded, difficult to renovate residential buildings in the campus core, which will require the replacement of 557 beds in the campus inventory.

### Campus Housing Capacity (before 2011 Student Housing Facility)

<u>Type</u>	<u>Occupancy</u>
Double occupancy/suites	1,000
Double occupancy/corridor	872
Single occupancy	62
Handicapped-accessible	13
Apartment style	18

### The Student Housing Facility

The Student Housing Facility consists of an approximately 225,000 square foot apartment style student housing complex consisting of 507 beds, located on the Land at the western edge of the College's campus at the corner of Letchworth Street and Grant Street in the City of Buffalo, Erie County, New York. The facility consists of three wings of various heights. In keeping with the preferences of today's resident student, each apartment contains four single bedrooms, two full baths, and a full kitchen and living room. The Student Housing Facility has been constructed on land owned by SUNY that has been leased to the Alumni Association pursuant to the Ground Lease and subleased by the Alumni Association to the Company under the Sublease. Construction of the Student Housing Facility began in November 2009 and the facility is now substantially completed, with a certificate of occupancy anticipated to be issued in June 2011. The architect for the project is Cannon Design and the construction manager

is LP Ciminelli. The total cost for the design and construction of the Student Housing Facility is approximately \$44,600,000.

The Student Housing Facility is expected to be completed and delivered in June 2011 and to be open for occupancy by students for the fall 2011 semester of the College. The Student Housing Facility is fully assigned for fall 2011 occupancy.

The College has marketed the Student Housing Facility to current and prospective students through the use of a marketing brochure mailed to all newly accepted students and to incoming transfer students; a postcard mailer sent to parents of current upper division students; a web site; virtual and on-site tours; and posters located throughout the College campus.

Housing rates per student per semester for the Student Housing Facility are expected to be initially \$4,400. Other current housing rates for other student residence facilities at the College range from \$3,169 for a standard double room to \$4,019 for a standard single room to \$3,570 for a Moore Complex double room and \$4,400 for a Moore Complex single room.

Construction of the Student Housing Facility was financed by two series of variable rate bonds and one series of fixed rate bonds, in the aggregate principal amount of \$47,755,000, issued by the Issuer in a private placement on December 31, 2009 (the "Construction Financing"). The 2011 Bonds are being issued to refund the Construction Financing and to pay or reimburse certain remaining costs of the construction and equipping of the Student Housing Facility.

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**APPENDIX B**

**CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES**

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## CERTAIN DEFINITIONS

In addition to the other terms defined in the Official Statement, when used in the summaries of certain provisions of the Indenture, the Loan Agreement and the Leasehold Mortgage and Security Agreement, the following terms have the meanings ascribed to them below.

*"Acknowledgment"* means the Acknowledgment by the Company of the Pledge and Assignment.

*"Act"* means Section 1411 of the Not-for-Profit Corporation Law of the State of New York and Resolution Nos. 218 and 295 of 2009 and 5-3 (2010) of the Erie County Legislature, each as amended to date.

*"Additional Bonds"* means any bonds issued by the Issuer pursuant to Section 2.12 of the Indenture.

*"Agency Obligations"* means obligations of any agency or corporation which has been or may hereafter be created pursuant to an act of Congress as an agency or instrumentality of the United States, including, but not limited to, the Federal National Mortgage Association, Federal Home Loan Mortgage Association, Student Loan Marketing Association, Farm Credit System, Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank and the Bank for Cooperatives.

*"Annual Budget"* means the annual budget for operation of the Project prepared by the College and approved by the Management Committee pursuant to the Facility Management Agreement.

*"Applicable Elected Representative"* means any Person constituting an applicable elected representative within the meaning given to the term in Section 147(f) of the Code.

*"Architect"* means Cannon Design, Inc., its successors and/or assigns.

*"Assignment of Agreements"* means the Assignment of Agreements dated as of June 1, 2011, by the Company to the Trustee, as amended or supplemented from time to time.

*"Assignment of Mortgage"* means the Assignment of Mortgage dated as of June 16, 2011, by the Issuer.

*"Assignment of Rents"* means Assignment of Rents and Leases dated as of June 1, 2011, from the Company to the Trustee, as amended or supplemented from time to time.

*"Association"* means the Buffalo State Alumni Association, Inc., a not-for-profit corporation incorporated under the laws of the State.

*"Authorized Denomination"* means \$5,000 or any integral multiple of \$5,000 in excess thereof, except that if as a result of redemption partially redeemed Bonds cannot be authenticated in such denominations, such partially redeemed Bonds shall be authenticated in such other denominations to the extent required to effect such redemption.

*"Authorized Representative"* or *"Authorized Officer"* means the Persons or Persons at the time designated to act on behalf of the Issuer or the Company, as the case may be, by written Certificate furnished to the Trustee containing the specimen signature of each such Person and signed on behalf of (A) the Issuer by its Chair, Vice Chair, Chief Executive Officer, Chief Operating Officer, Assistant Treasurer, Treasurer and/or Chief Financial Officer, or other officer designated by the Chair, and (B) the Company by its President, Treasurer or any Vice President, or such other Person as may be authorized by the President of the Company to act on behalf of the Company.

*"Bankruptcy Code"* means the United States Bankruptcy Code, as amended from time to time.

*"Bond"* or *"Bonds"* means the Series 2011A Bonds and the Series 2011B Bonds, together with any Additional Bonds.



*“Bond Counsel”* means the law firm of Hiscock & Barclay, LLP, or such other attorney or firm of attorneys located in the State whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and who is acceptable to the Issuer.

*“Bond Documents”* means the Bond Purchase Agreement, the Indenture, the Loan Agreement, the Tax Compliance Agreement, the Pledge and Assignment, the Guaranty, the Mortgage, the Assignment of Rents, the Assignment of Agreements, the Continuing Disclosure Agreement and the Official Statement.

*“Bond Fund”* means the fund so designated and created pursuant to Section 4.1 of the Indenture.

*“Bondowners,” “Bondholders,” “Owners”* or words of similar import means the registered owner of any Bond as indicated on the bond register maintained by the Bond Registrar.

*“Bond Payment Date”* means any date on which a Debt Service Payment shall be due on any of the Bonds so long as the Bonds shall be Outstanding.

*“Bond Proceeds”* means the proceeds of the sale of the Bonds, including any accrued interest, paid to the Trustee on behalf of the Issuer by the purchasers from time to time of the Bonds as the purchase price of the Bonds.

*“Bond Purchase Agreement”* means the Bond Purchase Agreement dated May 26, 2011, by and among the Issuer, the Company and the Underwriter.

*“Bond Registrar”* means the Trustee as bond registrar with respect to the Bonds and its successors and assigns in such capacity.

*“Bond Resolution”* means the resolution of the Issuer adopted on March 21, 2011, authorizing the Issuer to issue and sell the Initial Bonds and to execute and deliver the Bond Documents to which the Issuer is a party.

*“Bond Year”* shall have the meaning assigned thereto in the Tax Compliance Agreement.

*“Book Entry Only System”* means the system of registration described in Section 2.3(c) of the Indenture.

*“Business Day”* means any day of the year, other than a Saturday or Sunday, on which commercial banks located in the city or cities in which are located the principal corporate trust offices of the Trustee and the New York Stock Exchange is not required or authorized to remain closed.

*“Capital Reserves”* means all necessary reserves for the capital repair, replacement, alteration or improvement of the Project.

*“Certificate”* means a certificate or report, in form and substance satisfactory to the Issuer and the Trustee, executed: (i) in the case of an Issuer Certificate, by an Authorized Representative of the Issuer; (ii) in the case of a Company Certificate, by an Authorized Representative of the Company; and (iii) in the case of a Certificate of any other Person, by such Person, if an individual, and otherwise by an officer, member, partner or other authorized representative of such Person; *provided that* in no event shall any individual be permitted to execute any Certificate in more than one capacity.

*“Certificate of Authentication of the Trustee”* and *“Trustee’s Certificate of Authentication”* means the certificate executed by an authorized officer of the Trustee certifying the due authentication of the Bonds in the aggregate principal amount of \$44,285,000.

*“Closing Date”* means June 16, 2011.

*“Code”* means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the United States Treasury Department promulgated thereunder.

*“College”* means Buffalo State College.

*"College Expense"* means (i) all payroll costs for on-site staff, including wages, salary, incentive bonuses, holiday and vacation pay, insurance benefits, workers' compensation premiums or allocable costs for self-insurance of such matters, pension and health and welfare payments, payroll taxes and other governmental assessments so long as such salary and wage costs and benefits conform to the approved Annual Budget or are otherwise approved in writing by the Company; (ii) any backcharge by the College for or with respect to any utilities supplied by the College to the Project; and (iii) costs of non-capital maintenance and repairs at the Project. To the extent that any on-site staff member devotes less than full time (*i.e.*, forty (40) hours per week) to the Project, the expenses identified in clause (i) in the immediately preceding sentence with respect to such employee shall be allocated pro rata based upon the amount of time such employee devotes exclusively to the Project.

*"Company"* means Buffalo State College Foundation Housing Corporation, a not-for-profit corporation incorporated under the laws of the State.

*"Company Documents"* means the Sublease, the Facility Management Agreement, the SUNY Agreement, the Loan Agreement, the Mortgage, the Guaranty, the Assignment of Rents, the Assignment of Agreements, the Bond Purchase Agreement, the Tax Compliance Agreement, the Environmental Compliance and Indemnification Agreement, the Acknowledgment and the other documents, certificates and instruments executed and delivered by the Company in connection with the issuance of the Bonds.

*"Completion Certificate"* means the certificate executed by an Authorized Officer of the Company in accordance with Section 4.5 of the Indenture.

*"Construction Fund"* means the fund established under Section 4.1 of the Indenture.

*"Computation Period"* means "Computation Period" as defined in the Tax Compliance Agreement.

*"Condemnation"* means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under Governmental Authority.

*"Continuing Disclosure Agreement"* means the Continuing Disclosure Agreement dated as of June 1, 2011, by and between the Company and the Trustee, as amended or supplemented from time to time.

*"Cost" or "Costs"* means all those costs and items of expense relating to (i) the cost of preparing the Plans and Specifications (including any preliminary study or planning of the Project or any aspect thereof); (ii) all costs of constructing, reconstructing and equipping the Project (including architectural, engineering and supervisory services with respect to the Project); (iii) all fees, taxes, charges and other expenses for recording or filing, as the case may be, the Bond Documents, any other agreement contemplated thereby and any financing statements that the Issuer and the Trustee may deem desirable in order to perfect or protect the Issuer's or the Company's respective interest in the Project, and any security interests contemplated by the Bond Documents; (iv) all fees and expenses in connection with any actions or proceedings that the Issuer or the Trustee may deem desirable in order to perfect or protect the Issuer's, the Trustee's or the Company's respective interest in the Project; (v) eligible working capital costs; (vi) all legal, accounting and any other fees, costs and expenses incurred in connection with the preparation, printing, reproduction, authorization, issuance, execution, sale and distribution of the Bonds and the Bond Documents and all other documents in connection herewith or therewith, with the acquisition of a leasehold or fee simple interest in the Project and with any other transaction contemplated by the Loan Agreement or the other Bond Documents; (vii) the administrative fee, if any, of the Issuer and the Trustee; (viii) all appraisal and survey costs; (ix) eligible or approved soft costs contemplated by the Bond Documents and all other documents in connection therewith; and (xi) reimbursement to the Company for any of the above-enumerated costs and expenses.

*"Costs of Issuance Fund"* means the fund so designated and created pursuant to Section 4.1 of the Indenture.

*"Costs of the Project"* means all those costs and items of expense relating to (i) the cost of preparing the Plans and Specifications (including any preliminary study or planning of the Project or any aspect thereof); (ii) all costs of constructing, reconstructing and equipping the Project (including architectural, engineering and supervisory services with respect to the Project); (iii) all fees, taxes, charges and other expenses for recording or filing, as the case may

be, the Bond Documents or the documents relating to the Outstanding Prior Bonds, any other agreement contemplated thereby and any financing statements to perfect or protect the Issuer's or the Company's respective interest in the Project, and any security interests contemplated by the Bond Documents or the documents relating to the Outstanding Prior Bonds; (iv) all fees and expenses in connection with any actions or proceedings that the Issuer or the Trustee may deem desirable in order to perfect or protect the Issuer's, the Trustee's or the Company's respective interest in the Project; (v) eligible working capital costs; (vi) all legal, accounting and any other fees, costs and expenses incurred in connection with the preparation, printing, reproduction, authorization, issuance, execution, sale and distribution of the Bonds and the Bond Documents and all other documents in connection herewith or therewith or of the Outstanding Prior Bonds and the documents relating thereto, with the acquisition of a leasehold or fee simple interest in the Project and with any other transaction contemplated by the Loan Agreement or the other Bond Documents or by the documents relating to the Outstanding Prior Bonds; (vii) the administrative fee, if any, of the Issuer and the Trustee; (viii) all appraisal and survey costs; (ix) eligible or approved soft costs contemplated by the Bond Documents, all other documents in connection therewith or the documents relating to the Outstanding Prior Bonds; and (xi) reimbursement to the Company for any of the above-enumerated costs and expenses.

*"Debt Service Coverage Ratio"* means, with respect to any Fiscal Year, the ratio of aggregate Project Revenues during such Fiscal Year to the sum of Debt Service Payments, Capital Reserves payments, Operating Expense payments, all non-deferred College Expense payments and all other payments required to be made pursuant to the Principal Agreements during such Fiscal Year.

*"Debt Service Payment"* means, with respect to any Bond Payment Date, (i) the interest payable on such Bond Payment Date on all Bonds then Outstanding, plus (ii) the principal of, or Redemption Price of, or Sinking Fund Installments payable on, all Bonds on such Bond Payment Date.

*"Default"* means any Event of Default under either the Indenture or the Loan Agreement or any event or condition which, with the giving of notice or the passage of time or both, would constitute an Event of Default under either the Indenture or the Loan Agreement.

*"DTC"* means Depository Trust Company.

*"Environmental Compliance and Indemnification Agreement"* means the Environmental Compliance and Indemnification Agreement dated as of June 1, 2011 by the Company in favor of the Issuer and the Trustee, as amended or supplemented from time to time.

*"Equipment"* means all furniture, furnishings, machinery and other tangible personal property in and around the Improvements and financed in whole or in part with proceeds of the Outstanding Prior Bonds.

*"Event of Bankruptcy"* means the filing of a petition in bankruptcy or the filing of a proceeding under the United States Bankruptcy Code or any other applicable insolvency, reorganization or bankruptcy law by or against the Company, any affiliates thereof, any guarantor of the Bonds or the Issuer, as debtor.

*"Event of Default"* with respect to the Loan Agreement, has the meaning given to such term in Section 30(a) thereof and with respect to the Indenture, Section 8.1 thereof.

*"Extraordinary Services"* and *"Extraordinary Expenses"* means all services rendered and all expenses incurred by the Trustee or any Paying Agent under the Indenture other than Ordinary Services and Ordinary Expenses, including reasonable fees and disbursements of Trustee's counsel.

*"Facility Management Agreement"* means that certain Facility Management Agreement, dated as of July 1, 2009, by and between the Company and SUNY, as amended or supplemented from time to time.

*"Fiscal Year"* means the twelve (12) month period beginning on July 1 in any year or such other fiscal year as the Company may select from time to time.

**"Governmental Authority"** means the United States of America, the State, any other state or any political subdivision of any of them, and any agency, department, commission, board, bureau or instrumentality of any of them, having jurisdiction over the Issuer, the Trustee, the Company or the Project.

**"Government Obligations"** means (i) direct obligations of the United States of America or (ii) obligations, the full and timely payment of the principal and interest of which are guaranteed by the United States of America, which are not subject to redemption by the issuer thereof prior to their stated redemption.

**"Governmental Requirements"** means any present and future laws, rules, orders, ordinances, regulations, statutes, requirements and executive orders applicable to the Project of the United States, the State and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them, now existing or hereafter created, and having or asserting jurisdiction over the Project or any part thereof.

**"Gross Proceeds"** means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance claim or Condemnation award.

**"Gross Revenues"** means all Project Revenues, issues, profits, revenues, income, receipts, moneys and royalties derived from all license, lease or rental arrangements for dormitory rooms in the Project, operating revenues and gains from or relating to the Project, determined in accordance with generally accepted accounting principles, including Federal or State grant or other programs, insurance and Condemnation payments and awards and amounts received under the SUNY Agreement and Facility Management Agreement, and also including investment income on all funds and accounts (except the Rebate Fund) held by the Trustee under the Indenture, and all proceeds thereof and rights to receive the same, but excluding (i) any Restricted Gift, or (ii) any income derived from the investment of any such Restricted Gift.

**"Ground Lease"** means that certain Ground Lease dated as of July 1, 2009, by and between SUNY and the Association with respect to the Land, as amended or supplemented from time to time.

**"Guaranty"** means the Guaranty Agreement dated as of June 1, 2011, from the Company to the Trustee, as amended or supplemented from time to time.

**"Holder" or "Holder of Bonds"** means Bondowner.

**"Improvements"** means the approximately 225,000 square foot student housing complex consisting of approximately 507 beds, together with related infrastructure improvements, including, but not limited to, roadway, sewer, water and related improvements.

**"Indebtedness"** means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit (other than letters of credit collateralized by cash or cash equivalents, but only to the extent of the amount of such cash or cash equivalents), or for the deferred purchase price of property for which such Person or its assets is liable, (b) all outstanding amounts under a loan agreement, letter of credit (other than letters of credit collateralized by cash or cash equivalents, but only to the extent of the amount of such cash or cash equivalents), or other credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners, members (or other equity holders) or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all obligations under leases that constitute capital leases for which such Person is liable, (e) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss, and (f) all Indebtedness referred to in clauses (a), (b), (c), (d) or (e) above guaranteed directly or indirectly in any manner by such Person.

**"Indenture"** means the Trust Indenture dated as of June 1, 2011, by and between the Issuer and the Trustee, entered into in connection with the issuance, sale, delivery and payment of the Bonds and the security therefor as amended or supplemented from time to time.

*"Independent Counsel"* means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full-time employee of the Issuer, the Company or the Trustee.

*"Information Report"* means Form 8038 used by the issuers of certain tax-exempt bonds to provide the Internal Revenue Service with the information required.

*"Initial Bond"* or *"Initial Bonds"* means the Series 2011A Bonds and the Series 2011B Bonds.

*"Interest Account"* means the account established in the Bond Fund pursuant to Section 4.1 of the Indenture.

*"Interest Payment Date"* means April 1 and October 1 of each year, commencing April 1, 2012.

*"Issuer"* means the (i) Buffalo and Erie County Industrial Land Development Corporation, its successors and assigns, and (ii) any local development corporation resulting from or surviving any consolidation or merger to which the Issuer or its successors may be a party.

*"Issuer Documents"* means the Bond Purchase Agreement, the Bonds, the Indenture, the Loan Agreement, the Pledge and Assignment, the Assignment of Mortgage, the Tax Compliance Agreement and the Information Report.

*"Issuer Fee"* means the fee payable to the Issuer attributable to the issuance of the Bonds, as more particularly described in Schedule A attached to the Loan Agreement and made a part thereof.

*"Land"* means the approximately 3.9 acres of land located at the corner of Rockwell Road and Grant Street in the City of Buffalo, Erie County, New York, as more particularly described in Exhibit A attached to the Mortgage.

*"Lien"* means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including, but not limited to, the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions and other similar title exceptions and encumbrances, including, but not limited to, mechanics', materialmen's, warehousemen's, carriers' and other similar encumbrances, affecting real property. For the purposes of this definition, a Person shall be deemed to be the owner of any Property that it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

*"Loan Agreement"* means the Loan Agreement dated as of June 1, 2011, between the Issuer and the Company, as amended or supplemented from time to time.

*"Loan Payments"* means the loan payments payable by the Company pursuant to Section 7(a) of the Loan Agreement.

*"Majority of Owners"* means the Owners of more than fifty percent (50%) of the principal amount of all Outstanding Bonds as evidenced by an instrument or instruments executed by said Owners in accordance with the Indenture, and received by the Trustee. Unless an Event of Default has occurred and is continuing or the context requires otherwise, the Company shall be responsible for obtaining any such instruments from a Majority of Owners.

*"Management Committee"* has the meaning given to such term in the Facility Management Agreement.

*"Moody's"* means Moody's Investors Service, Inc., a Delaware corporation, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated in writing by the Company.

*"Mortgage"* means the Leasehold Mortgage and Security Agreement dated as of June 1, 2011, granted by the Company to the Issuer, as amended or supplemented from time to time.

*"Mortgaged Property"* means the real and personal property described in Section 2.01 of the Mortgage and subject to the Lien created thereby.

*"Net Proceeds"* means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such Gross Proceeds.

*"Office of the Trustee"* means the principal corporate trust office of the Trustee as specified in the Indenture or at such other address as Trustee shall designate.

*"Official Statement"* means the Official Statement dated May 26, 2011, delivered in connection with the offering and sale of the Initial Bonds.

*"Operating Account"* means the account established by the Company pursuant to Section 10(c) of the Loan Agreement.

*"Operating Expense"* means the aggregate of the following expenses incurred in connection with or arising from the ownership, operation, management, repair, maintenance and use or occupancy of the Project: (i) license and permit fees, real estate taxes, assessments and payments in lieu thereof, and any other charges of any kind or nature imposed or assessed against the Project by any Governmental Authority; (ii) legal, accounting, engineering and other professional and consulting fees and disbursements; (iii) accounts payable to third-party contractors and vendors providing labor, material, services and equipment to the Project; (iv) premiums for insurance paid with respect to the Project or the operations thereof; (v) costs of capital maintenance, repairs, reserves and replacements of any equipment dedicated to the Project; (vi) service contracts and public utility charges not supplied by the College to the Project; and (vii) costs of credit reports, bank charges and like matters. For purposes of the Bond Documents, Operating Expenses shall include College Expenses.

*"Operation and Maintenance Fund"* means the fund so designated and created pursuant to Section 4.1 of the Indenture.

*"Opinion of Bond Counsel"* means an approving legal opinion given by Bond Counsel with respect to the validity, binding nature and enforceability of the Bonds.

*"Opinion of Counsel"* means a written opinion of counsel who is acceptable to the Issuer and the Trustee. In rendering any such written opinion, counsel may rely upon certificates from appropriate individuals with respect to relevant factual matters, *provided that* nothing has come to their attention which would lead them to believe that any of the representations contained in any such Certificate are inaccurate in any respect.

*"Ordinary Services"* and *"Ordinary Expenses"* means those services normally rendered and those expenses normally incurred by a trustee or paying agent, as the case may be, under instruments similar to the Indenture, including reasonable fees and disbursements of counsel for the Trustee.

*"Outstanding"* or *"Bonds Outstanding"* or *"Outstanding Bonds"* mean all Bonds that have been authenticated by the Trustee and delivered by the Issuer under the Indenture, or any Supplemental Indenture, except: (a) any Bond cancelled by the Trustee because of payment or redemption prior to maturity; (b) any Bond deemed paid in accordance with the provisions of Section 3.1 of the Indenture, except that any such Bond shall be considered Outstanding until the maturity date thereof only for the purposes of being exchanged or registered; (c) any Bond for the redemption of which there has been separately set aside and held in the Bond Fund moneys in an amount sufficient to effect payment of the principal and applicable Redemption Price thereof, together with accrued interest on such Bond to the Redemption Date, in accordance with Section 3.1(f) of the Indenture, (d) any Bond in lieu of or in substitution for which another Bond shall have been authenticated and delivered pursuant to Article II of the Indenture, unless proof satisfactory to the Trustee is presented that any Bond, for which a Bond in lieu of or in substitution therefor shall have been authenticated and delivered, is held by a bona fide purchaser, as that term is defined in Article 8 of the Uniform Commercial Code of the State as amended, in which case both the Bond so substituted and replaced and the Bond or Bonds so authenticated and delivered in lieu thereof or in substitution therefor shall be deemed Outstanding.

*"Outstanding Prior Bonds"* means the Prior Tax-Exempt Bonds and the Prior Taxable Bonds.

*"Owner"* means the registered owner of any Bond as shown on the registration books maintained by the Bond Registrar pursuant to the Indenture. For so long as the Bonds are held by DTC, the registered owner shall be Cede & Co.

*"Parity Bonds"* means the Initial Bonds and any series of Additional Bonds issued on parity with the Initial Bonds and any other series of Additional Bonds, if any, subsequently issued under the Indenture.

*"Paying Agent"* means the Trustee, acting as such, and any additional paying agent for the Bonds appointed pursuant to Article IX of the Indenture, their respective successors and any other corporation that may at any time be substituted in their respective places pursuant to the Indenture.

*"Permitted Encumbrances"* means when used in connection with the 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 in accordance with the Loan Agreement;
- (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) The Mortgage, the Assignment of Rents and the Assignment of Agreements;
- (vi) Security interests, Liens and other encumbrances to secure the purchase price of any equipment or furnishings, and any other Liens, pledges, charges and encumbrances;
- (vii) Any instrument recorded pursuant to Section 21 of the Loan Agreement; and
- (viii) Such other encumbrances, defects, and irregularities to which the prior written consent of the Issuer and the Trustee has been obtained.

*"Permitted Investments"* has the meaning given to such term in Section 4.18 of the Indenture.

*"Person"* or *"Persons"* means an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision or branch thereof.

*"Plans and Specifications"* means the plans and specifications for the Improvements prepared for the Company as revised from time to time.

*"Pledge and Assignment"* means the Pledge and Assignment with Acknowledgment dated as of June 1, 2011, from the Issuer to the Trustee with the Acknowledgment, as amended or supplemented from time to time.

