

*In the opinion of Bond Counsel, under existing law and assuming compliance with the tax covenants described herein, and the accuracy of certain representations and certifications made by the Issuer and Wagner College described herein, interest on the Series 2012 Bonds is excluded from gross income for Federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Bond Counsel is also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Bond Counsel is further of the opinion that interest on the Series 2012 Bonds is exempt from personal income taxation imposed by the state of New York or any political subdivision thereof including The City of New York, pursuant to the General Municipal Law. See "Tax Matters" herein regarding certain other tax considerations.*

**\$12,705,000**

**BUILD NYC RESOURCE CORPORATION  
REVENUE BONDS, SERIES 2012  
(WAGNER COLLEGE PROJECT)**

**Dated: Date of Delivery**

**Due: As shown on the  
inside front cover**

The Series 2012 Bonds are issuable by Build NYC Resource Corporation (the "Issuer") only in fully registered form in the minimum denomination of \$5,000, or any integral multiple of \$5,000, and will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company ("DTC"). Purchases of the Series 2012 Bonds will be made in book-entry only form. See "Book-Entry Only System" herein. Interest on the Series 2012 Bonds will be payable by U.S. Bank National Association, as trustee for the Series 2012 Bonds (the "Trustee"), on each January 1 and July 1, commencing January 1, 2013. The Series 2012 Bonds are subject to redemption prior to maturity, as described herein.

The Series 2012 Bonds are being issued for the benefit of Wagner College, a New York not-for-profit corporation ("Wagner College"), pursuant to an Indenture of Trust dated as of September 1, 2012 (the "Indenture") between the Issuer and the Trustee in order to provide a portion of the funds required to (i) finance, refinance or reimburse Wagner College for certain of the costs of renovating, equipping and/or furnishing various facilities on the Wagner College campus, (ii) fund a debt service reserve fund for the Series 2012 Bonds, and (iii) pay certain costs of issuing the Series 2012 Bonds, as more fully described herein.

**The Series 2012 Bonds are special limited revenue obligations of the Issuer, payable as to principal, redemption price and interest, from and secured by a pledge of (i) certain payments to be made under the Loan Agreement, dated as of September 1, 2012, between Wagner College and the Issuer and (ii) certain funds and accounts established under the Indenture. Neither the State of New York (the "State") nor any political subdivision thereof, including The City of New York (the "City"), shall be obligated to pay the principal or redemption price of, or the interest on, the Series 2012 Bonds. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, including the City, is pledged to such payment of the Series 2012 Bonds. The Series 2012 Bonds will not be payable out of any funds of the Issuer other than those pledged therefor pursuant to the Indenture. The Series 2012 Bonds will not give rise to a pecuniary liability or charge against the credit or taxing powers of the State or any political subdivision thereof, including the City. No recourse will be had for the payment of the principal or redemption price of, or the interest on, the Series 2012 Bonds against any member, officer, director, employee or agent of the Issuer. The Issuer has no taxing power.**

The Series 2012 Bonds are offered, when, as and if issued and accepted by the Underwriter, subject to the approval of legality by Nixon Peabody LLP, New York, New York, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the Issuer by Richard E. Marshall, Esq., its Vice President for Legal Affairs, and for Wagner College by its counsel, Hawkins Delafield & Wood LLP, New York, New York. Certain legal matters will be passed upon for the Underwriter by its counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York. It is expected that delivery of the Series 2012 Bonds will take place through the facilities of DTC on or about September 25, 2012.

**Morgan Stanley**

**\$12,705,000**  
**BUILD NYC RESOURCE CORPORATION**  
**REVENUE BONDS, SERIES 2012**  
**(WAGNER COLLEGE PROJECT)**

**MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES, YIELDS AND CUSIPS**

<b><u>Maturity</u></b> <b><u>(July 1)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>	<b><u>Yield</u></b> <sup>†</sup>	<b><u>CUSIP</u></b> <sup>1</sup>
2024	\$2,195,000	5.00%	3.650%	12008EAQ9
2025	2,230,000	5.00	3.730	12008EAR7
2026	2,360,000	5.00	3.790	12008EAS5
2027	2,670,000	5.00	3.850	12008EAT3
2028	3,250,000	5.00	3.910	12008EAU0

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<sup>†</sup> Priced at the stated yield to the July 1, 2022 redemption date at a redemption price of 100%.

<sup>1</sup> CUSIP<sup>®</sup> is a registered trademark of the American Bankers Association (“ABA”). The CUSIP numbers herein are provided by CUSIP Global Services, which is managed by Standard & Poor’s, a business unit of The McGraw-Hill Companies, Inc, on behalf of the ABA. The CUSIP numbers are provided for convenience of reference only. Neither the Issuer, Wagner College nor the Trustee takes any responsibility for the accuracy of such numbers.

## REGARDING THIS OFFICIAL STATEMENT

The information set forth herein has been obtained from the Issuer, Wagner College and other sources which are believed to be reliable. As to information from Wagner College, it is to be construed as a representation by Wagner College and not by the Issuer. The information contained in this Official Statement is subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder shall under any circumstances create any implication that there has been no change in the information or opinions stated herein or in the affairs of the Issuer or Wagner College since the date hereof.

The Issuer has provided the information set forth under the headings "THE ISSUER" and "ABSENCE OF LITIGATION—The Issuer" and makes no representation, warranty or certification as to the adequacy or accuracy of the information set forth anywhere else in this Official Statement.

The Underwriter has provided the following sentence 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 and this Official Statement is not to be construed as the promise or guarantee of the Underwriter.

**In connection with the offering, the Underwriter may overallocate or effect transactions which stabilize or maintain the market price of the Series 2012 Bonds at levels above those which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.**

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Series 2012 Bonds in any jurisdiction in which such offer, solicitation or sale is not qualified under applicable law or to any person to whom it is unlawful to make such offer, solicitation or sale.

**These securities have not been approved or disapproved by the Securities and Exchange Commission or any state securities commission, nor has the Securities and Exchange Commission or any state securities commission passed upon the accuracy or adequacy of this Official Statement. Any representation to the contrary may be a criminal offense.**

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act. Such statements are generally identifiable by the terminology used, such as "plan," "expect," "estimate," "budget," "intend," "projection" or other similar words. Such forward-looking statements include, but are not limited to, certain statements contained in the information in APPENDIX A — "WAGNER COLLEGE." Such forward-looking statements speak only as of the date of this Official Statement.

Forward-looking statements inherently are subject to a variety of risks and uncertainties that could cause actual results to differ materially from those projected. Such risks and uncertainties include, among others, general economic and business conditions, changes in political, social and economic conditions, regulatory initiatives and compliance with governmental regulations, litigation and various other events, conditions and circumstances, many of which are beyond the control of Wagner College. **Wagner College disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement contained herein to reflect any change in Wagner College's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.**

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## OFFICIAL STATEMENT

### RELATING TO

**\$12,705,000**

**BUILD NYC RESOURCE CORPORATION  
REVENUE BONDS, SERIES 2012  
(WAGNER COLLEGE PROJECT)**

*See APPENDIX C for definitions of certain of the words and terms used in this Official Statement.*

### INTRODUCTION

This Official Statement (including the front cover page, the inside front cover page and the Appendices) is being distributed in connection with the offering and sale of \$12,705,000 in aggregate principal amount of Build NYC Resource Corporation Revenue Bonds, Series 2012 (Wagner College Project) (the “*Series 2012 Bonds*”) of Build NYC Resource Corporation (the “*Issuer*”). The Issuer is a not-for-profit local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of the City of New York.

The Series 2012 Bonds are authorized to be issued under and pursuant to a resolution of the Issuer adopted on May 8, 2012 authorizing the issuance and sale of the Series 2012 Bonds and an Indenture of Trust dated as of September 1, 2012 (the “*Indenture*”) between the Issuer and U.S. Bank National Association, as trustee (the “*Trustee*”). The Trustee will also serve as Paying Agent and Bond Registrar for the Series 2012 Bonds.

The proceeds from the sale of the Series 2012 Bonds are being loaned to Wagner College, a not-for-profit corporation organized and existing under the laws of the State of New York (“*Wagner College*” or the “*College*”), pursuant to a Loan Agreement dated as of September 1, 2012 between the Issuer and Wagner College and a Building Loan Agreement dated as of September 1, 2012 between the Issuer, the Trustee and Wagner College (collectively, the “*Loan Agreement*”) and each between the Issuer, the Trustee and Wagner College, for the purposes described below. Wagner College will be obligated under the Loan Agreement and the Promissory Note from Wagner College to the Issuer and the Trustee (the “*Promissory Note*”) to make payments sufficient to pay the principal or redemption price of, and interest on, the Series 2012 Bonds, as and when the same become due. The obligations of the College to make such payments under the Loan Agreement and Promissory Note will be secured by a pledge of Gross Receipts (as defined in Appendix C) and a mortgage lien granted to the Issuer by Wagner College in each of the Mortgage and Security Agreement (Acquisition Costs), the Mortgage and Security Agreement (Building Loan) and the Mortgage and Security Agreement (Indirect Costs) (collectively, the “*Mortgages*”). See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT.”

Pursuant to the Indenture, the Issuer will assign to the Trustee substantially all of its right, title and interest in and to the Gross Receipts, the Mortgages and the Loan Agreement (except for

the Issuer's Reserved Rights), including all rights to receive the payments of principal or redemption price of, and interest on, the Series 2012 Bonds to be made by Wagner College pursuant to the Loan Agreement.

The proceeds from the sale of the Series 2012 Bonds will be used, together with other available funds, to (i) finance, refinance or reimburse Wagner College for certain of the costs of renovating, equipping and/or furnishing various facilities on the Wagner College campus known as Main Hall and Harborview Residence Hall as more fully described under "THE PLAN OF FINANCE" below (collectively, the "*Project*"), (ii) fund the Debt Service Reserve Fund established under the Indenture in an amount equal to the Debt Service Reserve Fund Requirement for the Series 2012 Bonds, and (iii) pay certain costs of issuing the Series 2012 Bonds.

The Series 2012 Bonds are secured on a parity basis with the Dormitory Authority of the State of New York ("*DASNY*") Wagner College Revenue Bonds, Series 1998 (the "*DASNY Series 1998 Bonds*"), the Dormitory Authority of the State of New York Wagner College Revenue Bonds, Series 2009 (the "*DASNY Series 2009 Bonds*"), certain letters of credit issued by TD Bank, N.A. in connection with the DASNY Series 1998 Bonds and the DASNY Series 2009 Bonds (the "*Letters of Credit*") and the term loan made to Wagner College by TD Bank, N.A. (the "*Term Loan*" and, together with the Letters of Credit, the "*Bank Credit Facilities*") by the pledge and assignment to the Trustee of the Trust Estate, including the Mortgages and the Issuer's security interest in the Gross Receipts granted by Wagner College to the Issuer under the Loan Agreement, subject to the liens, pledges, charges, encumbrances and security interests made or given by Wagner College to secure its obligations pursuant to agreements entered into by Wagner College in connection with the Wagner College Consolidation and Construction Bonds of 1962, Series B (the "*Prior Pledge*"). The Trust Estate and the Issuer's interest in Gross Receipts have been pledged by the Issuer to the Trustee for the benefit of the Bondholders.

The Series 2012 Bonds will, pursuant to the Second Amended and Restated Intercreditor Agreement (the "*Intercreditor Agreement*"), dated as of September 25, 2012, by and among the Issuer, DASNY, the Trustee, The Bank of New York Mellon, as Trustee for the DASNY Series 1998 Bonds, The Bank of New York Mellon, as Trustee for the DASNY Series 2009 Bonds, The Bank of New York Mellon as Gross Receipts Trustee and TD Bank, N.A., (i) be secured on a parity with the DASNY Series 1998 Bonds, the DASNY Series 2009 Bonds and the Bank Credit Facilities with respect to the security interest in the Gross Receipts (subject to the Prior Pledge) and the lien on the property encumbered by the Mortgages (subject to the Prior Pledge), and (ii) share on a pro rata basis with the DASNY Series 1998 Bonds, the DASNY Series 2009 Bonds and the Bank Credit Facilities in any Gross Receipts collections and in the proceeds of a foreclosure on the mortgage lien granted to the Issuer by Wagner College in the Mortgages.

The obligations of Wagner College under the Loan Agreement will be secured by the Mortgages. The Mortgages will be pledged to the Holders of the Series 2012 Bonds.

Subject to compliance by Wagner College with the provisions of the Loan Agreement summarized below under the heading "SECURITY FOR THE SERIES 2012 BONDS—Limitations on Incurrence of Additional Debt," the Issuer may, upon the request of Wagner College, issue Additional Bonds under the Indenture (collectively with the Series 2012 Bonds, the "*Bonds*") for

the benefit of Wagner College. See “SECURITY FOR THE SERIES 2012 BONDS—Additional Bonds” below.

The forepart of this Official Statement contains brief descriptions of the Issuer, Wagner College, the Series 2012 Bonds, the Indenture, the Loan Agreement, the Promissory Note and the Continuing Disclosure Agreement to be executed by Wagner College on the date of issuance of the Series 2012 Bonds (the “*Continuing Disclosure Agreement*”). Additional information about Wagner College is set forth in APPENDIX A. The audited financial statements of Wagner College as of and for the years ended August 31, 2011 and August 31, 2010 are included in APPENDIX B. Certain of the defined terms used herein are set forth in APPENDIX C. Summaries of certain provisions of the Loan Agreement and the Indenture are included as APPENDICES D and E, respectively. The proposed form of the Continuing Disclosure Agreement is included in APPENDIX F. The proposed form of opinion of Bond Counsel is included in APPENDIX G.

All references herein to the Indenture, the Loan Agreement, the Promissory Note, the Mortgages, the Intercreditor Agreement and the Continuing Disclosure Agreement are qualified in their entirety by reference to such documents, and the description of the Series 2012 Bonds herein is qualified in its entirety by reference to the terms thereof and the information with respect thereto included in the Indenture and the Loan Agreement. All such descriptions are further qualified in their entirety by reference to laws relating to or affecting the enforcement of creditors’ rights generally. Copies of the Indenture and the Loan Agreement may be obtained prior to the date of issuance of the Series 2012 Bonds from Morgan Stanley & Co. LLC (the “*Underwriter*”) at its offices at 1585 Broadway, New York, New York 10036 and, on and after the date of issuance of the Series 2012 Bonds, from the Trustee at its offices at 100 Wall Street, Suite 1600, New York, New York 10005, Attention: Corporate Trust Administration.

This introduction is subject in all respects to the additional information contained in this Official Statement, including APPENDICES A through G.

#### **THE ISSUER**

The Issuer, created in 2011, is a not-for-profit local development corporation organized pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York (the “*State*”) at the direction of the Mayor of The City of New York (the “*City*”). The Issuer is not an agency of State or City government and is not subject to administrative direction by any department, commission, board or agency of the State or of the City. The Issuer is authorized by the Not-For-Profit Corporation Law of the State and the Issuer’s Certificate of Incorporation to promote community and economic development, and the creation of jobs in the non-profit and profit sectors for residents of the City by developing and providing programs for not-for-profit institutions, manufacturing and industrial businesses and other entities to access low interest tax-exempt and non-tax-exempt financing for their eligible projects.

The Issuer has offered and plans to offer other obligations from time to time to finance projects for other not-for-profit institutions and, under certain circumstances, manufacturing and industrial businesses, with respect to facilities located in the City. Such obligations have been and will be issued pursuant to and secured by instruments separate and apart from the Indenture.

The Issuer has not prepared or assisted in the preparation of this Official Statement, except for statements under the sections captioned "THE ISSUER" and "ABSENCE OF LITIGATION—THE ISSUER" and, except as aforesaid, the Issuer is not responsible for any statements made in this Official Statement. Except for the execution and delivery of documents required to effect the issuance of the Series 2012 Bonds, the Issuer has not otherwise assisted in the public offer, sale or distribution of the Series 2012 Bonds. Accordingly, except as aforesaid, the Issuer disclaims responsibility for the disclosures set forth in this Official Statement or otherwise made in connection with the offer, sale and distribution of the Series 2012 Bonds.

The Series 2012 Bonds are special limited revenue obligations of the Issuer payable solely from the payments made by the College under the Loan Agreement and the Promissory Note and from the Trust Estate as described in the Indenture. Neither the Issuer nor its directors or officers are personally liable with respect to the Series 2012 Bonds. Accordingly, no financial information with respect to the Issuer or its directors or officers has been included in this Official Statement.

## **WAGNER COLLEGE**

### **GENERAL**

Wagner College is a private, not-for-profit, non-sectarian, co-educational liberal arts college located on Staten Island in The City of New York. For additional information about Wagner College, see APPENDIX A and APPENDIX B hereto.

### **OUTSTANDING BONDS AND BANK CREDIT FACILITIES**

The Series 2012 Bonds are secured on a parity basis with the DASNY Series 1998 Bonds, the DASNY Series 2009 Bonds and the Bank Credit Facilities by the pledge and assignment to the Trustee of the Trust Estate, including the Mortgages and the Issuer's security interest in the Gross Receipts granted by Wagner College to the Issuer under the Loan Agreement, subject to the Prior Pledge. For a further description of the Outstanding bonds and other debt of the College, please see APPENDIX A and APPENDIX B hereto.

## **THE PLAN OF FINANCE**

### **THE PROJECT**

A portion of the proceeds from the sale of the Series 2012 Bonds will be used to (i) finance, refinance or reimburse Wagner College for certain of the costs of the Project, (ii) fund the Debt Service Reserve Fund and (iii) pay certain costs of issuing the Series 2012 Bonds. The Project will consist of (i) the renovation, repair of, and improvements to the approximately 58,840 square foot Main Hall building located on the College's campus at 631 Howard Avenue, Staten Island, New York; (ii) the renovation, repair of, and improvements to the approximately 139,045 square foot Harborview Residence Hall Building located on the College's campus at One Campus Road, Staten Island, New York; and (iii) miscellaneous capital improvements or equipment. All of the facilities that are part of the Project are owned by Wagner College.

## THE SERIES 2012 BONDS

*The information under this heading is subject in its entirety to the information set forth below under the heading "Book-ENTRY ONLY SYSTEM" while the Bonds are held in DTC's book-entry only system.*

### GENERAL

The Series 2012 Bonds will be dated their date of delivery and will bear interest from such date, payable initially on January 1, 2013 and semiannually thereafter on each July 1 and January 1 (each an "*Interest Payment Date*") computed on the basis of a 360-day year of twelve 30-day months. The Series 2012 Bonds mature (subject to prior redemption) in the principal amounts and on the dates set forth on the inside front cover page of this Official Statement. The Series 2012 Bonds are issuable only in fully registered, book-entry only form in a minimum denomination of \$5,000 or any integral multiple thereof (the "*Authorized Denomination*"). See "BOOK-ENTRY ONLY SYSTEM" herein.

Each Series 2012 Bond are transferable only upon compliance with the restrictions on transfer set forth on such Series 2012 Bond and only upon the books of the Issuer, which will be kept for the purpose at the designated corporate trust office of the Trustee, by the registered owner thereof in person or by his duly authorized attorney-in-fact, upon surrender of such Series 2012 Bond together with a written instrument of transfer in the form appearing on such Series 2012 Bond duly executed by the registered owner or his duly authorized attorney-in-fact with a guaranty of the signature thereon. Upon the transfer of any Series 2012 Bond, the Trustee will prepare and issue in the name of the transferee one or more new Series 2012 Bonds of the same aggregate principal amount, maturity and interest rate as the surrendered Series 2012 Bond.

Any Series 2012 Bond, upon surrender thereof at the designated corporate trust office of the Trustee with a written instrument of transfer in the form appearing on such Series 2012 Bond, duly executed by the registered owner or his duly authorized attorney-in-fact, with a guaranty of the signature thereon, may, at the option of the owner thereof, be exchanged for an equal aggregate principal amount of Series 2012 Bonds of the same maturity and interest rate in the Authorized Denomination. However, the Trustee will not be required to (i) transfer or exchange any Series 2012 Bonds during the period between a Record Date and the following Interest Payment Date or during the period of fifteen (15) days next preceding any day for the selection of Series 2012 Bonds to be redeemed, or (ii) transfer or exchange any Series 2012 Bonds selected, called or being called for redemption in whole or in part.

The Issuer, the Bond Registrar, the Trustee and any Paying Agent may deem and treat the Person in whose name any Series 2012 Bond is registered as the absolute owner of such Series 2012 Bond, whether such Series 2012 Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal and Redemption Price, if any, of, and interest on such Series 2012 Bond and for all other purposes, and all payments made to any such registered owner or upon his order will be valid and effectual to satisfy and discharge the liability upon such Series 2012 Bond to the extent of the sum or sums so paid, and neither the Issuer, Wagner College, the Bond Registrar, the Trustee nor any Paying Agent will be affected by any notice to the contrary.