*"Pledged Revenue Fund"* means the fund so designated and created pursuant to Section 4.1 of the Indenture

*"Pledged Revenues"* means (i) Gross Revenues and all amounts payable by, or on behalf of, the Company pursuant to the Company Documents, including all Loan Payments made or to be made under the Loan Agreement (except payments made with respect to the Unassigned Rights), (B) all payments received by the Trustee from or on behalf

of the Company, (C) all other amounts pledged to the Trustee by the Issuer or the Company to secure the Bonds or performance of their respective obligations under the Loan Agreement and the Indenture, (D) the Net Proceeds (except proceeds with respect to the Unassigned Rights) of insurance and Condemnation awards with respect to the Project, (E) the Net Proceeds received by the Trustee with respect to any other collateral granted to the Trustee to secure the Bonds, (F) all moneys and investments held from time to time in each fund and account established under the Indenture, and investment income thereon, except (1) for moneys and investments held by the Rebate Fund, (2) moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of which has been duly given, and (3) as specifically otherwise provided, and (G) all other moneys received or held by the Trustee for the benefit of the Holders of Bonds pursuant to the Indenture. Notwithstanding anything to the contrary, amounts held in the Rebate Fund shall *not* be considered Pledged Revenues and shall not be subject to the Lien of the Indenture, and amounts held therein shall not secure any amount payable on the Bonds.

*"Preliminary Official Statement"* means the Preliminary Official Statement dated May 18, 2011, delivered in connection with the offering and sale of the Initial Bonds.

*"Principal Account"* means the account established in the Bond Fund pursuant to Section 4.1 of the Indenture.

*"Principal Agreements"* means the Indenture, the Ground Lease, the Sublease and the Loan Agreement.

*"Principal User"* means a principal user as that term is defined in the Tax Compliance Agreement.

*"Prior Tax-Exempt Bonds"* means, collectively, the Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2009A-1, the Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2009A-2, the Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Subordinate Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2009B, the Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2010A-1, and the Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2010A-2.

*"Prior Taxable Bonds"* means the Buffalo and Erie County Industrial Land Development Corporation Taxable Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2009A-3 and the Buffalo and Erie County Industrial Land Development Corporation Taxable Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2009A-4.

*"Prior Trustee"* means Manufacturers and Traders Trust Company, as trustee of the Outstanding Prior Bonds.

*"Project"* means the Land, the Improvements and the Equipment.

*"Project Bonds"* has the meaning given to such term in Section 2.12 of the Indenture.

*"Project Revenues"* means license fees and other charges to be paid by the occupants of the Project.

*"Property"* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

*"Rating Agency"* means Standard & Poor's and any of its successors or assigns.

*"Rebate Amount"* means with respect to the Bonds, the amount computed as described in the Tax Compliance Agreement.

*"Rebate Fund"* means the Fund so designated pursuant to Section 4.1 of the Indenture.

*"Record Date"* means the close of business on the fifteenth (15th) day of the calendar month next preceding an Interest Payment Date.



*“Redemption Account”* means the account established in the Bond Fund pursuant to Section 4.1 of the Indenture.

*“Redemption Date”* means, when used with respect to a Bond, the date upon which a Bond is scheduled to be redeemed pursuant to the Indenture.

*“Redemption Price”* means, when used with respect to a Bond, the principal amount thereof plus the applicable premium, if any, payable upon the prior redemption thereof pursuant to the Indenture.

*“Refunding Bonds”* has the meaning given to such term in Section 2.12 of the Indenture.

*“Related Person”* means with respect to any Principal User, a Person who is a related person as determined in Section 144(a)(3) of the Code by reference to Sections 267, 707(b) and 1563(a) of the Code, except that fifty percent (50%) is substituted for eighty percent (80%) in Section 1563(a).

*“Repair and Replacement Fund”* means the Fund so designated pursuant to Section 4.8 of the Indenture.

*“Repair and Replacement Fund Requirement”* means \$4,600,000 and shall initially be funded in six annual installments commencing in the Fiscal Year ended June 30, 2012 in the following amounts \$600,000 for the Fiscal Year ended June 30, 2012, \$600,000 for the Fiscal Year ended June 30, 2013, \$700,000 for the Fiscal Year ended June 30, 2014, \$800,000 for the Fiscal Year ended June 30, 2015, \$900,000 for the Fiscal Year ended June 30, 2016 and \$1,000,000 for the Fiscal Year ended June 30, 2017.

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

*“Schedule of Definitions”* means the words and terms set forth in the Schedule of Definitions attached to the Indenture, as amended or supplemented from time to time.

*“Security Documents”* means the Guaranty, the Mortgage, the Assignments of Rents and the Assignment of Agreements.

*“Series 2011A Bonds”* means the Buffalo and Erie County Industrial Land Development Corporation Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2011A in the aggregate principal amount of \$43,875,000.

*“Series 2011B Bonds”* means the Buffalo and Erie County Industrial Land Development Corporation Taxable Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2011B in the aggregate principal amount of \$410,000.

*“Sinking Fund Installments”* means the mandatory sinking fund installments payable by the Company pursuant to Section 3.1(b) of the Indenture.

*“Standard & Poor’s”* means Standard & Poor’s Ratings Group, a division of The McGraw-Hill Companies, Inc., its successors and assigns, and, if such rating agency shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated in writing by the Company.

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

*“Stated Maturity”* means, when used with respect to any Bond or any installment of interest thereon, the date specified in such Bond as the fixed date on which the principal of such Bond or such installment of interest on such Bond is due and payable.

## Appendix B

**"Sublease"** means that certain Sublease Agreement dated as of July 1, 2009, between the Association and the Company, as amended or supplemented from time to time in accordance with its terms.

**"Subordinate Bonds"** means any series of Additional Bonds issued pursuant to a Supplemental Indenture that provides that such series of Bonds is subordinate to the Parity Bonds and the Lien of the Indenture and Trust Estate securing any Parity Bonds.

**"Supplemental Indenture"** means any indenture amending or supplementing the Indenture which may be entered into in accordance with the Indenture.

**"SUNY"** means the State University of New York.

**"SUNY Agreement"** means that certain Agreement dated as of June 1, 2011, by and between the Company and SUNY, as amended or supplemented from time to time.

**"Surplus Fund"** means the Fund so designated pursuant to Section 4.1 of the Indenture.

**"Tax Compliance Agreement"** means the Tax Compliance Agreement dated the Closing Date executed by the Company and the Issuer regarding, among other things, the restrictions prescribed by the Code in order for interest on the Series 2011A Bonds to remain excludable from gross income for federal income tax purposes.

**"Title Policy"** means leasehold mortgagee title policy issued by Stewart Title Company to the Issuer and the Trustee, as of the Closing Date.

**"Transfer Date"** means September 25 (or if not a Business Day, the next succeeding Business Day) and March 25 (or if not a Business Day, the next succeeding Business Day), commencing September 25, 2011.

**"Trustee"** means Manufacturers and Traders Trust Company, a banking corporation organized and existing under the laws of the State of New York, having an office for the transaction of business located at One M&T Plaza, 7th Floor, Buffalo, New York 14203, or any successor trustee or co-trustee acting as trustee under the Indenture.

**"Trust Estate"** means all Property which may from time to time be subject to a Lien in favor of the Trustee created by the Indenture or any other Issuer Document.

**"UCC"** means the State Uniform Commercial Code as amended from time to time.

**"Unassigned Rights"** means:

- (i) the right of the Issuer in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications required to be delivered to the Issuer under the Loan Agreement;
- (ii) the right of the Issuer to grant or withhold any consents or approvals required of the Issuer under the Loan Agreement;
- (iii) the right of the Issuer to enforce in its own behalf the obligation of the Company to complete the Project;
- (iv) the right of the Issuer to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Project shall always constitute a qualified "project" as defined in and as contemplated by the Act;
- (v) the right of the Issuer to require any indemnity from any Person;
- (vi) the right of the Issuer in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2, 3, 4, 5, 6, 7(a)(i), (vi), (vii),

and (viii), 7(c), 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27, 29, 30, 36, 37, 39, 40, 41 and 44 of the Loan Agreement; and

(vii) the right of the Issuer in its own behalf to declare an Event of Default under Section 30 of the Loan Agreement or with respect to any of the Issuer's Unassigned Rights.

Notwithstanding the preceding sentence, to the extent the obligations of the Company under the Sections of the Loan Agreement listed above do not relate to the payment of moneys to the Issuer for its own account or to the members, officers, agents and employees of the Issuer for their own account, such obligations, upon assignment of the Loan Agreement by the Issuer to the Trustee pursuant to the Assignment, shall be deemed to and shall constitute obligations of the Company to the Issuer and the Trustee, jointly and severally, and either the Issuer or the Trustee may commence an action to enforce the Company's obligations under the Loan Agreement.

"Underwriter" means M&T Securities, Inc., as original purchaser of the Initial Bonds on the Closing Date.

## SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

The following is a summary of certain provisions of the Loan Agreement pertaining to the obligations of the Company and the Project. This summary does not purport to be complete and reference is made to the Loan Agreement for full and complete descriptions of the terms thereof.

### Compliance with Indenture

The Issuer and the Company agree that the Loan Agreement is executed in part to induce the purchase by others of the 2011 Bonds. Accordingly, all covenants and agreements on the part of the Issuer and the Company set forth in the Loan Agreement are declared to be for the benefit of the Trustee and the Owners from time to time. The Company covenants and agrees that it will comply with the provisions of the Indenture with respect to the Company and that the Trustee will have the power, authority, rights and protections provided in the Indenture.

(Section 2)

### Project Completion

The Company represents that the construction and equipping of the Project have been completed and that all permits and approvals of Governmental Authorities necessary for the use and occupancy of the Project have been obtained.

(Section 3)

### Use of Proceeds in Construction Fund

(a) Subject to the conditions of the Loan Agreement and the Tax Compliance Agreement, the Issuer will, to the extent of moneys available in the Construction Fund, cause the Company to be reimbursed for, or pay, any costs and expenses incurred by the Company which constitute Costs of the Project. To the extent that moneys are available therefor, moneys in the Construction Fund shall be disbursed in accordance with the terms of the Indenture. Except as otherwise disclosed to, and agreed to by, the Issuer and the Trustee in writing, delivery of a Construction Fund requisition by the Company shall constitute a representation by the Company that it has complied with all provisions of the Loan Agreement and the Tax Compliance Agreement, including, but not limited to those related to the use of the Project and certain non tax-exempt purposes.

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

(c) The Company agrees to retain all documents pertaining to expenditures for items which constitute Costs of the Project for at least seven (7) years after the date of completion of the Project to which such documents relate. All such documents shall be made available to the Issuer and its authorized representatives for inspection upon reasonable prior notice.

(d) The Company acknowledges and agrees that disbursements from the Construction Fund are to be made by the Trustee and shall be made in accordance with the Indenture only upon receipt by the Trustee of the documents required by the Indenture to be executed and delivered in connection with such disbursements.

(e) The Project shall be deemed to be complete upon delivery to the Issuer and the Trustee of a Completion Certificate signed by an Authorized Officer of the Company which certificate shall be delivered as soon as practicable after the completion of such Project. Any such Certificate shall comply with the requirements of Section 4.5 of the Indenture. The moneys, if any, remaining in the Construction Fund after such Project has been deemed to be complete shall be paid as provided in Section 4.5 of the Indenture.

(Section 4)

### **Compliance with Governmental Requirements**

The Company will comply with (i) all Governmental Requirements which, if not complied with, could adversely affect the Company, its operation or financial condition or title to its Properties in any material respect, and (ii) any requirement of an insurance company writing insurance thereon irrespective of the nature of the work required to be done. Anything contained in the Loan Agreement to the contrary notwithstanding, the Company will have the right to contest the validity of any Governmental Requirement or the application thereof at the Company's sole cost and expense. During such contest, compliance with any such contested Governmental Requirement may be deferred by the Company, provided that prior to commencing any action or proceeding, administrative or judicial, contesting such Governmental Requirement the Company notifies the Issuer and the Trustee of the Company's intention to contest such Governmental Requirement and, if the Issuer or the Trustee reasonably requests, furnishes to the Issuer and the Trustee a surety bond, moneys or other security, satisfactory to the Issuer and the Trustee (each in its sole discretion), securing compliance with the contested Governmental Requirement and payment of all interest, penalties, fines, fees and expenses resulting from or in connection with such contest or the failure of the Company to comply with the contested Governmental Requirement. Any such action or proceeding instituted by the Company will be commenced as soon as is reasonably possible after the assertion of the applicability to the Project or any part thereof of the contested Governmental Requirement by a Governmental Authority, and will be prosecuted to final adjudication or other final disposition with reasonable dispatch. Notwithstanding the furnishing of any bond, deposit or other security, the Company promptly will comply with any such Governmental Requirement and compliance will not be deferred if at any time the Project or any part thereof to which such contested Governmental Requirement relates would, in the reasonable judgment of the Issuer or the Trustee, be in substantial danger by reason of the Company's noncompliance with such Governmental Requirement 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 Issuer or the Trustee under the Loan Agreement or under the Indenture or the Mortgage, (ii) the ability of the Issuer to enforce its rights thereunder, (iii) the ability of the Issuer or the Trustee to fulfill the terms of any covenants or perform any of its obligations under the Loan Agreement or under the Indenture, or (iv) the ability of the Company to fulfill the terms of any covenants or perform any of its obligations under the Loan Agreement or under the Mortgage.

(Section 6)

### **Financial Obligations**

(a) Except to the extent that moneys are available therefor under the Indenture or under the Loan Agreement, including moneys in the funds established under the Indenture, and interest accrued but unpaid on investments held in such funds, the Company unconditionally agrees to pay or cause to be paid, so long as Bonds are Outstanding, to or upon the order of the Issuer, from its general funds or any other moneys legally available to it:

(i) On or before the date of delivery of the 2011 Bonds, the Issuer Fee agreed to by the Issuer and the Company in connection with issuance of the 2011 Bonds;

(ii) On or before the date of delivery of the 2011 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 2011 Bonds, and other costs in connection with the issuance of the 2011 Bonds;

(iii) On the tenth day preceding a Bond Payment Date an amount sufficient to provide funds to pay the principal of, and interest on, the 2011 Bonds on such Bond Payment Date;

(iv) At least ten (10) days prior to any date on which the Redemption Price of Bonds previously called for redemption, is to be paid, the amount required to pay the Redemption Price of such Bonds;

(v) Promptly after notice from the Issuer, 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 Issuer (A) for the Issuer Fee then unpaid, (B) to reimburse the Issuer for any expenses or liabilities incurred by the Issuer pursuant to Section 24, 26 or 29 of the Loan Agreement, (C) to reimburse the Issuer for any external costs or expenses incurred by it attributable to the

issuance of the 2011 Bonds or the financing or construction of the Project, and (D) for the costs and expenses incurred by the Issuer to compel full and punctual performance by the Company of all the provisions of the Loan Agreement or of the Mortgage or of the Indenture in accordance with the terms thereof;

(vi) Promptly upon notice from the Trustee or any Paying Agent, to pay or reimburse for the fees and expenses of the Trustee and any Paying Agent for fees, charges and expenses thereof pursuant to the Indenture;

(vii) Promptly upon demand by the Issuer (a copy of which will be furnished to the Trustee), all amounts required to be paid by the Company as a result of an acceleration pursuant to Section 30 of the Loan Agreement;

(viii) Promptly upon demand by the Issuer, the difference between the amount on deposit in the Rebate Fund available to be rebated in connection with the 2011A Bonds or otherwise available therefore under the Indenture 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 2011A Bonds; and

(ix) To the extent not otherwise set forth in Section 7(a) of the Loan Agreement, including, without limitation, in the event of any insufficiency, any amounts necessary to pay the principal or Redemption Price, if any, of, and interest on, the 2011 Bonds, on the dates, in the amounts, at the times and in the manner provided in or pursuant to the Indenture, whether at maturity, upon acceleration, redemption, purchase or otherwise.

The Issuer directs the Company, and the Company agrees, to make the payments required by Section 7(a) of the Loan Agreement as follows: (i) the payments required by paragraphs (a)(iii), (a)(iv), (a)(vii) and (a)(ix) of Section 7(a) of the Loan Agreement directly to the Trustee for deposit in the Pledged Revenue Fund and application in accordance with Section 4.5 of the Indenture and by paragraph (a)(viii) of Section 7(a) of the Loan Agreement directly to the Trustee for deposit and application in accordance with Section 4.12 of the Indenture; (ii) the payments required by paragraph (a)(ii) of Section 7(a) of the Loan Agreement directly to the Trustee for deposit in the Costs of Issuance Fund established under the Indenture, as directed by the Issuer; (iii) the payments required by paragraph (a)(vi) directly to the Trustee or Paying Agent, as the case may be; and (iv) the payments required by paragraphs (a)(i) and (a)(v) of Section 7(a) of the Loan Agreement directly to the Issuer.

(b) All moneys paid by the Company to the Trustee pursuant to the Loan Agreement or otherwise held by the Trustee will be deposited and applied in accordance with the Sections 4.3 and 4.5 of the Indenture, *provided that* if an Event of Default has occurred and is continuing, all such moneys will be applied in accordance with Section 8.5 of the Indenture. Except as otherwise provided in the Indenture, the Trustee will hold such moneys in trust in accordance with the applicable provisions of the Indenture for the sole and exclusive benefit of the Holders of Bonds, regardless of the actual due date or applicable payment date of any payment to the Holders of Bonds.

(c) The Company will comply with the requirements of the Indenture regarding funding the Costs of Issuance Fund, the Repair and Replacement Fund and the Insurance and Condemnation Fund.

(d) The obligations of the Company 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 will 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 Company may otherwise have against the Issuer, the Trustee, the Trustee or any Holder of Bonds for any cause whatsoever including, without limiting the generality of the foregoing, failure of the Company to complete the Project or the completion thereof with defects, failure of the Company to occupy or use the Project, any declaration or finding that the 2011 Bonds are or the Indenture is invalid or unenforceable or any other failure or default by the Issuer or the Trustee; *provided, however*, that nothing in the Loan Agreement will be construed to release the Issuer from the performance of any agreements on its part in the Loan Agreement contained or any of its other duties or obligations, and in the event the Issuer will fail to perform any such agreement, duty or obligation, the Company may institute, subject to Section 9 of the Loan Agreement, such action as it may deem necessary to compel performance or recover damages for non-performance.

The Loan Agreement and the obligations of the Company to make payments thereunder are general obligations of the Company.

(e) The Company, if it is not then in default under the Loan Agreement and if no Event of Default would be caused thereby, will have the right to make voluntary prepayments of all or a portion of Loan Payments in any amount to the Trustee, to be applied to the Redemption Price. In the event of a voluntary payment, the amount so paid will be deposited in the Pledged Revenue Fund and applied in accordance with the Indenture. Upon any voluntary payment by the Company, the Issuer agrees to direct the Trustee to redeem Bonds in accordance with the Indenture; *provided, however*, that in the event such voluntary payment is in the sole judgment of the Issuer sufficient to pay all amounts then due under the Loan Agreement and under the Indenture, including the redemption of all Bonds Outstanding, the Issuer agrees, in accordance with the instructions of the Company, to direct the Trustee to redeem all Bonds Outstanding.

(Section 7)

#### **Financial Covenants; No Indebtedness Secured by Project or Gross Revenues**

(a) The Company will cause the Project to maintain at all times while the 2011 Bonds remain Outstanding a Debt Service Coverage Ratio of 1.10 to 1.00. At all times while the 2011 Bonds remain Outstanding, the Company will submit to the Trustee the Company's calculation of the Debt Service Coverage Ratio when it submits such calculation to SUNY in accordance with the terms of the SUNY Agreement, but in no event later than 120 days after the end of the Company's Fiscal Year.

(b) So long as any of the 2011 Bonds will remain Outstanding, the Company will not, nor will it permit any subsidiary to, directly or indirectly, (i) create, assume, incur or in any manner become or remain liable in respect to, any Indebtedness secured by the Project or the Gross Revenues; or (ii) create, assume, incur or suffer to exist or allow to be created, assumed or incurred or suffered to exist any Lien upon the Project or Gross Revenues, now owned or hereafter acquired, excepting, however, Permitted Encumbrances; *provided, however*, that notwithstanding the provisions of Section 8 of the Loan Agreement to the contrary, the Company may, in the ordinary course of its operations, make, modify, terminate and otherwise deal with student licenses for use of dormitory rooms included in the Project, without the consent of the Issuer or the Trustee, in a manner consistent with normal College practice, provided that no such actions on the part of the Company will waive, release, limit, modify or impair any obligations or liabilities of SUNY under the SUNY Agreement.

(Section 8)

#### **No Liability**

(a) All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Loan Agreement, the 2011 Bonds, the other Bond Documents and the other documents and instruments connected therewith will be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, agent or employee of the Issuer in his or her individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in the Loan Agreement, the Bond Documents and the 2011 Bonds or otherwise based upon or in respect to the Bond Documents and the 2011 Bonds or any documents supplemental thereto, or for any of the 2011 Bonds or for any claim based thereon or otherwise in respect thereof, will be had against any past, present or future member, director, officer, agent or employee, as such, of the Issuer, or any successor local development corporation, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, or any Person executing the Loan Agreement, the other Bond Documents and the 2011 Bonds either directly or through the Issuer or any successor to the local development corporation, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, it being expressly understood that the Issuer Documents and the 2011 Bonds will not constitute or give rise to a general obligation of the Issuer, but rather will constitute special limited obligations of the Issuer, payable solely from the Loan Payments received by the Issuer (except with respect to the Unassigned Rights) and other revenues or Property pledged under the Indenture, and that no such personal liability whatsoever will attach to, or is or will be incurred by, the Issuer or any such member, director, officer, agent or employee of the Issuer or of any such successor local development

corporation, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, or any Person executing the 2011 Bonds because of the creation of the indebtedness authorized thereby, or under or by reason of the obligations, covenants or agreements contained in the Bond Documents or in any of the 2011 Bonds or implied therefrom, and that any and all such personal liability of, and any and all such rights and claims against, the Issuer and every such member, director, officer, agent or employee because of the indebtedness authorized by the Loan Agreement, or under or by reason of the obligations, covenants or agreements contained in the Bond Documents or in any of the 2011 Bonds or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of and as a consideration for the execution of the Bond Documents and the issuance of the 2011 Bonds. The limitations on the obligations of the Issuer contained in Section 9 of the Loan Agreement by virtue of any lack of assurance required by Section 9(b) will not be deemed to prevent the occurrence and full force and effect of any Event of Default pursuant to Section 30 of the Loan Agreement.

(b) No order or decree of specific performance with respect to any of the obligations of the Issuer under the Loan Agreement will be sought or enforced against the Issuer unless (i) the party seeking such order or decree has first requested the Issuer in writing to take the action sought in such order or decree of specific performance, and ten (10) days will have elapsed from the date of receipt of such request, and the Issuer has refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, has failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (ii) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree will have placed in an account with the Issuer an amount or undertaking which, in the sole discretion of the Issuer, is sufficient to cover such reasonable fees and expenses, and (iii) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it or any of its members, directors, officers, agents or employees will be subject to potential liability, the party seeking such order or decree will (A) agree to indemnify and hold harmless the Issuer and its members, officers, directors, agents and employees against any liability incurred as a result of its compliance with such demand, and (B) if requested by the Issuer, furnish to the Issuer security which, in the sole discretion of the Issuer, is sufficient to protect the Issuer and its members, directors, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

(c) The obligations and agreements of the Issuer contained in the Loan Agreement will not constitute or give rise to an obligation of the State or any municipality or subdivision thereof (including Erie County, New York) and neither the State nor any municipality or political subdivision thereof (including Erie County, New York) will be liable thereon.

*(Section 9)*

**Pledge of Gross Revenues; Application of Gross Revenues; Operating Account**

(a) As security for the payment of all liabilities and the performance of all obligations of the Company pursuant to the Loan Agreement, the Company continuously pledges, grants a security interest in and assigns to the Issuer the Gross Revenues, together with the Company's right to receive and collect the Gross Revenues and the proceeds of the Gross Revenues.

The Company represents and warrants that no part of the Gross Revenues or any right to receive or collect the same or the proceeds thereof is subject to any Lien or assignment and that the Gross Revenues assigned pursuant to the Loan Agreement are legally available to provide security for the Company's performance under the Loan Agreement. The Company covenants that, except in connection with the issuance of Additional Bonds pursuant to the Indenture, it will not create or permit the creation of any Lien on or other commitment of or with respect to the Gross Revenues or the Project.

(b) The Company agrees to collect and transfer the Gross Revenues, as the same are due, to the Trustee for deposit to the Pledged Revenue Fund and to no other account. The Company shall provide a Certificate of an Authorized Representative of the company and the Budget to the Trustee in accordance with Section 4.5 of the Indenture with respect to each transfer of Gross Revenues. The Company agrees that the Gross Revenues shall be used only for the purpose and in the manner provided in the Loan Agreement, or as provided in the Indenture.



(c) The Company will establish the Operating Account to be held separate and apart from all other accounts of the Company. The Company will pay Operating Expenses from the Operating Account. The Company will cause the depository of the Operating Account to enter into a written deposit account control agreement, which will be satisfactory in form and substance to the Trustee, and pursuant to which the depository will agree (i) that amounts on deposit therein constitute Pledged Revenues that the depository holds on deposit in the Operating Account for the Trustee for the benefit of the Owners of the 2011 Bonds, and (ii) to transfer the Pledged Revenues on deposit therein to the Trustee upon receipt from the Trustee of notice stating that delivery of such Pledged Revenues is required. Except for the Operating Account, the Company will not create any other accounts or deposit any moneys with a financial institution. If invested, moneys in the Operating Account will be invested in Permitted Investments.

(Section 10)

#### **Collection of Gross Revenues**

In the event that, pursuant to Section 30(b)(v) of the Loan Agreement, the Issuer notifies the Company that account debtors are to make payments directly to the Issuer or to the Trustee, such payments will be made directly to the Issuer or the Trustee notwithstanding anything contained in Section 11 of the Loan Agreement, but the Company will continue to deliver to the Trustee for deposit in accordance with Section 4.3 of the Indenture any payments received by the Company with respect to the Gross Revenues.

(Section 11)

#### **Covenants With Respect to SUNY Agreement and Facility Management Agreement**

The Company agrees and covenants with respect to the SUNY Agreement to (i) perform all of the obligations of the Owner (as defined in the SUNY Agreement) under the SUNY Agreement and enforce the timely payment, performance and observance of the covenants, conditions and terms thereof by SUNY; (ii) not later than August 15 of each Fiscal Year, commencing August 15, 2011, the Company will determine in good faith, based upon licenses actually entered into by the Company as of such date, whether or not the projected Project occupancy for such Fiscal Year will be sufficient to achieve the level of the Project Revenues required under the terms of the Facility Management Agreement, and will give written notice of such determination (including supporting computations in reasonable detail) to the Trustee, the Issuer and the Underwriter; if such determination is that the projected Project occupancy for such Fiscal Year will not be sufficient to achieve the level of Project Revenues required under the terms of the Facility Management Agreement, the Company will immediately give written notice thereof to SUNY and shall secure licenses from SUNY in accordance with the terms and conditions of the SUNY Agreement; (iii) obtain payment from SUNY of the then established license rates for the Project with respect to the units licensed by SUNY as will be necessary to achieve the level of Project Revenues required under Section 4.1 of the SUNY Agreement; (iv) take any and all action required to implement and enforce the SUNY Agreement; and (v) not consent to any amendment thereto or termination thereof without first obtaining the prior written consent of the Trustee.

The Company agrees and covenants with respect to the Facility Management Agreement to (i) perform all of the obligations of Owner under the Facility Management Agreement and enforce the timely payment, performance and observance of the covenants, conditions and terms thereof by SUNY as manager and the College; (ii) cause SUNY to transfer all Project Revenues to the Trustee in accordance with the Facility Management Agreement; (iii) take any and all action required to implement the Facility Management Agreement; and (iv) not consent to any amendment thereto or termination thereof without first obtaining the prior written consent of the Trustee.

(Section 12)

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

At or before the delivery by the Issuer of the 2011 Bonds, the Company will execute and deliver to the Issuer the Mortgage, in recordable form, mortgaging the Mortgaged Property acceptable to the Issuer.

The Company warrants and represents to the Issuer that (i) it has good and marketable leasehold title to the Land and Improvements and good and marketable title to the Equipment, free and clear of Liens and encumbrances, except Permitted Encumbrances, so as to permit it to have quiet enjoyment and use thereof for purposes hereof and the Company's programs, and (ii) the Company 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 and the Mortgaged Property for proper operation and utilization of the Project and the Mortgaged Property and for utilities required to serve the Project and such Mortgaged Property, 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 Company of the Project and the Mortgaged Property.

As a condition precedent to the Issuer's obligation to deliver such Bonds, the Company agrees to provide the Title Policy and a current survey or surveys, including a metes and bounds description, of such Mortgaged Property; certified to, among others, the Issuer, the Trustee and the issuer of the Title Policy and showing any easements to which the Mortgaged Property is subject.

The Company warrants, represents and covenants that (i) title to the Project and the Mortgaged Property will be kept free from any encumbrances, Liens or commitments of any kind, other than Permitted Encumbrances, (ii) the Project and the Mortgaged Property 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 (iii) to the extent applicable, has and will have its own separate and independent means of access, apart from any other Property owned by the Company or others; *provided, however*, that such access may be through common roads or walks owned by the Company used also for other parcels owned by the Company.

*(Section 13)*

**Consent to Pledge and Assignment**

The Company consents to and authorizes the assignment, transfer or pledge by the Issuer to the Trustee of the Issuer's rights to receive any or all of the payments required to be made pursuant to Section 7(a) of the Loan Agreement, any or all security interests granted by the Company under the Loan Agreement, including, without limitation, the security interest in the Gross Revenues given by the Company pursuant to Section 10 of the Loan Agreement, the Mortgage, any security interest in the fixtures, furnishings and equipment located on the Mortgaged Property and all funds and accounts established by the Indenture (other than the Rebate Fund) and pledged under the Indenture, in each case to secure any payment or the performance of any obligation of the Company under the Loan Agreement or arising out of the transactions contemplated by the Loan Agreement whether or not the right to enforce such payment or performance is specifically assigned by the Issuer to the Trustee. The Company further agrees that the Issuer may pledge and assign to the Trustee any and all of the Issuer's rights and remedies under the Loan Agreement. Upon any pledge and assignment by the Issuer to the Trustee authorized by Section 14 of the Loan Agreement, the Trustee will be fully vested with all of the rights of the Issuer so assigned and pledged and may thereafter exercise or enforce, by any remedy provided therefor by the Loan Agreement or by law, any of such rights directly in its own name. Any such pledge and assignment is limited to securing the Company's obligation to make all payments required under the Loan Agreement and to performing all other obligations required to be performed by the Company under the Loan Agreement. Any realization upon any Lien granted by the Loan Agreement not, by operation of law or otherwise, result in cancellation or termination hereof or the obligations of the Company under the Loan Agreement.

*(Section 14)*

**Additional Representations and Warranties**

The Company 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, the Mortgage, the SUNY Agreement, the Sublease, the Facility Management Agreement and the other Company Documents, (B) to incur the Indebtedness contemplated thereby and (C) to make the Lien on the Gross Revenues given by Section 10 of the Loan Agreement and to mortgage the Mortgaged Property; (ii) each of the Loan Agreement, the Mortgage, the SUNY Agreement, the Sublease, the Facility Management Agreement and the other Company Documents constitutes the valid and binding obligation of the Company enforceable in accordance with its terms, subject to bankruptcy, insolvency,

reorganization, moratorium or similar laws affecting or relating to the rights of creditors generally and general principles of equity; (iii) the execution and delivery of, consummation of the transaction contemplated by and performance of the Company's obligations under the Loan Agreement, the Mortgage, the SUNY Agreement, the Sublease, the Facility Management Agreement and the other Company Documents, including, but not limited to, the pledge of and security interest in the Gross Revenues made or granted pursuant to Section 10 of the Loan Agreement and the mortgaging of the Mortgaged Property, do not or did not violate, conflict with or constitute a default under the certificate of incorporation or by-laws of the Company or any indenture, mortgage, trust, or other commitment or agreement to which the Company 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, agency or other instrumentality or court having jurisdiction over the Company or any of its Properties; (iv) the SUNY Agreement, the Sublease and the Facility Management Agreement are in full force and effect and have not been modified or rescinded; (v) the Company is not in default under the SUNY Agreement, the Sublease or the Facility Management Agreement; and (vi) to the knowledge of the Company, no "event of default" or event which with notice of the passage of time would constitute an "event of default" under the Outstanding Prior Bonds, the Ground Lease, the SUNY Agreement, the Sublease or the Facility Management Agreement has occurred.

The Company warrants, represents and covenants (i) that the Gross Revenues are and will be free and clear of any Lien or charge thereon or with respect thereto, prior to, or of equal rank with, the pledge thereof made pursuant to the Loan Agreement, and (ii) that all corporate action on the part of the Company to authorize the pledge thereof and the granting of a security interest therein has been duly and validly taken. The Company further covenants that it will at all times, to the extent permitted by law, defend, preserve and protect such Lien and all of the rights of the Issuer and the Holders of Bonds thereunder against all claims and demands of all persons whomsoever.

(Section 15)

#### **Tax-Exempt Status of Company**

The Company 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 Company agrees that: (a) it will not perform any act or enter into any agreement which will adversely affect such federal income tax status and will conduct its operations in the manner which will conform to the standards necessary to qualify the Company as an exempt organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law; and (b) it will not perform any act, 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 exempt purposes of the Company, which could adversely affect the exclusion of interest on the 2011A Bonds from federal gross income pursuant to Section 103 of the Code.

(Section 16)

#### **Maintenance of Corporate Existence**

The Company covenants that it will (i) maintain its corporate existence, (ii) continue to operate as a not-for-profit corporation, (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, and (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 Company, with the prior written consent of the Issuer (which consent will not be unreasonably withheld) and the Trustee (in its sole discretion), may (A) sell or otherwise transfer all or substantially all of its assets to, or consolidate with or merge into, another organization or corporation which qualifies as an organization described in Section 501(c)(3) of the Code, or any successor provision of federal income tax law, (B) permit one or more corporations or any other organization to consolidate with or merge into it, or (C) acquire all or substantially all of the assets of one or more

corporations or other organizations. Notwithstanding the foregoing provisions of Section 18 of the Loan Agreement, no disposition, transfer, consolidation or merger otherwise permitted by the Loan Agreement will be permitted unless (1) the same would not in the opinion of Bond Counsel adversely affect the exclusion of interest on any 2011A Bond from gross income for purposes of federal income taxation; (2) the Company will not as a result thereof be in default under the Loan Agreement or under the SUNY Agreement, the Sublease or the Facility Management 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; (4) the surviving, resulting or transferee corporation of the Company assumes in writing all of the obligations of the Company under the Loan Agreement, under the Mortgage, the SUNY Agreement, the Sublease, the Facility Management Agreement and the other Bond Documents; and (5) the Company furnishes to the Issuer and the Trustee 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 will meet the requirements of the Act and such other certificates, opinions and documents as the Issuer and the Trustee may reasonably require to establish compliance with Section 18 of the Loan Agreement.

(Section 18)

#### **Use and Possession of the Project; Ground Lease and Sublease**

(a) Subject to the rights, duties and remedies of the Issuer under the Loan Agreement, the Company will have sole and exclusive control and possession of and responsibility for (i) the Project and the Mortgaged Property, (ii) the operation of the Project and the Mortgaged Property and supervision of the activities conducted therein or in connection with any part thereof, and (iii) the maintenance, repair and replacement of the Project and the Mortgaged Property; *provided, however*, that, except as otherwise limited by the Loan Agreement, the foregoing will not prohibit use of the Project or the Mortgaged Property by persons other than the Company or its staff or employees or SUNY, the College, the College's students, staff or faculty in furtherance of the Company's corporate purposes, if such use will not adversely affect the exclusion of interest on any 2011A Bonds from gross income for federal income tax purposes.

(b) The Company will observe and perform all terms, covenants and conditions on its part to be observed or performed under the Ground Lease and the Sublease Agreement and will not consent to any amendment or modification thereof without the prior written consent of the Trustee. The Company will promptly forward to the Trustee copies of any notice of default or of an occurrence which with notice or the passage of time will constitute a default given or received by the Company under the Ground Lease and the Sublease Agreement.

(Section 20)

#### **Sale of the Project or Mortgaged Property**

The Company covenants that it will not transfer, sell or convey the Project or the Mortgaged Property or any part thereof or interest therein, including development rights, without the prior approval of the Trustee (in its sole discretion) and the Issuer, *provided that* the Issuer will not approve such transfer, sale or conveyance unless (a) in the opinion of Bond Counsel, the same will not adversely affect the exclusion of interest on any 2011A Bond from gross income for federal income tax purposes, and (b) the Company pays to the Trustee either for deposit into the Bond Fund, or to purchase defeasance securities in accordance with Section 10.1 of the Indenture, an amount equal to the greater of:

(i) the amount, if any, which is sufficient to redeem or provide for payment in accordance with Section 10.1 of the Indenture of any Outstanding 2011A Bonds required to be redeemed or deemed paid in order to preserve the exclusion of interest on 2011A Bonds from gross income for federal income tax purposes; and

(ii) the lesser of (A) the net proceeds of such transfer, sale or conveyance or (B) a percentage of the Outstanding 2011A Bonds determined by dividing (1) the principal amount of 2011A Bonds issued to finance the portion of the Project being transferred, sold or conveyed (which principal amount will be reasonably determined by the Issuer) by (2) the aggregate principal amount of 2011A Bonds issued.

Notwithstanding the foregoing, the Company may remove equipment, furniture or fixtures that is part of the Project or the Mortgaged Property and was financed with the proceeds of the Outstanding Prior Bonds in accordance with Section 23 of the Loan Agreement.

*(Section 22)*

**Maintenance, Repair and Replacement**

The Company agrees that, throughout the term of the Loan Agreement, it will, at its own expense, hold, operate and maintain the Project and the Mortgaged Property or cause the Project and Mortgaged Property to be operated and maintained 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 will 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 Company will give the Issuer and the Trustee 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 the Mortgaged Property or a portion thereof. The Company will have the right to remove or replace any type of fixtures, furnishings and equipment in the Project or the Mortgaged Property which may have been financed by the proceeds of the sale of Bonds, *provided* the Company 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 and such substituted items remain subject to the first priority perfected Lien of the Mortgage and the Loan Agreement.

The Company further agrees that it will pay at its own expense all extraordinary costs of maintaining, repairing and replacing the Project and the Mortgaged Property except insofar as funds are made available therefor from proceeds of insurance, condemnation or eminent domain awards or from moneys in the Repair and Replacement Fund.

*(Section 23)*

**Covenant as to Insurance**

(a) At all times throughout the term of the Loan Agreement, including, without limitation, during any period of construction of the Project, the Company will maintain insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and, except as otherwise specified in the Loan Agreement, for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company, including, without limitation:

(i) (A) during any period of construction, reconstruction, renovation or improvement of the Project, Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form," including coverage therein for "completion and/or premises occupancy," and coverage for property damage insurance, and (B) All Risk Hazard Insurance with respect to the Project, all of which insurance will include coverage for removal of debris, insuring the buildings, structures, facilities, fixtures and other Property constituting a part of the Project against loss or damage to the Project by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) with policy limits equal at least to the lesser of (x) the value of the Project and all improvements thereon or thereto (exclusive of the fair market value of the land), or (y) the aggregate Outstanding principal amount of the 2011 Bonds, and at all times in an amount such that the proceeds of such insurance will be sufficient to prevent the Company or the Issuer from becoming a co-insurer of any loss under the insurance policies;

(ii) public liability insurance in accordance with customary insurance practices for similar operations with respect to the Project and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence during the first five (5) years in which the Initial Bonds are Outstanding and thereafter in a minimum amount calculated by adding three percent (3%) of the prior year's amount of insurance, which insurance (A) will also provide coverage of the Company's obligations of indemnity under Section 29 of the Loan Agreement; (B) may be effected under overall blanket or excess coverage policies of the Company or any affiliate thereof, *provided, however*, that at least \$1,000,000 is effected by a comprehensive liability insurance policy during the first five (5)

years in which the Initial Bonds are Outstanding and thereafter in a minimum amount calculated by adding three percent (3%) of the prior year's amount of insurance; and (C) shall not contain any provisions for a deductible amount in excess of \$1,000 or for risk retention in any amount in excess of \$1,000 by the Company;

(iii) workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company or the Issuer is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Company or any affiliate thereof, or any contractor or subcontractor performing work with respect to the Project; the Company will require that all said contractors and subcontractors maintain all forms or types of insurance with respect to their employees required by laws; and

(iv) boiler and machine property damage insurance with respect to any steam and pressure boilers and similar apparatus located at the Project from risks normally insured against under boiler and machinery policies and in amounts and with deductions customarily obtained for similar business enterprises and in each case approved by the Issuer.

(b) All insurance required by Section 24 of the Loan Agreement will be procured and maintained in financially sound and generally-recognized, responsible insurance companies authorized to write such insurance in the State.

(c) Each of the policies or binders evidencing the insurance required above to be obtained will:

(i) designate (except in the case of workers' compensation insurance) the Company, the Trustee, and the Issuer as additional insureds as their respective interests may appear, *provided, however*, that the insurance policies set forth in paragraph (a)(i) of Section 24 of the Loan Agreement will name only the Issuer and the Trustee in the mortgagee loss payable clause;

(ii) provide that there will be no recourse against the Issuer or the Trustee for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iii) provide that in respect of the respective interests of the Issuer and the Trustee in such policies, the insurance will not be invalidated by any action or inaction of the Company or any other Person and will insure the Issuer and the Trustee regardless of, and any losses will be payable notwithstanding, any such action or inaction;

(iv) provide that such insurance will be primary insurance without any right of contribution from any other insurance carried by the Issuer or the Trustee to the extent that such other insurance provides the Issuer or the Trustee, as the case may be, with contingent and/or excess liability insurance with respect to its respective interest as such in the Project;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change will not be effective as to the Issuer or the Trustee until at least thirty (30) days after receipt by the Issuer and the Trustee, respectively, of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

(vi) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Project would, in the prudent management of its Properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Project owned or operated by it.

(d) Concurrently with the original issuance of the 2011 Bonds, the Company will deliver or cause to be delivered to the Issuer and the Trustee certificates of insurance, and upon the written request of the Issuer or the Trustee, duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of Section 24 of the Loan Agreement. At least thirty (30) days prior to the expiration of any such

policy, the Company will furnish the Issuer and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by the Loan Agreement.

(e) The Company will, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Issuer or the Trustee to collect from insurers for any loss covered by any insurance required to be obtained by Section 24 of the Loan Agreement. The Company will not do any act, or suffer or permit any act to be done, whereby any insurance required by Section 24 of the Loan Agreement would or might be suspended or impaired.

(f) The insurance required to be maintained pursuant to Section 24 of the Loan Agreement will be subject to the review of the Insurance Consultant every two (2) years commencing June 30, 2013, and the Company agrees that it will follow any recommendations of the Insurance Consultant. In order to establish compliance with Section 24 of the Loan Agreement, the Company agrees that it will deliver to the Trustee bi-annually within three months after the end of the applicable Fiscal Year and upon any modification, renewal or replacement of any insurance required under Section 24 of the Loan Agreement, (i) a report of the Insurance Consultant setting forth a description of the insurance maintained, or caused to be maintained pursuant to Section 24 of the Loan Agreement (with copies of the policies or other evidence of such issuance attached to the report) and then in effect and stating whether, in the opinion of the Insurance Consultant, such insurance, the manner of providing such insurance and any reductions or eliminations of the amount of any insurance coverage during the Fiscal Years covered by such report comply with the requirements of Section 24 of the Loan Agreement and adequately protect the Project and the Company's operations, and (ii) a letter from the Insurance Consultant evidencing compliance with its recommendations. The Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed on the report and letter furnished by the Insurance Consultant and conforming to Section 24(f) of the Loan Agreement. The Trustee shall not have a duty to review the policies or other evidence of insurance and may conclusively rely on any report of the Insurance Consultant that complies with clause (i) of Section 24(f) of the Loan Agreement. The Trustee will notify the Company, the Issuer and the Bondholders of any failure by the Company to deliver a report of the Insurance Consultant to the Trustee. For purposes of Section 24(f) of the Loan Agreement, the term, "Insurance Consultant" means a Person which is appointed by the Company for the purpose of passing on questions related to insurance of the Company and for the Project, having the skill and experience necessary to render the particular report and recommendations required and having a favorable and professionally recognized reputation for such skill and experience, which Person does not control the Company or any affiliate thereof and is not controlled by or under common control with the Company or an affiliate.

**(g) THE ISSUER DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED IN THE LOAN AGREEMENT, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF THE COMPANY.**

*(Section 24)*

#### **Damage or Condemnation**

In the event of a taking of the Project or the Mortgaged Property or any portion thereof by eminent domain or condemnation, or of damage or destruction affecting all or part thereof, all property casualty insurance, condemnation or eminent domain proceeds will, if not applied to reimburse the Company for costs incurred to repair or restore the same, be paid to the Trustee for deposit in the Insurance and Condemnation Fund. All proceeds derived from an award for such taking or from property casualty insurance will be applied as provided below.

(i) If within one hundred eighty (180) days (or such longer period as the Issuer and the Company may agree) after the Issuer receives actual notice or knowledge of the taking or damage, the Company, the Trustee and the Issuer agree in writing that the Property or the affected portion thereof will be repaired, replaced or restored, the Company will 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 will be appropriate to the needs of the Company and approved in writing by the Trustee and the Issuer. The funds required for such repair, replacement or restoration will be paid, subject to such conditions and limitations as the Trustee and the Issuer may impose, from the proceeds of insurance, condemnation or eminent domain awards

received by reason of such occurrence and to the extent such proceeds are not sufficient, from funds to be provided by the Company.

(ii) If no agreement for the repair, restoration or replacement of the Property or affected portion will have been reached by the Trustee, the Issuer and the Company within such period, the proceeds then held by the Company will be paid the Trustee for deposit in the Bond Fund and the proceeds then held in the Insurance and Condemnation Fund will be transferred to the Bond Fund, whereupon such proceeds will be applied to the purchase or redemption of Outstanding Bonds in accordance with the Indenture.

(Section 25)

#### **Taxes and Assessments**

The Company will pay or cause to be paid, when due at its own expense, and hold the Issuer 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 the Project and its equipment. The Company will file exemption certificates as required by law. The Company agrees to exhibit to the Trustee and an Authorized Officer of the Issuer within ten (10) days after written demand by the Issuer or the Trustee, 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 will be deemed to be complete compliance with the requirements of the Loan Agreement if the Company sets aside such reserves as may be required by good accounting practice. Notwithstanding the foregoing, the Trustee or the Issuer, in each case in its sole discretion, after notice in writing to the Company, may pay any such charges, taxes and assessments if, in the reasonable judgment of the Issuer or the Trustee, the Project or any part thereof would be in substantial danger by reason of the Company'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 Issuer under the Loan Agreement or under the Indenture; (ii) the ability of the Issuer to enforce its rights thereunder; (iii) the ability of the Issuer to fulfill the terms of any covenants or perform any of its obligations under the Loan Agreement or under the Indenture; or (iv) the ability of the Company to fulfill the terms of any covenants or perform any of its obligations under the Loan Agreement. The Company agrees to reimburse the Trustee, or the Issuer for any such payment, with interest thereon from the date payment was made by the Trustee or the Issuer at a rate equal to the highest rate of interest payable on any investment held for the Bond Fund on the date such payment was made by the Trustee or the Issuer.

(Section 26)

#### **Annual Budget; Reporting Requirements; Access to Records**

(a) *Annual Budget.* On or before the date of issuance of the 2011 Bonds for the academic year commencing September 2011, and on or before the date that is ninety (90) days prior to the commencement of each academic year thereafter, the Company will prepare or cause to be prepared an Annual Budget for such academic year and will file a copy of such budget with the Trustee and the Underwriter. The Annual Budget of the Company will set forth revenues and expenses and capital expenditures by category in reasonable detail and demonstrate compliance with the Debt Service Coverage Ratio covenant for the applicable Fiscal Years. As and when determined necessary or appropriate by the Company, the Annual Budget will be amended and a copy of each revision will be promptly filed with the Trustee and the Underwriter.

(b) *Reporting Requirements.* The Company will furnish or cause to be furnished to the Issuer, the Underwriter, the Trustee and such other persons as the Issuer or the Trustee may request and to the Owners of the 2011 Bonds upon any Owner's written request to the Company:

(i) annually, within one hundred twenty (120) days after the end of the Company's Fiscal Year, (A) a copy of the annual audited financial statements of the Company for such Fiscal Year, including therein without limitation, a balance sheet as of the end of such Fiscal Year, a statement of changes in net assets and a statement of activities for such Fiscal Year or such other financial statements then required in accordance with generally accepted



accounting principles applicable to the Company, audited by a firm of independent public accountants of recognized standing, (B) a certificate or other instrument signed by the Company's auditors setting forth the Debt Service Coverage Ratio and detailing the calculation thereof and stating whether an Event of Default, or, to the best of the auditors' knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, and, if such an Event of Default or such an event has occurred and is continuing, a statement as to the nature thereof, and (C) if such an Event of Default or such an event has occurred and is continuing, a certificate of an Authorized Officer of the Company setting forth the action that the Company proposes to take with respect thereto;

(ii) quarterly statements will be provided within forty-five (45) days of the end of the quarter or, if required by the Trustee, monthly statements upon the occurrence of a default by the Company under Section 8 or any other Section of the Loan Agreement (within thirty (30) days of the end of the month), together with a certificate of an Authorized Representative stating that the Company is not in default of any of its obligations or covenants under the Bond Documents;

(iii) promptly following approval by the Management Committee (as defined in the Facility Management Agreement), but at least ninety (90) days prior to the commencement of the academic year to which it applies, an Annual Budget for each academic year covering the operation of the Project;

(iv) prompt written notice, but in no event more than thirty (30) days after commencement, of any adverse litigation (A) seeking damages in excess of the applicable insurance coverage, or (B) in which an adverse determination may have a material adverse effect on the combined financial or operating condition of the Company;

(v) prompt written notice of any pending formation, acquisition, merger, consolidation, change in ownership or dissolution of or by the Company and, within ten (10) days after any of the foregoing, become effective;

(vi) such reports with respect to the condition of, and repairs, replacements, renovations, and maintenance, to the Project or the Mortgaged Property as the Issuer, the Underwriter or the Trustee may from time to time reasonably request;

(vii) copies of any detailed audit reports, management letters or recommendations submitted to the Company by independent accountants;

(viii) immediate notice of any failure by SUNY to license or make any payment required by the SUNY Agreement or Facility Management Agreement or notice of default thereunder; and

(ix) such other information respecting the business, Property or the condition or operations, financial or otherwise, of the Company as the Issuer or the Trustee may from time to time reasonably request (other than information the Company or College is required by law to keep confidential).

(c) *Access to Records.* At any and all reasonable times and from time to time, permit the Issuer and the Trustee, or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account (other than those books and records that by law must be treated as confidential) of, and visit the Properties of the Company and to discuss the affairs, finances and accounts of the Company with any of their respective officers.