## PAYMENT OF PRINCIPAL AND INTEREST

The principal of and the Redemption Price, if applicable, on all Series 2012 Bonds is payable by check or draft at maturity or upon earlier redemption to the Persons in whose names such Series 2012 Bonds are registered on the bond registration books maintained by the Trustee as Bond Registrar at the maturity or redemption date thereof, upon the presentation and surrender of such Series 2012 Bonds at the designated corporate trust office of the Trustee, as Paying Agent.

The interest payable on each Series 2012 Bond on any Interest Payment Date will be paid by the Trustee to the registered owner of such Series 2012 Bond, as shown on the bond registration books of the Trustee as Bond Registrar at the close of business on the Record Date for such interest, (1) by check or draft mailed to such registered owner at his address as it appears on the bond registration books or at such other address as is furnished to the Trustee in writing by such owner, or (2) by wire transfer at the written request addressed to the Trustee by any registered owner of Series 2012 Bonds in the aggregate principal amount of at least \$1,000,000 that all such payments be made by wire transfer, no later than five (5) Business Days before an Interest Payment Date, but no later than a Record Date for any interest payment.

Interest on any Series 2012 Bond that is due and payable but not paid on the date due ("*Defaulted Interest*") will cease to be payable to the owner of such Series 2012 Bond on the Record Date and will be payable to the owner in whose name such Series 2012 Bond is registered at the close of business on a special record date (the "*Special Record Date*") for the payment of such Defaulted Interest, which Special Record Date will be fixed as provided in the Indenture.

## EVENTS OF DEFAULT AND ACCELERATION

The following constitute events of default under the Indenture with respect to the Series 2012 Bonds: (i) failure in the payment of the interest on any Series 2012 Bond when the same becomes due and payable; (ii) failure in the payment of the principal or redemption premium, if any, of any Series 2012 Bonds, when due and payable, whether at the stated maturity thereof or upon proceedings for redemption thereof or otherwise, or interest accrued thereon to the date of redemption after notice of redemption therefor or otherwise (iii) failure of the Issuer to observe or perform any covenant, condition or agreement in the Series 2012 Bonds or under the Indenture on its part to be performed and (A) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Issuer and the College specifying the nature of same from the Trustee or the Holders of more than fifty percent (50%) in aggregate principal amount of the Series 2012 Bonds Outstanding, or (B) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Issuer or the College fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice; or (iv) the occurrence of an "Event of Default" under the Loan Agreement, the Promissory Note, the Mortgage, the Intercreditor Agreement, the Indenture or the Tax Regulatory Agreement.

Upon the happening and continuance of any Event of Default under the Indenture, unless the principal of all the Series 2012 Bonds has already become due and payable, either the Trustee (by notice in writing to the Issuer and the College) or the Holders of over fifty percent (50%) in aggregate principal amount of the Series 2012 Bonds Outstanding (by notice in writing to the Issuer, the College and the Trustee) may declare the principal or Redemption Price, if any, of all the Series 2012 Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon such declaration the same will become and be immediately due and payable. The Indenture also provides for acceleration upon the occurrence of certain Events of Default under the Loan Agreement, without the necessity of any declaration or other action by the Trustee or any other Person.

In addition, the Loan Agreement also provides for acceleration of the loan payments upon the occurrence of certain Events of Default under the Loan Agreement, in some cases without the necessity of any declaration or other action by the Trustee or any other Person.

See "APPENDIX D—SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT" and See "APPENDIX E—SUMMARY OF CERTAIN PROVISIONS OF INDENTURE OF TRUST".

#### REDEMPTION PROVISIONS

##### *Optional Redemption*

The Series 2012 Bonds are subject to redemption, on or after July 1, 2022, in whole at any time or in part (but if in part in integral multiples of \$5,000 and in the minimum principal amount of \$50,000) at the option of the Issuer (which option will be exercised only upon the giving of notice by Wagner College of its intention to prepay loan payments due under the Loan Agreement), at the Redemption Price of 100% of the unpaid principal amount of the Series 2012 Bonds to be redeemed, plus accrued interest to the date of redemption.

##### *Mandatory Redemption Upon Occurrence of Certain Other Events*

The Series 2012 Bonds are also subject to mandatory redemption prior to maturity, at the option of the Issuer, as a whole only, in the event (i) the Issuer determines that (w) the College is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not for the Approved Project Operations, (x) the College, any Principal of the College or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the College has committed a material violation of a material Legal Requirement, (y) any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, or (ii) the College fails to obtain or maintain the liability insurance with respect to the Facility required under the Loan Agreement, and, in the case of clause (i) or (ii) above, the College fails to cure any such default or failure within the applicable time periods set forth in the Loan Agreement following the receipt by the College of written notice of such default or failure from the Issuer and a demand by the Issuer on the College to cure the same. Any such redemption will be made upon notice or waiver of notice as provided in the Indenture, at the Redemption Price of one hundred

percent (100%) of the unpaid principal amount of the Series 2012 Bonds, together with interest accrued thereon to the date of redemption.

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

The Series 2012 Bonds are subject to mandatory tender for purchase at the direction of the Issuer, upon the direction of the College, in whole or in part (and, if in part, in such manner as determined by the College) on any date on or after July 1, 2022, at a Purchase Price equal to the applicable Redemption Price for any optional redemption of such Series 2012 Bonds, plus accrued interest to the purchase date. The Series 2012 Bonds purchased are not required to be cancelled if the College delivers an opinion of Nationally Recognized Bond Counsel pursuant to the Loan Agreement.

#### *General Redemption Provisions*

In the event of redemption of less than all the Outstanding Series 2012 Bonds of a maturity, the particular Series 2012 Bonds or portions thereof to be redeemed will be selected by the Trustee in such manner as the Trustee in its discretion may deem fair, except that to the extent practicable, the Trustee will select Series 2012 Bonds for redemption such that no Series 2012 Bond will be of a denomination of less than the Authorized Denomination. In the event of redemption of less than all the Outstanding Series 2012 Bonds stated to mature on different dates, the principal amount of such Series 2012 Bonds to be redeemed will be applied in inverse order of maturity of the Outstanding Series 2012 Bonds to be redeemed and by lot within a maturity. The portion of Series 2012 Bonds to be redeemed in part will be in the principal amount of the minimum Authorized Denomination thereof or some integral multiple thereof and, in selecting Series 2012 Bonds for redemption, the Trustee will treat each such Series 2012 Bond as representing that number of Series 2012 Bonds which is obtained by dividing the principal amount of such registered Series 2012 Bond by the minimum Authorized Denomination thereof (referred to below as a "unit") then issuable rounded down to the integral multiple of such minimum Authorized Denomination. If it is determined that one or more, but not all, of the units of principal amount represented by any such Series 2012 Bond is to be called for redemption, then, upon notice of intention to redeem such unit or units, the Holder of such Series 2012 Bond will forthwith surrender such Series 2012 Bond to the Trustee for (a) payment to such Holder of the Redemption Price of the unit or units of principal amount called for redemption and (b) delivery to such Holder of a new Series 2012 Bond or Series 2012 Bonds in the aggregate unpaid principal amount of the unredeemed balance of the principal amount of such Series 2012 Bond. New Series 2012 Bonds of the same maturity representing the unredeemed balance of the principal amount of such Series 2012 Bond will be issued to the registered Holder thereof, without charge therefor. If the Holder of any such Series 2012 Bond of a denomination greater than a unit will fail to present such Series 2012 Bond to the Trustee for payment and exchange as aforesaid, such Series 2012 Bond will, nevertheless, become due and payable on the date fixed for redemption to the extent of the unit or units of principal amount called for redemption (and to that extent only).

When redemption of any Series 2012 Bond is requested or required pursuant to the Indenture, the Trustee will give notice of such redemption in the name of the Issuer, specifying the name of the Series 2012 Bonds, CUSIP number, Series 2012 Bond numbers, the date of

original issue of such Series 2012 Bonds, the date of mailing of the notice of redemption, maturities, interest rates and principal amounts of the Series 2012 Bonds or portions thereof to be redeemed, the redemption date, the Redemption Price, and the place or places where amounts due upon such redemption will be payable (including the name, address and telephone number of a contact person at the Trustee) and specifying the principal amounts of the Series 2012 Bonds or portions thereof to be payable and, if less than all of the Series 2012 Bonds of any maturity are to be redeemed, the numbers of such Series 2012 Bonds or portions thereof to be so redeemed. Such notice will further state that on such date there will become due and payable upon each Series 2012 Bond or portion thereof to be redeemed the Redemption Price thereof together with interest accrued to the redemption date, and that from and after such date interest thereon will cease to accrue and be payable. Such notice may set forth any additional information relating to such redemption. The Trustee, in the name and on behalf of the Issuer, (i) will mail a copy of such notice by first class mail, postage prepaid, not more than sixty (60) nor less than thirty (30) days prior to the date fixed for redemption, to the registered owners of any Series 2012 Bonds which are to be redeemed, at their last addresses, if any, appearing upon the registration books, but any defect in such notice will not affect the validity of the proceedings for the redemption of such Series 2012 Bonds with respect to which proper mailing was effected; and (ii) cause notice of such redemption to be sent to at least two (2) of the national information services that disseminate redemption notices. Any notice mailed as provided in the Indenture and described above will be conclusively presumed to have been duly given, whether or not the registered owner receives the notice. In the event of a postal strike, the Trustee will give notice by other appropriate means selected by the Trustee in its discretion. If any Series 2012 Bond will not be presented for payment of the Redemption Price within sixty (60) days of the redemption date, the Trustee will mail a second notice of redemption to such Holder by first class mail, postage prepaid. Any amounts held by the Trustee due to non-presentment of Series 2012 Bonds for payments on or after any redemption date will be retained by the Trustee for a period of at least one year after the final maturity date of such Series 2012 Bonds. Further, if any Holders of Series 2012 Bonds will constitute registered depositories, the notice of redemption described in the first sentence of this paragraph will be mailed to such Holders at least two (2) days prior to the mailing of such notice to all Holders.

If notice of redemption will have been given as aforesaid, the Series 2012 Bonds called for redemption will become due and payable on the redemption date; provided, however, that with respect to any optional redemption of the Series 2012 Bonds, such notice will state that such redemption will be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2012 Bonds to be redeemed, and that if such moneys will not have been so received said notice will be of no force and effect and the Issuer will not be required to redeem the Series 2012 Bonds. In the event that such notice of optional redemption contains such a condition and such moneys are not so received, the redemption will not be made and the Trustee will within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. If a notice of optional redemption will be unconditional, or if the conditions of a conditional notice of optional redemption will have been satisfied, then upon presentation and surrender of the Series 2012 Bonds so called for redemption at the place or places of payment, such Series 2012 Bonds will be redeemed.

Notice having been given in the manner provided in the Indenture and described above, the Series 2012 Bonds or portions thereof so called for redemption will become due and payable on the redemption dates so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date. If, on the redemption date, moneys for the redemption of all the Series 2012 Bonds or portions thereof to be redeemed, together with interest to the redemption date, will be held by the Paying Agents so as to be available therefor on said date and if notice of redemption has been given as aforesaid, then, from and after the redemption date, (i) interest on the Series 2012 Bonds or portions thereof so called for redemption will cease to accrue and become payable, (ii) the Series 2012 Bonds or portions thereof so called for redemption will cease to be entitled to any lien, benefit or security under the Indenture, and (iii) the Holders of the Series 2012 Bonds or portions thereof so called for redemption will have no rights in respect thereof, except to receive payment of the Redemption Price together with interest accrued to the redemption date. If said moneys are not available on the redemption date, such Series 2012 Bonds or portions thereof will continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

### **BOOK-ENTRY ONLY SYSTEM**

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Series 2012 Bonds. The Series 2012 Bonds will be issued as fully registered bonds 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 certificate will be issued for each maturity of the Series 2012 Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

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

Purchases of Series 2012 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2012 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2012 Bond ("*Beneficial Owner*") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2012 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 Series 2012 Bonds, except in the event that use of the book-entry system for the Series 2012 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2012 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2012 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2012 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2012 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. Beneficial Owners of Series 2012 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2012 Bonds, such as redemptions, defaults and proposed amendments to bond documents. For example, Beneficial Owners of Series 2012 Bonds may wish to ascertain that the nominee holding the Series 2012 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Trustee and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2012 Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2012 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Trustee 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 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal, interest and redemption prices on the Series 2012 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 Trustee on a payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, interest and redemption prices to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the 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 Series 2012 Bonds at any time by giving reasonable notice to the Issuer or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, bond certificates are required to be printed and delivered.

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

The information set forth above under this heading concerning DTC and DTC's book-entry system has been obtained from sources the Issuer believes to be reliable, but the Issuer takes no responsibility for the accuracy thereof.

NO REPRESENTATION IS MADE BY THE ISSUER, THE TRUSTEE, WAGNER COLLEGE OR THE UNDERWRITER AS TO THE ACCURACY OR ADEQUACY OF THE INFORMATION SET FORTH ABOVE UNDER THIS HEADING NOR AS TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE HEREOF.

Under the Indenture, payments made by the Trustee to DTC or its nominee will satisfy the Issuer's obligations under the Indenture and Wagner College's obligations under the Loan Agreement, to the extent of the payments so made.

Prior to any discontinuation of the book-entry only system described above, the Trustee and the Issuer may treat DTC or its nominee, Cede & Co., as, and deem DTC or its nominee, Cede & Co., to be, the absolute owner of the Series 2012 Bonds for all purposes whatsoever, including, without limitation, (i) the payment of principal of and interest on the Series 2012 Bonds, (ii) giving notices of redemption and other matters with respect to the Series 2012 Bonds, (iii) registering transfers with respect to the Series 2012 Bonds and (iv) the selection of Series 2012 Bonds for redemption.

NONE OF THE ISSUER, THE TRUSTEE, WAGNER COLLEGE OR THE UNDERWRITER WILL HAVE ANY RESPONSIBILITY OR OBLIGATION WITH RESPECT TO (i) THE ACCURACY OF THE RECORDS OF

DTC, ITS NOMINEE OR ANY DTC PARTICIPANT OR INDIRECT PARTICIPANT WITH RESPECT TO ANY BENEFICIAL OWNERSHIP INTEREST IN ANY SERIES 2012 BOND, (ii) THE DELIVERY TO ANY DTC PARTICIPANT OR INDIRECT PARTICIPANT OR ANY OTHER PERSON, OTHER THAN AN OWNER, AS SHOWN IN THE BOND REGISTER, OF ANY NOTICE WITH RESPECT TO ANY SERIES 2012 BOND, INCLUDING, WITHOUT LIMITATION, ANY NOTICE OF REDEMPTION OR ANY EVENT WHICH WOULD OR COULD GIVE RISE TO AN OPTION WITH RESPECT TO ANY SERIES 2012 BOND, (iii) THE PAYMENT OF ANY DTC PARTICIPANT OR INDIRECT PARTICIPANT OR ANY OTHER PERSON, OTHER THAN AN OWNER, AS SHOWN IN THE BOND REGISTER, OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OF OR INTEREST ON ANY SERIES 2012 BOND OR (iv) ANY CONSENT GIVEN BY DTC AS REGISTERED OWNER.

## **SECURITY FOR THE SERIES 2012 BONDS**

### **GENERAL**

Concurrently with the issuance of the Series 2012 Bonds, the Issuer will enter into the Loan Agreement with Wagner College pursuant to which the Issuer will loan the proceeds from the sale of the Series 2012 Bonds to Wagner College. Wagner College will be unconditionally obligated under the Loan Agreement and the Promissory Note to make semiannual payments to the Trustee sufficient to pay the principal or redemption price of, and interest on, the Bonds, including the Series 2012 Bonds and any Additional Bonds, whether at maturity, upon redemption, purchase in lieu of redemption, acceleration or otherwise. See “APPENDIX D—SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT.” The obligations of the College to make such payments under the Loan Agreement and Promissory Note will be secured by the pledge of the Gross Receipts and the Mortgages. Pursuant to the Indenture, the Issuer will assign to the Trustee all of its right, title and interest in and to the Loan Agreement, the Promissory Note and the Gross Receipts, including all amounts payable thereunder with respect to the principal or redemption price of, and interest on, the Bonds, except for the Issuer’s Reserved Rights.

The Series 2012 Bonds will be secured on a parity basis with the DASNY Series 1998 Bonds, the DASNY Series 2009 Bonds and the Bank Credit Facilities under the Indenture by the pledge and assignment of the Trust Estate, including the Mortgages and the Issuer’s security interest in the Gross Receipts granted by Wagner College to the Issuer (see “SECURITY INTEREST IN GROSS RECEIPTS” below) under the Loan Agreement, subject to the Prior Pledge. At the time of delivery of the Series 2012 Bonds, a portion of the proceeds of the Series 2012 Bonds will be used to fund the Debt Service Reserve Fund in an amount equal to the Debt Service Reserve Fund Requirement (see “DEBT SERVICE RESERVE FUND” below).

### **SECURITY INTEREST IN GROSS RECEIPTS**

As security for its liabilities and the performance of all obligations under the Loan Agreement, Wagner College has granted to the Issuer a security interest in Wagner College’s Gross Receipts, consisting, generally, of receipts, revenues, income and other unrestricted moneys received by Wagner College, subject to the Prior Pledge. In the Indenture, the Issuer has pledged the security interest in the Gross Receipts to the Trustee for the benefit of the Holders of

the Series 2012 Bonds and all other Bonds issued under the Indenture. See "APPENDIX B - THE COLLEGE."

Wagner College has also granted to the trustee for the DASNY Series 1998 Bonds and the trustee for the DASNY Series 2009 Bonds a parity security interest in Wagner College's Gross Receipts (subject to the Prior Pledge) for the benefit of the holders of the DASNY Series 1998 Bonds and the DASNY Series 2009 Bonds and has granted to TD Bank a parity security interest in Wagner College's Gross Receipts (subject to the Prior Pledge) as security for the Bank Credit Facilities. Wagner College may also incur additional debt secured on a parity with the lien and pledge of the Gross Receipts under certain conditions. See "APPENDIX D—SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT." See also "APPENDIX E - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST."

#### DEBT SERVICE RESERVE FUND

The Indenture establishes a Debt Service Reserve Fund to be held by the Trustee and pledged to secure the payment of the principal and Redemption Price of and interest on the Series 2012 Bonds.

The Debt Service Reserve Fund for the Series 2012 Bonds will be maintained at an amount equal to the lesser of (i) ten percent of the stated principal amount of the outstanding Series 2012 Bonds, (ii) 100% of the maximum annual principal and interest on Outstanding Series 2012 Bonds, (iii) 125% of the average annual debt service on Outstanding Series 2012 Bonds, or (iv) the amount permitted to be deposited into the Debt Service Reserve Fund, and invested at an unrestricted yield, under the Code. Initially, the Debt Service Reserve Fund will be funded at \$1,270,500.

Moneys in the Debt Service Reserve Fund are to be withdrawn and deposited in the Bond Fund whenever the amount in such Bond Fund on the third Business Day prior to an interest payment date is less than the amount which is necessary to pay the principal of and interest on Outstanding Series 2012 Bonds payable on such interest payment date. The Loan Agreement requires that Wagner College restore the Debt Service Reserve Fund to its requirement by paying the amount of any deficiency to the Trustee on the first day of the month immediately following the receipt by the College of a notice of deficiency and on the first day of each of the five (5) succeeding months, an amount equal to 1/6 of such deficiency in the Debt Service Reserve Fund. Moneys in the Debt Service Reserve Fund in excess of its requirement will be withdrawn and applied in accordance with the Indenture. See "APPENDIX E - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST."

#### SECURITY AND MORTGAGE INTERESTS

The obligations of Wagner College under the Loan Agreement will be secured by the Mortgages. The Mortgages will be pledged to the Holders of the Series 2012 Bonds.

## INTERCREDITOR AGREEMENT

Pursuant to the Intercreditor Agreement, the Series 2012 Bonds will (i) be secured on a parity with the DASNY Series 1998 Bonds, the DASNY Series 2009 Bonds and the Bank Credit Facilities with respect to the security interest in the Gross Receipts and the Mortgages (subject to the Prior Pledge), and (ii) share on a pro rata basis with the DASNY Series 1998 Bonds, the DASNY Series 2009 Bonds and the Bank Credit Facilities in any Gross Receipts collections and in the proceeds of a foreclosure on the mortgage lien granted to the Issuer by Wagner College in the Mortgages.

## ADDITIONAL BONDS

Subject to compliance by Wagner College with the provisions of the Loan Agreement, the Issuer may, upon the request of Wagner College, issue Additional Bonds under the Indenture for the purpose of (i) completing the Project, (ii) providing funds in excess of Net Proceeds of insurance or eminent domain to repair, relocate, replace, rebuild or restore a Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to any of the Facilities or (iv) refunding Outstanding Bonds. Additional Bonds will be secured on a parity basis with the Series 2012 Bonds under the Indenture.

## LIMITATIONS ON INCURRENCE OF ADDITIONAL DEBT

The Loan Agreement provides that Wagner College may incur Additional Debt (including Additional Bonds); provided, among other things, that:

- (i) the Trustee has consented to such Additional Debt; or
- (ii) each of the following has been satisfied as determined by an Independent Accountant:
  - (A) For the last full Fiscal Year of the College immediately preceding the issuance of such Additional Debt, the Cash Flow Coverage Ratio (calculated as if such Additional Debt had been issued and utilizing the maximum annual debt service for such Additional Debt, excluding any final or balloon payment) is at least 1.20; and
  - (B) After giving effect to the incurrence of such Additional Debt, the College's Total Net Assets (as set forth in the College's most recent audited financial statements) is not less than 30% of the College's Total Liabilities (as set forth in the College's most recent audited financial statements).

The Loan Agreement provides that Wagner College may incur Additional Subordinated Debt; provided that after giving effect to the incurrence of such Subordinated Debt, the College's Total Net Assets (as set forth in the College's most recent audited financial statements) will not be less than 30% of the College's total assets.

See APPENDIX D—"SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT—Financial Covenants."

## CASH FLOW COVERAGE RATIO

Wagner College will covenant in the Loan Agreement that, as long as the Series 2012 Bonds are outstanding, it will maintain rates, fees, charges, rents and other sources of revenue and support such that the Cash Flow Coverage Ratio (as defined in APPENDIX C) will equal or exceed 1.20 in each Fiscal Year of the College.

Failure of Wagner College to maintain the ratio described in the preceding paragraph in any Fiscal Year will obligate Wagner College under the Loan Agreement to develop a series of financial plans to correct such failure. The failure of Wagner College to maintain such ratios will not constitute a default on the part of Wagner College, provided that Wagner College continues to develop and comply with such financial plans in accordance with the Loan Agreement. See APPENDIX D—"SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT—Financial Covenants."

## LIQUIDITY TEST

The College must have on hand Liquidity of at least \$10,000,000 at the end of each Fiscal Year of the College.

## NEGATIVE COVENANT WITH RESPECT TO PLEDGE OF ENDOWMENT FUNDS

Wagner College will further covenant in the Loan Agreement that it will not grant any security interest in its endowment or board-designated funds unless Wagner College will first grant to the Trustee a security interest in such funds which is in all respects equal to any other security interest it grants in such funds. Wagner College may remove the board designation from previously board-designated funds at any time without restriction, and the foregoing covenant will not apply to such funds thereafter.

## LIMITED OBLIGATIONS

The Series 2012 Bonds are special limited revenue obligations of the Issuer, payable as to principal, redemption price and interest, solely from the Trust Estate and certain fund and accounts established under the indenture. Neither the State of New York nor any political subdivision thereof, including The City of New York, shall be obligated to pay the principal or redemption price of, or interest on, the Series 2012 Bonds. Neither the faith and credit nor the taxing power of the State of New York or any political subdivision thereof, including The City of New York, is pledged to such payment of the Series 2012 Bonds. The Series 2012 Bonds will not be payable out of any funds of the Issuer other than those pledged therefor pursuant to the Indenture. The Series 2012 Bonds will not give rise to a pecuniary liability or charge against the credit or taxing powers of the State of New York or any political subdivision thereof, including The City of New York. No recourse will be had for the payment of the principal or redemption price of, or interest on, the Series 2012 Bonds against any member, officer, director, employee or agent of the Issuer. The Issuer has no taxing power.

## **ESTIMATED SOURCES AND USES OF FUNDS**

The proceeds from the sale of the Series 2012 Bonds, together with certain other funds, are expected to be applied as follows:

<b>SOURCES OF FUNDS</b>	
Par Amount of Series 2012 Bonds	\$12,705,000
Original Issue Premium	1,235,443
Equity from College	<u>347,454</u>
TOTAL SOURCES	<u>\$14,287,897</u>
 <b>USES OF FUNDS</b>	
Payment of Project Costs	\$12,351,871
Debt Service Reserve Fund	1,270,500
Costs of Issuance	<u>665,526</u>
TOTAL USES	<u>\$14,287,897</u>

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## ANNUAL DEBT SERVICE REQUIREMENTS

The following table sets forth the annual debt service on the Series 2012 Bonds and all other debt of Wagner College that will be outstanding upon the issuance of the Series 2012 Bonds.

YEAR (AUGUST 31)	OTHER DEBT <sup>(1)(2)</sup> TOTAL	BONDS		TOTAL
		PRINCIPAL	INTEREST	
2013	\$5,630,719	-	\$487,025	\$6,117,744
2014	5,479,061	-	635,250	6,114,311
2015	5,471,861	-	635,250	6,107,111
2016	5,661,801	-	635,250	6,297,051
2017	5,541,920	-	635,250	6,177,170
2018	5,530,076	-	635,250	6,165,326
2019	5,492,776	-	635,250	6,128,026
2020	5,457,263	-	635,250	6,092,513
2021	5,601,202	-	635,250	6,236,452
2022	5,589,221	-	635,250	6,224,471
2023	5,571,741	-	635,250	6,206,991
2024	2,758,350	\$2,195,000	635,250	5,588,600
2025	2,836,125	2,230,000	525,500	5,591,625
2026	2,817,150	2,360,000	414,000	5,591,150
2027	2,625,475	2,670,000	296,000	5,591,475
2028	2,173,750	3,250,000	162,500	5,586,250
2029	2,183,900	-	-	2,183,900
2030	2,185,900	-	-	2,185,900
2031	2,194,975	-	-	2,194,975
2032	2,195,675	-	-	2,195,675
2033	2,198,225	-	-	2,198,225
2034	2,202,400	-	-	2,202,400
2035	2,212,975	-	-	2,212,975
2036	2,209,500	-	-	2,209,500
2037	2,222,425	-	-	2,222,425
2038	2,225,850	-	-	2,225,850
<b>TOTAL</b>	<b>\$96,270,316</b>	<b>\$12,705,000</b>	<b>\$8,872,775</b>	<b>\$117,848,091</b>

(1) Assumes that the interest on unhedged variable rate bonds accrues at 4.50%. Interest on the term loan accrues at a swap rate of 5.11%.

(2) Includes the Wagner College Consolidation and Construction Bonds of 1962, the DASNY Series 1998 Bonds, the DASNY Series 2009 Bonds, the TD Bank Term Loan, a mortgage loan and the Chartwells loans (which are interest-free loans), all as described in APPENDIX A hereto.

## **BONDHOLDERS' RISKS**

The following is a discussion of certain risks that could affect payments to be made by Wagner College with respect to the Series 2012 Bonds. Such discussion is not, and is not intended to be, exhaustive and should be read in conjunction with all other parts of this Official Statement, and such discussion should not be considered to be a complete description of all risks that could affect such payments. Prospective purchasers of the Series 2012 Bonds should carefully analyze the information contained in this Official Statement, including the Appendices hereto, and in the documents summarized herein, copies of which are available as described herein.

### **GENERAL**

The Series 2012 Bonds are payable solely from the payments to be made by Wagner College pursuant to the Loan Agreement and the Promissory Note. Such payments will be made from the revenues derived by Wagner College from its operations and from other nonoperating revenues received by Wagner College, income from the investment of funds held for the security of the Series 2012 Bonds and, under certain circumstances, proceeds of casualty insurance or condemnation awards. No representation or assurance is made that revenues will be realized by Wagner College in the amounts necessary to make payments due under the Loan Agreement. The amount of Wagner College's future revenues and expenses are subject to, among other things: (a) enrollment levels; (b) competition from other educational institutions; (c) the continuation of support from private contributions, grants and various federal and State programs; (d) endowment and investment performance; (e) the capabilities of management of Wagner College; and (f) future economic and other conditions, all of which are unpredictable and which may affect Wagner College's revenues and thereby payment of principal or redemption price of, and interest on, the Series 2012 Bonds.

### **MATTERS RELATING TO ENFORCEABILITY OF REMEDIES**

The remedies available under the Indenture and the Loan Agreement upon the occurrence of an Event of Default are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, including, specifically, Title 11 of the United States Code (the Federal Bankruptcy Code), the remedies provided in the Indenture and the Loan Agreement may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2012 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally and by judicial principles of equity.

### **FUNDING OF DEBT SERVICE RESERVE FUND**

There is no assurance that the amount on deposit in the Debt Service Reserve Fund will always be equal to the Debt Service Reserve Fund Requirement because (a) the market value of the securities on deposit therein may fluctuate or (b) Wagner College may not be able to repay amounts, if any, transferred from the Debt Service Reserve Fund to the Bond Fund or to replenish the Debt Service Reserve Fund in the event that, upon a valuation of the Debt Service

Reserve Fund, the amount on deposit therein is determined to be less than the Debt Service Reserve Fund Requirement.

#### AMENDMENTS TO INDENTURE AND LOAN AGREEMENT

Certain amendments to the Indenture and the Loan Agreement may be made without notice to or the consent of the owners of the Series 2012 Bonds and any Additional Bonds, and other amendments may be made with the consent of the owners of not less than a majority in aggregate principal amount of all Bonds outstanding under the Indenture, including Series 2012 Bonds and any Additional Bonds, and the requisite percentage of outstanding Bonds may be composed wholly or partially of the Beneficial Owners of Bonds other than the Series 2012 Bonds. Such amendments may affect the security for the Series 2012 Bonds and will be binding on all Bondholders, whether or not they have consented to the amendment. See "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST—Supplemental Indentures Without Bondholders' Consent," "—Supplemental Indentures With Bondholders' Consent," "—Amendments of Related Security Documents Not Requiring Consent of Bondholders" and "—Amendments of Related Security Documents Requiring Consent of Bondholders" in APPENDIX E.

#### TAX-EXEMPT STATUS OF WAGNER COLLEGE

The Internal Revenue Service (the "IRS") has determined that Wagner College is a tax-exempt organization described in Section 501(c)(3) of the Code. In order to maintain its tax-exempt status, Wagner College must comply with a number of requirements affecting its operations. The possible modification or repeal of certain existing federal income tax laws, a change of IRS policies or positions, a change in Wagner College's operations, purposes or other factors could result in the loss of its tax-exempt status. Wagner College has covenanted in the Loan Agreement that it will maintain its existence as a tax-exempt organization described in Section 501(c)(3) of the Code.

#### TAX-EXEMPT STATUS OF THE SERIES 2012 BONDS

Because the excludability of interest on the Series 2012 Bonds from gross income for federal income tax purposes is dependent in part upon events occurring after the date of issuance of the Series 2012 Bonds, the opinion of Bond Counsel described under "TAX MATTERS" assumes the compliance by Wagner College with certain provisions of the Code and the regulations relating thereto. No opinion is expressed by Bond Counsel with respect to the excludability of interest on the Series 2012 Bonds from gross income for federal income tax purposes in the event of noncompliance with such provisions.

The failure of Wagner College to maintain its existence as an organization described in Section 501(c)(3) of the Code or to comply with certain provisions of the Code and the regulations thereunder may cause interest on the Series 2012 Bonds to become includable in the gross income of the owners thereof for federal income tax purposes as of the date of issue. The Indenture does not provide for the payment of additional interest or a penalty on the Series 2012 Bonds or the mandatory redemption thereof in the event that the interest thereon becomes includable in gross income for federal income tax purposes.

There are or may be pending in the Congress of the U.S. legislative proposals, including some that carry retroactive effective dates, which, if enacted, could alter or amend the federal tax-exempt status, or adversely affect the market value, of the Series 2012 Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, it would apply to bonds issued prior to enactment. Prospective purchasers of the Series 2012 Bonds should consult their own tax advisors regarding any pending or proposed federal tax legislation. Bond Counsel expresses no opinion regarding any pending or proposed federal tax legislation.

#### RISK OF IRS AUDIT

The IRS has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the IRS, interest on such obligations is includable in gross income for federal income tax purposes. It cannot be predicted whether or not the IRS will commence an audit of the Series 2012 Bonds. If an audit is commenced, under current procedures the IRS may treat the Issuer as a taxpayer and the Bondholders may have no right to participate in such procedure. The commencement of an audit could adversely affect the market price for, and marketability of, the Series 2012 Bonds until the audit is concluded, regardless of the ultimate outcome.

#### BOND RATING

There is no assurance that the rating assigned to the Series 2012 Bonds on the date of issue will not be lowered or withdrawn at any time, the effect of which could adversely affect the market price for, and marketability of, the Series 2012 Bonds. See "RATING" herein.

#### SECONDARY MARKET AND PRICES

No assurance can be given that there will be a secondary market for the Series 2012 Bonds. Even if a secondary market exists, there can be no assurance as to the price for which the Series 2012 Bonds may be sold. Such price may be lower than the price paid by the current owner of the Series 2012 Bonds, depending on existing market conditions and other factors.

#### OTHER CONSIDERATIONS

##### *Environmental Matters*

To the knowledge of Wagner College, it is currently in substantial compliance with all material environmental laws related to its facilities. However, many of the structures on the Wagner College campus were constructed prior to the enactment of the current environmental regulatory framework and there can be no assurance that material environmental conditions will not be identified in the future. Furthermore, there can be no assurance that the costs of dealing with the identified problems or any other environmental problems that may be discovered in the future will not be significant.

## *Insurance*

Wagner College is obligated to obtain insurance providing coverage in the amount required by the Loan Agreement. Insurance premiums may increase significantly, thus reducing the revenues available to satisfy the payment obligations of Wagner College under the Loan Agreement. An unanticipated volume of claims under these insurance policies, however, could cause the payment of unforeseen amounts as deductibles and increased premiums, thereby adversely affecting Wagner College's finances.

## INTERCREDITOR AGREEMENT

Pursuant to the provisions of the Intercreditor Agreement, the exercise of certain rights and remedies of the Trustee for the Series 2012 Bonds may be restricted or limited for certain periods. In addition, certain rights in favor of DASNY, The Bank of New York Mellon and TD Bank, N.A., as applicable, may affect the rights and remedies of the Trustee of the Series 2012 Bonds.

## CONSIDERATIONS RELATING TO ADDITIONAL DEBT

Subject to the coverage and other tests set forth therein, the Loan Agreement permits Wagner College to incur additional indebtedness, including Additional Bonds. In addition, the College is permitted to incur additional indebtedness on a parity basis with the Series 2012 Bonds under its documentation with DASNY.

Such indebtedness would increase the College's debt service and repayment requirements and may adversely affect debt service coverage on the Series 2012 Bonds.

## OTHER RISK FACTORS

In the future, the following factors, among others, may adversely affect the operations of Wagner College to an extent that cannot be determined at this time:

- Employee strikes and other adverse labor actions that could result in a substantial reduction in revenues without corresponding decreases in costs.
- Decrease in the availability or receipt of grants or in the receipt of contributions or bequests.
- Inflation or other adverse economic conditions.
- Inability of Wagner College to meet or continue to comply with legal, regulatory and licensing requirements.
- The attempted imposition of, or the increase in, taxes related to the property and operations of not-for-profit organizations.

- The occurrence of natural disasters, including floods and earthquakes, which may damage the Facilities and other properties of Wagner College, interrupt utility service to the Facilities and other properties of Wagner College or otherwise impair the operation and generation of revenues therefrom.

## **ABSENCE OF LITIGATION**

### **THE ISSUER**

There is not now pending any litigation of which the Issuer has notice restraining or enjoining the issuance or delivery of the Series 2012 Bonds or questioning or affecting the validity of the Series 2012 Bonds or the proceedings and authority under which the Series 2012 Bonds are to be issued or the validity or enforceability of the Security Documents. Neither the creation, organization or existence of the Issuer, nor the title of the present directors or other officials of the Issuer to their respective offices, is, to the best knowledge of the Issuer, being contested.

### **WAGNER COLLEGE**

Wagner College has advised that no litigation, proceeding or investigation is pending or, to its knowledge, threatened against Wagner College, except (i) as disclosed in APPENDIX A, (ii) litigation, proceedings or investigations for which the probable ultimate recoveries and the estimated costs and expenses of defense will be entirely within applicable insurance policy limits (subject to applicable deductibles) or are not in excess of the total reserves held under applicable self-insurance programs or otherwise available, or (iii) litigation, proceedings or investigations in which there is no reasonable likelihood that an adverse determination will result or which, if an adverse determination were to result, would not have a materially adverse effect on the financial condition or results of operations of Wagner College. Wagner College has also advised that no litigation, proceedings or investigations are pending or, to its knowledge, threatened against Wagner College that in any manner question the right of Wagner College to participate in the transactions described in this Official Statement.

## **LEGAL MATTERS**

Legal matters in connection with the authorization, issuance and sale of the Series 2012 Bonds are subject to the approving opinion of Nixon Peabody LLP, New York, New York, Bond Counsel, which opinion will be substantially in the form attached hereto as APPENDIX G. Certain legal matters will be passed upon for the Issuer by Richard E. Marshall, Esq., its Vice President for Legal Affairs, and for Wagner College by its counsel, Hawkins Delafield & Wood LLP, New York, New York. Certain legal matters will be passed upon for the Underwriter by its counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York.

## **TAX MATTERS**

### **FEDERAL INCOME TAXES**

The Internal Revenue Code of 1986, as amended (the “Code”), imposes certain requirements that must be met subsequent to the issuance and delivery of the Series 2012 Bonds

for interest thereon to be and remain excluded from gross income for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Series 2012 Bonds to be included in gross income for federal income tax purposes retroactive to the date of issue of the Series 2012 Bonds. Pursuant to the Resolution, the Indenture, the Loan Agreement and the Tax Regulatory Agreement, the Issuer and Wagner College have covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the Series 2012 Bonds from gross income for federal income tax purposes pursuant to Section 103 of the Code. In addition, the Issuer and Wagner College have made certain representations and certifications in the Resolution, the Indenture, the Loan Agreement and the Tax Regulatory Agreement. Bond Counsel will also rely on the opinion of Hawkins, Delafield and Wood, LLP as to all matters concerning the status of the College as an organization described in Section 501(c)(3) of the Code and exempt from federal income tax under Section 501(a) of the Code. Bond Counsel will not independently verify the accuracy of those representations and certifications or that opinion.

In the opinion of Nixon Peabody LLP, Bond Counsel, under existing law and assuming compliance with the aforementioned covenant, and the accuracy of certain representations and certifications made by the Issuer and Wagner College described above, interest on the Series 2012 Bonds is excluded from gross income for Federal income tax purposes under Section 103 of the Code. Bond Counsel is also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Interest on the Series 2012 Bonds is, however, included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations.

#### STATE TAXES

Bond Counsel is also of the opinion that interest on the Series 2012 Bonds is exempt from personal income taxation imposed by the state of New York or any political subdivision thereof including The City of New York, pursuant to the General Municipal Law. Bond Counsel expresses no opinion as to other New York state or local tax consequences arising with respect to the Series 2012 Bonds nor as to the taxability of the Series 2012 Bonds or the income therefrom under the laws of any state other than the state of New York.

#### ORIGINAL ISSUE PREMIUM

The Series 2012 Bonds maturing on July 1, 2024 through July 1, 2028 (collectively, the "*Premium Bonds*") are being offered at prices in excess of their principal amounts. An initial purchaser with an initial adjusted basis in a Premium Bond in excess of its principal amount will have amortizable bond premium which is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of each Premium Bond based on the purchaser's yield to maturity (or, in the case of Premium Bonds callable prior to their maturity, over the period to the call date, based on the purchaser's yield to the call date and giving effect to any call premium). For purposes of determining gain or loss on the sale or other disposition of a Premium Bond, an initial purchaser who acquires such obligation with an amortizable bond premium is required to decrease such purchaser's adjusted basis in such Premium Bond annually

by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning such Series 2012 Bonds. Owners of the Premium Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Premium Bonds.

#### ANCILLARY TAX MATTERS

Ownership of the Series 2012 Bonds may result in other federal tax consequences to certain taxpayers, including, without limitation, certain S corporations, foreign corporations with branches in the United States, property and casualty insurance companies, individuals receiving Social Security or Railroad Retirement benefits, and individuals seeking to claim the earned income credit. Ownership of the Series 2012 Bonds may also result in other federal tax consequences to taxpayers who may be deemed to have incurred or continued indebtedness to purchase or to carry the Series 2012 Bonds. Prospective investors are advised to consult their own tax advisors regarding these rules.

Interest paid on tax-exempt obligations such as the Series 2012 Bonds is subject to information reporting to the Internal Revenue Service (the “IRS”) in a manner similar to interest paid on taxable obligations. In addition, interest on the Series 2012 Bonds may be subject to backup withholding if such interest is paid to a registered owner that (a) fails to provide certain identifying information (such as the registered owner’s taxpayer identification number) in the manner required by the IRS, or (b) has been identified by the IRS as being subject to backup withholding.