(Section 27)

#### **Indemnity by Company**

(a) The Company releases the Issuer and the Trustee, and their respective members, officers, directors, agents, officials, employees and any person who controls the Issuer or the Trustee within the meaning of the Securities Act of 1933, as amended, from, and covenants and agrees to indemnify, hold harmless and defend the Issuer and the Trustee and their respective members, officers, directors, employees, agents, officials, grantors, beneficiaries and any person who controls such party within the meaning of the Securities Act of 1933, as amended, and employees

and each of them (each an "Indemnified Party") from and against, any and all losses, claims, damages, demands, liabilities and expenses (including attorneys' fees and expenses, whether incurred in a third party action or an action to enforce the Loan Agreement), taxes, causes of action, suits, claims, demands and judgments of any nature, joint or several, by or on behalf of any person arising out of:

- (i) the transactions provided for in the Bond Documents;
- (ii) the execution and delivery or amendment of any document entered into in connection with the transactions provided for in the Bond Documents, including any certifications or representations made by any person other than the party seeking indemnification;
- (iii) the approval of the financing for the Project;
- (iv) any and all claims arising in connection with the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents or any other documents relating to the Project or the 2011 Bonds or in connection with any other matters relating to the 2011 Bonds or the Project, including, but not limited to, any federal or state tax audit, or any questions or other matters arising under such documents;
- (v) the Trustee's acceptance or administration of the trusts created by the Indenture or the exercise of its powers or duties under the Indenture, the Loan Agreement, the Tax Compliance Agreement or any other agreements to which it is a party or otherwise in connection with the transactions provided for in the Bond Documents;
- (vi) any and all claims arising in connection with (A) the issuance or sale of any Bonds or any certifications or representations made by any person other than the party seeking indemnification, including, but not limited to, any (1) statement or information made by the Company with respect to the Company or the Project in any offering document or materials regarding the 2011 Bonds, the Project or the Company or in the Tax Compliance Agreement or in any other certificate executed by the Company which, at the time made, is misleading, untrue or incorrect in any material respect; (2) untrue statement or alleged untrue statement of a material fact relating to the Company or the Project contained in any offering material relating to the sale of the 2011 Bonds, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to the Company or the Project required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading; and (3) failure to properly register or otherwise qualify the sale of the 2011 Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the 2011 Bonds could be sold; and (B) the carrying out by the Company of any of the transactions provided for in the Bond Documents;
- (vii) the Company's failure to comply with any requirement of any Bond Document applicable to the Company;
- (viii) any act or omission of the Company or any of its agents, servants, employees or licensees in connection with the Loan Agreement or the Project, including violation of any law, ordinance, court order or regulation affecting the Project or any part of it or the ownership, occupancy or use of it;
- (ix) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to Property (including loss of use of Property) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of the Company, whether or not related to the Project, or resulting from or in any way connected with the acquisition, construction, reconstruction, renovation, equipping or management of the Project, the issuance of the 2011 Bonds or otherwise in connection with transactions provided for in the Bond Documents or otherwise in connection with the Project, the 2011 Bonds or the execution or amendment of any document relating to the Project or the 2011 Bonds;
- (x) any failure to comply with the Environmental Compliance and Indemnification Agreement applicable to, or the release of any toxic substance from, the Project; and

- (xi) any and all claims arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or supervision of work done in or about, or from the planning, design, acquisition, construction, repair or equipping of, the Project or any part of it.
- (b) This indemnification will extend to and include, without limitation, all reasonable costs, attorneys' fees (whether incurred in a third party action or an action to enforce the Loan Agreement), expenses or liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except (a) in the case of the foregoing indemnification of the Trustee or any of its Indemnified Parties, to the extent such damages are caused solely by the gross negligence or willful misconduct of such Person, and (b) in the case of the foregoing indemnification of the Issuer or any of its Indemnified Parties, to the extent such damages are caused by the gross negligence or willful misconduct of such Person. To effectuate the purposes of Section 29 of the Loan Agreement, the Company will provide for and insure, in the liability policies required under Section 24 of the Loan Agreement, not only its own liability in respect of the matters therein mentioned but also liability pursuant to Section 29 of the Loan Agreement.
- (c) An Indemnified Party will promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to Section 29 of the Loan Agreement. Such notice will be given in sufficient time to allow the Company to defend or participate in such claims or action, but the failure to give such notice in sufficient time will not constitute a defense under the Loan Agreement nor in any way impair the obligations of the Company under Section 29 of the Loan Agreement.
- (d) The provisions of Section 29 of the Loan Agreement and the indemnification provided in the Loan Agreement will survive repayment of the 2011 Bonds. Notwithstanding anything to the contrary in the Loan Agreement, the covenants of the Company contained in Section 29 of the Loan Agreement will continue in full force and effect after the expiration or earlier termination of the Loan Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought, and (ii) payment in full or the satisfaction of such claim or cause of action and all expenses and charges incurred by the Indemnified Party relating to the enforcement of Section 29 of the Loan Agreement and the provisions in the Loan Agreement specified.
- (e) In the event of any claim against the Issuer or its members, directors, officers, agents or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company under the Loan Agreement will not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.
- (f) The Company and every assignee of the Company's interest in the Loan Agreement waives any and all of its rights against the Issuer (whether such rights currently exist or arise in the future by statute, common law or otherwise) as a mortgagee of the Project with respect to any and all environmental liabilities, however or whenever accruing.
- (g) Should an insurance carrier provide for the defense of the Issuer in connection with any claim subject to indemnity under Section 29 of the Loan Agreement, the Company will cause such insurance carrier (and the attorneys retained by such insurance carrier) to promptly provide the Issuer with such information regarding the status of such claims as the Issuer may from time to time reasonably request, to immediately advise the Issuer of any monetary verdict against it, and in no event will the Company permit a judgment to be entered against the Issuer arising out of such claim without thirty (30) days' prior written notice to the Issuer. Should the Company provide the defense of any such claim directly, the attorneys selected by the Company will be subject to the prior approval of the Issuer, and the Company will cause such attorneys to promptly provide the Issuer with such information regarding the status of such claims as the Issuer may from time to time reasonably request, to immediately advise the Issuer of any monetary verdict against it, and in no event will the Company permit a judgment to be entered against the Issuer arising out of such claim without thirty (30) days' prior written notice to the Issuer.
- (h) Should any lawsuit be commenced against the Issuer which is subject to indemnity pursuant to Section 29 of the Loan Agreement, and should such lawsuit result in a judgment being entered against the Issuer, the Company will not permit any Lien resulting from such judgment to encumber any asset of the Issuer. Should such judgment

result in a Lien encumbering any asset of the Issuer, the Company will immediately, upon demand by the Issuer, cause such judgment to be released from all assets of the Issuer, pursuant to documentation in form and content acceptable to the Issuer. The Company will be responsible for all damages suffered by the Issuer (including incidental and consequential damages) resulting from any such judgment Lien that may encumber any asset of the Issuer, including, but not limited to, all out-of-pocket expenses (including reasonable attorneys' fees) incurred by the Issuer to obtain releases of any such judgment Lien.

(Section 29)

#### Defaults and Remedies

(a) As used in the Loan Agreement the term "*Event of Default*" means:

(i) the Company defaults in the timely payment of any amount payable pursuant to Section 7 of the Loan Agreement or the payment of any other amounts required to be delivered or paid by or on behalf of the Company in accordance herewith, and such default continues for a period in excess of ten (10) days; or

(ii) the Company fails to satisfy the Debt Service Coverage Ratio covenant under Section 8 of the Loan Agreement; or

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

(iv) the occurrence of an Event of Default under the 2011 Bonds, the Indenture, the Mortgage or any other Bond Document; or

(v) an Event of Bankruptcy with respect to the Company; or

(vi) a final judgment for the payment of money which (A) in itself, exceeds \$500,000 or if combined with the aggregate amount of all outstanding final judgments for money exceeds \$500,000, and (B) is not covered by insurance or reserves set aside by the Company, which in the judgment of the Issuer will adversely affect the rights of the Holders of the 2011 Bonds will be rendered against the Company and at any time after forty-five (45) days from the entry thereof, (C) such judgment will not have been discharged or paid, or (D) the Company will 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 will have been granted or entered, and will not have caused, within forty-five (45) days, the execution of or levy under such judgment, order, decree or process or the enforcement thereof to have been stayed pending determination of such appeal; or

(vii) the termination of (i) the Ground Lease, (ii) the Sublease Agreement, (iii) the SUNY Agreement, or (iv) the Facility Management Agreement; or

(viii) the occurrence of a default under any Indebtedness of the Company.

(b) Upon the occurrence of an Event of Default, the Issuer may take any one or more of the following actions:

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

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

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

(iv) realize upon any pledge of or security interest in the Gross Revenues and the rights to receive the same, all to the extent provided in Sections 10 and 11 of the Loan Agreement, by any one or more of the following actions: (A) enter the Company and examine and make copies of the financial books and records of the Company relating to the Gross Revenues and, to the extent of the assigned Gross Revenues, take possession of all checks or other orders for payment of money and moneys in the possession of the Company representing Gross Revenues or proceeds thereof; (B) notify any account debtors obligated on any Gross Revenues to make payment directly to the Issuer or to the Trustee, as the Issuer may direct, and of the amount to be so paid; *provided, however*, that (1) the Issuer may, in its discretion, immediately collect the entire amount of interest or principal coming due on Outstanding Bonds on the next interest payment date therefor, and may continue to do so commencing on each such interest payment date to the extent of amounts due on Outstanding Bonds on the next interest payment date therefor, with respect to the Gross Revenues, until such amounts are fully collected, (2) written notice of such notification will be mailed to the Company five (5) days prior to mailing or otherwise making such notification to account debtors, and (3) until the Company will receive such notice it will have full authority and responsibility to enforce and collect Gross Revenues owing from its account debtors; (C) following the above mentioned notification to account debtors, collect, compromise, settle, compound or extend amounts payable as Gross Revenues which are in the form of accounts receivable or contract rights from the Company's account debtors by suit or other means and give a full acquittance therefor and receipt therefor in the name of the Company whether or not the full amount of any such account receivable or contract right owing will be paid to the Issuer; (D) forbid the Company to extend, compromise, compound or settle any accounts receivable or contract rights which represent any unpaid assigned Gross Revenues, or release, wholly or partly, any person liable for the payment thereof (except upon receipt of the full amount due) or allow any credit or discount thereon; or (E) endorse in the name of the Company any checks or other orders for the payment of money representing any unpaid assigned Gross Revenues or the proceeds thereof;

(v) take any action necessary to enable the Issuer to realize on its Liens under the Loan Agreement or under the Mortgage or the other Security Documents 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 Issuer are cumulative, non-exclusive and in addition to any and all rights and remedies that the Issuer 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 will effect a waiver of the Issuer'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 Issuer may annul any declaration made pursuant to paragraph (b) of Section 30 of the Loan Agreement and its consequences if such Event of Default will be cured. No such annulment will extend to or affect any subsequent default or impair any right consequent thereto.

(Section 30)

### **Compliance with Indenture**

The Company approves of and agrees to the provisions of the Indenture. The Company agrees to do all things within its power in order to enable the Issuer to comply with all requirements and to fulfill all covenants of the Indenture which require the Company to comply with requests or obligations so that the Issuer will not be in default in the performance of any covenant, condition, agreement or provision of the Indenture.

(Section 31)

### **Investment of Moneys**

The Company may in its sole discretion direct the investment of certain moneys held under the Indenture as provided therein. Neither the Issuer nor the Trustee will have any liability arising out of or in connection with the making of any investment authorized by the provisions of Article IV of the Indenture in the manner provided therein, or for any loss, direct or indirect, resulting from any such investment.

(Section 32)

**Arbitrage; Tax Exemption**

Each of the Company and the Issuer covenants that it will take no action, nor will it approve the Trustee's taking any action or making any investment or use of the proceeds of the 2011A Bonds, which would cause the 2011A 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 2011 Bonds at the time of such action, investment or use. The Company (or any related person, as defined in Section 147(a)(2) of the Code) will not, pursuant to an arrangement, formal or informal, purchase 2011A Bonds in an amount related to the amount of any obligation to be acquired from the Company by the Issuer.

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

(Section 34)

**Amendments to Loan Agreement**

The Loan Agreement may be amended only in accordance with Article XI of the Indenture and each amendment will be made by an instrument in writing signed by the Company, the Trustee and the Issuer.

(Section 40)

**Termination**

The Loan Agreement will remain in full force and effect until no Bonds are Outstanding and until all other payments, expenses and fees payable under the Loan Agreement by the Company have been made or provision made for the payment thereof; *provided, however*, that the liabilities and the obligations of the Company under Section 7(a) of the Loan Agreement and to provide reimbursement for or indemnification against reasonable expenses, costs or liabilities made or incurred pursuant to Sections 24, 26 and 29 of the Loan Agreement will nevertheless survive any such termination. Upon such termination, the Issuer will promptly deliver such documents as may be reasonably requested by the Company to evidence such termination and the discharge of the Company's duties under the Loan Agreement and the release or surrender of any security interests granted by the Company to the Issuer.

(Section 41)

## SUMMARY OF CERTAIN PROVISIONS OF THE TRUST INDENTURE

The following is a brief summary of certain provisions of the Indenture. This summary does not purport to be complete and reference is made to the Indenture for the full and complete description thereof. Certain provisions of the Indenture are also described in the Official Statement.

### Trust Estate

The Issuer, in consideration of the covenants contained in the Indenture and as security for the Bonds and for the payment of all other sums required to be paid under the Indenture, assigns and grants to the Trustee, and its successors and assigns forever, for the benefit of the Owners and future Owners of the Bonds, the following described property:

- (a) All right, title and interest of the Issuer in and to the Loan Agreement (except for the Unassigned Rights expressly retained by the Issuer), the present and continuing right to make claim for, collect, receive and receipt for any of the Pledged Revenues and other sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable thereunder or hereunder (except for amounts payable to the Issuer with respect to Unassigned Rights), the exclusive right to bring actions and proceedings thereunder or for the enforcement thereof (except as otherwise specifically provided with respect to Unassigned Rights), the right to grant consents and waivers, and to enter into amendments and to do any and all things which the Issuer is or may become entitled to do thereunder;
- (b) All right, title and interest of the Issuer in and to all money and securities from time to time held by the Trustee under the terms of the Indenture or credited to any fund or account established hereunder (other than any moneys or securities in the Rebate Fund);
- (c) Any and all other Property of every name and nature from time to time hereafter by delivery or by writing of any kind given, granted, sold, conveyed, mortgaged, pledged, assigned or transferred, or as to which a Lien is granted, as and for additional security hereunder by the Issuer or by anyone on its behalf or with its written consent or by the Company, subject to the Unassigned Rights, in favor of the Trustee, that is hereby authorized to receive any and all such Property at any and all times and to hold and apply the same subject to the terms of the Indenture; and
- (d) Any and all proceeds (including real property) acquired by the Issuer or the Trustee as a result of its exercise of any remedies under the Security Documents or Loan Agreement.

### *(Granting Clauses)*

### Purpose for Which Bonds May Be Issued

The 2011 Bonds may be issued only for the purpose of providing funds to defease the Outstanding Prior Bonds and pay certain Costs of Issuance of the 2011 Bonds. Additional Bonds may be issued for the purposes specified in Section 2.12 of the Indenture.

### *(Section 2.2)*

### No Recourse, Special Obligations

- (a) All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Indenture, in the 2011 Bonds, in the other Issuer Documents and in the other documents and instruments connected therewith will be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, agent or employee of the Issuer in his or her individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in the Bond Documents and the 2011 Bonds or otherwise based upon or in respect to the Bond Documents and the 2011 Bonds or any documents supplemental thereto, or for any of the 2011 Bonds or for any claim based thereon or otherwise in respect thereof, will be had against any past,

present or future member, director, officer, agent or employee, as such, of the Issuer, or any successor local development corporation, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, or any person executing the Bond Documents and the 2011 Bonds either directly or through the Issuer or any successor local development corporation, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, it being expressly understood that the Bond Documents and the 2011 Bonds will not constitute or give rise to a general obligation of the Issuer, but rather will constitute special limited obligations of the Issuer, payable solely from the Loan Payments received by the Issuer (except for Loan Payments derived by the Issuer with respect to the Unassigned Rights) and other revenues pledged under the Indenture, and that no such personal liability whatsoever will attach to, or is or will be incurred by, any such member, director, officer, agent or employee of the Issuer or of any such successor local development corporation, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, or any person executing the 2011 Bonds because of the creation of the Indebtedness authorized by the Indenture, or under or by reason of the obligations, covenants or agreements contained in the Bond Documents or in any of the 2011 Bonds or implied therefrom, and that any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent or employee because of the indebtedness authorized thereby, or under or by reason of the obligations, covenants or agreements contained in the Bond Documents or in any of the 2011 Bonds or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of and as a consideration for the execution of the Bond Documents and the issuance of the 2011 Bonds. The limitations on the obligations of the Issuer contained in Section 2.4 of the Indenture by virtue of any lack of assurance required by Section 2.4(b) will not be deemed to prevent the occurrence and full force and effect of any Event of Default pursuant to Section 8.1 of the Indenture.

(b) No order or decree of specific performance with respect to any of the obligations of the Issuer under the Indenture or under the 2011 Bonds or Bond Documents will be sought or enforced against the Issuer unless (i) the party seeking such order or decree will first have requested the Issuer in writing to take the action sought in such order or decree of specific performance, and ten (10) days will have elapsed from the date of receipt of such request, and the Issuer has refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, has failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (ii) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree has placed in an account with the Issuer an amount or undertaking which in the sole discretion of the Issuer is sufficient to cover such reasonable fees and expenses, and (iii) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it or any of its members, directors, officers, agents or employees will be subject to potential liability, the party seeking such order or decree will (A) agree to indemnify and hold harmless the Issuer and its members, directors, officers, agents and employees against any liability incurred as a result of its compliance with such demand, and (B) if requested by the Issuer, furnish to the Issuer security which in the sole discretion of the Issuer is sufficient to protect the Issuer and its members, directors, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

(c) The obligations and agreements of the Issuer contained in the Indenture do not constitute or give rise to an obligation of the State or any municipality or subdivision thereof (including Erie County, New York) and neither the State nor any municipality or political subdivision thereof (including Erie County, New York) will be liable thereon, and further such obligations and agreements will not constitute or give rise to a general obligation of the Issuer, but rather will constitute special limited obligations of the Issuer payable solely from the Loan Payments received by the Issuer (except for Unassigned Rights) and other revenues and Property pledged under the Indenture.

(Section 2.4)

#### **Persons Deemed Owners**

The Issuer, the Trustee and any Paying Agent may deem and treat the Person in whose name any Bond will be registered upon the books of the Issuer as the absolute owner thereof, whether such Bond will be overdue or not for the purpose of receiving payment of the principal or Redemption Price of and interest on such Bond and for all other purposes. All such payments so made to any such Owner or upon his order will be valid and effectual to



satisfy and discharge the liability of the Issuer upon such Bond to the extent of the sum or sums so paid. Neither the Issuer, the Trustee nor any Paying Agent will be affected by any notice to the contrary.

(Section 2.10(b))

#### **Authority for Issuance of Additional Bonds**

The Issuer may, upon the request of the Company, issue from time to time, and the Trustee will authenticate, (a) Additional Bonds for the purpose of providing all or a part of the funds necessary to refund all or any portion of the Outstanding Bonds of any one or more series ("*Refunding Bonds*"), including the costs of issuance of such Refunding Bonds and of financing, (b) Additional Bonds to finance improvements or repairs to the Project or the acquisition of furniture, fixtures, machinery or other tangible personal property for installation in the Project or use at the Project ("*Project Bonds*") and the costs of issuance of such Project Bonds. Each series of Additional Bonds must be issued in compliance with the provisions of Section 2.13 of the Indenture and will mature no later than the latest date permitted by applicable law (if any).

(Section 2.12)

#### **Conditions Precedent to Issuance of Additional Bonds**

(a) Additional Bonds issued hereunder will be on a parity with the Parity Bonds unless the Supplemental Indenture with respect to such Additional Bonds provides otherwise. No Series of Additional Bonds will have a Lien on Pledged Revenues or the Trust Estate senior to the Lien of the Initial Bonds. Any Additional Bonds will be authorized and described in a Supplemental Indenture executed by the Issuer and the Trustee and which, when so issued, authorized and described, will be equally and ratably secured by the Indenture and the Trust Estate on parity with the 2011 Bonds then Outstanding under the Indenture, without distinction, preference or priority unless otherwise provided in the applicable Supplemental Indenture.

(b) ***Refunding Bonds.*** Prior to the issuance of Refunding Bonds, the Company will deliver or cause to be delivered to the Trustee:

(i) A Supplemental Indenture executed by the Issuer and approved by the Company providing for the issuance of the Refunding Bonds, containing such terms and provisions as may be necessary or proper to secure the Refunding Bonds and as will not, unless all Outstanding Bonds are to be paid or redeemed, be inconsistent with the Indenture;

(ii) An executed counterpart of an amendment to the Loan Agreement evidencing and securing the Company's obligation to pay to the Issuer Loan Payments sufficient to pay Debt Service Payments on the Refunding Bonds to be issued, together with an assignment to the Trustee of said amendment to the Loan Agreement and of the amounts payable thereunder;

(iii) Certified copies of the resolution of the Issuer authorizing the execution of the Supplemental Indenture, the issuance of the Refunding Bonds and the payment or redemption of the 2011 Bonds to be refunded;

(iv) Evidence satisfactory to the Trustee that notice of redemption of any Bonds to be redeemed has been properly given or the Trustee has received irrevocable instructions to give such notice at the appropriate time;

(v) An Opinion or Opinions of Counsel in form and substance satisfactory to the Trustee and Bond Counsel to the effect that (A) the Additional Bonds have been duly issued for a permitted purpose under the Act and Article II of the Indenture, (B) all consents or approvals required to be obtained from any Governmental Authority for the issuance of the Additional Bonds have been obtained, (C) the issuance of the Additional Bonds and execution and delivery of related documents will not constitute a breach or default on the part of the Company under its certificate of incorporation, or on the part of the Issuer or the Company under any applicable laws or regulations, court orders or rulings of Governmental Authorities to which the Issuer or the Company is subject or any agreements to which the Issuer or the Company is a party or to which its Properties are subject, (D) all documents delivered by the Issuer and the Company in connection with the issuance of the Additional Bonds have been duly

and validly authorized, executed and delivered and such execution and delivery and all other actions taken by the Issuer and the Company in connection with the issuance of the Additional Bonds have been duly authorized by all necessary corporate actions, (E) all conditions precedent to the issuance of the Additional Bonds pursuant to the Indenture and the applicable Supplemental Indenture have been satisfied, and (F) no litigation is pending or threatened to restrain or enjoin the issuance or delivery of the Additional Bonds;

(vi) Executed counterparts of such documents as are necessary or appropriate for the purposes of the refunding, including, if appropriate, an escrow agreement providing for the deposit and application of funds for the refunding and irrevocable instructions with respect to any required redemption of refunded Bonds;

(vii) A resolution of the Company finding that such refunding is in the best interests of the Company and stating the reasons for such refunding;

(viii) An Opinion of Bond Counsel to the effect that the issuance of Additional Bonds will not adversely affect the exclusion (if any) from gross income of the Owners of any Outstanding Bonds of the interest on such Outstanding Bonds for federal tax purposes;

(ix) In connection with a partial refunding, written evidence from a Rating Agency, if any, by which the Outstanding Bonds are then rated, to the effect that the Refunding Bonds are rated at least as high as the rating(s) assigned to the Outstanding Bonds immediately prior to the issuance of the Refunding Bonds;

(x) Unless the 2011 Bonds being refunded are Subordinate Bonds, the consent of SUNY to the issuance of such Refunding Bonds and the acknowledgment of SUNY that the SUNY Agreement is in full force and effect and the Project Bonds are subject thereto;

(xi) A Company Certificate that the Loan Agreement and the Bond Documents are in effect and no "event of default," as such term is defined in the Loan Agreement and the Bond Documents, exists thereunder;

(xii) A Company Certificate that the Debt Service Coverage Ratio of the Company for the Fiscal Year prior to the Fiscal Year in which such Refunding Bonds are to be issued is equal to or greater than 1.10:1.00 and a Company Certificate accompanied by a Certificate of a firm of independent accountants of recognized standing that the Debt Service Coverage Ratio of the Company for the Fiscal Year during which such Refunding Bonds are being issued (taking into account Debt Service Payments on such Refunding Bonds) will be equal to or greater than 1.10:1.00;

(xiii) Such other certificates, affidavits, documents or opinions as the Trustee or Bond Counsel may reasonably request; and

(xiv) Evidence that the Company has paid or caused to be paid all costs and expenses of the Issuer, the Holders of the 2011 Bonds and the Trustee with respect to the issuance of Refunding Bonds.

(c) **Project Bonds.** Prior to the issuance of Project Bonds, the Company will deliver, or cause to be delivered, to the Trustee:

(i) A Supplemental Indenture executed by the Issuer and approved by the Company providing for the issuance of the Project Bonds, containing such terms and provisions as may be necessary or proper to secure the Project Bonds and as will not, unless all Outstanding Bonds are to be paid or redeemed, be inconsistent with the Indenture;

(ii) An executed counterpart of an amendment to the Loan Agreement evidencing and securing the Company's obligation to pay to the Issuer Loan Payments sufficient to pay Debt Service Payments on the Project Bonds to be issued and to undertake and complete the improvements, repairs, acquisition and installation to be financed by the Project Bonds, together with an assignment to the Trustee of said amendment to the Loan Agreement and of the amounts payable thereunder;

(iii) Certified copies of the resolution of the Issuer authorizing the execution of the Supplemental Indenture, amendments or supplements to the Loan Agreement, the Mortgage and other Bond Documents, the issuance of the Project Bonds and the undertaking of the project to be financed thereby;

(iv) An Opinion or Opinions of Counsel in form and substance satisfactory to the Trustee and Bond Counsel to the effect that (A) the Additional Bonds have been duly issued for a permitted purpose under the Act and Article II of the Indenture, (B) all consents or approvals required to be obtained from any Governmental Authority for the issuance of the Additional Bonds have been obtained, (C) the issuance of the Additional Bonds and execution and delivery of related documents will not constitute a breach or default on the part of the Company under its certificate of incorporation, or on the part of the Issuer or the Company under any applicable laws or regulations, court orders or rulings of Governmental Authorities to which the Issuer or the Company is subject or any agreements to which the Issuer or the Company is a party or to which its Properties are subject, (D) all documents delivered by the Issuer and the Company in connection with the issuance of the Additional Bonds have been duly and validly authorized, executed and delivered and such execution and delivery and all other actions taken by the Issuer and the Company in connection with the issuance of the Additional Bonds have been duly authorized by all necessary corporate actions, (E) all conditions precedent to the issuance of the Additional Bonds pursuant to the Indenture and the applicable Supplemental Indenture have been satisfied, and (F) no litigation is pending or threatened to restrain or enjoin the issuance or delivery of the Additional Bonds;

(v) Executed counterparts of amendments or supplements to the Mortgage and other Bond Documents as are necessary or appropriate in the opinion of Bond Counsel for the purposes of evidencing the issuance of the Project Bonds and the pledge of the Trust Estate as security therefor;

(vi) An Opinion of Bond Counsel to the effect that the issuance of Additional Bonds will not adversely affect the exclusion (if any) from gross income of the Owners of any Outstanding Bonds of the interest on such Outstanding Bonds for federal tax purposes;

(vii) Written evidence from a Rating Agency, if any, by which the Outstanding Bonds are then rated, to the effect that the Project Bonds are rated at least as high as the rating(s) assigned to the Outstanding Bonds immediately prior to the issuance of the Project Bonds;

(viii) The consent of SUNY to the issuance of such Project Bonds and the acknowledgment of SUNY that the SUNY Agreement is in full force and effect and the Project Bonds are subject thereto;

(ix) A Company Certificate that the Loan Agreement and the Bond Documents are in effect, no "*event of default*," as such term is defined in the Loan Agreement and the Bond Documents, exists thereunder and the proceeds of the Project Bonds, together with any additional funds supplied or to be supplied from any source, will be sufficient to complete the project for which such Project Bonds are issued and pay the cost thereof; and

(x) A Company Certificate that the Debt Service Coverage Ratio of the Company for the Fiscal Year prior to the Fiscal Year in which such Project Bonds are to be issued is equal to or greater than 1.10:1.00 and a Company Certificate accompanied by a Certificate of a firm of independent accountants of recognized standing that the Debt Service Coverage Ratio of the Company for the Fiscal Year during which such Project Bonds are being issued (taking into account Debt Service Payments on such Project Bonds) will be equal to or greater than 1.10:1.00;

(xi) Such other certificates, affidavits, documents or opinions as the Trustee or Bond Counsel may reasonably request; and

(xii) Evidence that the Company has paid or caused to be paid all costs and expenses of the Issuer, the Holders of the 2011 Bonds and the Trustee with respect to the issuance of Project Bonds.

(d) The consent of the Holders of Bonds will not be required prior to the issuance of Additional Bonds, or to the execution and delivery of any amendments to the Bond Documents required in connection therewith. The Trustee will, however, mail notice in writing (in the form provided to the Trustee by the Issuer) to the Holders of Bonds and each Rating Agency, if any, by which the 2011 Bonds are then rated of the proposed issuance of the

## Appendix B

Additional Bonds, detailing, at least, the aggregate principal amount of such Additional Bonds, and summarizing the nature of the amendments to the Bond Documents proposed to be executed in connection therewith.

(e) Upon compliance with the requirements of Section 2.13(a) or (b) of the Indenture, the Trustee will thereupon be authorized to execute the Supplemental Indenture, to authenticate the Additional Bonds and to deliver the same to or upon the order of the Issuer.

(Section 2.13)

### Establishment of Funds

The Indenture creates the following trust funds to be established with the Trustee and held, maintained and administered by or on behalf of the Trustee on behalf of the Issuer in accordance with the Indenture:

(a) Buffalo and Erie County Industrial Land Development Corporation – Costs of Issuance Fund – Buffalo State College Foundation Housing Corporation Project (the “*Costs of Issuance Fund*”);

(b) Buffalo and Erie County Industrial Land Development Corporation – Construction Fund – Buffalo State College Foundation Housing Corporation Project (the “*Construction Fund*”);

(c) Buffalo and Erie County Industrial Land Development Corporation – Bond Fund – Buffalo State College Foundation Housing Corporation Project (the “*Bond Fund*”) and within the Bond Fund, an Interest Account, a Principal Account and a Redemption Account;

(d) Buffalo and Erie County Industrial Land Development Corporation – Insurance and Condemnation Fund – Buffalo State College Foundation Housing Corporation Project (the “*Insurance and Condemnation Fund*”);

(e) Buffalo and Erie County Industrial Land Development Corporation – Repair and Replacement Fund – Buffalo State College Foundation Housing Corporation Project (the “*Repair and Replacement Fund*”);

(f) Buffalo and Erie County Industrial Land Development Corporation – Operation and Maintenance Fund – Buffalo State College Foundation Housing Corporation Project (the “*Operation and Maintenance Fund*”); and

(g) Buffalo and Erie County Industrial Land Development Corporation – Surplus Fund – Buffalo State College Foundation Housing Corporation Project (the “*Surplus Fund*”); and

(h) Buffalo and Erie County Industrial Land Development Corporation – Rebate Fund – Buffalo State College Foundation Housing Corporation (the “*Rebate Fund*”).

(Section 4.1)

### Moneys to Be Held in Trust

(a) All moneys deposited with, paid to or received by the Trustee for the account of the Issuer (other than amounts deposited in the Rebate Fund) will be held by the Trustee in trust, and will be subject to the Lien of the Indenture and held for the security of the Owners of the 2011 Bonds until paid in full, *provided, however*, that moneys that have been deposited with, paid to or received by the Trustee for the redemption of a portion of the 2011 Bonds, notice of the redemption of which has been given, or (ii) for the payment of Bonds or interest thereon due and payable otherwise than upon acceleration by declaration, will be held in trust for and subject to a Lien in favor of only the Owners of such Bonds so called for redemption or so due and payable; and *provided further* that all moneys transferred to the Prior Trustee will be held by the Prior Trustee for the security of the owners of the Outstanding Prior Bonds.

(b) The Trustee will deposit moneys into the funds and accounts as follows:

(i) *Pledged Revenue Fund.* The Trustee will deposit into the Pledged Revenue Fund:

- A. the Gross Revenues (other than Net Proceeds of any insurance settlement or Condemnation award) immediately upon receipt;
- B. investment earnings on the Pledged Revenue Fund; and
- C. all amounts which are required by other provisions of the Indenture to be transferred to the Pledged Revenue Fund.

(ii) *Rebate Fund.* The Trustee will deposit into the Rebate Fund amounts required to be paid to the United States under the provisions of Section 148 of the Code as certified to the Trustee in writing by an Authorized Representative of the Company.

(iii) *Bond Fund.*

- A. *Interest Account.* The Trustee will deposit into the Interest Account all moneys received by the Trustee under and pursuant to any of the provisions of the Indenture or of the Loan Agreement which are required to be or which are certified to the Trustee in writing by an Authorized Representative of the Company accompanied by directions that such moneys are to be paid into the Interest Account of the Bond Fund;
- B. *Principal Account.* The Trustee will deposit into the Principal Account all moneys received by the Trustee under and pursuant to any of the provisions of the Indenture or of the Loan Agreement which are required to be or which are certified to the Trustee in writing by an Authorized Representative of the Company accompanied by directions that such moneys are to be paid into the Principal Account of the Bond Fund; and
- C. *Redemption Account.* In the event of (i) receipt by the Trustee of Net Proceeds for purposes of redeeming Bonds; or (ii) deposit with the Trustee by the Issuer or the Company of moneys from any other source for redeeming Bonds (other than mandatory sinking fund redemptions), such moneys will be deposited in the Redemption Account.

(iv) *Operation and Maintenance Fund.* In accordance with the priority of payments set forth in Section 4.6 of the Indenture, the Trustee will transfer from the Pledged Revenue Fund into the Operation and Maintenance Fund an amount equal to the budgeted Operating Expenses for the next succeeding two (2) months as certified to the Trustee in writing by an Authorized Representative of the Company. Amounts equal to actual Operating Expenses in excess of the budgeted Operating Expenses for the next succeeding two (2) months may be transferred from the Surplus Fund into the Operation and Maintenance Fund on any date as certified to the Trustee in writing by an Authorized Representative of the Company. All amounts in the Operation and Maintenance Fund at the end of each Fiscal Year will be transferred to the Surplus Fund promptly following receipt by the Trustee of a Certificate from an Authorized Officer of the Company that all Operating Expenses have been paid for such Fiscal Year.

(v) *Repair and Replacement Fund.* In accordance with the priority of payments set forth in Section 4.6 of the Indenture, the Trustee will transfer an amount equal to one-half of the Repair and Replacement Fund Requirement from the Pledged Revenue Fund into the Repair and Replacement Fund for the current Fiscal Year (together with any amount withdrawn from the Repair and Replacement Fund and not previously replenished. All amounts in the Repair and Replacement Fund in excess of the cumulative Repair and Replacement Fund Requirement in effect for a Fiscal Year ended June 30, 2012 through 2017 and thereafter in excess of the Repair and Replacement Fund Requirement shall be transferred to the Surplus Fund on the last day of such Fiscal Year.

(vi) *Surplus Fund.* In accordance with the priority of payments set forth in Section 4.6 of the Indenture, the Trustee will transfer all remaining amounts from the Pledged Revenue Fund into the Surplus Fund.

(vii) *Insurance and Condemnation Funds.* The Net Proceeds of any insurance settlement or Condemnation award received by the Trustee will, upon receipt thereof, be deposited in the Insurance and Condemnation Fund.

(Section 4.3)

**Cost of Issuance Fund**

Moneys in the Costs of Issuance Fund will be applied and expended by the Trustee to pay costs of issuance of the 2011 Bonds in accordance with the requisition in the form of Exhibit C attached to the Indenture. Upon receipt by the Trustee of a certificate signed by an Authorized Representative of the Company stating that all expenses incurred in connection with the issuance of the 2011 Bonds have been paid, any moneys remaining in the Costs of Issuance Fund will be transferred to the Bond Fund.

(Section 4.4)

**Deposits to Construction Fund; Payments from Construction Fund; Procedure Upon Completion; Excess Proceeds in the Construction Fund**

(a) The Construction Fund will consist of the amounts deposited therein pursuant to the Indenture. The amounts in the Construction Fund will be held for the security of the Series 2011A Bonds Outstanding.

(b) The Trustee will pay the Costs of the Project as authorized by a requisition in the form of Exhibit D to the Indenture, numbered consecutively upwards from 1, signed by an Authorized Representative of the Company. Any requisition may authorize the making of payments to or on behalf of the Company for advances made in respect of Costs of the Project or work done in respect of the Project, but only to the extent that such amounts are properly chargeable against the Construction Fund in accordance with the Indenture and the Tax Compliance Agreement. In any such case, the requisition will relate (i) in the case of payments for work done, to the work so performed, and (ii) in the case of reimbursements for advances made, to the underlying obligation for which the Company is being reimbursed. Upon written request to the Trustee, the Trustee will provide to the Issuer a record of the requisitions and disbursements from the Construction Fund.

(c) Upon completion of the construction and equipping of the Project, pursuant to the Loan Agreement and receipt of the certificate of occupancy related thereto, the Company will furnish the Trustee with a Completion Certificate executed by an Authorized Officer of the Company and the Architect which may be given in reliance upon appropriate certifications of the Architect, certifying (i) that all required insurance has been obtained; (ii) that all construction and equipping of the Project has been substantially completed in accordance with the approved Plans and Specifications and approved changes, if any; (iii) that all Costs of the Project relating to the Project have been paid (other than the retainage) or stating the amounts to be reserved for the payment of any unpaid Costs of the Project relating to the Project and certifying that such amounts reserved are more than sufficient; (iv) that at least ninety-five percent (95%) of the net proceeds of the Series 2011A Bonds applied to payment of Costs of the Project have been applied to pay Qualified Costs of the Project as provided in the Tax Compliance Agreement; (v) the construction of the Project and the installation of the Equipment therein have been completed in a good and workmanlike manner in accordance with the Plans and Specifications and the Loan Agreement and in such manner as to conform with all applicable zoning, planning and building regulations of the Governmental Authorities, as of the date of such Completion Certificate and that no claim has been made calling into question such compliance; and (vi) that all work requiring inspection by Governmental Authorities has been duly inspected and approved by such Governmental Authorities and the certificate of occupancy and all other applicable certificates, licenses and approvals necessary for the use and operation of the Project have been issued and are in force and effect and copies are attached thereto, and there is no violation of any of the provisions thereof or of any Governmental Requirements of which such party has notice or knowledge as of the date thereof. The Architect will not approve the Completion Certificate and the retainage requisition until the Architect has completed a site inspection of the Project which supports a conclusion that the Project has been completed in accordance with the Plans and Specifications.

(d) To the extent that any Series 2011A Bond proceeds remain unexpended in the Construction Fund after receipt of Completion Certificate required in Section 6.3 of the Indenture, the Trustee will (i) retain in the Construction Fund such amount as the Company will specify in the Completion Certificate to be necessary to pay additional Costs of the Project not otherwise provided for; and (ii) transfer such excess funds in the Construction Fund to the Bond Fund for application to the payment of the principal of and interest on the Series 2011A Bonds as the same will become due.

(Section 4.5)

#### **Pledged Revenue Fund**

Except as otherwise provided in the Indenture, moneys in the Pledged Revenue Fund will be used as provided in Section 4.6 of the Indenture (or for payment of Debt Service Payments, when the other moneys in the Bond Fund are insufficient therefor). The Issuer authorizes and directs the Trustee on each Transfer Date during the Fiscal Year to withdraw funds from the Pledged Revenue Fund to effectuate all the transfers of funds contemplated by Section 4.6 of the Indenture in the following order of priority:

FIRST, amounts on deposit in the Pledged Revenue Fund will be transferred to the Rebate Fund to pay any Rebate Amount then owing;

SECOND, commencing with the Transfer Date on March 25, 2012 (there being no transfer to the Bond Fund on the first Transfer Date), amounts on deposit in the Pledged Revenue Fund will next be transferred (A) to the Interest Account of the Bond Fund, until there will be on deposit therein amounts sufficient to fund the next succeeding Debt Service Payment attributable to interest in accordance with Section 4.7 of the Indenture; and (B) to the Principal Account of the Bond Fund, until there will be on deposit therein amounts sufficient to fund one-half of the next succeeding Debt Service Payment attributable to principal in accordance with Section 4.7 of the Indenture;

THIRD, amounts on deposit in the Pledged Revenue Fund equal to one-half of the amount of the Repair and Replacement Fund Requirement allocable to such Fiscal Year (together with an amount equal to any amount withdrawn from the Repair and Replacement Fund and not previously replenished) shall next be transferred to the Repair and Replacement Fund in accordance with Section 4.3(b)(v) of the Indenture. Once an amount equal to the full Repair and Replacement Fund Requirement has been deposited into the Repair and Replacement Fund, no further funds will be transferred into the Repair and Replacement Fund pursuant to the THIRD clause of Section 4.6 of the Indenture;

FOURTH, amounts on deposit in the Pledged Revenue Fund shall next be applied to the Operation and Maintenance Fund until there shall be on deposit therein an amount equal to one-half of the budgeted Operating Expenses for the current Fiscal Year; and

FIFTH, after the Fiscal Year ended June 30, 2017, if the Repair and Replacement Fund is less than fully funded at the Repair and Replacement Fund Requirement, amounts on deposit in the Pledged Revenue Fund will next be applied to the Repair and Replacement Fund in an amount necessary to fully fund the Repair and Replacement Fund at the Repair and Replacement Fund Requirement.

The Trustee shall on April 15 of each Fiscal Year transfer all remaining amounts on deposit in the Pledged Revenue Fund to the Surplus Fund to be used in accordance with Section 4.11 of the Indenture.

On the second Business Day preceding a Transfer Date, the Company shall deliver to the Trustee, pursuant to Section 4.3(b)(iv) of the Indenture, a Certificate of an Authorized Representative of the Company setting forth the amount to be transferred to the Operation and Maintenance Account on such Transfer Date, including the proper account information and wiring instructions as necessary for the Trustee to make payment of amounts required under Section 4.6 of the Indenture to the Operating Account.

(Section 4.6)

## Bond Fund

Moneys in the various accounts of the Bond Fund will be used solely for the payment of the Debt Service Payments on the 2011 Bonds and for the redemption of the 2011 Bonds prior to maturity.

(i) *Interest Account.* Moneys in the Interest Account from moneys transferred by the Trustee for such purpose will be used to pay Debt Service Payments attributable to interest on the 2011 Bonds, on each Interest Payment Date.

(ii) *Principal Account.* Moneys in the Principal Account from moneys transferred by the Trustee for such purpose will be used to pay Debt Service Payments attributable to principal, when due.

(iii) *Redemption Account.* Moneys on deposit in the Redemption Account will be used redemption (other than mandatory sinking fund redemptions) of Bonds in accordance with the provisions of Article III of the Indenture.

If on any Bond Payment Date or Redemption Date, there is not enough money in the Bond Fund to make all the required payments, the Trustee will transfer sufficient money for such purpose first from the available amounts in the Surplus Fund, second from the Pledged Revenue Fund, third from the Repair and Replacement Fund, fourth from the Operation and Maintenance Fund and fifth from the Insurance and Condemnation Fund.

(Section 4.7)

## Insurance and Condemnation Fund

(a) The net proceeds of any insurance settlement or Condemnation award received by the Trustee pursuant to the Loan Agreement in connection with damage to or destruction of or the taking of part or all of the Project will be deposited into the Insurance and Condemnation Fund.

(b) If, pursuant and subject to the Loan Agreement, following damage to or condemnation of all or a portion of the Project Facility, (1) the Company exercised its option not to repair, rebuild or restore the Project and to require the redemption of the 2011 Bonds, or (2) if a taking in condemnation as described in the Loan Agreement occurs, the Trustee will, after any transfer to the Rebate Fund required by the Tax Compliance Agreement and the Indenture is made, transfer all moneys held in the Insurance and Condemnation Fund to the Bond Fund to be applied to the redemption of the 2011 Bonds then Outstanding pursuant to the Indenture.

(c) If, following damage to or condemnation of all or a portion of the Project, the Company elects to repair, rebuild or restore the Project, and provided no Event of Default under any Bond Document, the Sublease, the SUNY Agreement or the Facility Management Agreement has occurred and is continuing, moneys held in the Insurance and Condemnation Fund and attributable to the damage to or the destruction of or the taking of the Project Facility will, after any transfer to the Rebate Fund required by the Tax Compliance Agreement and the Indenture is made, be applied to pay the costs of such repairs, rebuilding or restoration in accordance with the terms and conditions set forth in the Indenture (or for the payment of Debt Service Payments when the moneys in the Bond Fund, the Surplus Fund, the Pledged Revenue Fund, the Repair and Replacement Fund and the Operation and Maintenance Fund in that order of priority are insufficient therefor).

(d) The Trustee is hereby authorized to and will make such disbursements, at the Company's request, either upon the completion of such repairs, rebuilding or restoration or periodically as such repairs, rebuilding or restoration programs, upon receipt by the Trustee of a Certificate of an Authorized Representative of the Company stating, with respect to each payment to be made: (1) the amount or amounts to be paid, the Person or Persons (which may include the Company for reimbursement of such costs) to whom an amount is to be paid and the total sum of all such amounts; (2) that the Company has expended, or is expending, concurrently with the delivery of such Certificate, such amount or amounts on account of costs incurred in connection with the repair, rebuilding or restoration of the Project; (3) that all contractors, workmen and suppliers have been or will be paid through the date of such certificate from the funds to be disbursed; (4) that there exists no Event of Default under the Indenture or under any other Bond Document and no condition, event or act which, with notice or the lapse of time or both,



would constitute an Event of Default under the Indenture or under any other Bond Document; (5) that such Authorized Representative of the Company has no knowledge, after diligent inquiry and after searching the records of the appropriate State and local filing offices, of any vendor's lien or mechanic's lien which should be satisfied, discharged or bonded before the payment as requisitioned is made or which will not be discharged by such payment; (6) that no Certificate with respect to such expenditure has previously been delivered to the Trustee; and (7) that there remains sufficient moneys in the Insurance and Condemnation Fund attributable to the damage to, destruction of, or taking of the Project to complete the repair, rebuilding or restoration of the Project. Each such requisition will be accompanied by bills, invoices or other evidences reasonably satisfactory to the Trustee. The Trustee will be entitled to rely on such requisition.

(e) Upon completion of the repair, rebuilding or restoration of the Project, an Authorized Representative of the Company will deliver to the Issuer and the Trustee a Certificate stating (1) the date of such completion; (2) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid; (3) that the Project has been restored to substantially its condition immediately prior to the damage or Condemnation thereof, or to a condition of at least equivalent value, operating efficiency and function; (4) that the Issuer or the Company has good and valid leasehold title to all Property constituting part of the restored Project, and that the Project is subject to the Loan Agreement and the Liens of the Indenture and the Mortgage; (5) the applicable Rebate Amount with respect to the Net Proceeds of the insurance settlement or Condemnation awards and the earnings thereon (with a statement as to the determination of the Rebate Amount and a direction to the Trustee of any required transfer to the Rebate Fund); and (6) that the restored Project is ready for occupancy, use and operation for its intended purposes. Notwithstanding the forgoing, such certificate may state (a) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (b) that it is given only for the purposes of Section 4.7 of the Indenture, and (c) that no Person other than the Issuer or the Trustee may benefit therefrom. Such certificate will be accompanied by a certificate of occupancy, if required, and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the Project for its intended purposes.

(f) All earnings on amounts held in the Insurance and Condemnation Fund will be retained by the Trustee in the Insurance and Condemnation Fund and applied to repair, rebuilding or restoration of the Project, redemption of the 2011 Bonds or Debt Service Payments.

(g) If the cost of the repairs, rebuilding or restoration of the Project effected by the Company will be less than the amount in the Insurance and Condemnation Fund, then on the completion of such repairs, rebuilding or restoration, the Trustee will transfer such difference to the Bond Fund to be used to redeem the 2011 Bonds in accordance with the Indenture *provided that* such amounts may be transferred to the Company for its purposes if (1) the Company so requests, and (2) the Company furnishes to the Trustee and the Issuer an Opinion of Bond Counsel to the effect that payment of such moneys to the Company will not, in and of itself, adversely affect the exclusion (if any) of the interest paid or payable on the 2011 Bonds from gross income for federal income tax purposes.

(h) If the cost of the repair, rebuilding or restoration of the Project will be in excess of the moneys held in the Insurance and Condemnation Fund, the Company will deposit such additional moneys in the Insurance and Condemnation Fund as are necessary to pay the cost of completing such repair, rebuilding or restoration.

(Section 4.8)

### **Repair and Replacement Fund**

Moneys in the Repair and Replacement Fund may be used (i) for the purpose of constructing or acquiring replacements of real or personal property that have become worn out, unusable or otherwise obsolete; (ii) for the purpose of making capital improvements to the Project; (iii) for the purpose of making renewals, betterments or other expenditures required to maintain the Project; (iv) for the purpose of reimbursing the Company for amounts theretofore expended by the Company for the foregoing purposes, in each case under the foregoing clauses (i) through (iv) upon presentation to the Trustee of a requisition, certified by an Authorized Representative of the Company accompanied by a Certificate of an Authorized Representative of the Company and a resolution of the

Company authorizing such expenditure; or (v) for the payment of Debt Service Payments when the moneys in the Bond Fund, the Surplus Fund and the Pledged Revenue Fund are insufficient therefor.

*(Section 4.9)*

#### **Operation and Maintenance Fund**

Moneys in the Operation and Maintenance Fund may be used to pay Operating Expenses (or for the payment of Debt Service Payments when the moneys in the Bond Fund, the Surplus Fund, the Pledged Revenue Fund and the Repair and Replacement Fund in that order of priority are insufficient therefor). Immediately after the Trustee makes transfers set forth in the Indenture, the Trustee will transfer an amount equal to the lesser of the next succeeding six (6) months' Operating Expenses as set forth in the Annual Budget for the Fiscal Year or the amount on deposit in the Operation and Maintenance Fund to the Operating Account. Moneys in the Operating Account will be used as provided in Section 10(c) of the Loan Agreement.

*(Section 4.10)*

#### **Surplus Fund**

Moneys in the Surplus Fund will be used in amounts as set forth in a Certificate of an Authorized Representative of the Company, in the following order of priority:

FIRST, amounts on deposit in the Surplus Fund will be used to make a deposit into the Rebate Fund;

SECOND, amounts on deposit in the Surplus Fund will be used to make up any deficiency in the Bond Fund;

THIRD, amounts on deposit in the Surplus Fund will be used to make a deposit into the Operation and Maintenance Fund or the Operating Account to pay Operating Expenses;

FOURTH, amounts on deposit in the Surplus Fund will be transferred to the Repair and Replacement Fund to replenish any withdrawal from the Repair and Replacement Fund or make up any deficiency therein and used for the purposes set forth in Section 4.9 of the Indenture;

FIFTH, amounts on deposit in the Surplus Fund will be transferred to the Redemption Account of the Bond Fund and used for the redemption of Bonds in accordance with the Indenture; and

SIXTH, amounts on deposit in the Surplus Fund in excess of \$10,000 may be withdrawn and used by the Company for any lawful purpose annually upon receipt by the Trustee of the annual audited financial statements of the Company and a Certificate of the Company required by Section 27(b)(i)(B) of the Loan Agreement provided that (i) no Event of Default has occurred and is continuing, (ii) the Company and its auditors have certified that the Debt Service Coverage Ratio has been met and will be maintained after such release, and (iii) the rating assigned to long term obligations issued or guaranteed by the State of New York is not lower than the third highest category by Moody's or Standard & Poor's or their successors.