Bond Counsel is not rendering any opinion as to any Federal tax matters other than those described in the opinions attached as APPENDIX G. Prospective investors, particularly those who may be subject to special rules described above, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the Series 2012 Bonds, as well as any tax consequences arising under the laws of any state or other taxing jurisdiction.

#### CHANGES IN LAW AND POST ISSUANCE EVENTS

Legislative or administrative actions and court decisions, at either the federal or state level, could have an adverse impact on the potential benefits of the exclusion from gross income of the interest on the Series 2012 Bonds for federal or state income tax purposes, and thus on the value or marketability of the Series 2012 Bonds. This could result from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), repeal of the exclusion of the interest on the Series 2012 Bonds from gross income for federal or state income tax purposes, or otherwise. For example, in September, 2011, the President released legislative proposals that would, among other things, subject interest on tax-exempt bonds (including the Series 2012 Bonds) to a federal income tax for taxpayers with incomes above certain thresholds for tax years beginning after 2012. It is not possible to predict whether any legislative or administrative actions or court decisions having an adverse impact on the federal or state income tax treatment of holders of the Series 2012 Bonds may occur. Prospective purchasers of the Series 2012 Bonds should consult their own tax advisors regarding the impact of any change in law on the Series 2012 Bonds. Bond Counsel has

not undertaken to advise in the future whether any events after the date of issuance and delivery of the Series 2012 Bonds may affect the tax status of interest on the Series 2012 Bonds. Bond Counsel expresses no opinion as to any federal, state or local tax law consequences with respect to the Series 2012 Bonds, or the interest thereon, if any action is taken with respect to the Series 2012 Bonds or the proceeds thereof upon the advice or approval of other counsel.

#### RATING

Fitch, Inc. has assigned the Series 2012 Bonds a long-term rating of BBB-. The College initiated discussions with more than one rating agency. After such initial discussions, the College decided to only apply for a rating from Fitch. Such rating reflects only the views of such rating agency, and an explanation of the significance of such rating must be obtained from the rating agency furnishing such rating. There is no assurance that a particular rating will continue for any given period of time or that any such rating will not be revised downward or withdrawn entirely if, in the judgment of the agency furnishing the rating, circumstances so warrant. A downward revision or withdrawal of such rating may have an effect on the market price for, and marketability of, the Series 2012 Bonds. A securities rating is not a recommendation to buy, sell or hold securities.

#### UNDERWRITING

Pursuant to the terms of a Bond Purchase Agreement (the "*Bond Purchase Agreement*") among the Issuer, Wagner College and Morgan Stanley & Co. LLC (the "*Underwriter*"), the Underwriter has agreed to purchase the Series 2012 Bonds at a purchase price of \$13,758,970.76, which is equal to the par amount of the Series 2012 Bonds, plus original issue premium of \$1,235,442.75 and less an underwriting discount of \$181,471.99. Wagner College has also agreed to reimburse the Underwriter for its reasonable expenses. The Bond Purchase Agreement provides that the obligation of the Underwriter are subject to certain conditions precedent and that the Underwriter will be obligated to purchase all of the Series 2012 Bonds if any of the Series 2012 Bonds are purchased. The Series 2012 Bonds may be offered and sold to certain dealers (including dealers depositing such Series 2012 Bonds into investment trusts, accounts or funds) and others at prices lower than the initial public offering price. After the initial public offering, the public offering price of the Series 2012 Bonds may be changed from time to time by the Underwriter. Wagner College has agreed to indemnify the Underwriter and the Issuer against certain liabilities or to contribute to any payments required to be made by the Underwriter relating to such liabilities, including liabilities under the federal securities laws.

Morgan Stanley, parent company of Morgan Stanley & Co. LLC, an Underwriter of the Series 2012 Bonds, has entered into a retail brokerage joint venture with Citigroup Inc. As part of the joint venture, Morgan Stanley & Co. LLC will distribute securities to retail investors through the financial advisor network of a new broker-dealer, Morgan Stanley Smith Barney LLC. This distribution arrangement became effective on June 1, 2009. As part of this arrangement, Morgan Stanley & Co. LLC will compensate Morgan Stanley Smith Barney LLC for its selling efforts with respect to the Series 2012 Bonds.

## **INDEPENDENT AUDITORS**

The financial statements of Wagner College as of and for the years ended August 31, 2011 and August 31, 2010, included in APPENDIX B to this Official Statement, have been audited by KPMG LLP, independent auditors, as stated in their report appearing in APPENDIX B.

## **FINANCIAL ADVISOR**

O'Brien Partners, New York, New York, has been engaged by Wagner College to provide various financial advisory services.

## **CONTINUING DISCLOSURE**

### **THE ISSUER**

The Issuer has determined that no financial or operating data concerning the Issuer is material to an evaluation of the offering of the Series 2012 Bonds or to any decision to purchase, hold or sell the Series 2012 Bonds, and the Issuer will not provide any such information.

### **WAGNER COLLEGE**

On the date of issuance of the Series 2012 Bonds, Wagner College will enter into the Continuing Disclosure Agreement for the benefit of the beneficial owners of the Series 2012 Bonds. Under the Continuing Disclosure Agreement, Wagner College is required to file certain information annually with, and to provide notice of certain events to, the Municipal Securities Rulemaking Board (the "MSRB") using its Electronic Municipal Market Access system ("EMMA"), pursuant to Rule 15c2-12 (the "Rule") of the Securities and Exchange Commission. The information to be provided on an annual basis and the events that are required to be noticed on an occurrence basis are set forth in the proposed form of the Continuing Disclosure Agreement included in APPENDIX F hereto. The Continuing Disclosure Agreement will constitute Wagner College's first obligation to provide continuing disclosure pursuant to the Rule.

## **MISCELLANEOUS**

The foregoing summaries or descriptions of provisions in the Indenture, the Loan Agreement, the Promissory Note, the Continuing Disclosure Agreement and the other agreements and documents referred to herein, and all references to other materials not purporting to be quoted in full, are only brief outlines of certain provisions thereof and do not constitute complete statements of such provisions or purport to summarize all of the pertinent provisions thereof. Reference is made to the complete Indenture and the Loan Agreement, copies of which may be obtained prior to the date of issuance of the Series 2012 Bonds from the Underwriter and thereafter from the Trustee.

The information contained in this Official Statement is the responsibility of Wagner College, except for the information contained under the heading "BOOK-ENTRY ONLY SYSTEM," which has been provided by DTC to the extent described therein, and the information under the headings "THE ISSUER" and "ABSENCE OF LITIGATION—The Issuer," which has been provided by

the Issuer. The Issuer makes no representation, warranty or certification as to the adequacy or accuracy of the information set forth in this Official Statement, other than the information set forth under the headings "THE ISSUER" and "ABSENCE OF LITIGATION—The Issuer." This Official Statement is not intended to be construed as a contract or agreement between the Issuer and the purchasers or holders of the Series 2012 Bonds.

Any statements made in this Official Statement involving matters of opinion or estimates, whether or not expressly stated, are set forth as such, and not as representations of facts. No representation is made that any of the opinions or estimates will be realized.

The distribution of this Official Statement has been duly authorized by the Issuer and by Wagner College.

BUILD NYC RESOURCE CORPORATION

By: /c/ Jeffrey Lee  
Executive Director

WAGNER COLLEGE

By: /c/ Richard Guarasci  
President

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**WAGNER COLLEGE**

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## **PART A - THE COLLEGE**

### **GENERAL INFORMATION**

#### **History of the College**

Wagner College (“Wagner” or the “College”) is an independent, private, not-for-profit liberal arts higher education institution located on Staten Island in New York City. The College was founded by the Lutheran Church of America in 1883 in Rochester, New York, and later moved to Staten Island on a collection of estates that included a Vanderbilt property and the American residence of British shipping magnate Sir Edward Cunard. Today, Wagner College is a largely residential undergraduate institution drawing traditional age, full-time college students primarily from the mid-Atlantic and northeastern U.S., with other students from the majority of states in the U.S. and foreign countries. The campus comprises 21 buildings, including a 300,000-volume library and four residence halls. The College’s strategy has been to offer a broad-based undergraduate education to students seeking the personal attention provided by a small private institution, but also drawn to the many cultural, social and professional opportunities of New York City. Wagner offers undergraduate majors and minors in 33 disciplines, including business, education, pre-med, pre-law, health care professions, the sciences, the humanities and social sciences, the arts and music, and nursing. Additionally, Wagner offers graduate studies in business (both MBA and Executive MBA), nursing, education, accounting, microbiology, and advanced physician assistant. Wagner has a full array of intercollegiate athletics, and is a member of the NCAA Division I. The College is an invited member of the National Association of Secondary School Principals’ Common Application and the Institute for European and Asian Studies.

#### **Academic Programs**

Wagner College offers a diverse menu of academic programs within the humanities, sciences, social sciences, performance and visual arts, education, business, and nursing. In 1998, the College adopted The Wagner Plan for the Practical Liberal Arts, which requires all undergraduate students to complete a comprehensive program emphasizing the liberal arts, experiential learning, and multidisciplinary studies. The liberal arts form the foundation of the undergraduate experience, and all students complete a core program that introduces students to the breadth of human experience. Students engage one discipline in depth by completing a program in a chosen major. Additionally, all undergraduates are required to demonstrate an understanding of the interrelated nature of problems by successfully completing several semesters of multidisciplinary and integrated studies and experiential learning requirements.

The liberal arts core program includes requirements in literature and the humanities, history, the social sciences, writing, speech, mathematics, computer literacy, laboratory science, and the arts. The core program constitutes approximately 40% of the undergraduate program. The major program may not exceed 45% of the undergraduate requirements.

Communication skills in writing, speaking, and information technology are critical competencies for the contemporary undergraduate. The Wagner curriculum requires all of its graduates to achieve effective levels of communication in each of these areas by fulfilling course

requirements and proficiency exams. All major programs, as well as the general education core, require demonstrated communication skills.

The Ph.D. or the relevant terminal degree is required for ongoing and tenured faculty appointments at the College. All faculty members teaching in the required First Year Program are drawn exclusively from the full-time faculty, as is every first-year student advisor/mentor.

Given its location in New York City, Wagner College has long emphasized experiential learning, internships, mentorships, practicum and studio and clinical sessions. In addition, community based and service learning courses link the liberal arts core to the greater community.

### **Accreditations**

Wagner College is accredited by the Middle States Commission on Higher Education, and was most recently reaffirmed in 2011. Academic programs are registered with the New York State Education Department. Specific portions of Wagner's academic programs have received recognition and accreditation by national professional agencies. The business administration programs are accredited by the Association of Collegiate Business Schools and Programs and the International Assembly of Collegiate Schools of Business. The education programs are accredited by the National Council for the Accreditation of Teacher Education (NCATE). The nursing programs are fully accredited by the National League for Nursing Accrediting Commission, Inc. (NLNAC). The Physician Assistant Program is accredited by the Accreditation Review Commission on the Education for the Physician Assistant (ARC-PA). The chemistry program is approved by the American Chemical Society. The College is a member of the American Council of Education and the College Entrance Examination Board. The Graduate Department is recognized by the Northeastern Association of Graduate Schools, and specific graduate programs are accredited by national organizations such as the Association of Collegiate Business Schools and Programs and the National League for Nursing Accreditation Commission, Inc.

### **Strategic Plan**

Wagner's strategic plan focuses on an educational vision, known as The Wagner Plan for the Practical Liberal Arts, which was initiated in 1998 and has recently been developed further on the basis of students' experiences and institutional outcomes. The strategic plan enables the College to prioritize its future plans and actions, and focus on its strategic goals and differentiating factors so that Wagner can fulfill its mission and innovative educational vision today, and into the future.

The Board of Trustees approved an updated strategic plan in October 2011. The College's primary strategic goal for the next decade is to emerge as a national leader in higher education, cited for its innovative and dynamic curriculum, comprehensive civic engagement and global education model, rooted in New York City. The core priorities of the strategic plan include educational excellence and the enhancement of Wagner's facilities, resources, and reputation. The 2011 strategic plan focuses on four key strategic objectives:

1. Deepen the Wagner Plan

2. Develop and implement a campus master plan
3. Develop and implement a multi-year budget model and net revenue plan
4. Develop and implement a multi-year branding plan

The College is in the early stages of implementing the new strategic plan, although progress has been made in developing and implementing the multi-year budget model and net revenue plan and the branding plan. The College anticipates soliciting donor support for campus needs identified by the proposed campus master plan.

## Governance

Wagner College is governed by a Board of Trustees consisting of a maximum of 35 members, including the College's President. Trustees, with the exception of the President, are elected by the Board for a three-year renewable term up to a 12-year limit, but may be re-elected after a one year hiatus. The full Board meets a minimum of four times annually. In addition, an Executive Committee of the Board meets between full Board meetings and is empowered to act on behalf of the Board on specific matters requiring attention prior to the next full Board meeting.

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

### *Chair*

**Dr. Warren R. Procci, '68**  
 Psychoanalyst, Private  
 Practice

### *Chairman Emeritus*

**Dr. Donald W. Spiro, '49,  
 H'88**  
 Oppenheimer Fund Group

### *Vice Chair*

**Jack H. Irving, '69**  
 Vice President/Director of  
 National Media  
 Partnership for a Drug-Free  
 America

### *Treasurer*

**Jeffrey D. Forchelli, Esq.,  
 '66**  
 Managing Partner  
 Forchelli, Curto, Deegan,  
 Schwartz, Mineo, Cohn &  
 Terrana, LLP

### *Secretary*

**Aletta Kipp Diamond, '65**  
 Elementary & Special  
 Education (Retired)

**Dr. Walter H. Baumhoff,  
 '59**  
 Headmaster (Retired)  
 The Buckley School

**John J. Campi, '62**  
 Vice President  
 Fairfax Financial Holdings,  
 Ltd.

**Donald M. Fox, '64**  
 Consultant  
 Mergers and Acquisitions

**David Friedman**  
 Vice President  
 UBS Financial Services

**Dr. Richard Guarasci**  
 President  
 Wagner College

### **Paul Haddad**

Chief Executive Officer  
 Solusia, Inc.

**Dr. Jay P. Hartig, '67, H  
 '09**

Partner (Retired)  
 PricewaterhouseCoopers LLP

**Richard Herburger, '66**  
 Vice President (Retired)  
 Citigroup

**Nanci Z. Kauffman**  
 Head of School  
 Castilleja School

**Peter A. Knudsen, '75**  
 Private Equity and Venture  
 Capital Investor

**Marc Lebovitz, '91**  
President  
Romark Logistics, East Coast  
Warehouse & Distribution,  
Safeway Trucking

**Polly Peck-Moles, '68**  
Educator (Retired)

**Alfred F. Palladino, '61**  
First Vice President  
Stifel Nicolaus & Co.

**Dianne M. Powers**  
Former Wall Street Executive  
Vice President  
Citigroup

**William Renshaw**  
Managing Director  
Renwood Consultants, LLC

**The Rev. Dr. Bishop Robert  
Alan Rimbo, Bishop**  
Metropolitan New York  
Synod, Evangelical Lutheran  
Church in America

**Dr. Maureen Robinson, '67,  
H '03**  
Educator (Retired)  
Curtis High School

**Kimberly H. Spiro**  
Advertising Account  
Executive  
Food Products and Analyst

**Dr. Frederick C.  
Williamson, Jr., '64, H '11**  
Director  
Star Net Commercial  
Flooring

**Lifetime Trustees**

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Physician (Retired)

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'72**  
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'06**  
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**Michael F. Manzulli, Esq.**  
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**Dr. George Megerle, H '94**  
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Megerle Consultants

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H '00**  
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H '95**  
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Credit Officer  
Credit Suisse

**Dr. Margaret Bambach  
Buck Reynolds, '40, H '98**  
Library and Art Gallery  
Volunteer

*Ex-Officio, Counsel*  
**Dr. Howard Braren, '50, H  
'12**  
President (Retired)  
Braren Mulder German  
Associates, Inc.

**Administration**

The President of the College, who is a member of the Board of Trustees, is appointed by the Board of Trustees, and serves as the officer responsible for the administration of the College. All other senior officers are appointed by the President. Senior executive officers are listed below:

**Dr. Richard Guarasci, *President and Chief Executive Officer*:** Dr. Richard Guarasci has served for the past ten years as the 18th President of Wagner College, where he was previously the Provost and Senior Vice President for five years. He holds the rank of Professor of Political Science, and he teaches in the areas of democracy, citizenship, and American diversity. Dr. Guarasci was Dean of the College and Professor of Political Science at Hobart

College from 1992-1997. Previously, he served as Dean and founding Director of the First Year Program at St. Lawrence University. Dr. Guarasci holds a Bachelor of Science from Fordham University. He received a master's in Economics and a doctorate in Political Science from Indiana University.

**Dr. Lily D. McNair, *Provost and Vice President for Academic Affairs*:** Dr. Lily D. McNair became the Provost and Vice President for Academic Affairs of Wagner College on July 1, 2011. Before coming to Wagner, Dr. McNair served as the Associate Provost of Research and Professor of Psychology at Spelman College in Atlanta, Georgia. She also served as a Professor of Psychology on the faculties of the University of Georgia and SUNY New Paltz, as well as a Clinical Psychologist at Vassar College. Dr. McNair received her undergraduate degree in Psychology at Princeton University, and her doctorate in Psychology at the State University of New York at Stony Brook.

**William E. Mea, *Vice President for Finance & Business*:** William E. Mea joined Wagner College as the Vice President for Finance & Business in May 2011. Prior to joining Wagner, Mr. Mea held the position of Vice President for Finance & Administration at The University of the Arts in Philadelphia, Pennsylvania for six years. Prior to his work at The University of the Arts, he worked at Philadelphia University for 11 years, first as Controller and then as Assistant Vice President for Business & Finance. Before that, Mr. Mea had a 10-year career at the accounting firm of Ernst & Young LLP. Mr. Mea received his Bachelor of Science in Business Administration with an accounting concentration from Widener University, and his Master of Business Administration with a finance concentration from Philadelphia University.

**Angelo G. Araimo, *Vice President for Enrollment and Planning*:** Angelo G. Araimo joined Wagner in 1994 and is responsible for admissions, financial aid, athletics and strategic planning. Previously, he held the position of Director of Admissions at St. Joseph's College in New York, where he worked for five years. Mr. Araimo also taught History at both St. Joseph's College and St. John's University from 1986-1994. He holds a Bachelor of Arts in History from St. John's University, as well as a master's in History from St. John's University.

Other senior officers of the College are listed below:

Myra Garcia	Vice President for Institutional Advancement
Joseph F. Romano	Vice President for Marketing & Communications and Chief of Staff
David J. Martin	Vice President for Administration
Ruta Shah-Gordon	Assistant Vice President for Campus Life

## **Campus Facilities**

The College's facilities currently include 21 buildings for academic, administrative, athletic, residential, and dining hall purposes in Staten Island, New York. The Horrmann Library contains over 300,000 volumes in support of undergraduate and graduate academic programs. All library facilities are computerized, and readily share information and resources on an intra- and inter-net library loan basis. The College completed a number of enhancements to campus facilities in the recent years, including fire sprinkler installation in student residence halls,

improvements in Campus grounds amenities, and the installation of artificial turf on its football field. The most recent addition to the campus was Foundation Hall, which opened in January 2010, and was the first new residence facility to be constructed on Wagner College's 108-acre campus in more than 40 years. The building was designed specifically as a residence for the College's fourth-year students as they prepare for the transition to "life after Wagner". Foundation Hall includes a high-tech class/conference center where Senior-Year Residence Experience seminars and other institutional meetings can be held. Wagner's need for the new four-story residence hall was driven by its transformation over the previous decade from a college where a majority of students were local commuters, into an institution drawing most of its students from outside New York.

The net carrying values of the College's facilities have increased steadily over the past five years. Amounts shown are as of August 31:

<b>Plant Assets</b>					
<b>As of August 31:</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Land and land improvements	\$ 7,785,979	\$ 8,001,961	\$ 8,046,811	\$ 8,463,939	\$ 8,637,762
Buildings and building improvements	61,488,026	64,166,883	66,993,462	95,276,129	96,098,396
Furnishings and equipment	10,973,990	12,026,093	12,562,517	13,450,114	14,316,374
Library books	296,999	297,192	293,282	289,817	288,876
Construction in progress	1,781,983	3,236,618	15,904,933	554,185	4,279,639
<b>Total</b>	<b>82,326,977</b>	<b>87,728,747</b>	<b>103,801,005</b>	<b>118,034,184</b>	<b>123,621,047</b>
Less: Accumulated depreciation	(37,515,195)	(40,850,264)	(44,283,610)	(47,947,053)	(52,067,066)
<b>Net carrying value</b>	<b>\$ 44,811,782</b>	<b>\$ 46,878,483</b>	<b>\$ 59,517,395</b>	<b>\$ 70,087,131</b>	<b>\$ 71,553,981</b>

## **OPERATING INFORMATION**

### **Admissions**

Wagner College has experienced a significant improvement in the quality of its student population over the past ten years. The Wagner College student of today is typically a resident student (73% of full-time undergraduate students live in College housing), with an average SAT score of 1120 and an average secondary school grade point average of 89.0. Wagner College students currently hail from over 30 different states and 10 different countries.