*(Section 4.11)*

#### **Rebate Fund; Determination, Notices and Records of Rebate Amount**

(a) The Rebate Fund will be used for the deposit of the Rebate Amount and will not be subject to the Lien of the Indenture.

(b) The Loan Agreement and the Tax Compliance Agreement provide that the Company will make a periodic determination as to whether any Rebate Amount may be due, or cause the same to be determined, in the manner provided in Section 148(f) of the Code. The Company will provide the Trustee and the Issuer with a written copy of

each such determination as provided in the Tax Compliance Agreement. This covenant will survive the defeasance of any Bonds pursuant to the Indenture.

(c) The Trustee will retain records of each of the determinations required to be made until a date six (6) years after the retirement of the 2011 Bonds. The Trustee will make such records available for review by the Issuer and the Company upon reasonable notice.

(d) The Trustee will perform such other duties as are specified to be performed by the Trustee in the Tax Compliance Agreement; provided, however, that notwithstanding any other provision in the Indenture or any of the other Bond Documents, general or specific, to the contrary, the Trustee will have no obligations under the Indenture or thereunder relating to rebate requirements except to comply with specific written instructions received by the Trustee from an Authorized Representative of the Company with respect to deposits into the Rebate Fund and release of the moneys therefrom. The Trustee will not have any responsibility under the Indenture or under any of the Bond Documents to make any calculations relating to arbitrage restrictions or rebate requirements, or the excludability of the interest on the 2011 Bonds from gross income for Federal income tax purposes or to verify, confirm or review (and the Trustee will not verify, confirm or review) any such calculations or requirements, or the excludability, if any, of the interest on the 2011 Bonds from gross income for Federal income tax purposes or to take any other action with respect thereto under the Indenture or thereunder.

(Section 4.12)

#### **Procedure When Funds Sufficient To Pay All Bonds**

If, at any time, the moneys held by the Trustee in the funds established under the Indenture, other than the Rebate Fund, are sufficient to pay the principal or Redemption Price of and interest on all Bonds then Outstanding, together with any amounts due the Trustee and any amounts due to the Owners of the 2011 Bonds, the Issuer and the Trustee, the Company may elect to defease the 2011 Bonds pursuant to the Indenture and if the Company so elects and notifies the Trustee in writing of such election, the Trustee will apply the amounts in such funds to the payment of such principal (or Redemption Price) and interest and to the payment of any other amounts due to the Owners of the 2011 Bonds, and to the payment of any amounts due to the Issuer and the Trustee, all as is provided in the Indenture.

(Section 4.18)

#### **Investments**

(a) The Trustee will, at the request and written direction of an Authorized Representative of the Company (*provided that* upon the occurrence of any Event of Default, the Company may not make such investment directions), invest and reinvest moneys held in any fund or account established under the Indenture in Permitted Investments, except that moneys held in the Rebate Fund and moneys held for the defeasance of the 2011 Bonds pursuant to the Indenture will be invested only in Government Obligations and moneys held for payment of matured installments of principal or interest on Bonds will remain uninvested, *provided, however*, in the absence of such written direction of an Authorized Representative of the Company, or after the occurrence of an Event of Default, the Trustee will invest and reinvest moneys held in any such funds or accounts only in investments of the type described in clause (iv) under the definition of Permitted Investment below.

(b) All Permitted Investments will mature or be subject to redemption by the Trustee prior to the date or dates that moneys therefrom will be required.

(c) Unless otherwise provided in the Indenture, all interest, income and profits received with respect to Permitted Investments, or upon the sale or disposition thereof will be transferred to the Pledged Revenue Fund for application in accordance with Section 4.5 of the Indenture except that interest, income and profits received with respect to Permitted Investments in the Rebate Fund, or upon the sale or disposition thereof, will be retained in the Rebate Fund.

(d) The term "*Permitted Investments*" means:

(i) Government Obligations or Agency Obligations or the right to receive the principal of or interest on Government Obligations through the purchase of certificates or other instruments evidencing an undivided ownership interest in payments of the principal of or interest on Government Obligations; the Trustee, in purchasing Government Obligations or Agency Obligations, (a) may make any such purchase subject to agreement with the seller for repurchase by the seller at a later date, and in such connection may accept the seller's agreement for the payment of interest in lieu of the right to receive the interest payable by the issuer of the securities purchased, *provided that* title to the Government Obligations or Agency Obligations so purchased by the Trustee will vest in the Trustee, that the Trustee will have actual or constructive possession of such Government Obligations or Agency Obligations, and that the current market value of such Government Obligations or Agency Obligations (or of cash or additional Government Obligations or Agency Obligations pledged with the Trustee as collateral for the purpose) is at all times at least equal to the principal and accrued interest payable by the seller under said agreement, or (b) may make any such purchase pursuant to an investment agreement or other agreement providing for the sale of such Government Obligations or Agency Obligations to the Trustee, or (c) may purchase shares of a fund, including, without limitation, any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent and/or custodian or subcustodian, notwithstanding that (1) the Trustee or an affiliate of the Trustee receives fees from such funds for services rendered, (2) the Trustee charges and collects fees for services rendered pursuant to the Indenture, which fees are separate from the fees received from such funds, and (3) services performed for such funds and pursuant to the Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates, whose sole assets are of a type described in this clause (i) and such repurchase agreements thereof;

(ii) obligations issued or guaranteed by any state or political subdivision thereof and rated at the time of purchase in the highest category, if rated as short-term obligations, or not lower than the third highest category, if rated as long term obligations, by Moody's or Standard & Poor's or their successors; the Trustee, in purchasing obligations of the type described in this clause (ii), may purchase shares of a fund whose sole assets are such obligations or obligations of the type described in clause (i) above, including, without limitation, any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (1) the Trustee or an affiliate of the Trustee receives fees from such funds for services rendered, (2) the Trustee charges and collects fees for services rendered pursuant to the Indenture, which fees are separate from the fees received from such funds, and (3) services performed for such funds and pursuant to the Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates;

(iii) commercial or finance company paper which is rated at the time of purchase at least "P-1" by Moody's or "A-1" by Standard & Poor's;

(iv) deposit and trust accounts, money market accounts, time deposits, trust funds, interest bearing deposits, overnight bank deposits, investment agreements, bankers' acceptances, certificates of deposit, including those placed by a third party pursuant to an agreement between the Trustee and the Company, or bearer deposit notes in any bank, trust company or savings and loan association (including, without limitation, the Trustee or any bank affiliated with the Trustee) organized under the laws of the United States of America or any state thereof having a rating of its unsecured senior long-term debt obligations within one of the three highest rating categories by either Moody's or Standard & Poor's;

(v) obligations evidencing indebtedness described in Section 103(a) of the Code, which obligations are not investment property as defined in Sections 148(b)(2) and (3) of the Code and are rated at the time of purchase within one of the three highest rating categories by Moody's or Standard & Poor's; the Trustee, in purchasing securities of the type described in this clause (v), may purchase shares of a fund, including, without limitation, any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (1) the Trustee or an

affiliate of the Trustee receives fees from such funds for services rendered, (2) the Trustee charges and collects fees for services rendered pursuant to the Indenture, which fees are separate from the fees received from such funds, and (3) services performed for such funds and pursuant to the Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates, at least ninety-eight percent (98%) of the weighted average value of the assets of which are of the type described in this clause (v) or which derives at least ninety-eight percent (98%) of its gross income from such assets; and

(vi) investment agreements with, or which are guaranteed by, a financial institution which has an unsecured, uninsured and unguaranteed obligation rated, at the time such agreement is entered into, in one of the three highest rating categories by Moody's or Standard & Poor's, or is the lead bank of a parent bank holding company with an uninsured, unsecured and unguaranteed obligation meeting such rating requirements, including any affiliate of the Trustee, *provided* (1) interest is paid at least semi-annually at a fixed rate during the entire term of the agreement, consistent with the Interest Payment Dates, (2) moneys invested thereunder may be withdrawn for any purpose required under the Indenture without any penalty, premium or charge upon not more than seven days' notice (*provided* such notice may be amended or cancelled at any time prior to the withdrawal date), (iii) the agreement is not subordinated to any other obligations of such financial institution or bank and provides that if the rating of such financial institution will be downgraded below the lowest rating of the lowest of the three highest rating categories of Moody's or Standard & Poor's, that the financial institution will either terminate such investment agreement with no penalty or collateralize such investment agreement with Governmental Obligations equal to 100% of the then outstanding amount of investments contained in the investment agreement until the rating of such financial institution is restored to one of the three highest rating categories by Moody's or Standard & Poor's, (iv) the same guaranteed interest rate will be paid on any future deposits permitted to be made under such investment agreement, and (v) the Trustee receives an Opinion of Counsel that such agreement is an enforceable obligation of such financial institution.

(Section 4.19)

#### **Valuation of Funds**

As of each Interest Payment Date for the 2011 Bonds, the Trustee will compute the value of the assets of each fund or account established under the Indenture. In computing the assets of any fund or account, investments and the accrued interest paid on the purchase thereof will be deemed a part of such fund or account. Investments of money in each such fund pursuant to the Indenture will be valued at the purchase price or the current market value thereof, whichever is lower, *provided that* any investment agreement will be valued at the maximum amount that can be withdrawn under the terms of such investment agreement.

(Section 4.20)

#### **Performance of Covenants**

The Issuer will covenant that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Indenture, in any and every Bond executed, authenticated and delivered under the Indenture and in all proceedings pertaining thereto.

(Section 5.2)

#### **Discharge of Indenture**

Any Outstanding Bond or installments of interest with respect thereto will, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning of and with the effect expressed in the Indenture if (i) there has been deposited with the Trustee sufficient Government Obligations, that will, without further investment, be sufficient, together with the other amounts held for such payment, to pay the principal of the 2011 Bonds when due

or to redeem the 2011 Bonds on the earliest possible redemption date thereof at the Redemption Price specified in the Indenture, (ii) in the event such Bond is to be redeemed prior to maturity in accordance with the Indenture, all action required by the provisions of the Indenture to redeem the 2011 Bonds will have been taken or provided for to the satisfaction of the Trustee and notice thereof in accordance with the Indenture have been duly given or provision satisfactory to the Trustee will have been made for the giving of such notice, (iii) provision will have been made for the payment of all amounts due to the Trustee under the terms of the Bond Documents and all fees and expenses of any additional Paying Agent, (iv) the Issuer has been reimbursed for all of its expenses under the Loan Agreement and (v) all other payments required to be made under the Loan Agreement and the Indenture with respect to the 2011 Bonds have been made or provided for.

Upon the defeasance of all Outstanding Bonds in accordance with the Indenture, the Trustee will hold in trust, for the benefit of the Owners of such Bonds, all such Government Obligations, will make no other or different investment of such Government Obligations and will apply the proceeds thereof and the income therefrom only to the payment of such Bonds.

(Section 7.2)

#### Events of Default

The following will be "Events of Default" under the Indenture, and the term "*Event of Default*" means, when it is used in the Indenture, any one or more of the following events:

(a) A default in the due and punctual payment of any interest on or any principal of, Sinking Fund Installments on, or the Redemption Price of any Bond, whether at the Stated Maturity thereof, upon proceedings for redemption thereof or upon the maturity thereof by declaration; or

(b) A default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in the Indenture or in the 2011 Bonds contained and the continuance thereof for a period of fifteen (15) days after written notice given to the Issuer and the Company by the Trustee, *provided, however*, that if such performance requires work to be done, actions to be taken or conditions to be remedied which by their nature cannot be reasonably done, taken or remedied, as the case may be, within such fifteen (15) day period, no Event of Default will be deemed to have occurred or exist if, and so long as, the Company will commence such performance within such fifteen (15) day period, and will diligently and continuously prosecute the same to completion within ninety (90) days after the initial notice and the Company will deliver a report to the Trustee and the Issuer at least once every thirty (30) days setting forth the status of its attempt to cure such default; or

(c) The occurrence and continuance of an Event of Default under the Loan Agreement; or

(d) If the Issuer will have applied for or consented to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets; admitted in writing the inability to pay its debts as they mature; made a general assignment for the benefit of creditors; been the subject of an order for relief under the Bankruptcy Code, or been adjudicated a bankrupt, or filed a petition or an answer seeking reorganization, liquidation or any arrangement with creditors or taken advantage of any insolvency law, or submitted an answer admitting the material allegations of a petition in bankruptcy, reorganization, liquidation or insolvency proceedings; or an order, judgment or decree will have been entered, without the application, approval or consent of the Issuer by any court of competent jurisdiction approving a petition seeking reorganization of the Issuer or appointing a receiver, trustee or liquidator of a substantial part of its assets and such order, judgment or decree will continue unstayed and in effect for any period of sixty (60) consecutive days; or filed a voluntary petition in bankruptcy or failed to remove an involuntary petition in bankruptcy filed against it within sixty (60) days of the filing thereof.

At any time before an acceleration pursuant to the Indenture, the Trustee may, with the express written consent of a Majority of Owners, waive a default under Sections (b) or (c) above and the respective consequences thereof. No waiver under Section 8.1 of the Indenture will affect the rights of the Trustee or the Issuer under the Indenture. Except as otherwise provided in the Indenture, the Trustee will not waive any Event of Default under Section (a) above.

(Section 8.1)

**Acceleration; Annulment of Acceleration.**

(a) Upon the occurrence of an Event of Default under Section 8.1(a) or Section 8.1(c) (but only to the extent that the Event of Default under the Loan Agreement is one described in Section 30(a)(i) of such Loan Agreement), all Bonds Outstanding will become immediately due and payable without action or notice of any kind on the part of the Trustee or the Issuer. Upon the occurrence and continuance of any other Event of Default, the Trustee, upon the written request of a Majority of Owners, will, by notice in writing delivered to the Issuer and the Company, declare all Bonds immediately due and payable, and such Bonds will become and be immediately due and payable, anything in the 2011 Bonds or in the Indenture to the contrary notwithstanding. In either such event, there will be due and payable on the 2011 Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon and that will accrue thereon to the date of acceleration. If all of the 2011 Bonds Outstanding will become so immediately due and payable, the Issuer and the Trustee will as soon as possible declare by written notice to the Company all unpaid Loan Payments payable by the Company under the Loan Agreement to be immediately due and payable.

(b) At any time after the principal of the 2011 Bonds will have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under the Indenture, the Trustee may annul such declaration and its consequences with respect to any Bonds not then due by their terms by a notice in writing delivered to the Issuer and the Bondholders if (i) moneys will have been deposited in the Bond Fund sufficient to pay all matured installments of interest and principal or Redemption Price (other than principal then due only because of such declaration) of all Outstanding Bonds; (ii) moneys will be available sufficient to pay the amounts described in the Indenture; (iii) all other amounts then payable by the Issuer under the Indenture will have been paid or a sum sufficient to pay the same will have been deposited with the Trustee; and (iv) every other Event of Default known to the Trustee (other than a default in the payment of the principal of such Bonds then due only because of such declaration) will have been remedied to the satisfaction of the Trustee. No such annulment will extend to or affect any subsequent Event of Default or impair any right consequent thereon.

(Section 8.2)

**Application of Moneys**

(a) The Net Proceeds received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture will be deposited in the Bond Fund.

(b) All moneys in the Bond Fund during the continuance of an Event of Default will be applied as follows:

(i) Unless the principal of all the 2011 Bonds will have become due or will have been declared due and payable,

FIRST – To the payment of all installments of the interest then due, in the order of the maturity of the installments of such interest, and if the amount available will not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto without any discrimination or preference;

SECOND – To the payment of the unpaid principal or Redemption Price of any of the 2011 Bonds that will have become due (other than Bonds called for redemption for the payment of which moneys were held pursuant to the provisions of the Indenture), in order of their due dates, with interest on such Bonds, at the rate or rates

expressed thereon, from the respective dates upon which such Bonds became due and, if the amount available will not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, to the Persons entitled thereto without any discrimination or preference; and

THIRD – To the payment of the principal or Redemption Price of and interest on the 2011 Bonds as the same become due and payable.

(ii) If the principal of all the 2011 Bonds will have become due or will have been declared due and payable, to the payment of the principal and interest (at the rate or rates expressed thereon) then due and unpaid upon all of the 2011 Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably according to the amounts due respectively for principal and interest to the Persons entitled thereto without any discrimination or preference.

(iii) If the principal of all the 2011 Bonds will have been declared due and payable and if such declaration will thereafter have been annulled pursuant to provisions of Section 8.2(b) of the Indenture, the moneys will be applied in accordance with the provisions of paragraph (i) of Section 8.5(b) of the Indenture.

(c) Whenever moneys are to be applied by the Trustee pursuant to the provisions of Section 8.5 of the Indenture, such moneys will be applied at such time or times as the Trustee in its sole discretion will determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Interest on the amounts of principal to be paid on such date will cease to accrue on the date of declaration of acceleration in accordance with Section 8.2(a) of the Indenture. The Trustee will give such notice as it may deem appropriate of the application of any such moneys and of the fixing of any such date.

*(Section 8.5)*

#### **Remedies Vested in Trustee**

All rights of action (including the right to file proof of claim) under the Indenture or under any of the 2011 Bonds may be enforced by the Trustee without possession of any of the 2011 Bonds or the production thereof in any trial or other proceedings relating thereto. Any such suit or proceeding instituted by the Trustee will be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owners of the 2011 Bonds. Subject to the provisions of the Indenture, any recovery of judgment will be for the equal benefit of the Owners of the Outstanding Bonds.

*(Section 8.6)*

#### **Majority Bondholders Control Proceedings**

Subject to the Indenture and the rights of the Bank, if an Event of Default will have occurred and be continuing notwithstanding anything in the Indenture to the contrary, the Majority of Owners will have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting any proceeding to be taken in connection with the enforcement of the terms and conditions of the Indenture or for the appointment of a receiver or any other proceedings under the Indenture, provided that such direction is in accordance with law and the provisions of the Indenture and, in the sole judgment of the Trustee (which in exercising such judgment the Trustee may rely upon an Opinion of Counsel), is not unduly prejudicial to the interests of Owners not joining in such direction, and provided further, that nothing will impair the right of the Trustee in its discretion to take any other action under the Indenture that it may deem proper and that is not inconsistent with such direction by Owners and, except as provided as otherwise provided in the Indenture with respect to certain Events of Default, upon receipt of adequate indemnification reasonably satisfactory to the Trustee.

*(Section 8.8)*



### **Supplemental Indentures Not Requiring Consent of Owners**

(a) Without the consent of or notice to any of the Owners, but with the consent of the Issuer and the Company, the Trustee may enter into one or more Supplemental Indentures, not inconsistent with the terms and provisions of the Indenture, for any one or more of the following purposes:

- (i) To cure any ambiguity or formal defect or omission in the Indenture;
- (ii) To cure, correct or supplement any defective provision of the Indenture in such manner as will not be inconsistent with the Indenture and will not impair the security hereof nor adversely affect the Owners;
- (iii) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee;
- (iv) To add to the covenants and agreements of the Issuer in the Indenture, other covenants and agreements to be observed by the Issuer;
- (v) To more precisely identify the Trust Estate;
- (vi) To subject to the Lien of the Indenture additional revenues, receipts, Property or collateral;
- (vii) To make any other changes in the Indenture that do not prejudice the interests of the Trustee or the Owners;
- (viii) To make any change which in the Opinion of Bond Counsel is reasonably necessary to protect the exclusion (if any) of interest on the 2011 Bonds from gross income for federal income tax purposes; or
- (ix) To issue Additional Bonds as provided in the Indenture.

(b) The Trustee may rely upon an opinion of Independent Counsel as conclusive evidence that any such Supplemental Indenture complies with the foregoing conditions and provisions.

(Section 10.1)

### **Supplemental Indentures Requiring Consent of Owners**

(a) Except as provided in the Indenture, the Majority of Owners will have the right, from time to time, to consent to and approve the execution by the Issuer and the Trustee of such Supplemental Indentures as will be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in the Indenture or in any Supplemental Indenture or in the 2011 Bonds, *provided, however*, that nothing contained in Section 10.2 of the Indenture will permit:

- (i) A change in the terms of redemption or maturity of the principal of or the time of payment of interest on any Outstanding Bond or a reduction in the principal amount or Redemption Price of any Outstanding Bond or the rate of interest thereon, without the consent of the Owner of such Bond, or
- (ii) the creation of a Lien upon the Trust Estate ranking prior to the Lien created by the Indenture, without the consent of the Owners of all Outstanding Bonds, or
- (iii) a preference or priority of any Parity Bond or Parity Bonds over any other Parity Bond or Parity Bonds without the consent of the Owners of all Outstanding Parity Bonds, or
- (iv) a reduction in the aggregate principal amount of the 2011 Bonds required for consent to such Supplemental Indenture, without the consent of the Owners of all Outstanding Bonds.

(b) If at any time the Issuer will request the Trustee to enter into a Supplemental Indenture for any of the purposes of Section 10.1(a) of the Indenture, the Trustee, upon being satisfactorily indemnified with respect to expenses, will cause notice of the proposed execution of such Supplemental Indenture to be given, by first class mail, to each Owner of Bonds then Outstanding at their addresses as they appear on the registration books kept by the Trustee. Such notice will briefly summarize the contents of the proposed Supplemental Indenture and will state that copies thereof are on file at the Office of the Trustee for inspection by all Owners.

(c) The Trustee will not, however, be subject to any liability to any Owner by reason of the Trustee's failure to mail the notice required by Section 10.2(b) of the Indenture.

(d) If within such period after the mailing of the notice required by Section 10.2(b) of the Indenture, as the Issuer will prescribe with the approval of the Trustee, the Issuer will deliver to the Trustee an instrument or instruments executed by the Majority of Owners, referring to the proposed Supplemental Indenture as described in such notice and consenting to and approving the execution thereof, the Trustee will execute such Indenture.

(e) If the Majority of Owners at the time of the execution of any such Supplemental Indenture will have consented to and approved the execution thereof as provided in the Indenture, no Owner of any Bond will have any right to object to any of the terms and provisions contained therein or in any manner to question the propriety of the execution thereof or enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

(f) The Trustee may rely upon an opinion of Independent Counsel as conclusive evidence that (i) any Supplemental Indenture entered into by the Issuer and the Trustee, and (ii) the evidence of the requisite Owner consents thereto comply with the provisions of Section 10.2 of the Indenture.

(Section 10.2)

#### **Amendments to Loan Agreement Not Requiring Consent of Owners**

Without the consent of or notice to any of the Owners, the Issuer may enter into, and the Trustee may consent to, any amendment, change or modification of the Loan Agreement as may be required (i) by the provisions thereof or of the Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission therein, (iii) in connection with the description of the Project and the substitution, addition or removal of a portion of the Project as provided in the Loan Agreement and the Indenture, (iv) in connection with additional real estate that is to become part of the Project, (v) in connection with any other change therein that, in the sole judgment of the Trustee, does not adversely affect the interests of the Trustee or the Owners of the 2011 Bonds, and (vi) to make any change which in the opinion of Bond Counsel is reasonably necessary to protect the exclusion (if any) of interest on the 2011 Bonds from gross income for federal income tax purposes. The Trustee may rely upon an opinion of Independent Counsel as conclusive evidence that any such amendment, change or modification complies with the provisions of Section 11.1 of the Indenture.

(Section 11.1)

#### **Amendments to Loan Agreement Requiring Consent**

Except for amendments, changes or modifications as provided in Section 11.1 of the Indenture, neither the Issuer nor the Trustee will consent to any amendment, change or modification of the Loan Agreement without mailing of notice and the written approval or consent of the Majority of Owners procured and given in the manner set forth in Section 11.2 of the Indenture, *provided, however*, that no such amendment will be permitted that changes the terms of payment thereunder without the consent of the Owners of all the 2011 Bonds then Outstanding. The Trustee may rely on an opinion of Independent Counsel as conclusive evidence that any such amendment, change or modification and the evidence of the requisite Owner consents comply with the requirements of Section 11.2 of the Indenture.

(Section 11.2)

**Consent of Owners**

(a) Any consent, request, direction, approval, objection or other instrument required or permitted by the Indenture to be signed and executed by the Owners may be in any number of writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, will be sufficient for any of the purposes of the Indenture and may be conclusively relied on by the Trustee with regard to any action taken thereunder:

(i) The fact and date of the execution by any Owner or his attorney of such instrument may be proved by (A) the Certificate (which need not be acknowledged or verified) of an officer of a bank or trust company satisfactory to the Trustee or of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such instrument acknowledged to him the execution thereof on such date, or (B) by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. The authority of the person or persons executing any such instrument on behalf of a corporate Owner may be established without further proof if such instrument is signed by a person purporting to be the president or a vice president of such corporation.

(ii) The ownership of the 2011 Bonds and the amount, numbers and other identification, and the date of holding the same will be proved by the registration books kept by the Trustee as Bond Registrar.

(b) Any request, consent or vote of the Owner of any Bond will bind all future Owners of such Bond with respect to anything done or suffered to be done or omitted to be done by the Issuer or the Trustee in accordance therewith, unless and until such request, consent or vote is revoked by the filing with the Trustee of a writing, signed and executed by the Owner of the Bond, in form and substance and within such time as will be satisfactory to the Trustee.