The College's admission statistics for first-year undergraduates for the last five years is outlined below:

<b>Freshmen Admission Statistics</b>					
<b>Academic Year Beginning Fall:</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Applications	2,693	2,921	2,661	2,581	3,001
Acceptances	1,716	1,831	1,853	1,687	2,079
Matriculants	524	480	519	483	470
Selectivity	64%	63%	70%	65%	69%
Matriculation	31%	26%	28%	29%	23%
% from Out of State	57%	61%	56%	53%	59%
Top 10% of Class	18%	17%	15%	14%	14%
Median Combined SAT	1100	1110	1110	1120	1120

The College seeks to attract students who are academically prepared to meet the rigors of a Wagner education while also possessing the ability to pay for it. The current economic environment creates challenges for families to pay for higher education, with some seeking less expensive solutions, especially in the first two years of college. In response to this, Wagner has increased its recruitment of transfer students, enrolling 90 transfer students in the 2011-2012 academic year, compared to 66 transfer students in the 2007-2008 academic year. Also in response to the economic challenges, Wagner has increased the size of its scholarships to be able to enroll students. This has led to net tuition revenue increasing more slowly than gross tuition revenue in recent years.

## **Enrollment**

The College's enrollment for the last five years is outlined below:

<b>Enrollment Summary</b>					
<b>Academic Year Beginning Fall <sup>(1)</sup>:</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Undergraduate FTE	1,910	1,893	1,831	1,783	1,801
Undergraduate Headcount	1,935	1,924	1,870	1,839	1,856
Graduate FTE	298	302	322	348	307
Graduate Headcount	359	370	395	432	384
<b>Total Enrollment FTE</b>	<b>2,208</b>	<b>2,195</b>	<b>2,153</b>	<b>2,131</b>	<b>2,108</b>
<b>Total Headcount</b>	<b>2,294</b>	<b>2,294</b>	<b>2,265</b>	<b>2,271</b>	<b>2,240</b>
<i>(1) Not full-year, enrollment is for the Fall semester only</i>					

The following table lists the number of degrees conferred (undergraduate and graduate) for the last five years.

<b>Degrees Conferred</b>			
<b>Academic Year</b>	<b>Undergraduate</b>	<b>Graduate</b>	<b>Total</b>
2006-07	431	140	571
2007-08	384	183	567
2008-09	475	164	639
2009-10	425	164	589
2010-11	414	199	613

### **Comprehensive Fee**

Tuition, room and board, and required fees for the last five academic years are listed below:

<b>Undergraduate Comprehensive Fees</b>					
<b>Academic Year Beginning Fall:</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Tuition	\$ 29,400	\$ 30,900	\$ 32,430	\$ 33,990	\$ 35,620
Room & Board	8,900	9,250	9,700	10,170	10,680
Required Fees	100	150	150	200	200
<b>Total</b>	<b>\$ 38,400</b>	<b>\$ 40,300</b>	<b>\$ 42,280</b>	<b>\$ 44,360</b>	<b>\$ 46,500</b>

### **Financial Aid**

On an institution-wide basis, approximately 90% of all full-time students receive some form of financial assistance. The College participates in federal and state financial aid programs, including Federal Pell Grants (Pell), Federal Supplemental Educational Opportunity Grants (SEOG), Federal Perkins (Perkins) and Federal Nursing loans (FNL), Direct Loans (2011), Federal Family Educational Loan Program (FFELP) (2007 through 2010), Academic Competitiveness Grants (ACG), National Science and Mathematics Access to Retain Talent Grants (SMART), Federal Work-Study (FWS), and the New York State Tuition Assistance Program (TAP).

The following table illustrates the sources and amounts of financial aid received by the College's students for the last five fiscal years ended August 31:

<b>Fiscal Year Ended August 31:</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Institutional Scholarships	\$ 19,573,307	\$ 21,152,954	\$ 22,796,622	\$ 24,823,377	\$ 26,930,976
TAP	1,046,543	911,581	928,660	1,000,785	973,369
Pell	623,375	634,687	706,692	989,226	1,253,243
SEOG	254,700	216,790	219,000	275,300	204,975
Perkins	502,473	460,850	103,603	290,000	323,550
FFELP (2007-2010) / Direct Loans (2011)	12,070,361	11,182,564	13,502,823	13,638,231	10,736,138
ACG	50,025	49,100	68,250	95,800	107,125
SMART	47,500	38,000	36,000	66,000	92,000
FNL	116,144	96,300	123,913	85,750	63,850
FWS	280,051	304,481	264,378	264,408	269,984
<b>Total</b>	<b>\$ 34,564,479</b>	<b>\$ 35,047,307</b>	<b>\$ 38,749,941</b>	<b>\$ 41,528,877</b>	<b>\$ 40,955,210</b>

## Faculty

As of the beginning of academic year 2011-12, the total faculty members employed by the College numbered 261, of whom 96 served full-time; 71 of the full-time faculty members held tenure. The majority of the College's full-time faculty is appointed within one of the four principal academic ranks: Professor, Associate Professor, Assistant Professor, and Instructor.

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

<b>Faculty Profile</b>					
					<b>Percent of</b>
				<b>Full-time</b>	<b>Full-time Faculty</b>
<b>Academic Year</b>	<b>Full-time Faculty</b>	<b>Part-time Faculty</b>	<b>Total Faculty</b>	<b>Equivalent Faculty</b>	<b>Tenured</b>
2007-08	100	149	249	171	68.0%
2008-09	101	155	256	153	63.4%
2009-10	99	157	256	151	70.7%
2010-11	95	173	268	153	73.7%
2011-12	96	165	261	151	74.0%

## Employees and Labor Relations

In addition to Wagner College's faculty, the College employs approximately 420 people, consisting of 292 full-time and 128 part-time administrative, clerical and technical staff. The College has collective bargaining agreements with Local 32BJ of the Service Employees International Union representing 25 custodial employees, Local 30 of the International Union of Operating Engineers representing 10 maintenance employees, Local 3 of the International

Brotherhood of Electrical Workers representing 17 maintenance employees, and Local 1 of the Security Officers Union representing 16 security officers. The College's faculty and administrative officers are not subject to any collective bargaining agreements. The College considers its relationship with the unions and with its faculty, staff, and other employees to be good.

## **ANNUAL FINANCIAL STATEMENT INFORMATION**

### **Selected Financial Data**

The College's most recent financial statements, together with the report of the College's independent accountants with respect thereto, are included as Appendix B to the Official Statement. The following table summarizes the revenues, expenses, and changes in net assets for the College for each of the last five years. For complete financial statements of the College for the fiscal years ended August 31, 2011 and 2010, see the financial statements and accompanying notes included in Appendix B.

<b>Financial Summary</b>					
<b>Statements of Activities</b>					
<b>Years Ended August 31, 2007 - 2011</b>					
	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<b>Operating revenue:</b>					
Tuition and fees, gross	\$ 59,948,534	\$ 63,875,528	\$ 66,710,378	\$ 67,552,492	\$ 70,012,283
Scholarships and fellowships	(19,573,307)	(21,152,954)	(22,796,622)	(24,823,377)	(26,930,976)
Tuition and fees, net	40,375,227	42,722,574	43,913,756	42,729,115	43,081,307
Contributions	11,843,272	3,688,433	7,293,478	5,783,507	4,177,861
Government grants and contracts	845,863	818,123	830,363	753,848	281,026
State appropriations	226,836	219,777	201,426	209,374	178,488
Endowment spending	-	-	-	-	2,075,463
Auxiliary enterprises, net	13,804,519	14,446,342	14,724,282	14,780,416	15,295,018
Change in value of derivatives	-	-	(20,278)	(1,078,613)	52,164
Other income	823,424	859,256	564,713	921,862	1,767,259
Total operating revenue	67,919,141	62,754,505	67,507,740	64,099,509	66,908,586
<b>Operating expenses:</b>					
Instruction	18,729,773	19,595,049	20,659,390	20,788,854	21,047,323
Academic support	4,115,021	4,404,887	4,240,305	3,552,951	3,959,462
Student services	6,615,744	7,211,814	7,289,598	7,477,453	8,084,795
Institutional support	9,953,698	10,727,171	9,630,695	9,722,010	10,692,057
Auxiliary enterprises	18,661,653	19,595,280	19,471,103	21,033,829	21,978,871
Total operating expenses	58,075,889	61,534,201	61,291,091	62,575,097	65,762,508
Change in net assets from operating activities	9,843,252	1,220,304	6,216,649	1,524,412	1,146,078
<b>Nonoperating activities:</b>					
Contributions	4,052,317	1,530,788	352,444	708,336	2,700,251
Gain on settlement from Metropolitan Intercollegiate Basketball Association	414,498	373,981	330,661	284,342	459,149
Investment return, net of endowment spending	7,803,729	(1,361,199)	(3,319,636)	3,646,289	3,711,896
Loss on defeasance and refinance of long-term debt	-	-	(7,743,445)	-	-
Change in net assets from nonoperating activities	12,270,544	543,570	(10,379,976)	4,638,967	6,871,296
Change in net assets	22,113,796	1,763,874	(4,163,327)	6,163,379	8,017,374
Net assets, beginning of year	46,588,750	68,702,546	70,466,420	66,303,093	72,466,472
Net assets, end of year	\$ 68,702,546	\$ 70,466,420	\$ 66,303,093	\$ 72,466,472	\$ 80,483,846

The following table summarizes the assets, liabilities, and net assets of the College for each of the last five years. For complete financial statements of the College for the fiscal years

ended August 31, 2011 and 2010, see the financial statements and accompanying notes included in Appendix B.

**Financial Summary  
Balance Sheets  
August 31, 2007 - 2011**

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<b>Assets</b>					
Cash and cash equivalents	\$ 14,115,609	\$ 10,256,697	\$ 11,565,320	\$ 11,464,414	\$ 11,012,331
Accounts receivable, less allowance for doubtful accounts	723,519	338,261	1,200,459	1,597,309	2,968,543
Inventory, prepaid expenses, and other assets	796,356	716,426	377,365	445,023	681,676
Contributions receivable, net	10,853,988	11,741,312	14,871,291	16,156,653	11,475,406
Investments	45,579,858	46,086,341	45,553,089	51,100,643	59,806,011
Notes receivable, less allowance for doubtful loans	2,356,427	2,581,576	2,368,518	2,319,543	2,241,029
Other receivables	5,404,353	5,778,334	5,108,995	3,393,337	-
Amounts held by bond trustees	5,599,390	5,659,836	19,130,237	3,390,683	3,383,176
Bond issuance costs	2,101,542	2,001,469	2,137,927	2,032,762	1,927,597
Property, plant, and equipment, net	44,811,782	46,878,483	59,517,395	70,087,131	71,553,981
Total Assets	<u>\$ 132,342,824</u>	<u>\$ 132,038,735</u>	<u>\$ 161,830,596</u>	<u>\$ 161,987,498</u>	<u>\$ 165,049,750</u>
<b>Liabilities</b>					
Accounts payable and accrued expenses	4,435,203	4,359,436	4,527,881	2,128,897	3,434,631
Deferred revenue	16,996,724	16,221,579	16,989,011	14,633,610	10,298,053
Student deposits	374,978	405,964	380,602	374,586	386,671
Amounts held for others	155,231	169,064	215,870	175,853	187,583
Postretirement benefit obligation	159,184	161,236	153,083	142,227	132,308
Long-term debt	37,991,200	36,586,300	69,068,196	66,748,258	64,715,780
Other liabilities	1,344,376	1,437,407	1,540,705	2,646,006	2,707,553
Refundable federal grants	2,183,382	2,231,329	2,652,155	2,671,589	2,703,325
Total Liabilities	<u>63,640,278</u>	<u>61,572,315</u>	<u>95,527,503</u>	<u>89,521,026</u>	<u>84,565,904</u>
<b>Net Assets</b>					
Unrestricted	22,628,138	24,308,668	18,397,403	21,764,374	18,860,626
Temporarily restricted	15,828,000	15,316,841	17,157,218	19,251,298	25,290,676
Permanently restricted	30,246,408	30,840,911	30,748,472	31,450,800	36,332,544
Total Net Assets	<u>68,702,546</u>	<u>70,466,420</u>	<u>66,303,093</u>	<u>72,466,472</u>	<u>80,483,846</u>
Total Liabilities and Net Assets	<u>\$ 132,342,824</u>	<u>\$ 132,038,735</u>	<u>\$ 161,830,596</u>	<u>\$ 161,987,498</u>	<u>\$ 165,049,750</u>

### Management Discussion of Recent Financial Performance

The College's financial management team strives to maintain annualized balanced budgets. Wagner's current strategic plan focuses on multi-year financial planning, including a net revenue plan. The College's financial, investment management, and fundraising efforts collaboratively work towards the long-term sustainability of Wagner, with emphasis on supporting the educational mission and technological and physical infrastructure. Wagner has been successful in meeting its objectives over the past several years. Operating budgets have been consistently balanced. For the fiscal year ending August 31, 2012, the operating budget includes strategic educational investments such as \$500,000 for deferred maintenance, \$250,000 for marketing, and \$60,000 for international recruiting.

The College's operating revenues for the fiscal year ended August 31, 2011 totaled \$66.9 million, while operating expenses totaled \$65.8 million, resulting in an operating surplus of \$1.1 million. Gross tuition and fees revenue grew by 3.6% compared to the prior year, due to improved enrollment, both in undergraduate and graduate programs. Net tuition and fees revenue grew by 0.8%, offset by increased scholarships. Total contributions were \$6.9 million in fiscal 2011, compared to \$6.5 million the year before. Total assets grew by \$3.1 million, or 1.9%, to approximately \$165 million. Total net assets increased 11.1% to \$80.5 million. Cash and investments increased \$8.3 million or 13.2% to \$70.8 million. Long-term debt decreased 3.0% to \$64.7 million.

## Fund Raising

In August 2011, the College formally closed its "Putting Wagner First" capital campaign, which raised more than \$57 million, exceeding its goal of \$50 million. A number of smaller campaigns are currently in progress aimed at funding specific initiatives.

The following table shows the contributions received by the College over the years ended August 31, 2007 to 2011, broken down by net asset type, as reported in the audited financial statements of the College for such years:

Private Gifts					
For Years Ended August 31,:	2007	2008	2009	2010	2011
Unrestricted	\$ 940,118	\$ 1,446,716	\$ 497,004	\$ 4,097,861	\$ 1,247,294
Temporarily Restricted	10,903,154	2,241,717	6,796,474	1,685,646	2,930,567
Permanently Restricted	4,052,317	1,530,788	352,444	708,336	2,700,251
<b>Total</b>	<b>\$ 15,895,589</b>	<b>\$ 5,219,221</b>	<b>\$ 7,645,922</b>	<b>\$ 6,491,843</b>	<b>\$ 6,878,112</b>

## Investments

Investments are overseen by the Investment Committee of the Board of Trustees. The Committee has the responsibility of maintaining the investment policy for the College, including the spending policy, asset allocation and rebalancing, and hiring managers and consultants. The Committee meets periodically with its three investment managers to review performance, asset allocation, investment style consistency with mandate, and personnel and organizational changes. Details can be found in Appendix B on page 10, note 3 of the financial statements.

The following table details the fair value of the College's investments for the past five fiscal years:

**Investments**  
**As of August 31,**

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Total investments	\$45,579,858	\$46,086,341	\$45,553,089	\$51,100,643	\$59,806,011

As of July 31, 2012, the College's unaudited investments totaled \$64,040,482.

The overall investment objective of the College's investments is to preserve and enhance the real (inflation-adjusted) purchasing power of the investments, while providing a relatively predictable, stable, and constant (in real terms) stream of distributions in line with operating spending needs. It is the College's goal to set a maximum annual endowment spending rate of 5% with the amount of the distribution determined annually in consultation with the Executive Committee, except in cases where donors have specified the spending rate as part of the gift agreement. Except in cases where specified by a gift agreement or required under the Uniform Prudent Management of Institutional Funds Act (UPMIFA) or the New York Prudent Management of Institutional Funds Act (NYPMIFA), the endowment spending rate will be applied to the twelve-quarter average market value of the endowment investments determined as of each May 31st to determine the amount available for spending in the next fiscal year.

The endowment fund's asset allocation guidelines are as follows:

Asset classes can include the following:

Percentages are for the entire portfolio	Asset Range in Percentages	
	Minimum	Maximum
Traditional Equities	25	70
Traditional Fixed Income	30	50
Alternative Strategies	0	15
Cash & Short-Term Securities	0	25

Traditional equity investments include domestic, international developed and international emerging stocks. Traditional fixed income investments include U.S. Government obligations, domestic corporate investment grade, domestic corporate non-investment grade, international developed and international emerging. Alternative strategies include private equity; real estate (publically traded and private equity); energy and natural resources, commodities, and managed futures; marketable hedge funds; venture capital; and distressed debt.

**Long-Term Indebtedness**

Long term debt at August 31, 2011 and 2010 consisted of the following:

	<u>2011</u>	<u>2010</u>
<b>Bonds payable:</b>		
Wagner College Tax-Exempt Revenue Bonds, Series 1998, variable rate averaged 0.190% and 0.230% in 2011 and 2010, respectively, maturing July 1, 2000 through July 1, 2027	\$ 11,535,000	12,135,000
Wagner College Tax-Exempt Revenue Bonds, Series 2009, variable rate averaged 0.190% and 0.230% in 2011 and 2010, respectively, maturing July 1, 2010 through July 1, 2038	29,810,000	30,170,000
Wagner College Series 2009 Bank Term Loan, 5.110% with an interest rate swap, maturing January 28, 2009 through July 1, 2023	21,954,170	23,194,250
Wagner College Consolidation and Construction Bonds of 1962, Series B, 3.385%, maturing October 1, 1997 through October 1, 2012	270,000	400,000
<b>Total bonds payable</b>	<u>63,569,170</u>	<u>65,899,250</u>
Chartwells loan 1	437,272	508,383
Mortgage payable	308,543	340,625
Chartwells loan 2	400,795	—
	<u>\$ 64,715,780</u>	<u>66,748,258</u>

The College entered into an interest rate swap agreement with TD Bank with a notional amount of \$25,000,000 with the intention of lowering its effective interest rate related to the Wagner College Series 2009 Bank Term Loan. The College pays a fixed rate of 5.11% and receives variable interest rate payments of LIBOR plus 275 basis points. The interest rate swap agreement terminates on January 28, 2014. The fair value of the interest rate swap at August 31, 2011 and 2010 was \$(944,432) and \$(1,002,778), respectively, and is included in other liabilities in the accompanying financial statements.

In May 2004, the College obtained a loan in the amount of \$885,000 with a discounted interest rate of 6.92% with the Chartwells Division of Compass Group USA, Inc., with a term of 12 years (Chartwells loan 1). The funds have been drawn by the College for the construction of a new dining facility that was completed in fiscal year 2004. In fiscal year 1998, the College purchased a residence for \$653,000, of which \$520,000 was financed (mortgage payable). During 2004, the College refinanced this mortgage for a term of 15 years at a fixed interest rate of 6.00%. In fiscal year 2011, the College obtained an interest-free loan in the amount of \$400,795 with the Chartwells Division of Compass Group USA, Inc., with a term of 9 years (Chartwells loan 2). The funds have been drawn by the College for the purchase and installation of dishwashing equipment that was completed in fiscal year 2011.

In May 2012, the College obtained a non-revolving line of credit in the principal amount of \$12,000,000 with TD Bank, which expires on September 30, 2012. The extensions of credit under and proceeds of the non-revolving credit will be used for working capital and general corporate purposes. The College intends to repay any amounts advanced under the non-revolving line of credit with a portion of the proceeds of the 2012 tax-exempt bond issue.

## **Pension Plans**

The College maintains a defined contribution retirement plan (the Plan), which covers certain faculty, administrative, and staff personnel. Benefits are provided by fixed dollar annuities issued by the Teachers Insurance and Annuity Association (TIAA) and by variable annuities offered by its companion organization, the College Retirement Equities Fund (CREF). The Plan operates under Section 403(b) of the Internal Revenue Code, and uses TIAA and CREF retirement annuities to provide pension benefits. The College's contribution to the Plan is 9% of each covered employee's annual salary for the first seven years of employment and 10% for each year thereafter.

Contributions were also paid in 2011 and 2010 to three union multi-employer retirement plans for maintenance personnel. Total pension expense for the years ended August 31, 2011 and 2010 was approximately \$1,914,000 and \$1,827,000, respectively.

Certain employees of the College who retired prior to 1995 will receive payments from the College, designed to help defray the cost of healthcare benefits, which those retired employees must secure on their own. Those payments, of \$600 each per individual retiree, are currently made to 35 retired College employees and are made annually during the first quarter of each calendar year. The College has recognized a liability for the present value of the annual \$600 payments to each of these individuals, which at August 31, 2011 and 2010 was \$132,308 and \$142,227, respectively.

## **Litigation**

Wagner College is involved in various claims and legal actions arising in the ordinary course of business. The College maintains insurance with respect to defense costs and potential damage awards. Management of the College does not expect the ultimate resolution of such actions to have a material adverse effect on the College's financial position or its ability to pay debt service on the Series 2012 Bonds.

## **Insurance**

The College purchases comprehensive insurance coverage in the traditional categories of workers' compensation, property, and general liability, as well as in other categories consistent with higher education institutions, such as educators' legal liability

**APPENDIX B**

**AUDITED FINANCIAL STATEMENTS OF WAGNER COLLEGE AS OF AND FOR THE YEARS  
ENDED AUGUST 31, 2011 AND AUGUST 31, 2010**

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**WAGNER COLLEGE**

**Financial Statements**

**August 31, 2011 and 2010**

**(With Independent Auditors' Report Thereon)**

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KPMG LLP  
345 Park Avenue  
New York, NY 10154

## Independent Auditors' Report

The Board of Trustees  
Wagner College:

We have audited the accompanying balance sheets of Wagner College (the College) as of August 31, 2011 and 2010, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the College's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wagner College as of August 31, 2011 and 2010, and the changes in its net assets and its cash flows for the years then ended, in conformity with U.S. generally accepted accounting principles.

As discussed in note 13 to the financial statements, the College adopted Accounting Standards Codification 958, Section 205-45, *Classification of Donor-Restricted Endowment Funds Subject to UPMIFA*, for classification of donor-restricted endowment funds in 2011.

KPMG LLP

December 21, 2011

**WAGNER COLLEGE**

Balance Sheets

August 31, 2011 and 2010

<b>Assets</b>	<b>2011</b>	<b>2010</b>
Cash and cash equivalents	\$ 11,012,331	11,464,414
Accounts receivable, less allowance for doubtful accounts of \$1,069,000 in 2011 and \$793,000 in 2010	2,968,543	1,597,309
Inventory, prepaid expenses, and other assets	681,676	445,023
Contributions receivable, net	11,475,406	16,156,653
Investments	59,806,011	51,100,643
Notes receivable, less allowance for doubtful loans of \$882,000 in 2011 and \$828,000 in 2010	2,241,029	2,319,543
Other receivable	—	3,393,337
Amounts held by bond trustees	3,383,176	3,390,683
Bond issuance costs	1,927,597	2,032,762
Property, plant, and equipment	71,553,981	70,087,131
Total assets	<u>\$ 165,049,750</u>	<u>161,987,498</u>
<b>Liabilities and Net Assets</b>		
<b>Liabilities:</b>		
Accounts payable and accrued expenses	\$ 3,434,631	2,128,897
Deferred revenue	10,298,053	14,633,610
Student deposits	386,671	374,586
Amounts held for others	187,583	175,853
Postretirement benefit obligation	132,308	142,227
Long-term debt	64,715,780	66,748,258
Other liabilities	2,707,553	2,646,006
Refundable federal grants	2,703,325	2,671,589
Total liabilities	<u>84,565,904</u>	<u>89,521,026</u>
<b>Net assets:</b>		
Unrestricted	18,860,626	21,764,374
Temporarily restricted	25,290,676	19,251,298
Permanently restricted	36,332,544	31,450,800
Total net assets	<u>80,483,846</u>	<u>72,466,472</u>
Total liabilities and net assets	<u>\$ 165,049,750</u>	<u>161,987,498</u>

See accompanying notes to financial statements.

**WAGNER COLLEGE**  
**Statements of Activities**  
**Years ended August 31, 2011 and 2010**

	2011				2010			
	Unrestricted	Temporarily restricted	Permanently restricted	Total	Unrestricted	Temporarily restricted	Permanently restricted	Total
Operating revenue:								
Tuition and fees, gross	\$ 70,012,283	—	—	70,012,283	67,552,492	—	—	67,552,492
Scholarships and fellowships	(26,930,976)	—	—	(26,930,976)	(24,823,377)	—	—	(24,823,377)
Tuition and fees, net	43,081,307	—	—	43,081,307	42,729,115	—	—	42,729,115
Contributions	1,247,294	2,930,567	—	4,177,861	4,097,861	1,685,646	—	5,783,507
Government grants and contracts	269,587	11,439	—	281,026	753,848	—	—	753,848
State appropriations	178,488	—	—	178,488	209,374	—	—	209,374
Endowment spending	666,606	1,408,857	—	2,075,463	—	—	—	—
Auxiliary enterprises, net	15,295,018	—	—	15,295,018	14,780,416	—	—	14,780,416
Change in value of derivatives	52,164	—	—	52,164	(1,078,613)	—	—	(1,078,613)
Other income	1,767,259	—	—	1,767,259	921,862	—	—	921,862
Net assets released from restrictions	6,264,109	(6,264,109)	—	—	2,196,924	(2,196,924)	—	—
<b>Total operating revenue</b>	<u>68,821,832</u>	<u>(1,913,246)</u>	<u>—</u>	<u>66,908,586</u>	<u>64,610,787</u>	<u>(511,278)</u>	<u>—</u>	<u>64,099,509</u>
Operating expenses:								
Instruction	21,047,323	—	—	21,047,323	20,788,854	—	—	20,788,854
Academic support	3,959,462	—	—	3,959,462	3,552,951	—	—	3,552,951
Student services	8,084,795	—	—	8,084,795	7,477,453	—	—	7,477,453
Institutional support	10,692,057	—	—	10,692,057	9,722,010	—	—	9,722,010
Auxiliary enterprises	21,978,871	—	—	21,978,871	21,033,829	—	—	21,033,829
<b>Total operating expenses</b>	<u>65,762,508</u>	<u>—</u>	<u>—</u>	<u>65,762,508</u>	<u>62,575,097</u>	<u>—</u>	<u>—</u>	<u>62,575,097</u>
Change in net assets from operating activities	3,059,324	(1,913,246)	—	1,146,078	2,035,690	(511,278)	—	1,524,412
Nonoperating activities:								
Contributions	—	—	2,700,251	2,700,251	—	—	708,336	708,336
Redesignated contributions	—	(1,291,287)	1,291,287	—	—	—	—	—
Gain on settlement from Metropolitan Intercollegiate Basketball Association	459,149	—	—	459,149	284,342	—	—	284,342
Investment return, net of endowment spending	1,372,083	1,917,115	422,698	3,711,896	1,046,939	2,375,345	224,005	3,646,289
Transfers	(480,723)	13,215	467,508	—	—	230,013	(230,013)	—
<b>Change in net assets from nonoperating activities</b>	<u>1,350,509</u>	<u>639,043</u>	<u>4,881,744</u>	<u>6,871,296</u>	<u>1,331,281</u>	<u>2,605,358</u>	<u>702,328</u>	<u>4,638,967</u>
Reclassification of net assets in accordance with ASC 958, 205-45	(7,313,581)	7,313,581	—	—	—	—	—	—
<b>Change in net assets</b>	<u>(2,903,748)</u>	<u>6,039,378</u>	<u>4,881,744</u>	<u>8,017,374</u>	<u>3,366,971</u>	<u>2,094,080</u>	<u>702,328</u>	<u>6,163,379</u>
Net assets, beginning of year	21,764,374	19,251,298	31,450,800	72,466,472	18,397,403	17,157,218	30,748,472	66,303,093
Net assets, end of year	<u>\$ 18,860,626</u>	<u>25,290,676</u>	<u>36,332,544</u>	<u>80,483,846</u>	<u>21,764,374</u>	<u>19,251,298</u>	<u>31,450,800</u>	<u>72,466,472</u>

See accompanying notes to financial statements

**WAGNER COLLEGE**  
**Statements of Cash Flows**  
**Years ended August 31, 2011 and 2010**

	<u>2011</u>	<u>2010</u>
Cash flows from operating activities:		
Change in net assets	\$ 8,017,374	6,163,379
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	4,120,013	3,663,443
Accretion of other liabilities	119,893	106,352
Change in fair value of derivatives	(52,164)	1,078,613
Amortization of bond issuance costs	105,165	105,165
Net realized and unrealized gains on investments	(4,510,436)	(2,184,290)
Gain on settlement from Metropolitan Intercollegiate Basketball Association	(459,149)	(284,342)
Increase in allowance for doubtful accounts and notes	330,000	206,000
Contributions and investment return restricted for long-term purposes	(4,004,268)	(1,096,881)
Changes in assets and liabilities:		
Accounts receivable	(1,647,234)	(418,850)
Inventory, prepaid expenses, and other assets	(242,835)	(147,322)
Contributions receivable	3,944,976	656,802
Other receivable	3,852,486	2,000,000
Accounts payable and accrued expenses	(338,093)	(609,153)
Deferred revenue	(4,335,557)	(2,355,401)
Student deposits	12,085	(6,016)
Amounts held for others	11,730	(40,017)
Postretirement benefit obligation	(9,919)	(10,856)
Net cash provided by operating activities	<u>4,914,067</u>	<u>6,826,626</u>
Cash flows from investing activities:		
Payments made for acquisition of property, plant, and equipment	(3,542,241)	(16,023,010)
Proceeds from sales of investments	39,554,745	33,848,778
Purchases of investments	(43,749,677)	(37,212,042)
Loans collected from students	349,564	254,975
Loans advanced to students	(325,050)	(290,000)
Additions to amounts held by bond trustees	(1,183,312)	(1,992,768)
Deductions from amounts held by bond trustees	1,190,819	17,732,322
Net cash used in investing activities	<u>(7,705,152)</u>	<u>(3,681,745)</u>
Cash flows from financing activities:		
Contributions and investment return restricted for long-term purposes	4,004,268	1,096,881
Decrease (increase) in contributions receivable restricted for long-term purposes	736,271	(2,042,164)
Repayments of long-term debt	(2,433,273)	(2,319,938)
Increase in refundable federal grants	31,736	19,434
Net cash provided by (used in) financing activities	<u>2,339,002</u>	<u>(3,245,787)</u>
Net decrease in cash and cash equivalents	(452,083)	(100,906)
Cash and cash equivalents at beginning of year	<u>11,464,414</u>	<u>11,565,320</u>
Cash and cash equivalents at end of year	<u>\$ 11,012,331</u>	<u>11,464,414</u>
Supplemental disclosure of cash flow information:		
Interest paid	\$ 1,318,684	1,406,873
Property, plant, and equipment acquired through a loan	400,795	—

See accompanying notes to financial statements.

**WAGNER COLLEGE**  
Notes to Financial Statements  
August 31, 2011 and 2010

**(1) Nature of Operations**

Wagner College (the College) is a private residential college located on Staten Island in New York City. It is strongly committed to undergraduate and graduate education in which all professional and liberal arts majors receive the foundation of a broad-based core of knowledge. The College prepares students for life, as well as for careers, by emphasizing scholarship, achievement, leadership, and citizenship. The College grants the degrees of bachelor of arts, bachelor of science, bachelor of science in education, master of business administration, master of science in education, master of science in accounting, master of science in nursing, master of science in microbiology, master of science in advanced physician assistant, and executive master in business administration.

**(2) Summary of Significant Accounting Policies**

**(a) Basis of Accounting**

The accompanying financial statements have been prepared on the accrual basis of accounting.

**(b) Basis of Presentation**

Net assets and revenues, expenses, gains, and losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, the net assets of the College and changes therein are classified and reported as follows:

***Unrestricted net assets*** – Net assets that are not subject to donor-imposed stipulations.

***Temporarily restricted net assets*** – Net assets subject to donor-imposed stipulations that will be met either by actions of the College or the passage of time.

***Permanently restricted net assets*** – Net assets subject to donor-imposed stipulations that they be maintained permanently by the College. Permanently restricted net assets provide investment income primarily for scholarships, building maintenance, academic support, and the library.

Revenues are reported as increases in unrestricted net assets unless their use is limited by donor-imposed restrictions. Expenses are reported as decreases in unrestricted net assets. Gains and losses on investments and other assets or liabilities are reported as increases or decreases in unrestricted net assets unless their use is restricted by explicit donor stipulation or by law. Expirations of temporary restrictions on net assets (i.e., when the donor-stipulated purpose has been fulfilled or the stipulated time period has elapsed) are reported as net assets released from restrictions.

**(c) Cash Equivalents**

Money market accounts, certificates of deposit, and any highly liquid debt instrument with an original maturity of three months or less are considered cash equivalents, with the exception of those managed as a component of the College's long-term investment portfolio.

## WAGNER COLLEGE

### Notes to Financial Statements

August 31, 2011 and 2010

**(d) Investments**

Investments in equity securities with readily determinable fair values and all investments in debt securities are measured at fair value based upon quoted market prices. Investments in nonmarketable funds are based upon net asset values (NAV) provided by external investment managers, which are reviewed and evaluated by College management for reasonableness. NAV is used as a practical expedient to measure fair value. Classification of these fund investments in Level 2 or 3 is based on the College's ability to redeem its interest at or near the date of the balance sheet, and if the interest can be redeemed in the near term, the investment is classified as Level 2.

Realized and unrealized gains and losses are recognized as changes in net assets in the period in which they occur, and investment income is recognized as revenue in the period earned.

**(e) Endowment Spending Rate**

The College has interpreted New York State law to allow the spending of income and gains on investments of permanently restricted net assets, absent explicit donor stipulations that all or a portion of such income or gains be maintained in perpetuity. State law allows the College to appropriate and spend such income and gains, as is prudent, considering such factors as the College's long and short term needs, present and anticipated financial requirements, expected total return on investments, price level trends, and general economic conditions. Accordingly, such income and realized and unrealized gains and losses are reported as temporarily restricted or unrestricted, based upon the amount of income and gains and losses that have been appropriated and spent. However, there is one permanently restricted gift, which the donor stipulated a portion of such income and gains be maintained in perpetuity. Accordingly, a portion of investment return on this gift is reported as permanently restricted.

For the year ended August 31, 2011, the College adopted an endowment spending policy for endowment funds that do not have a spending policy prescribed in the gift document. This policy allows for spending up to 5.0% of a twelve-quarter average market value of endowment investments, measured as of each May 31<sup>st</sup>, for spending in the subsequent fiscal year. The Board approved spending 4.5% for the year ended August 31, 2011.

**(f) Fair Value Hierarchy**

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. A fair value hierarchy was established, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

## WAGNER COLLEGE

### Notes to Financial Statements

August 31, 2011 and 2010

There are three levels of inputs that may be used to measure fair value:

- Level 1: Quoted prices in active markets for identical assets or liabilities.
- Level 2: Observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3: Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the asset or liabilities.

Fair value estimates are made at a specific point in time, based on available market information and judgments about the financial asset or liability, including estimates of timing, amount of expected future cash flows and the credit standing of the issuer. In some cases, the fair value estimates cannot be substantiated by comparison to independent markets. In addition, the disclosed fair value may not be realized in the immediate settlement of the financial asset. In addition, the disclosed fair values do not reflect any premium or discount that could result from offering for sale at one time an entire holding of a particular financial asset. Potential taxes and other expenses that would be incurred in an actual sale or settlement are not reflected in amounts disclosed.

The College's accounting policy is to recognize transfers between levels of the fair value hierarchy on the date of the event or change in circumstances that caused the transfer.

**(g) Bond Issuance Costs**

Expenses incurred in connection with debt financings are deferred and amortized over the life of the related debt.

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

Physical plant and equipment are stated at cost at date of acquisition or fair value at date of donation in the case of gifts. Library books are capitalized at the nominal value of \$1 per volume.

Depreciation of plant assets is computed on a straight-line basis over their estimated useful lives. Depreciable lives of buildings and improvements range from 15 to 50 years. Furnishings and equipment are depreciated over a useful life of seven years. Computer hardware is depreciated over a useful life of three to seven years. No depreciation is computed in the year assets are acquired, and a full year's depreciation is computed in the year of disposition.

**(i) Deferred Revenue**

Tuition and fees collected in advance of the fiscal school year are recorded as deferred revenue in the accompanying financial statements.

## WAGNER COLLEGE

### Notes to Financial Statements

August 31, 2011 and 2010

**(j) Refundable Federal Grants**

Funds provided by the U.S. government under the Federal Perkins and Nursing Student Loan programs are loaned to qualified students and may be reloaned after collection. These funds are ultimately refundable to the U.S. government and are presented in the accompanying balance sheets as a liability.

**(k) Contributions**

Contributions, including unconditional promises to give (pledges), are recognized as revenue when received. Contributions to be received after one year are discounted at an appropriate discount rate. Contributions related to charitable remainder trusts are recognized at the date the trusts are established at the present value of the estimated future cash flows to be received by the College.

**(l) Auxiliary Enterprises**

Auxiliary enterprises primarily consist of student housing, dining services, and bookstore operations. Auxiliary enterprises expenses include direct administration and general costs related to their operations as well as interest and depreciation. Amounts recorded net in auxiliary enterprises revenue for scholarships and fellowships is \$1,033,275 and \$1,270,470 for the years ended August 31, 2011 and 2010, respectively.

**(m) Fund-Raising Expenses**

Institutional support includes fund-raising expenses, which approximated \$2,207,000 in 2011 and \$2,019,000 in 2010.

**(n) Operating Measure**

The statements of activities distinguish between operating and nonoperating activities. Nonoperating activities of the College reflect private gifts of a permanent nature, investment return in excess of endowment spending, as well as other nonrecurring activities and other gains and losses.

**(o) Accounting Estimates**

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosures of contingencies at the date of the financial statements and revenues and expenses recognized during the reporting period. Actual results could differ from those estimates.

**(p) Income Taxes**

The College is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. There are certain transactions that could be deemed unrelated business income and would result in a tax liability. Management reviews transactions to estimate potential tax liability using a threshold of more likely than not. Management has concluded that there are no material tax liabilities that had to be recorded at August 31, 2011 and 2010.

**WAGNER COLLEGE**  
Notes to Financial Statements  
August 31, 2011 and 2010

**(q) *Reclassifications***

During the year ended August 31, 2011, a donor redesignated accumulated appreciation on a previously contributed permanently restricted gift to the original corpus of that gift. As a result, the College reclassified \$1,254,995 from temporarily restricted net assets to permanently restricted net assets. Also during the year ended August 31, 2011, a donor redesignated \$59,632 of a permanently restricted gift to a future capital need and the College reclassified that gift from permanently restricted net assets to temporarily restricted net assets and a donor fund totaling \$95,924 reached a size large enough to transfer for permanent investment according to the donor's instructions and the College reclassified this fund from temporarily restricted net assets to permanently restricted net assets.

There was a reclassification on the 2010 statement of cash flows between operating activities and financing activities in the amount of \$2,193,762 to properly present contributions and investment return restricted for long-term purposes as a financing activity.

Certain other reclassifications have been made to the 2010 financial statements to conform to the current year presentation.

**(r) *Subsequent Events***

The College evaluated events subsequent to August 31, 2011 through December 21, 2011, the date on which the financial statements were issued. The College is not aware of any subsequent events that would require recognition or disclosure in the financial statements.

**(s) *Recently Adopted Accounting Standards***

During fiscal 2011, the College adopted Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) No. 2010-06, *Improving Disclosures about Fair Value Measurements*, and applied its provisions to its investments. ASU 2010-06 provides amendments to Accounting Standards Codification 820-10, *Fair Value Measurements and Disclosures – Overall*, that clarify disclosures regarding the level of disaggregation and the inputs and valuation techniques for those financial assets and liabilities classified as either Level 2 or Level 3, as well as added new disclosures for transfers between Level 1 and Level 2 financial assets and liabilities.

**(t) *Other Significant Accounting Policies***

Other significant accounting policies are set forth in the following notes.

## WAGNER COLLEGE

### Notes to Financial Statements

August 31, 2011 and 2010

### (3) Investments

Investments at August 31, 2011 and 2010 consist of the following:

	2011		2010	
	Cost	Fair value	Cost	Fair value
Investments:				
Short-term securities	\$ 1,759,255	1,729,511	4,368,085	4,340,606
Fixed income:				
U.S. government securities	4,960,424	5,131,712	3,033,263	3,517,005
Corporate securities - domestic	4,431,103	4,588,252	5,627,977	5,457,592
Corporate securities - international	548,438	589,500	882,834	938,776
Mortgage-backed securities	1,272,448	1,340,294	1,085,577	1,141,950
Other securities	—	—	1,095,365	1,081,592
Fixed income mutual funds - domestic	505,905	496,996	515,843	546,907
Equities:				
Domestic common stock	27,965,899	30,364,413	18,448,533	19,371,795
International common stock	2,919,534	3,674,116	4,917,268	5,204,489
Domestic preferred stock	—	—	899,364	938,063
Domestic equity mutual funds	3,116,061	3,373,168	3,197,582	3,427,154
International equity mutual funds	5,057,221	5,679,966	2,414,623	2,974,044
Other mutual funds:				
Treasury inflation protected securities	439,962	493,062	447,073	551,604
Commodity	507,369	863,111	1,352,239	1,609,066
Alternative strategies:				
Managed futures fund	450,000	457,384	—	—
Hedge fund	1,040,000	1,024,526	—	—
Total investments	\$ <u>54,973,619</u>	<u>59,806,011</u>	<u>48,285,626</u>	<u>51,100,643</u>

The College invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market, and credit risks. Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect the amounts reported in the balance sheets.