*(Section 12.1)*

## SUMMARY OF CERTAIN PROVISIONS OF THE LEASEHOLD MORTGAGE AND SECURITY AGREEMENT

The following is a brief summary of certain provisions of the Leasehold Mortgage and Security Agreement (the "*Mortgage*"). This summary does not purport to be complete and reference is made to the Mortgage for the full and complete description of the terms thereof.

### Granting Clauses

The Company, in consideration of the issuance of 2011 Bonds, the execution and delivery by the Issuer of the Loan Agreement and for other good and valuable consideration, receipt of which is hereby acknowledged, and in order to secure (1) the payment of \$44,285,000, being the aggregate principal amount of the 2011 Bonds, together with interest thereon, according to their tenor and effect, (2) the payment of all other sums required to be paid under the Mortgage and under the Loan Agreement and the other Bond Documents, and (3) the performance and observance by the Company of all of the covenants, agreements, representations and warranties herein and in the Loan Agreement and the other Bond Documents, (all of the above in (1) through (3) being collectively referred to in the Mortgage as the "*Mortgage Indebtedness*"), and in order to secure the Mortgage Indebtedness, hereby warrant, assign, mortgage, hypothecate, pledge, grant a Lien on and security interest in, set over and confirm unto the Issuer, and its respective successors and assigns forever, all of the estate, right, title and interest of the Company in, to and under any and all of the following described property (the "*Mortgaged Property*"), whether now owned or held or hereafter acquired:

- (a) (i) the entire right title, interest and estate of the Company in and to the Land including the interest of the Company arising under the Ground Lease and the Sublease, respectively, each of which encumbers the Land (as more fully described on Exhibit A attached to the Mortgage), and (ii) all buildings, structures, improvements and appurtenances now standing, or at any time hereafter constructed, reconstructed or placed, upon the Land or any part thereof, including all right, title and interest of the Company in and to all building materials and fixtures of every kind and nature whatsoever on the Land or in any building now or hereafter standing on the Land or any part thereof, including, without limitation, the Improvements;
- (b) the Equipment (as more particularly described in Exhibit B attached to the Mortgage), together with all repairs, replacements, improvements, substitutions and renewals thereof and therefor, and all parts, accessories and additions incorporated therein or affixed thereon;
- (c) all leases, subleases, licenses, contract rights, general intangibles and other agreements affecting the use, operation or occupancy of all or any portion of the Improvements or the Land now or hereafter entered into, and the right to receive and apply the rents, issues and profits of the Mortgaged Property or the other real property described above to the payment of the Mortgage Indebtedness, *provided, however*, that so long as there exists no Event of Default or event which with the passage of time or giving of notice would constitute an Event of Default, the Company will have a revocable license to collect and receive rents, issues and profits and to retain, use and enjoy such rents, issues and profits;
- (d) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property or the other real property described above, including, without limitation, the right to receive and apply the proceeds of any insurance or judgments, or settlements made in lieu thereof, for damage to any of the foregoing, subject to the Company's right to use such insurance proceeds or condemnation award for restoration of the Mortgaged Property as provided in the Loan Agreement;
- (e) all right, title and interest of the Company in and to the Facility Management Agreement, the SUNY Agreement and all other contracts from time to time executed by the Company or any manager or agent on its behalf relating to the ownership, management, construction, equipping, reconstruction, maintenance, repair, operation, occupancy, sale or financing of the Mortgaged Property, or any part thereof, and all agreements relating to the purchase or lease of any portion of the Mortgaged Property, together with the right to exercise such options and all leases of Equipment, all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, reconstruction, equipping, completion, occupancy, use or operation of the

Mortgaged Property or any part thereof, and all drawings, plans, specifications and similar or related items relating to the Mortgaged Property (all, collectively, the “*Contract Rights*”);

(f) all Gross Revenues;

(g) the respective leasehold estate as defined and more fully described in the Ground Lease and/or the Sublease, together with all credits, deposits, option(s) to extend or renew the initial term and/or any renewal term of the Ground Lease and/or the Sublease (and any extensions of the term resulting from the exercise of option(s)), privileges, rights (including rights of possession and occupancy and loss proceeds), benefits, estate, title, and interest of the Company as subtenant under the Sublease, claims of the Company against the Association under the Sublease, rights to give the landlord under the Ground Lease any notices under the Ground Lease, rights of the Company to give the Association any notices under the Sublease, and all rights, recognitions and benefits granted to or for the benefit of the Company under the Ground Lease, including, without limitation, any and all Company’s rights and remedies under any nondisturbance, attornment, or recognition agreements or provisions thereunder (all, collectively, the “*Leasehold Rights*”);

(h) to the exclusion of the Company, all of the Company’s rights and remedies arising at any time under, or pursuant to, Bankruptcy Code § 365(h), including the Company’s right to elect to treat the Sublease as terminated, and the Company’s right to remain in possession under the Sublease if the County rejects or disaffirms it under Bankruptcy Code § 365(h) or any other bankruptcy law, or any comparable right under any other bankruptcy law, together with all claims, suits, actions, proceedings, rights, remedies, and privileges related thereto or arising therefrom, including the Company’s right to claim any offsets against rent under the Sublease together with the right to file and prosecute, to the exclusion of the Company, any proofs of claim, complaints, motions, applications, notices, and other documents in any case relating to the Company under the Bankruptcy Code (collectively the “*Lease 365(h) Rights*”);

(i) all of the Company’s claims and rights to the payment of damages that may arise from the Association’s failure to perform under the Sublease, rejection or disaffirmance of the Sublease under any bankruptcy law, or violation or breach by the Association under the Sublease, and all damages and other sums payable pursuant thereto (collectively, the “*Lease Damage Claims*”);

(j) all extensions, additions, substitutions and accessions with respect to any of the foregoing; and

(k) all other proceeds of the conversion, whether voluntary or involuntary, of the Mortgaged Property or any other Property or rights encumbered or conveyed under the Mortgage into cash or liquidated claims, including, without limitation, all title insurance, hazard insurance, Condemnation and other awards.

The Company’s assignment of the Lease Damage Claims and of the Lease 365(h) Rights: (i) is a present, irrevocable, and unconditional assignment (not an assignment as security or in future); and (ii) will continue in effect until all the Mortgage Indebtedness has been satisfied and discharged in full.

The Unassigned Rights are excepted from the Mortgaged Property.

(Section 2.01)

### Security Agreement

The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of the Company in the Mortgaged Property, including personal property used by the Company in connection with the Mortgaged Property. The Mortgage will also constitute a security agreement under the UCC so that the Issuer will have and may enforce a security interest in any or all of the Mortgaged Property, in addition to (but not in limitation of) the Lien upon that portion of the Mortgaged Property constituting part of the realty imposed by the foregoing provisions hereof, such security interest to attach at the earliest moment permitted by law and also to include and attach to all additions and accessions thereto, all substitutions and replacements therefor, all proceeds thereof, including insurance and Condemnation proceeds, and all contract rights, rental or lease payments and general intangibles of the Company obtained in connection with or relating to the Mortgaged

Property (except for the Unassigned Rights and moneys received pursuant thereto) as well as any and all items of property in the foregoing classifications which are acquired after the date of the Mortgage.

*(Section 2.02)*

**Performance of Covenants**

The Company covenants that it will faithfully observe and perform, or cause to be observed and performed, at all times, any and all covenants, undertakings, stipulations and provisions on its part to be observed or performed contained in the Mortgage, the Loan Agreement and the other Bond Documents executed by it.

*(Section 2.04)*

**Priority of Lien of Mortgage; Discharge of Liens and Encumbrances**

(a) The Company represents and warrants that, except for Permitted Encumbrances, the Company is lawfully seized of the subleasehold estate conveyed by the Mortgage, and the Company has the right to grant and convey the Mortgaged Property, and it will warrant and defend title to the Mortgaged Property against all claims and demands, excepting the Permitted Encumbrances.

(b) The Company will not create nor permit or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Mortgaged Property or any part thereof, without the prior written consent of the Issuer, which consent will not be unreasonably withheld, and the Trustee.

(c) Notwithstanding the provisions of Section 2.05(b) of the Mortgage, the Company may in good faith contest any such Lien, *provided that* the Company (1) first notifies the Issuer of such contest, (2) there is no default under any of the Bond Documents, (3) has set aside adequate reserves for the discharge of any such Lien and furnished evidence thereof satisfactory to the Issuer, (4) the contest of any such Lien is not an event of default under the Sublease, and (5) demonstrates to the reasonable satisfaction of the Issuer that the failure to discharge any such Lien will not impair or adversely affect the Lien of the Mortgage or the Mortgaged Property.

*(Section 2.05)*

**Payment of Principal and Interest on the 2011 Bonds and Payment of Amounts Due under the Loan Agreement and other Bond Documents**

The Company covenants that it will promptly pay, or cause to be paid, payments pursuant to the Loan Agreement in an amount sufficient to pay the principal of, and premium, if any, and interest on, the 2011 Bonds at the place, on the dates and in the manner provided therein, and will promptly pay all other amounts due under the Loan Agreement and other Bond Documents.

*(Section 2.06)*

**Delegation to Issuer**

The Company irrevocably delegates to the Issuer the nonexclusive authority from and after an Event of Default under the Mortgage to exercise any or all Leasehold Rights and Contract Rights, whether or not the Company has failed to exercise them. The Company irrevocably designates the Issuer as the Company's agent and attorney-in-fact, in accordance with the Mortgage, and irrevocably authorizes the Issuer to perform or observe on the Company's behalf from and after an Event of Default under the Mortgage any obligation that the Company fails to perform under the Sublease, the SUNY Agreement or the Facility Management Agreement and exercise any Leasehold Rights and Contract Rights. Such appointment of the Issuer as the Company's attorney-in-fact is coupled with an interest and hence irrevocable. The Company will reimburse the Issuer for any advances or expenditures that the Issuer makes or incurs in performing any such obligation or exercising any such right of the Company, with interest at the per annum rate of interest equal to the highest rate earned on any investment in the Bond Fund, plus four percent (4%), and such advances or expenditures and interest thereon be secured under the Mortgage. In

performing any such obligation or right, the Issuer may enter the Mortgaged Property. If the Issuer receives notice or obtains knowledge of any default under the Ground Lease, the Sublease, the SUNY Agreement or the Facility Management Agreement, the Issuer may rely on the same and take any action that the Mortgage (or the Ground Lease, the Sublease, the SUNY Agreement or the Facility Management Agreement or applicable law) allows to remedy such default even if the Company disputes its existence or nature. Nothing in Section 2.07 of the Mortgage imposes any obligation or duty on the Issuer.

(Section 2.07)

### **Representations, Warranties and Covenants of the Company**

The Company represents, warrants and covenants to the Issuer as follows:

- (a) The Sublease is a valid and subsisting sublease of the Land demised for the term set forth therein, is in full force and effect in accordance with its terms, and has not been modified. There are no existing or anticipated defaults by the Association under the Sublease and the Company has not received notice of any default or any event which with the passage of time will constitute an event of default under the Sublease. The Company is the subtenant under the Sublease and of the leasehold estate created thereby, all sub-sublease(s) in effect affecting the Land, if any, are subordinate to the Mortgage. The Company owns or will own all fixtures and articles of personal property now or hereafter constituting the Equipment, including any substitutions or replacements thereof, free and clear of all Liens and claims, and the Mortgage is and will remain a valid and enforceable Lien on the Mortgaged Property.
- (b) The Company is a not-for-profit corporation organized and existing under the laws of the State and has the power to enter into and perform the Mortgage and the other Bond Documents executed by the Company and to mortgage and pledge the Mortgaged Property in the manner and to the extent set forth in the Mortgage.
- (c) The Mortgage and the other Bond Documents executed by the Company constitute valid and enforceable obligations according to their respective terms.
- (d) Neither the execution and delivery of the Mortgage or the other Bond Documents executed by the Company, the consummation of the transactions contemplated by the Mortgage or thereby, nor the fulfillment of or compliance with the provisions of the Mortgage or thereof will violate any provision of the Company's Certificate of Incorporation, or conflict with or result in a breach of or default under any of the terms, conditions or provisions of any order, judgment, Governmental Requirement, restriction, agreement or instrument to which the Company is a party to or by which the Company or any of its Property is or may be bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such instrument or agreement.
- (e) The execution and delivery of the Mortgage by the Company does not constitute a "fraudulent conveyance" within the meaning of Title 11 of the United States Code as now constituted or under any other applicable statute, and no bankruptcy or insolvency proceedings are pending or contemplated by or against the Company.
- (f) The Mortgaged Property and the operation thereof currently complies and will continue to comply in all material respects with all Governmental Requirements.
- (g) The Land is not located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as same may have been amended to date.
- (h) The Company has all necessary certificates, licenses, authorizations, registrations, permits and approvals necessary for the commencement of any construction on and the operation of the Mortgaged Property, including, but not limited to, all required environmental permits, all of which are (or prior to commencement of construction or operation thereof will be) in full force and effect and are not (and will not be), to the knowledge of the Company, subject to any revocation, amendment, release, suspension, forfeiture or the like; and the present and contemplated use and occupancy of the Land does not conflict with or violate any such certificate, license, authorization, registration, permit or approval.

- (i) The representations and warranties of the Company set forth in the Loan Agreement are true and correct, and such representations and warranties are incorporated in the Mortgage by reference and made a part thereof.

(Section 3.01)

**Maintenance of and Modifications to the Mortgaged Property by the Company**

The Company will, at all times during the term of the Mortgage, (A) keep the Mortgaged Property or cause the Mortgaged Property to be kept in good condition and repair and preserve the same against waste, loss, damage, ordinary wear and tear excepted; (B) make or caused to be made all necessary repairs and replacements to the Mortgaged Property or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (C) not remove or demolish any portion of the Mortgaged Property or alter in any material respect the character of any improvement without the prior written consent of the Issuer, except as permitted in the Loan Agreement; (D) not permit the Mortgaged Property to become deserted or abandoned; and (E) operate the Mortgaged Property or cause the Mortgaged Property to be operated in a sound and economic manner.

(Section 4.01)

**Events of Default Defined**

The following will each be an "Event of Default" under the Mortgage and the terms "Event of Default" or "default" mean, whenever they are used in or with respect to the Mortgage, any one or more of the following events:

- (a) a default in the due and punctual payment of principal of and premium, if any, and interest on, the 2011 Bonds;
- (b) a default in any amount required to be paid by Company under the Loan Agreement, and the continuation of such default for a period in excess of ten (10) days;
- (c) the Company defaults in the due and punctual performance of any other covenant of the Company in the Mortgage and such default continues for thirty (30) days after written notice requiring the same to be remedied will have been given to the Company by the Issuer or the Trustee or, if such default is not capable of being cured within thirty (30) days, the Company fails to commence within said thirty (30) days to cure the same and to diligently prosecute the cure thereof;
- (d) the occurrence of an Event of Default under any of the 2011 Bonds, the Loan Agreement or any other Bond Document;
- (e) if any warranty, representation, certification, financial statement or other information made or furnished to induce the Issuer to issue the 2011 Bonds, or made or furnished, at any time, in or pursuant to the terms of the Mortgage or otherwise by the Company, proves to have been false or misleading in any material respect when made;
- (f) an Event of Bankruptcy with respect to the Company;
- (g) the Company conceals, removes or permits to be concealed or removed any part of its Property with intent to hinder, delay or defraud its creditors, or any one of them, or will make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law, or make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or will suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof;
- (h) except as permitted by the Mortgage or the Loan Agreement, the Mortgaged Property, or any part thereof, is in any manner, whether voluntarily or involuntarily, encumbered, assigned, leased, subleased, sold, transferred or conveyed, or the Company threatens to encumber, assign, lease, sublease, sell, transfer or convey, the Mortgaged Property, or any part thereof, to any person;



- (i) the imposition of a Lien on the Mortgaged Property other than a Lien being contested as provided in the Mortgage or a Permitted Encumbrance; of
- (j) the termination of the Ground Lease, the Sublease, the SUNY Agreement or the Facility Management Agreement.

(Section 6.01)

#### **Acceleration; Annulment of Acceleration**

(a) Upon the occurrence of an Event of Default under the Mortgage, the Issuer may, by notice in writing delivered to the Company, declare the whole of the Mortgage Indebtedness immediately due and payable, whereupon the same will become and be immediately due and payable, anything in the Mortgage or any other Bond Document to the contrary notwithstanding. In such event, there will be due and payable the total amount of the Mortgage Indebtedness plus all accrued but unpaid interest thereon and all interest which will accrue thereon to the date of payment, together with any premium payable thereon.

(b) At any time after the principal of the 2011 Bonds will have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under the Mortgage, the Issuer may annul such declaration and its consequences. No such annulment will extend to or affect any subsequent default or impair any right consequent thereon.

(Section 6.02)

#### **Enforcement of Remedies**

(a) Upon the occurrence of any Event of Default, the Issuer may proceed forthwith to protect and enforce its rights under the Mortgage and the other Bond Documents by such suits, actions or proceedings as the Issuer will deem appropriate, including, without limitation, an action to foreclose the Lien of the Mortgage, in which case the Mortgaged Property or any interest therein may be sold for cash or credit in one or more interests and in any order or manner, including sale under Article 14 of the New York State Real Property Actions and Proceeding Law (or any successor statute).

(b) The Issuer may sue for, enforce payment of and receive any amounts due or becoming due from the Company for principal, premium, interest or otherwise under any of the provisions of the Mortgage, or the other Bond Documents, without prejudice to any other right or remedy of the Issuer. The Issuer may also declare the entire indebtedness secured by the Mortgage immediately due and payable without presentment, demand protect or notice of any kind and the Issuer may take any action permitted at law or in equity, without notice or demand, as it deems advisable to protect and enforce its rights against the Company and the Mortgaged Property.

(c) Regardless of the happening of an Event of Default, the Issuer may institute and maintain such suits and proceedings as the Issuer may be advised will be necessary or expedient to prevent any impairment of the security under the Mortgage by any acts which may be unlawful or in violation of the Mortgage, or to preserve or protect the interests of the Issuer.

(d) The Issuer has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Company, which the Issuer, in its discretion, feels should be brought to protect its interests in the Mortgaged Property.

(e) Upon the occurrence of any Event of Default under the Mortgage, the Company, upon demand of the Issuer, will forthwith surrender the possession of, and it will be lawful for the Issuer, by such officer or agent as it may appoint, to take possession of, all or any part of the Mortgaged Property, together with the books, papers and accounts of the Company pertaining thereto, and to hold, operate and manage the same, and from time to time to make all needed repairs and improvements as the Issuer will deem wise, the Issuer may sell the Company's interest

in the Mortgaged Property or any part thereof, or lease the Mortgaged Property or any part thereof in the name and for the account of the Company, collect, receive and sequester the rents, revenues, earnings, income, products and profits therefrom, and pay out of the same all proper costs and expenses of taking, holding, leasing, selling and managing the Mortgaged Property, including reasonable compensation to the Issuer and its agents and counsel, and any charges of the Issuer under the Mortgage, and any taxes and other charges prior to the Lien of the Mortgage which the Issuer may deem it wise to pay, and all expenses of such repairs and improvements, and apply the remainder of the moneys so received in accordance with the provisions of the Loan Agreement and Section 8.5 of the Indenture.

Upon the occurrence of an Event of Default, the Issuer may exercise any or all of the rights and remedies of a leasehold mortgagee under the Ground Lease and any or all of the rights and remedies of a secured party under the UCC. Nothing in Section 6.03 of the Mortgage will be construed to grant the Issuer any rights or remedies with respect to the Leased Premises (as defined in the Ground Lease) that are inconsistent with the rights and remedies of a leasehold mortgagee under the Ground Lease.

Whenever all that is due under the 2011 Bonds and the other Bond Documents, including any amounts which may have been accelerated pursuant to Section 6.02 of the Mortgage, will have been paid and all defaults made good, the Issuer will surrender possession to the Company, the same right of entry, however, to exist upon any subsequent Event of Default.

(f) Notwithstanding anything in the Mortgage contained to the contrary, to the extent permitted by law, the Company and anyone claiming through or under the Company (1) will not (i) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of the Mortgage, (ii) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision of the Mortgage, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (iii) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the Property so sold or any part thereof; (2) expressly waives all benefit or advantage of any such law or laws; and (3) covenants not to hinder, delay or impede the execution of any power in the Mortgage granted or delegated to the Issuer, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Company, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure of the Mortgage.

(Section 6.03)

#### **Waiver and Non-Waiver of Event of Default**

(a) The Issuer may, in its discretion, agree to waive any Event of Default under the Mortgage and its consequences and annul any acceleration in accordance with Section 6.02 of the Mortgage. No such waiver will extend to or affect any other existing or any subsequent Event of Default.

(b) The failure of the Issuer to insist upon strict performance of any term of the Mortgage will not be deemed to be a waiver of any term of the Mortgage. The Company will not be relieved of its obligations under the Mortgage by reason of (1) failure of the Issuer to comply with any request of the Company to take any action to foreclose the Mortgage or otherwise enforce any of the provisions of the Mortgage; (2) the release, regardless of consideration, of the whole or any part of the Mortgaged Property; or (3) any agreement or stipulation by the Issuer extending the time of payment or otherwise modifying or supplementing the terms of the Mortgage or any of the other Bond Documents. The Issuer may resort for the payment of the Mortgage Indebtedness to any other security held by the Issuer pursuant to the Security Documents in such order and manner as the Issuer, in its discretion, may elect. The Issuer may take action to recover the Mortgage Indebtedness, or any portion thereof, or to enforce any covenant of the Mortgage without prejudice to the right of the Issuer thereafter to foreclose the Mortgage. The rights of the Issuer under the Mortgage will be separate, distinct and cumulative and none will be given effect to the exclusion of the others. No act of the Issuer will be construed as an election to proceed under any one provision in the Mortgage

to the exclusion of any other provision. No waiver of any right of the Issuer will be effective unless it is in a writing signed by an Authorized Officer of the Issuer.

*(Section 6.08)*

**Covenants Run with the Land**

All of the grants, covenants, terms, provisions and conditions in the Mortgage will run with the Land and will apply to, bind and inure to the benefit of the parties to the Mortgage, the Trustee, the Owners of the 2011 Bonds and their successors and assigns.

*(Section 7.07)*

**Tax Laws**

If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on the Mortgage, the Company will pay, or cause to be paid, such tax, with interest and penalties thereon, if any.

*(Section 7.11)*

## SUMMARY OF CERTAIN PROVISIONS OF THE ASSIGNMENT OF RENTS

The Company grants, transfers, assigns, and sets over to the Trustee and grants a security interest in all of its right, title and interest (1) in and to all the rents, issues, fees, sums, amount, profits and, to the extent permitted by applicable law, security deposits (collectively the "*Rents*") of and from the premises described in Exhibit "A" attached to the Assignment of Rents (the "*Improvements*"), and (2) in and to all residency agreements, leases, subleases, licenses, or occupancy agreements (collectively the "*Leases*"), now or hereafter existing, of all or any part of the Improvements.

Without limiting the generality of the foregoing, the Company agrees as follows:

(1) The Company grants, transfers and assigns to the Trustee all of its right, title and interest in and to the said Leases and in and to the right to use and possess the Improvements, including any and all of the Rents now due or which may hereafter become due under and by virtue of any Lease, whether written or oral, or any letting or any agreement for the use or occupancy of any part of the Improvements which may heretofore have been or which may hereafter be made or agreed to between the Company or any other present, prior or subsequent owner of the Improvements, or any interest therein, or which may be made or agreed to by the Trustee, its successors or assigns, under the powers herein granted and any tenant or occupant of all or any part of the Improvements for the purposes of securing the payment of the principal of, redemption premium, if any, and interest on the Indebtedness and the performance by the Company of each and all of the Company's payments, obligations, covenants and agreements as set forth in the Loan Agreement and other Bond Documents

Upon or at any time after default in the payment of any Indebtedness or in the performance of any term, provision, condition, obligation, covenant or agreement contained in the Assignment of Rents or in the Mortgage, the Loan Agreement or any Bond Document and after the expiration of any period of grace, if any, with respect to any such default provided for in the Assignment of Rents or in the Mortgage, the Loan Agreement or any Bond Document, respectively, the Trustee may declare all sums secured hereby immediately due and payable and may, at the declaring party's option, without notice, either in person or by agent and with or without bringing any action or proceeding, or by any receiver to be appointed by a court, enter upon, take possession of, and manage and operate the Improvements and each and every part thereof, and in connection therewith, the Trustee may make, cancel, enforce and modify Leases; fix or modify Rents; repair, maintain and improve the Improvements; employ contractors, subcontractors and workmen in and about the Improvements; obtain and evict tenants; in its own name, sue for or otherwise collect or reserve any and all Rents, including those past due and unpaid; employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of the rights of the Trustee under the terms of the Assignment of Rents and pay the reasonable fees and expenses thereof; and otherwise do and perform any and all acts which the Trustee may deem necessary and appropriate in and about the Improvements for the protection thereof and of the rights of the Trustee under the Assignment of Rents or under the Mortgage, the Loan Agreement or any other Bond Document, and any and all amounts reasonably expended by the Trustee in connection with the foregoing shall constitute so much additional Indebtedness secured by the Assignment of Rents. The Trustee shall apply any moneys collected, less costs and expenses incurred, upon any Indebtedness secured by the Assignment of Rents in such order and manner as the Trustee may determine. The entering upon and taking possession of the Improvements; the collection of Rents; the exercise of any rights in the Assignment of Rents; and the application of collections, shall not cure, waive, modify or otherwise affect any default under the Assignment of Rents or under the Mortgage, the Loan Agreement or any other Bond Document.