The College began investing in alternative strategies, which included a managed futures fund and a hedge fund, during the year ended August 31, 2011 as a way of decreasing investment volatility while securing a desired return. These types of investments are nonmarketable, but do have liquidity, allowing them to be classified as Level 2 investments. The hedge fund has daily pricing and liquidity and the managed futures fund has daily pricing and monthly liquidity. All other investments can be redeemed on a daily basis.

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The managed futures fund invests in bonds, money markets, foreign exchange markets, and commodity markets. These markets are traded using highly liquid and regulated futures and foreign exchange contracts.

The hedge fund engages in speculative trading of a diversified portfolio of commodity interests including futures contracts, options, swaps and forward contracts. The sectors traded include currencies, energy, grains, indices, U.S. and non U.S. interest rates, livestock, lumber, and metal.

Investment return for the years ended August 31, 2011 and 2010 consists of the following:

	<u>2011</u>	<u>2010</u>
Interest and dividends	\$ 1,276,923	1,461,999
Net realized gains on investments	2,493,061	1,517,289
Net unrealized gains on investments	<u>2,017,375</u>	<u>667,001</u>
	<u>\$ 5,787,359</u>	<u>3,646,289</u>

**(4) Contributions Receivable**

Contributions receivable at August 31, 2011 and 2010 are scheduled to be collected as follows:

	<u>2011</u>	<u>2010</u>
In the next year	\$ 8,696,576	8,378,530
In one to five years	<u>3,343,824</u>	<u>8,693,214</u>
	12,040,400	17,071,744
Less present value discount at 5%	(464,994)	(815,091)
Less allowance for doubtful contributions	<u>(100,000)</u>	<u>(100,000)</u>
	<u>\$ 11,475,406</u>	<u>16,156,653</u>

The College is the remainder beneficiary of a charitable remainder trust with assets held by a third-party trustee. The receivable from this remainder trust amounted to \$722,329 and \$688,785 at August 31, 2011 and 2010, respectively. In addition, contributions receivable includes approximately \$9.5 million from four donors at August 31, 2011 and \$14 million from three donors at August 31, 2010.

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

Property, plant, and equipment at August 31, 2011 and 2010 consist of the following:

	<b>2011</b>	<b>2010</b>
Land and land improvements	\$ 8,637,762	8,463,939
Buildings and building improvements	96,098,396	95,276,129
Furnishings and equipment	14,316,374	13,450,114
Library books	288,876	289,817
Construction in progress	4,279,639	554,185
Total	123,621,047	118,034,184
Less accumulated depreciation	(52,067,066)	(47,947,053)
	\$ 71,553,981	70,087,131

**(6) Long-Term Debt**

Long-term debt at August 31, 2011 and 2010 consists of the following:

	<b>2011</b>	<b>2010</b>
Bonds payable:		
Wagner College Tax-Exempt Revenue Bonds, Series 1998, variable rate averaged 0.190% and 0.230% in 2011 and 2010, respectively, maturing July 1, 2000 through July 1, 2027 (a)	\$ 11,535,000	12,135,000
Wagner College Tax-Exempt Revenue Bonds, Series 2009, variable rate averaged 0.190% and 0.230% in 2011 and 2010, respectively, maturing July 1, 2010 through July 1, 2038 (b)	29,810,000	30,170,000
Wagner College Series 2009 Bank Term Loan, 5.110% with an interest rate swap, maturing January 28, 2009 through July 1, 2023 (c)	21,954,170	23,194,250
Wagner College Consolidation and Construction Bonds of 1962, Series B, 3.385%, maturing October 1, 1997 through October 1, 2012 (d)	270,000	400,000
Total bonds payable	63,569,170	65,899,250
Chartwells loan 1 (e)	437,272	508,383
Mortgage payable (f)	308,543	340,625
Chartwells loan 2 (g)	400,795	—
	\$ 64,715,780	66,748,258

(a) On July 30, 1998, the Dormitory Authority of the State of New York issued \$16,600,000 of variable rate Wagner College Tax-Exempt Revenue Bonds, Series 1998 (the 1998 tax-exempt bonds). The bond proceeds were used to: (i) finance the construction of the College's new recreation center;

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(ii) increase the debt service reserve fund remaining from the Series 1992 bonds; (iii) create a capitalized interest fund; and (iv) pay the costs of issuance of these bonds.

The 1998 tax-exempt bonds are subject to redemption prior to maturity at the option of the College, as provided for in the Indenture, on each interest payment date at the principal amount plus accrued interest to the date of the redemption. Under the debt agreement, the College is required to meet certain covenants. The College met these covenants as of August 31, 2011 and 2010.

The College obtained a letter of credit in the amount of the outstanding principal balance of the 1998 tax-exempt bonds with a bank, which expires on January 28, 2014.

The College entered into an interest rate cap agreement with a counterparty, effective April 1, 2008, with the intention of lowering its effective interest rate related to the 1998 tax-exempt bonds. The counterparty pays the College the amount by which the floating rate exceeds the cap rate of 4.50%, on a monthly basis, beginning May 1, 2008. The interest rate cap agreement terminates on April 1, 2013. The fair value of the interest rate cap at August 31, 2011 and 2010 was \$1,158 and \$7,331, respectively, and is included in inventory, prepaid expenses, and other assets in the accompanying financial statements.

- (b) On January 28, 2009, the Dormitory Authority of the State of New York issued \$30,500,000 of variable rate Wagner College Tax-Exempt Revenue Bonds, Series 2009 (the 2009 tax-exempt bonds). The bond proceeds were used to: (i) finance the construction and equipping of a new 200-bed student residence hall and a 36-space adjacent surface parking lot, (ii) pay a portion of the interest on the 2009 tax-exempt bonds, (iii) fund a debt service reserve fund, and (iv) pay the costs of issuance of these bonds.

The 2009 tax-exempt bonds are subject to redemption prior to maturity at the option of the College, as provided for in the Indenture, on each interest payment date at the principal amount plus accrued interest to the date of the redemption. The 2009 tax-exempt bonds are secured by the College's gross receipts, consisting of receipts, revenues, income, and other moneys received by the College, subject to prior pledges and by a mortgage on all land and buildings of the College. Under the debt agreement, the College is required to meet certain covenants. The College met these covenants as of August 31, 2011 and 2010.

The College obtained a letter of credit in the amount of the outstanding principal balance of the 2009 tax-exempt bonds with a bank, which expires on January 28, 2014.

The College entered into an interest rate cap agreement with a counterparty, effective January 28, 2009, with respect to \$15,500,000 of the 2009 tax-exempt bonds with the intention of lowering its effective interest rate related to the 2009 tax-exempt bonds. The counterparty pays the College the amount by which the floating rate exceeds the cap rate of 4.5%, on a monthly basis. The interest rate cap agreement terminates on January 31, 2012. The fair value of the interest rate cap at August 31, 2011 and 2010 was \$0 and \$9 respectively, and is included in inventory, prepaid expenses, and other assets in the accompanying financial statements.

- (c) Concurrently with the issuance of the 2009 tax-exempt bonds, the College obtained a variable rate term loan in the principal amount of \$25,000,000 from TD Bank (Bank Term Loan) to defease the

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outstanding aggregate principal amount of the 1998 taxable bonds. The amount borrowed provided for an amount to be set aside to defease the 1998 taxable bonds, as well as legal and other costs associated with the borrowing.

The Bank Term Loan is secured on a parity basis with respect to the security interest in the gross receipts of the College. As security for the full and timely payments by the College of its obligations under the loan agreement, the College delivered to the trustee and bank the security instruments, conveying to the trustee and bank, duly perfected liens upon and security interests in the collateral. Principal and interest are payable monthly. Principal repayment schedule is monthly based on set principal plus interest.

The College entered into an interest rate swap agreement with TD Bank with a notional amount of \$25,000,000 with the intention of lowering its effective interest rate related to the Bank Term Loan. The College pays a fixed rate of 5.11%. The interest rate swap agreement terminates on January 28, 2014. The fair value of the interest rate swap at August 31, 2011 and 2010 was \$(944,432) and \$(1,002,778), respectively, and is included in other liabilities in the accompanying financial statements.

Under the loan agreement, the College is required to meet certain covenants, including a cash flow coverage ratio. The College met these covenants as of August 31, 2011 and 2010.

- (d) The Consolidation and Construction Bonds of 1962 are general obligations of the College additionally secured by a first mortgage on the dormitories and related facilities constructed with the proceeds of the issues and on the site thereof and by a first lien on and a pledge of: (i) the net revenues to be derived from the operation of and/or ownership of the dormitory facilities; (ii) the first \$28,900 of annual revenue derived from student union fees; (iii) the first \$60,000 of annual revenue derived from special student fees (other than student union fees); and (iv) marketable investments having an estimated fair value of not less than \$107,000. The Consolidation and Construction Bonds of 1962 provide for repayment in increasing annual installments until the maximum annual amount of \$135,000 is reached in 2011. The final installment of \$135,000 is due on October 1, 2012.

The Indenture requires that the College make semiannual deposits to a bond and interest sinking fund account based upon the larger of: (i) the balance in the revenue fund account or (ii) an amount sufficient to meet the next interest and principal payments due and to maintain the debt service reserve at \$290,000. In addition, a repair and replacement reserve account has been established into which shall be deposited from the revenue fund account, on or before the close of each fiscal year, (i) the sum of \$10,000 or such portion thereof as is available for transfer annually for an equipment reserve until the funds in and/or investments of the equipment reserve portion of the reserve account shall aggregate \$200,000, and thereafter such sums, but not more than \$10,000 annually, as shall be required to restore and maintain the \$200,000 balance and (ii) the sum of \$21,000 or such portion thereof as is available for transfer annually to a repairs reserve.

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- (e) On May 1, 2004, the College obtained a loan in the amount of \$885,000 with a discounted interest rate of 6.92% with the Chartwells Division of Compass Group USA, Inc., with a term of 12 years. The funds have been drawn by the College for the construction of a new dining facility that was completed in fiscal year 2004.
- (f) In fiscal year 1998, the College purchased a residence for \$653,000, of which \$520,000 was financed. During 2004, the College refinanced this mortgage for a term of 15 years at a fixed interest rate of 6.00%.
- (g) In fiscal year 2011, the College obtained an interest-free loan in the amount of \$400,795 with the Chartwells Division of Compass Group USA, Inc., with a term of 9 years. The funds have been drawn by the College for the purchase and installation of dishwashing equipment that was completed in fiscal year 2011.

Future minimum principal and interest payments in each of the next five fiscal years on the College's long-term debt at August 31, 2011 are as follows:

	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
Year ending August 31:			
2012	\$ 2,582,371	3,035,334	5,617,705
2013	2,699,106	2,803,397	5,502,503
2014	2,677,912	1,847,710	4,525,622
2015	2,802,529	1,793,018	4,595,547
2016	3,130,767	1,732,763	4,863,530

Interest expense for all long-term debt, letters of credit, and interest rate cap and swap agreements for the years ended August 31, 2011 and 2010 was \$1,318,684 and \$1,406,873, respectively.

The College is required to establish and deposit with bond trustees certain funds for the benefit of bondholders and to fulfill bond commitments. These funds are invested, principally in U.S. government obligations, by the trustees until withdrawn to affect the purpose for which they were generated. Deposits held by bond trustees consist of the following as of August 31, 2011 and 2010:

	<b>2011</b>	<b>2010</b>
Debt service reserve funds	\$ 2,680,699	2,671,185
Debt service funds	515,585	533,835
Interest capitalization fund	186,892	185,663
Total deposits held by trustees	\$ 3,383,176	3,390,683

## WAGNER COLLEGE

### Notes to Financial Statements

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#### (7) Temporarily Restricted and Permanently Restricted Net Assets

Temporarily restricted net assets in the amount of \$25,290,676 and \$19,251,298 at August 31, 2011 and 2010, respectively, are principally for plant projects and program support to be funded by capital campaign contributions or are time restricted under split-interest agreements available for use by the College. Permanently restricted net assets of \$36,332,544 and \$31,450,800 at August 31, 2011 and 2010, respectively, are funds to be held in perpetuity by the College.

#### (8) Pensions and Other Postretirement Benefits

The College maintains a defined contribution (money purchase) retirement plan (the Plan), which covers certain faculty, administrative, and staff personnel. Benefits are provided by fixed dollar annuities issued by the Teachers Insurance and Annuity Association (TIAA) and by variable annuities offered by its companion organization, the College Retirement Equities Fund (CREF). The Plan operates under Section 403(b) of the Internal Revenue Code and uses TIAA and CREF retirement annuities to provide pension benefits. The College's contribution to the Plan is 9% of each covered employee's annual salary for the first seven years of employment and 10% for each year thereafter.

Contributions were also paid in 2011 and 2010 to three union multi-employer retirement plans for maintenance personnel. Total pension expense for the years ended August 31, 2011 and 2010 was approximately \$1,914,000 and \$1,827,000, respectively.

Certain college employees who retired prior to 1995 will receive payments from the College designed to help defray the cost of healthcare benefits, which those retired employees must secure on their own. Those payments, of \$600 each per individual retiree, are currently made to 35 retired College employees and are made annually during the first quarter of the calendar year. The College has recognized a liability for the present value of the annual \$600 payments to each of these individuals, which at August 31, 2011 and 2010 was \$132,308 and \$142,227, respectively.

#### (9) Operating Leases

The College leases office equipment under noncancelable operating leases, which expire in fiscal years 2012 through 2016. The following summarizes the future minimum lease payments at August 31, 2011:

	<u>Amount</u>
Year ending August 31:	
2012	\$ 375,000
2013	342,000
2014	244,000
2015	124,000
2016	7,000
	<u>\$ 1,092,000</u>

## **WAGNER COLLEGE**

### **Notes to Financial Statements**

**August 31, 2011 and 2010**

#### **(10) Litigation**

The College is involved in various claims and legal actions arising in the ordinary course of business. The College maintains insurance with respect to defense costs and potential damage awards. In the opinion of the College, the ultimate disposition of these matters will not have a material adverse effect on the College's financial statements.

#### **(11) Gain on Settlement**

Metropolitan Intercollegiate Basketball Association (MIBA) was formed in 1938 as a not-for-profit entity organized as a voluntary association situated in the City and State of New York consisting of five member institutions: Fordham University, Manhattan College, New York University, St. John's University, and Wagner College. MIBA controlled, directed, and supervised a preseason and postseason college basketball tournament known as the National Invitation Tournament.

On or about June 4, 2001, MIBA entered into litigation against the National Collegiate Athletic Association (NCAA) seeking to collect damages and injunctive relief for alleged violations of federal antitrust laws.

On August 17, 2005, MIBA and the NCAA came to a mutual understanding with respect to the settlement of the lawsuit whereby the NCAA agreed to acquire the assets of MIBA. In consideration, at the closing of the transaction, the NCAA agreed to pay to MIBA \$9,000,000. In addition, the NCAA agreed to pay to MIBA's five schools the sum of \$45,000,000 in total or \$1,000,000 per school on August 31 of each year, beginning in 2006, for the nine years following the closing of the transaction, equaling \$45,000,000. During these nine years, the five schools also share 40% of the net income of the tournaments. The payout is based on a minimum net income of \$625,000.

In 2005, the College recorded a gain on the settlement and corresponding receivable of approximately \$7,400,000, at a discount rate of 6.92%. The present value discount is amortized into revenue on an annual basis, approximately \$459,000 and \$284,000, respectively in 2011 and 2010.

On September 21, 2010, the NCAA set forth its decision to prepay its financial obligations related to the MIBA settlement under the terms of a 4% discount rate, which resulted in a payment of \$3,852,486 on October 8, 2010.

#### **(12) Conditional Asset Retirement Obligations**

Costs related to legal obligations to perform certain activities in connection with the retirement, disposal, or abandonment of assets are required to be accrued. The College identified asbestos abatement as a conditional asset retirement obligation and computed the present value of remediation costs to be approximately \$1,300,000. The associated asset was deemed to be partially depreciated. The asset retirement obligation at August 31, 2011 and 2010 included in other liabilities was approximately \$1.8 million and \$1.6 million, respectively.

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**(13) Endowment Funds**

The College's endowment consists of approximately 200 individual donor-restricted funds established for a variety of purposes.

***Interpretation of Relevant Law***

The Board of Trustees of the College has interpreted the New York Uniform Prudent Management of Institutional Funds Act (NYPMIFA) as requiring the preservation of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. The College classifies as permanently restricted net assets (a) the original value of gifts donated to the permanent endowment, (b) the original value of subsequent gifts to the permanent endowment, and (c) accumulations of investment returns to the permanent endowment made in accordance with the direction of the applicable donor gift instrument, when applicable. Beginning in the year ended August 31, 2011, as a result of the enactment of NYPMIFA, the remaining portion of the donor-restricted endowment fund that is not classified in permanently restricted net assets is classified as temporarily restricted net assets. Such amounts recorded as temporarily restricted net assets are released from restriction when the donor-stipulated purpose has been fulfilled and/or the required time period has elapsed and the board has appropriated the amounts for expenditure. NYPMIFA was enacted into law in September 2010. As a result, the College adopted the provisions of Accounting Standards Codification 958, Section 205-45, *Classification of Donor-Restricted Endowment Funds Subject to UPMIFA* in 2011 and reclassified accumulated appreciation from unrestricted net assets to temporarily restricted net assets in the amount of \$7,313,581.

The College has no board-designated endowment funds. The following tables represent the net asset classes of the College's donor-restricted endowment funds at August 31, 2011 and 2010:

		<b>2011</b>			
		<b>Unrestricted</b>	<b>Temporarily restricted</b>	<b>Permanently restricted</b>	<b>Total</b>
Donor-restricted endowment funds	\$	—	9,670,301	36,332,544	46,002,845
		<b>2010</b>			
		<b>Unrestricted</b>	<b>Temporarily restricted</b>	<b>Permanently restricted</b>	<b>Total</b>
Donor-restricted endowment funds	\$	7,166,103	1,800,721	31,450,800	40,417,624

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The following tables represent changes in endowment funds for the years ended August 31, 2011 and 2010:

	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>Total</u>
Endowment net assets at September 1, 2009	\$ 6,655,992	—	30,748,472	37,404,464
Investment return	510,111	1,675,629	224,005	2,409,745
Appropriation	—	(104,921)	—	(104,921)
Contributions	—	—	708,336	708,336
Transfers	—	230,013	(230,013)	—
	<u>7,166,103</u>	<u>1,800,721</u>	<u>31,450,800</u>	<u>40,417,624</u>
Endowment net assets at August 31, 2010	\$ <u>7,166,103</u>	<u>1,800,721</u>	<u>31,450,800</u>	<u>40,417,624</u>

	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>Total</u>
Endowment net assets at September 1, 2010	\$ 7,166,103	1,800,721	31,450,800	40,417,624
Net asset reclassification in accordance with the provisions of ASC 958-205-45	(7,313,581)	7,313,581	—	—
Investment return	147,478	3,325,972	422,698	3,896,148
Appropriation	—	(1,556,335)	—	(1,556,335)
Contributions	—	—	2,700,251	2,700,251
Redesignated contributions	—	(1,254,995)	1,291,287	36,292
Transfers	—	41,357	467,508	508,865
	<u>—</u>	<u>9,670,301</u>	<u>36,332,544</u>	<u>46,002,845</u>
Endowment net assets at August 31, 2011	\$ <u>—</u>	<u>9,670,301</u>	<u>36,332,544</u>	<u>46,002,845</u>

Included in the permanently restricted amounts above are contributions receivable of \$3,229,680, \$1,612,917, and \$1,770,020 as of August 31, 2011 and 2010, and September 1, 2009, respectively.

The College has adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of income and growth, while seeking to maintain the purchasing power of the endowment assets. Endowment assets include those assets of donor-restricted funds that the College must hold in perpetuity. Under this policy, as approved by the College's board of trustees, the endowment assets are invested in a manner that is intended to produce moderate to high rates of return while assuming a moderate to low level of investment risk.

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From time to time, the fair value of assets associated with individual donor-restricted endowment funds may fall below the level that the donor or NYPMIFA require to retain as a fund for perpetual duration. In accordance with Generally Accepted Accounting Principles (GAAP), deficiencies of this nature are reported in temporarily restricted net assets to the extent there are accumulated gains available to absorb such loss, or otherwise unrestricted net assets. As of August 31, 2010, there were deficiencies totaling \$147,478. There were no such deficiencies as of August 31, 2011.