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**APPENDIX C**

**PROPOSED FORM OF OPINION OF BOND COUNSEL**

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## APPENDIX C

### [PROPOSED FORM OF OPINION OF BOND COUNSEL]

Upon delivery of the 2011 Bonds, Hiscock & Barclay, LLP, Bond Counsel to the Issuer, proposes to issue its legal opinion in substantially the following form:

June \_\_, 2011

Buffalo and Erie County Industrial Land Development Corporation  
143 Genesee Street  
Buffalo, New York 14203

Re: Buffalo and Erie County Industrial Land Development Corporation  
\$43,875,000 Revenue Bonds  
(Buffalo State College Foundation Housing Corporation Project), Series 2011A  
  
\$410,000 Taxable Revenue Bonds  
(Buffalo State College Foundation Housing Corporation Project), Series 2011B

Ladies and Gentlemen:

We have acted as Bond Counsel to Buffalo and Erie County Industrial Land Development Corporation (the "*Issuer*") in connection with the issuance on the date hereof of the Issuer's Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2011A in the aggregate principal amount of \$43,875,000 (the "*Series 2011A Bonds*") and its Taxable Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2011B in the aggregate principal amount of \$410,000 (the "*Series 2011B Bonds*" and with the Series 2011A Bonds, the "*Bonds*").

The Bonds are authorized to be issued pursuant to (i) Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "*State*"), as amended, and Resolution Nos. 218 and 295 of 2009 and 5-3(2010) of the Erie County Legislature, each as amended to date (collectively, the "*Act*"); (ii) a resolution adopted by the Issuer on March 14, 2011 (the "*Resolution*"); and (iii) a certain trust indenture dated as of June 1, 2011 (the "*Indenture*"), by and between the Issuer and Manufacturers and Traders Trust Company, as trustee (the "*Trustee*"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Indenture.

The Bonds are being issued in connection with a loan made by the Issuer to Buffalo State College Foundation Housing Corporation (the "*Company*"), a not-for-profit corporation



organized under the laws of the State, for the purpose of, among other purposes, refunding of the Outstanding Prior Bonds, payment or reimbursement of certain costs of the Project (as defined hereinbelow) and the payment of the costs of issuance of the Bonds. The Outstanding Prior Bonds were issued to finance the costs of a project consisting of: (i) the acquisition by the Company of leasehold title to certain parcels of land containing in the aggregate approximately 3.6 acres and located at the corner of Letchworth Street and Grant Street on the campus of Buffalo State College located at Rockwell and Grant Streets in the City of Buffalo, Erie County, New York (the "*Land*"); (ii) the acquisition, installation and construction on the Land by the Company of an approximately 225,000 square foot student housing complex consisting of approximately 507 beds, to serve students of Buffalo State College, together with related infrastructure improvements, including, but not limited to, roadway, sewer, water and related improvements (collectively, the "*Improvements*"); and (iii) the acquisition and installation in and around the Improvements of certain items of furniture, furnishings, equipment, machinery and other tangible personal property (collectively, the "*Equipment*" and, collectively with the Land and the Improvements, the "*Project*").

The Bonds are dated the date hereof, are issued as fully registered bonds without coupons and mature and bear interest as set forth therein. The Bonds are subject to redemption prior to maturity in the manner and upon the terms and conditions set forth therein and in the Indenture. The principal and Redemption Price of and interest on the Bonds are payable from loan payments to be made by the Company under the Loan Agreement dated as of June 1, 2011 (the "*Loan Agreement*"), by and between the Issuer and the Company.

The Issuer has assigned its interest in the Loan Agreement (other than its Unassigned Rights) to the Trustee as provided in the Indenture pursuant to the Pledge and Assignment dated as of June 1, 2011 (the "*Pledge and Assignment*"), by the Issuer to the Trustee and acknowledged by the Company.

As security for the obligations of the Company under the Loan Agreement and for the Bonds, the Company has entered and delivered to the Issuer a Leasehold Mortgage and Security Agreement dated as of June 1, 2011 (the "*Mortgage*"), granting a first lien on, and security interest in (subject to certain Permitted Encumbrances), the interest of the Company in and to the Project and the other Mortgaged Property therein and thereon to secure the Loan Agreement and the Bonds. Pursuant to the Assignment of Mortgage dated the date hereof (the "*Assignment of Mortgage*"), the Issuer assigned the Mortgage to the Trustee for the benefit of the Owners of the Bonds.

We have examined a specimen of each of the Bonds and executed counterparts of the Indenture, the Loan Agreement, the Assignment of Mortgage, the Pledge and Assignment and a certain tax compliance agreement dated the date hereof (the "*Tax Compliance Agreement*") executed by the Company and the Issuer relating to the Bonds.

We have reviewed an opinion of even date herewith of Hodgson Russ LLP, counsel to the Company, upon which we are relying as to the status of the Company as a 501(c)(3) Organization (as defined in the Tax Compliance Agreement), the validity and enforceability with respect to the Company of the Loan Agreement, the Mortgage, the acknowledgement to the Pledge and Assignment, the Tax Compliance Agreement and the other Company Documents. No opinion as to such matters is expressed herein.

As Bond Counsel, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates and documents (including documents contained in the record of proceedings with respect to the issuance of the Bonds) as we have deemed necessary or appropriate for the purposes of the opinions rendered below. In such examination, we have assumed the genuineness of all signatures, the authenticity and due execution of all documents submitted to us as originals and the conformity to the original documents of all documents submitted to us as copies. As to any facts material to our opinion, without having any independent investigation, we have relied upon, and assumed the accuracy and truthfulness of, the aforesaid instruments, certificates and documents.

The Internal Revenue Code of 1986, as amended (the "Code"), imposes various requirements which must be met upon and subsequent to the issuance and delivery of the Series 2011A Bonds in order that interest on the Series 2011A Bonds will be and remain excludable from gross income for federal income tax purposes. Included among these requirements are restrictions on the investment and use of proceeds of the Series 2011A Bonds and the rebate of certain earnings in respect of such investments to the United States. Failure to comply with the requirements of the Code may cause interest on the 2011A Bonds to be includable in gross income for purposes of federal income tax, possibly from the date of issuance of the 2011A Bonds. The Issuer and the Company have covenanted in the Tax Compliance Agreement to comply with certain procedures, and they have made certain representations and certifications designed to assure satisfaction of the requirements of the Code. Our opinion in paragraph (vii) hereinbelow assumes compliance with such covenants and the accuracy, in all material respects, of such representations and certifications. We express no opinion with respect to the exclusion from gross income for federal income tax purposes of interest on the 2011A Bonds in the event that any such representations and certifications are materially inaccurate or that there occurs a failure to comply with such covenants.

Based upon the foregoing, it is our opinion that:

- (i) The Issuer is a duly created and validly existing not-for-profit corporation constituting a local development corporation under the laws of the State.
- (ii) The Issuer has the right and power under the Act (a) to issue, execute, sell and deliver the Bonds; (b) to enter into and perform its obligations under the Loan Agreement, the Indenture, the Pledge and Assignment, the Assignment of Mortgage and the Tax Compliance Agreement; (c) to assign its interest in the Loan Agreement to the Trustee as provided in the Indenture and the Pledge and Assignment; and (d) to assign its interest in the Mortgage to the Trustee for the benefit of the Owners of the Bonds as provided in the Assignment of Mortgage.
- (iii) The Resolution has been duly and lawfully adopted by the Issuer and is in full force and effect.
- (iv) The Loan Agreement, the Indenture, the Pledge and Assignment, the Assignment of Mortgage and the Tax Compliance Agreement have been duly authorized and lawfully executed and delivered by the Issuer and (assuming the authorization, execution and delivery by the other respective parties thereto) are valid and

legally binding obligations of the Issuer enforceable against it in accordance with their respective terms.

- (v) The Bonds have been duly authorized, executed, delivered and issued for value by the Issuer in conformity with all applicable laws and the provisions of the Indenture and the Resolution and constitute valid and legally binding special obligations of the Issuer enforceable against it in accordance with their terms. The Bonds are payable solely from the amounts payable by the Company pursuant to the Loan Agreement and the Security Documents. The Indenture creates a valid pledge of and a valid Lien upon the Pledged Revenues (as defined in the Indenture), except as set forth therein, and subject only to the provisions of the Indenture permitting the use and payment thereof for or to the purposes and on the terms and conditions set forth in the Indenture.
- (vi) The Bonds do not constitute a debt of the State of New York, the County of Erie, or any political subdivision thereof, and neither the State of New York, the County of Erie, nor any political subdivision thereof shall be liable thereon.
- (vii) Under existing law, interest on the 2011A Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code and is not treated as an item of tax preference for purposes of the alternative minimum tax imposed upon individuals and corporations pursuant to the provisions of the Code, provided, however, that such interest is taken into account in determining adjusted current earnings of certain corporations (as defined for federal income tax purposes) for purposes of computing the alternative minimum tax imposed on such corporations. With respect to the 2011A Bonds maturing October 1, 2041 (the "*Discount Bonds*") having original issue discount ("*OID*"), OID that has accrued and is properly allocable to the owners of Discount Bonds under Section 1288 of the Code is excludable from gross income for federal income tax purposes to the same extent as other interest on the 2011A Bonds.
- (viii) The interest on the 2011A Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including the City of New York and the City of Yonkers). The interest on the 2011B Bonds is not exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including the City of New York and the City of Yonkers).

In rendering our opinion, we wish to advise you that:

- (a) The enforceability against the Issuer of the Bonds, the Indenture, the Loan Agreement, the Pledge and Assignment, the Assignment of Mortgage and the Tax Compliance Agreement may be limited by any applicable bankruptcy, insolvency or other similar law or enactment now existing or hereafter enacted by the State or the federal government affecting the enforcement of creditors' rights generally.

(b) Equitable remedies with respect to any of the documents described in paragraph (a) above (and with respect to any other documents) lie in the discretion of a court and may not be available.

(c) We express no opinion as to the title to the Project, or the sufficiency (insofar as it relates to the title to the Project) of the description of the Project in the Loan Agreement or the Mortgage or the existence of any liens, security interest or encumbrances on or affecting the Project. We also express no opinion as to perfection of any interests in the Project.

(d) Certain requirements and procedures contained or referred to in the Indenture and certain other documents delivered in connection with the issuance of the Bonds may be changed, and certain actions may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice, or with the approving opinion of Bond Counsel. We express no opinion as to any Bond or the interest thereon if any such change occurs or action is taken upon the advice or approval of bond counsel other than Hiscock & Barclay, LLP.

(e) We have not been requested to examine and have not examined any documents or information relating to the Issuer or the Company, other than documents contained in the record of proceedings hereinabove referred to, and no opinion is expressed as to any financial information, or the adequacy thereof, which has been or may be supplied to the Trustee, the initial purchaser of the Bonds or any other person.

(f) This opinion is given as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

(g) This opinion is rendered to the addressee named above, and may not be relied upon by any other person without our prior express written consent.

We have examined the executed Bonds numbered RA-1 and RB-1, in fully registered form and, in our opinion, the respective form of Bond and the execution thereof are regular and proper.

Very truly yours,

**HISCOCK & BARCLAY, LLP**

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**APPENDIX D**

**PROPOSED FORM OF CONTINUING DISCLOSURE AGREEMENT**

## CONTINUING DISCLOSURE AGREEMENT

**THIS CONTINUING DISCLOSURE AGREEMENT** (this "Agreement"), dated as of June 1, 2011, by and between **BUFFALO STATE COLLEGE FOUNDATION HOUSING CORPORATION**, a New York not-for-profit corporation (the "Company"), and **MANUFACTURERS AND TRADERS TRUST COMPANY**, a banking corporation duly organized and existing under the laws of the State of New York, as trustee (in such capacity, the "Trustee") under the Trust Indenture, dated as of June 1, 2011 (the "Indenture"), between the Buffalo and Erie County Industrial Land Development Corporation, a not-for-profit local development corporation organized under the laws of the State of New York (the "Issuer"), and the Trustee, is executed and delivered in connection with the issuance by the Issuer, of \$43,875,000 aggregate principal amount of its Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2011A (the "Series A Bonds"), and \$410,000 aggregate principal amount of its Taxable Revenue Bonds (Buffalo State College Foundation Housing Corporation Project), Series 2011B (together with the Series A Bonds, the "Bonds"). The proceeds of the Bonds are being loaned by the Issuer to the Company pursuant to the Loan Agreement, dated as of June 1, 2011 (the "Loan Agreement"), between the Issuer and the Company. Capitalized terms used in this Agreement which are not otherwise defined herein shall have the respective meanings given to those terms in Article IV hereof.

### **ARTICLE I**

#### **The Undertaking**

Section 1.1. Purpose; No Issuer Responsibility or Liability. This Agreement shall constitute a written undertaking for the benefit of the holders of the Bonds and is being executed and delivered solely to assist the Participating Underwriter in complying with subsection (b)(5) of the Rule. The Company and the Trustee acknowledge that the Issuer has undertaken no responsibility, and shall not be required to undertake any responsibility, and shall have no liability to any person, including any holder of the Bonds, with respect to any reports, notices or disclosures that are part of such undertaking.

Section 1.2. Annual Financial Information. (a) The Company shall provide to the Trustee Annual Financial Information with respect to each fiscal year of the Company, commencing with its fiscal year ending June 30, 2011, by no later than the 150<sup>th</sup> day after the end of each such fiscal year. The Trustee shall provide notice in writing to the Company that such Annual Financial Information is required to be provided by such 150<sup>th</sup> day, at least 30 days but not more than 60 days in advance of such 150<sup>th</sup> day. The Trustee shall provide such Annual Financial Information to the MSRB through the EMMA System within five business days after receipt by the Trustee.

(b) The Trustee shall provide, in a timely manner, notice of any failure of the Company or the Trustee to provide the Annual Financial Information by the date specified in subsection (a) above, in each case to the MSRB through the EMMA System and, if such failure is of the Company, to the Company.

Section 1.3. Quarterly Financial Information. (a) The Company shall provide to the Trustee Quarterly Financial Information with respect to each fiscal quarter of the Company, commencing with its fiscal quarter ending September 30, 2011, by no later than the 45<sup>th</sup> day after the end of each such fiscal quarter. The Trustee shall provide such Quarterly Financial Information to the MSRB through the EMMA System within five business days after receipt by the Trustee.

(b) The Trustee shall provide, in a timely manner, notice of any failure of the Company or the Trustee to provide the Quarterly Financial Information by the date specified in subsection (a) above, in each case to the MSRB through the EMMA System and, if such failure is of the Company, to the Company.

Section 1.4. Notice Events. (a) If a Notice Event occurs, the Company shall provide, in a timely manner (but in all cases in sufficient time for the Trustee to send notice thereof to the MSRB through the EMMA System within ten business days after the occurrence of such Notice Event pursuant to the next following sentence), written notice of such Notice Event to the Trustee. The Trustee shall send notice of such Notice Event to the MSRB

through the EMMA System not later than three business days after receipt of notice of such Notice Event from the Company.

(b) The Trustee shall promptly advise the Company whenever, in the course of performing its duties as Trustee under the Indenture, the Trustee has actual knowledge of the occurrence of any event which would require the Company to provide notice of a Notice Event hereunder; *provided, however*, that the failure of the Trustee so to advise the Company shall not constitute a breach by the Trustee of any of its duties and responsibilities under this Agreement or the Indenture or relieve the Company of any of its responsibilities or obligations hereunder or under any other instrument or agreement relating to the Bonds.

Section 1.5. Additional Disclosure Obligations. The Company acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933, as amended, and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, as amended, may apply to the Company, and that under some circumstances compliance with this Agreement, without additional disclosures or other action, may not fully discharge all duties and obligations of the Company under such other laws.

Section 1.6. Additional Information. Nothing in this Agreement shall be deemed to prevent the Company from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any information in any Annual Financial Information, Quarterly Financial Information or notice of a Notice Event in addition to that which is required by this Agreement. If the Company chooses to include any information in any Annual Financial Information, Quarterly Financial Information or notice of a Notice Event in addition to that which is specifically required by this Agreement, the Company shall have no obligation under this Agreement to update such information or include it in any future Annual Financial Information, Quarterly Financial Information or notice of a Notice Event.

Section 1.7. No Previous Non-Compliance. The Company represents that it has not failed to comply in any material respect with any previous undertaking in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule.

## **ARTICLE II**

### **Operating Rules**

Section 2.1. Reference to Other Agreements. It shall be sufficient for purposes of Section 1.2 hereof if the Company provides Annual Financial Information or Quarterly Financial Information by specific reference to documents (a) either (i) provided to the MSRB through the EMMA System or (ii) filed with the SEC, or (b) if such document is a "final official statement" (as defined in the Rule), available from the MSRB.

Section 2.2. Submission of Information. Annual Financial Information and Quarterly Financial Information may be provided in one document or multiple documents, and at one time or in part from time to time.

Section 2.3. Event Notices. Each notice of a Notice Event given by the Company to the Trustee shall be so captioned and shall prominently state the title, date and CUSIP numbers of the Bonds.

Section 2.4. Fiscal Year. Annual Financial Information shall be provided at least annually notwithstanding any fiscal year longer than twelve calendar months. The Company's current fiscal year consists of the period from and including July 1 of one calendar year to and including June 30 of the next following calendar year, and the Company shall promptly notify the Trustee in writing of each change in its fiscal year. The Trustee shall provide such notice to the MSRB through the EMMA System within ten business days after receipt by the Trustee.



**ARTICLE III**  
**Termination, Amendment and Enforcement**

Section 3.1. Termination. (a) If the Company's obligations under the Loan Agreement are assumed in full by some other entity, such person shall be responsible for compliance with this Agreement in the same manner as if it were the Company, and thereupon the Company shall have no further responsibility hereunder.

(b) The Company's and the Trustee's obligation under this Agreement shall terminate upon a legal defeasance of all of the Bonds pursuant to Article VII of the Indenture or upon the prior redemption or payment in full of all of the Bonds.

(c) This Agreement, or any provision hereof, shall be null and void and of no further force and effect in the event that (i) the Company delivers to the Trustee an opinion of Counsel, addressed to the Company and the Trustee, to the effect that those portions of the Rule which require this Agreement, or any specific provisions hereof (as appropriate), do not or no longer apply to the Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, all as shall be specified in such opinion, and (ii) the Trustee delivers copies of such opinion to the MSRB through the EMMA System and to the Issuer. The Trustee shall so deliver such opinion within three business days after receipt by the Trustee.

Section 3.2. Amendment. (a) This Agreement may be amended, by written agreement of the parties, without the consent of the holders of the Bonds (except to the extent required under clause (4)(ii) below), if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the Company or the type of business conducted thereby, (2) this Agreement as so amended would have complied with the requirements of the Rule as of the date of this Agreement, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the Company shall have delivered to the Trustee an opinion of Counsel, addressed to the Company and the Trustee, to the same effect as set forth in clause (2) above, (4) either (i) the Company shall have delivered to the Trustee an opinion of Counsel or a determination by a person, in each case unaffiliated with the Issuer or the Company (such as bond counsel or the Trustee) and acceptable to the Company, addressed to the Company and the Trustee, to the effect that the amendment does not materially impair the interests of the holders of the Bonds or (ii) the holders of the Bonds consent to the amendment to this Agreement pursuant to the same procedures as are required for amendments to the Indenture with consent of holders of Bonds pursuant to Section 13.2 of the Indenture as in effect on the date of this Agreement, and (5) the Trustee shall have delivered copies of such opinion(s) and amendment to the MSRB through the EMMA System and to the Issuer. The Trustee shall so deliver such opinion(s) and amendment with three business days after receipt by the Trustee.

(b) In addition to subsection (a) above, this Agreement may be amended and any provision of this Agreement may be waived, by written agreement of the parties, without the consent of the holders of the Bonds, if all of the following conditions are satisfied: (1) an amendment to the Rule is adopted, or a new or modified official interpretation of the Rule is issued, after the effective date of this Agreement which is applicable to this Agreement, (2) the Company shall have delivered to the Trustee an opinion of Counsel, addressed to the Company and the Trustee, to the effect that performance by the Company and the Trustee under this Agreement as so amended or giving effect to such waiver, as the case may be, will not result in a violation of the Rule and (3) the Trustee shall have delivered copies of such opinion and amendment to the MSRB through the EMMA System and to the Issuer. The Trustee shall so deliver such opinion and amendment within three business days after receipt by the Trustee.

(c) To the extent any amendment to this Agreement results in a change in the type of financial information or operating data provided pursuant to this Agreement, the first Annual Financial Information or Quarterly Financial Information provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change.

(d) If an amendment is made to the accounting principles to be followed in preparing financial statements, the Annual Financial Information and Quarterly Financial Information for the year in which the change

is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a qualitative and, to the extent reasonably feasible, quantitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information. Notice of such amendment shall be provided by the Company to the Trustee, and the Trustee shall provide such notice to the MSRB through the EMMA System and to the Issuer, in each case within three business days after receipt by the Trustee.

Section 3.3. Benefit; Third-Party Beneficiaries; Enforcement. (a) The provisions of this Agreement shall inure solely to the benefit of the parties hereto, the Issuer, the Participating Underwriter and the holders from time to time of the Bonds. In addition, beneficial owners of Bonds held in a book-entry system by a securities depository shall also be third-party beneficiaries of this Agreement.

(b) Except as provided in this subsection (b), the provisions of this Agreement shall create no rights in any other person or entity. The obligations of the Company to comply with the provisions of this Agreement shall be enforceable (i) in the case of enforcement of obligations to provide financial statements, financial information, operating data and notices, by any holder of Outstanding Bonds, or by the Trustee on behalf of the holders of Outstanding Bonds, or by the Participating Underwriter, or (ii) in the case of challenges to the adequacy of the financial statements, financial information and operating data so provided, by the Trustee on behalf of the holders of Outstanding Bonds or by the Participating Underwriter; *provided, however*, that the Trustee shall not be required to take any enforcement action except at the direction of the holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, who shall have provided the Trustee with adequate security and indemnity. The holders' and Trustee's rights to enforce the provisions of this Agreement shall be limited solely to a right, by action for specific performance, to compel performance of the Company's obligations under this Agreement. In consideration of the third-party beneficiary status of beneficial owners of Bonds pursuant to subsection (a) of this Section, beneficial owners shall be deemed to be holders of Bonds for purposes of this subsection (b).

(c) Any failure by the Company or the Trustee to perform in accordance with this Agreement shall not constitute a default or an Event of Default under the Indenture or the Loan Agreement, and the rights and remedies provided by the Indenture or the Loan Agreement upon the occurrence of a default or an Event of Default shall not apply to any such failure.

(d) This Agreement shall be construed and interpreted in accordance with the laws of the State of New York; *provided, however*, that to the extent this Agreement addresses matters of federal securities laws, including the Rule, this Agreement shall be construed in accordance with such federal securities laws and official interpretations thereof.

#### ARTICLE IV Definitions

Section 4.1. Definitions. The following terms used in this Agreement shall have the following respective meanings:

(1) "Annual Financial Information" means, collectively, (i) Audited Financial Statements, (ii) the computation of the Debt Service Coverage Ratio for the fiscal year of the Company covered by the relevant Audited Financial Statements as described in the section of the Official Statement captioned "SECURITY FOR THE 2011 BONDS – Financial Covenants", (iii) information detailing the occupancy of the Student Housing Facility (as defined in the Official Statement) for the fiscal year of the Company covered by the relevant Audited Financial Statements, (iv) an annual update of the information in the sections captioned "BUFFALO STATE COLLEGE – Enrollment" and -- "Demand" in APPENDIX A to the Official Statement, and (v) the information regarding amendments to this Agreement pursuant to Sections 3.2(c) and (d) of this Agreement.

(2) "Audited Financial Statements" means the annual financial statements, if any, of the Company, as audited by a firm of independent certified public accountants. Audited Financial Statements shall be prepared in accordance with GAAP; *provided, however*, that the Company may from time to time, if required by federal or state legal requirements, modify the accounting principles to be following in preparing its financial statements. The written notice of any such modification required by Section 3.2(d) hereof shall include a reference to the specific federal or state law or regulation describing such accounting principles.

(3) "Counsel" means any attorney or firm of attorneys nationally recognized as expert in federal securities laws.

(4) "EMMA System" means the Electronic Municipal Market Access online municipal securities disclosure system operated by the MSRB.

(5) "GAAP" means generally accepted accounting principles applicable to the preparation of financial statements of not-for-profit corporations similar to the Company.

(6) "MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15(B)(b)(1) of the Securities Exchange Act of 1934, as amended.

(7) "Notice Event" means any of the following events with respect to the Bonds, whether relating to the Company or otherwise:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) modifications to rights of security holders, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Bonds, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or a similar event of the obligated person;
- (xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material.

(8) "Official Statement" means the Official Statement, dated May 26, 2011, of the Issuer and the Company with respect to the Bonds.

(9) "Participating Underwriter" means M&T Securities, Inc.

(10) "Quarterly Financial Information" means Unaudited Financial Statements and information detailing the occupancy of the Student Housing Facility for the fiscal quarter covered by the Unaudited

Financial Statements, including without limitation the number of units, if any, licensed by SUNY (as defined in the Official Statement) pursuant to the SUNY Agreement (as defined in the Official Statement).

(11) "Rule" means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended and in effect on and as of the date of this Agreement, including any official interpretations thereof issued either before or after the effective date of this Agreement which are applicable to this Agreement.

(12) "SEC" means the United States Securities and Exchange Commission.

(13) "Unaudited Financial Statements" means the unaudited quarterly financial statements of the Company.

#### **ARTICLE V**

##### **Miscellaneous**

Section 5.1. Duties, Immunities and Liabilities of Trustee. Article IX of the Indenture is hereby made applicable to this Agreement as if this Agreement were (solely for this purpose) contained in the Indenture. The Trustee shall have only such duties under this Agreement as are specifically set forth in this Agreement.

Section 5.2. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**BUFFALO STATE COLLEGE FOUNDATION  
HOUSING CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**MANUFACTURERS AND TRADERS  
TRUST COMPANY, AS TRUSTEE**

By: \_\_\_\_\_  
Name:  
Title:

*Signature Page to Continuing Disclosure Agreement*

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