#### **(14) Fair Value of Financial Instruments**

The carrying amount of cash and cash equivalents, accounts receivable, other receivables, deferred revenue, and accounts payable and accrued expenses approximates fair value because of the short maturity of these financial instruments. Amounts held by bond trustees are recorded at fair value based upon quoted market prices. The basis for the fair value of investments is disclosed in note 2. Contributions receivable are stated at their present value, which approximates fair value.

A reasonable estimate of the fair value of notes receivable from students under government loan programs could not be made because the notes are not salable and can only be assigned to the U.S. government or its designees. The fair value of the notes receivable from students under the College's loan programs approximates carrying value.

The carrying amount of long-term debt approximates fair value because these financial instruments bear interest at various rates, which, when averaged, are not significantly different from current market rates for loans with similar maturities and credit quality.

The fair value of interest rate swap and cap agreements is based upon inputs from current valuation information priced with observable market assumptions and appropriate valuation adjustments for credit risk. The valuation model adjusts each semiannual net cash flow by a credit spread depending on whether a net payment is due to the counterparty or due to the College. If the net payment was due to the counterparty, the rate used to adjust the net cash flow was a proxy curve for the College (a composite curve comprising U.S. dollar-denominated fair market curves with applicable ratings), minus the risk-free rate (LIBOR or the swap curve). If the net payment was due from the counterparty, the rate used to adjust the net cash flow was from the counterparty's 10-year credit default swap. The net cash flow for each payment was adjusted using the aforementioned rates (the credit adjustment) discounted for the appropriate time period from the valuation date via continuous compounding. The College has evaluated the valuation methodologies used to develop the fair values in order to determine whether such valuations are representative of an exit price. The College considered both its credit risk and counterparty credit risk in determining fair value and appropriate adjustments.

**WAGNER COLLEGE**

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The following tables present financial instruments that are measured at fair value on a recurring basis by the Accounting Standards Codification (ASC) 820, *Fair Value Measurements and Disclosures*, hierarchy as of August 31, 2011 and 2010, respectively. The College does not have any Level 3 financial assets or liabilities and there were no transfers among levels in the years ended August 31, 2011 or 2010.

	Fair value	2011	
		Level 1	Level 2
<b>Financial assets:</b>			
<b>Investments:</b>			
Short-term securities	\$ 1,729,511	1,729,511	—
<b>Fixed income:</b>			
U.S. Government securities	5,131,712	5,131,712	—
Corporate securities - domestic	4,588,252	2,374,635	2,213,617
Corporate securities - international	589,500	589,500	—
Mortgage-backed securities	1,340,294	1,340,294	—
Fixed income mutual funds - domestic	496,996	496,996	—
<b>Equities:</b>			
Domestic common stock	30,364,413	30,364,413	—
International common stock	3,674,116	3,674,116	—
Domestic equity mutual funds	3,373,168	3,373,168	—
International equity mutual funds	5,679,966	5,679,966	—
<b>Other mutual funds:</b>			
Treasury inflation protected securities	493,062	493,062	—
Commodity	863,111	863,111	—
<b>Alternative strategies:</b>			
Managed futures fund	457,384	—	457,384
Hedge fund	1,024,526	—	1,024,526
<b>Total investments</b>	<b>\$ 59,806,011</b>	<b>56,110,484</b>	<b>3,695,527</b>
<b>Amounts held by bond trustees</b>	<b>\$ 3,383,176</b>	<b>3,383,176</b>	<b>—</b>
Interest rate caps	1,158	—	1,158
Interest rate swap	(944,432)	—	(944,432)

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	<u>Fair value</u>	<u>2010</u>	
		<u>Level 1</u>	<u>Level 2</u>
<b>Financial assets:</b>			
<b>Investments:</b>			
Short-term securities	\$ 4,340,606	4,340,606	—
<b>Fixed income:</b>			
U.S. Government securities	3,517,005	3,517,005	—
Corporate securities - domestic	5,457,592	3,398,858	2,058,734
Corporate securities - international	938,776	938,776	—
Mortgage-backed securities	1,141,950	1,141,950	—
Other securities	1,081,592	1,081,592	—
Fixed income mutual funds - domestic	546,907	546,907	—
<b>Equities:</b>			
Domestic common stock	19,371,795	19,371,795	—
International common stock	5,204,489	5,204,489	—
Domestic preferred stock	938,063	938,063	—
Domestic equity mutual funds	3,427,154	3,427,154	—
International equity mutual funds	2,974,044	2,974,044	—
<b>Other mutual funds:</b>			
Treasury inflation protected securities	551,604	551,604	—
Commodity	1,609,066	1,609,066	—
<b>Total investments</b>	<u>\$ 51,100,643</u>	<u>49,041,909</u>	<u>2,058,734</u>
Amounts held by bond trustees	\$ 3,390,683	3,390,683	—
Interest rate caps	7,340	—	7,340
Interest rate swap	(1,002,778)	—	(1,002,778)

**CERTAIN DEFINITIONS**

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## APPENDIX C- CERTAIN DEFINITIONS

*The following are definitions of certain terms, unless the context shall otherwise require, used in the Indenture, the Loan Agreement or this Official statement.*

**Additional Bonds** shall mean one or more Series of additional bonds issued, executed, authenticated and delivered under the Indenture.

**Additional Debt** shall mean any indebtedness for borrowed money issued by the Institution or any issuer on behalf of the Institution that is secured on a parity basis with the Bonds, other than indebtedness issued to refund, refinance or replace, in whole or in part, the DASNY Financings or the TD Bank Financings.

**Additional Subordinated Debt** shall mean any indebtedness for borrowed money issued by the Institution or any issuer on behalf of the Institution the security for which is subordinate to the security for the Bonds.

**Additional Improvements** shall have the meaning specified in Section 3.4(a) of the Loan Agreement.

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

**Annual Administrative Fee** shall mean the annual administrative fee established from time to time by the Issuer's Bond of Directors as generally applicable to Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from such general applicability as may be established by the Issuer's Board of Directors).

**Approved Facility** shall mean the Facility as occupied, used and operated by the Institution substantially for the Approved Project Operations, all in accordance with the Loan Agreement.

**Approved Project Operations** shall mean operation of the Facility for use by the Institution as an institution of higher education, including in the providing of services to students, administrative activities and such other activities as may be substantially related to or substantially in support of such operations.

**Authorized Denomination** shall mean, in the case of the Initial Bonds, \$5,000 or any integral multiple of \$5,000 in excess thereof.

**Authorized Principal Amount** shall mean, in the case of the Initial Bonds, \$12,705,000.

**Authorized Representative** shall mean, (i) in the case of the Issuer, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties, and (ii) in the case of the Institution, a person named in Exhibit C – "Authorized Representative" to the Loan Agreement or any other officer or employee of the Institution who is authorized to perform specific duties under the Loan Agreement or under any other Project Document and of whom another Authorized Representative of the Institution has given written notice to the Issuer and the Trustee; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of the Loan Agreement or

any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

**Beneficial Owner** shall mean, whenever used with respect to an Initial Bond, the Person in whose name such Initial Bond is recorded as the Beneficial Owner of such Initial Bond by the respective systems of DTC and each of the Participants of DTC. If at any time the Initial Bonds are not held in the Book-Entry System, Beneficial Owner shall mean "Holder" for purposes of the Security Documents.

**Bond Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Bondholder, Holder of Bonds, Holder or holder** shall mean any Person who shall be the registered owner of any Bond or Bonds.

**Bond Registrar** shall mean the Trustee acting as registrar as provided in Section 3.10 of the Indenture.

**Bond Resolution** shall mean the resolution of the Issuer adopted on May 8, 2012, authorizing the issuance of the Initial Bonds.

**Bonds** shall mean the Initial Bonds and any Additional Bonds.

**Business Day** shall mean any day that shall not be:

- (i) a Saturday, Sunday, or legal holiday;
- (ii) a day on which banking institutions in the City are authorized by law or executive order to close; or
- (iii) a day on which the New York Stock Exchange is closed.

**Cash Flow Coverage Ratio** shall mean (i) increase in total net assets of the Institution as reflected on its balance sheet as of the Fiscal Year just ending, plus depreciation, amortization and actual interest expense (taking into account any interest rate protection agreements) for the immediately preceding twelve month period, divided by (ii) the current maturities of long-term debt for the upcoming twelve-month period, plus actual interest expense (taking into account any interest rate protection agreements) for the immediately preceding twelve month period, all determined in accordance with GAAP, applied on a consistent basis.

**City** shall mean The City of New York, New York.

**Claims** shall have the meanings set forth in Section 8.2(a) of the Loan Agreement.

**Closing Date** shall mean [September 25, 2012], the date of the initial issuance and delivery of the Initial Bonds.

**Code** shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder. All references to Sections of the Code or regulations thereunder shall be deemed

to include any such Sections or regulations as they may hereafter be renumbered in any subsequent amendments to the Code or such regulations.

**Completed Improvements Square Footage** shall mean approximately 197,885 square feet, the square footage of the Improvements comprising the Facility upon completion of the Project Work.

**Computation Date** shall have the meaning assigned to that term in the Tax Regulatory Agreement.

**Computation Period** shall have the meaning assigned to that term in the Tax Regulatory Agreement.

**Conduct Representation** shall mean any representation by the Institution under Section 2.2(t) of the Loan Agreement, or by any other Person in any Required Disclosure Statement delivered to the Issuer.

**Control or Controls**, including the related terms “controlled by” and “under common control with”, shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

**Costs of Issuance** shall mean issuance costs with respect to the Initial Bonds described in Section 147(g) of the Code and any regulations thereunder, including but not limited to the following: Underwriter’s spread (whether realized directly or derived through purchase of Initial Bonds at a discount below the price at which they are expected to be sold to the public); counsel fees (including bond counsel, counsel to the Underwriter, Trustee’s counsel, Issuer’s counsel, Institution’s counsel, as well as any other specialized counsel fees incurred in connection with the borrowing); financial advisor fees of any financial advisor to the Issuer or the Institution incurred in connection with the issuance of the Initial Bonds; engineering and feasibility study costs; guarantee fees (other than Qualified Guarantee Fees, as defined in the Tax Regulatory Agreement); Rating Agency fees; Trustee and Paying Agent fees; accountant fees and other expenses related to issuance of the Initial Bonds; printing costs (for the Initial Bonds and of the preliminary and final Official Statement relating to the Initial Bonds); printing costs for the Initial Bonds and offering documents; public approval and process costs; fees and expenses of the Issuer incurred in connection with the issuance of the Initial Bonds; and Blue Sky fees and expenses; and similar costs.

**DASNY Financings** shall mean, collectively, the \$13,135,000 Wagner College Revenue Bonds, Series 1998, and the \$30,500,000 Wagner College Revenue Bonds, Series 2009, issued by the Dormitory Authority of the State of New York and any full or partial refunding, refinancing or replacement thereof.

**Debt Service Reserve Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Debt Service Reserve Fund Requirement** shall mean, as of any particular date of computation, an amount (which amount may take the form of cash, Qualified Investments or any combination thereof) equal to the lesser of:

- Bonds;
- (i) ten percent (10%) of the stated principal amount of the Outstanding Bonds;
- Bonds;
- (ii) 100% of the maximum annual principal and interest on Outstanding Bonds;
- (iii) 125% of the average annual debt service on Outstanding Bonds; or
- (iv) the amount permitted to be deposited into the Debt Service Reserve Fund, and invested at an unrestricted yield, under the Code.

**Defaulted Interest** shall have the meaning specified in Section 2.02(f) of the Indenture.

**Defeasance Obligations** shall mean Government Obligations that are not subject to redemption prior to maturity.

**Determination of Taxability** shall mean:

- (i) the adoption, promulgation or enactment of any federal statute or regulation, or any determination, decision, decree or ruling made by the Commissioner or any District Director of the Internal Revenue Service;
- (ii) the issuance of a public or private ruling or a technical advice memorandum by the Internal Revenue Service in which the Institution has participated or has been given the opportunity to participate, and which ruling or memorandum the Institution, in its discretion, does not contest or from which no further right of judicial review or appeal exists;
- (iii) a determination from which no further right of appeal exists of any court of competent jurisdiction in the United States in a proceeding in which the Institution has participated or has been a party, or has been given the opportunity to participate or be a party; or
- (iv) the admission in writing by the Institution;

in any case, to the effect that the interest payable on the Bonds of a Holder or a former Holder thereof is includable in gross income for federal income tax purposes provided, however, that no such Determination of Taxability described in clauses (ii) or (iii) hereof shall be considered to exist unless (1) the Holder or former Holder of the Bond involved in such proceeding (A) gives the Institution and the Trustee prompt notice of the commencement thereof and (B) (if the Institution agrees to pay all expenses in connection therewith) offers the Institution the opportunity to control the defense thereof and (2) either (A) the Institution does not agree within thirty (30) days of receipt of such offer to pay such expenses and to control such defense or (B) the Institution shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Institution determines to be appropriate. No Determination of Taxability described above will result from the inclusion of interest on any Bond in the computation of minimum or indirect taxes.

**DOL** shall have the meaning set forth in Section 8.7(c) of the Loan Agreement.

**DTC** shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

**Due Date** shall have the meaning set forth in Section 9.9(a) of the Loan Agreement.

**Earnings Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Entity** shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

**Event of Default** shall have the meaning specified in the Indenture or the Loan Agreement, as applicable.

**Event of Taxability** shall mean the date specified in a Determination of Taxability as the date interest paid or payable on any Bond becomes includable for federal income tax purposes in the gross income of any Holder thereof as a consequence of any act, omission or event whatsoever, including any change of law, and regardless of whether the same was within or beyond the control of the Institution.

**Facility** shall mean, collectively, the Facility Personalty and the Facility Realty.

**Facility Personalty** shall mean those items of machinery, equipment and other items of personalty the acquisition and/or the installation of which is to be financed in whole or in part with the proceeds of the Bonds for installation or use at the Facility Realty as part of the Project pursuant to Section 3.2 of the Loan Agreement and described in **Exhibit B** – “Description of the Facility Personalty”, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions of Sections 3.5 and 6.4 of the Loan Agreement, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in Section 3.5 of the Loan Agreement.

**Facility Realty** shall mean, collectively, the portions of the Land and the Improvements comprising (i) the approximately 58,840 square foot Main Hall building located at 631 Howard Avenue, Staten Island, New York and (ii) the approximately 139,045 square foot Harborview Residence Hall Building located at One Campus Road, Staten Island, New York.

**Fitch** shall mean Fitch, 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, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Fiscal Year** shall mean a year of 365 or 366 days, as the case may be, commencing on September 1 and ending on August 31 of the next calendar year, or such other fiscal year of similar length used by the Institution for accounting purposes as to which the Institution shall have given prior written notice thereof to the Issuer and the Trustee at least ninety (90) days prior to the commencement thereof.

**GAAP** shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Closing Date, so as to properly reflect the financial position of the Institution, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

**Governing Body** shall mean, when used with respect to any Entity, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Entity are exercised.

**Government Obligations** shall mean the following:

- (i) direct and general obligations of, or obligations unconditionally guaranteed by, the United States of America;
- (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America for the timely payment thereof; or
- (iii) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in clauses (i) or (ii) above.

**Gross Receipts** shall mean all receipts, revenues, income and other moneys received by or on behalf of the Institution, including, without limitation, tuition, fees, contributions, donations and pledges whether in the form of cash, securities or other personal property, revenues derived from the operation of the facilities of the Institution, and all rights to receive the same, whether in the form of accounts receivable, contract rights, chattel paper, payment intangibles, instruments or other rights, and the proceeds thereof, and any insurance thereon, whether now existing or hereafter coming into existence and whether now owned or held or hereafter acquired by the Institution; provided, however, that gifts, grants bequests, donations and contributions heretofore or hereafter made, designated at the time of making thereof by the donor or maker as being for certain specific purposes inconsistent with the payment of debt service, and the income derived therefrom, to the extent required by virtue of such designation, shall be excluded from Gross Receipts.

**Hazardous Materials** shall include any petroleum, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

**Impositions** shall have the meaning set forth in Section 8.17(a) of the Loan Agreement.

**Improvements** shall mean:

- (i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Closing Date and erected or situated on the Land;
- (ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.2 of the Loan Agreement); and

(iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

**Indemnification Commencement Date** shall mean May 8, 2012, the date on which the Issuer first adopted with respect to the Project.

**Indemnified Parties** shall have meanings set forth in Section 8.2(a) of the Loan Agreement.

**Indenture** shall mean the Indenture of Trust, dated as of September 1, 2012, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

**Independent Accountant** shall mean KPMG, Grant Thornton LLP, or another independent certified public accountant or firm of independent certified public accountants by the Institution and approved by the Issuer (such approval not to be unreasonably withheld or delayed).

**Independent Engineer** shall mean a Person (not an employee of either the Issuer or the Institution or any Affiliate of either thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Institution, and approved in writing by the Trustee (which approval shall not be unreasonably withheld).

**Initial Bonds** shall mean the Issuer's \$12,705,000 Revenue Bonds, Series 2012 (Wagner College Project) authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

**Institution** shall mean Wagner College, a not-for-profit education corporation organized and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Institution under Section 8.9 or 8.20 of the Loan Agreement.

**Institution Documents** shall mean the Bond Purchase Agreement, the Loan Agreement, the Mortgage, the Building Loan Agreement, the Pledge and Security Agreement, the Tax Regulatory Agreement and any other Bond Documents to which the Institution is a party, each as may be amended from time to time.

**Institution's Property** shall have the meaning specified in Section 3.4(d) of the Loan Agreement.

**Intercreditor Agreement** shall mean that certain Second Amended and Restated Intercreditor Agreement, dated as of date thereof, between and among Dormitory Authority of the State of New York, as "Issuer," The Bank of New York Mellon, as "1998 Trustee," The Bank of New York Mellon, as "2009 Trustee," The Bank of New York Mellon, as "Gross Receipts Trustee" and TD Bank, N.A., as the "Bank," the Issuer and the Trustee.

**Interest Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

**Interest Payment Date** shall mean, with respect to the Initial Bonds, January 1 and July 1 of each year, commencing January 1, 2013, and with respect to any Series of Additional Bonds, the

dates set forth therefor in the Supplemental Indenture pursuant to which such Series of Additional Bonds are issued.

**Issuer** shall mean Build NYC Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

**Issuer's Reserved Rights** shall mean, collectively,

(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 Institution under the Loan Agreement to complete the Project;

(iv) the right of the Issuer to enforce or otherwise exercise in its own behalf all agreements of the Institution under the Loan Agreement with respect to ensuring that the Facility shall always constitute the Approved Facility;

(v) the right of the Issuer to amend with the Institution the provisions of Section 5.3 of the Loan Agreement without the consent of the Trustee or any Bondholder;

(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 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.4, 4.5, 4.6, 4.7, 5.1, 5.2, 5.3, 6.1, 6.2, 6.3, 6.4, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16, 8.17, 8.18, 8.19, 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26, 8.28, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 10.1, 10.2, 10.3, 11.1, 11.3, 11.5, 12.1, 12.3, 12.4, 12.5, 12.6, 12.11, 12.13 and 12.14 of the Loan Agreement; and

(vii) the right of the Issuer in its own behalf to declare a default with respect to any of the Issuer's Reserved Rights and exercise the remedies set forth in Section 9.2(b) of the Loan Agreement.

**Land** shall mean that certain lots, pieces or parcels of land constituting a portion of the Institution's campus and more particularly described in Exhibit A — "Description of the Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c) or (d) of the Loan Agreement.

**Land Square Footage** shall mean approximately 97 acres.

**Legal Requirements** shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards,

courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Institution, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

**Letter of Representation and Indemnity Agreement** shall mean the Letter of Representation and Indemnity Agreement, dated the Closing Date, from the Institution to the Issuer, the Trustee and the original purchaser(s) of the Initial Bonds.

**Liability** shall have the meaning set forth in Section 8.2(a) of the Loan Agreement.

**Liens** shall have the meaning specified in Section 8.11(a) of the Loan Agreement.

**Liquidity** shall mean the Institution's total balance of cash, cash equivalents and marketable securities that is unencumbered and the use of which is unrestricted, and temporary restricted cash.

**Loan** shall mean the loan made by the Issuer to the Institution pursuant to the Loan Agreement as described in Section 4.1 thereof.

**Loan Agreement** shall mean the Loan Agreement, dated as of September 1, 2012, between the Issuer and the Institution, and shall include any and all amendments thereof and supplements thereto thereafter made in conformity therewith and with the Indenture.

**Loan Payment Date** shall mean initially the date that is three (3) Business Days prior to each Interest Payment Date (or, if such Loan Payment Date shall not be a Business Day, the immediately preceding Business Day).

**Loss Event** shall have the meaning specified in Section 6.1 of the Loan Agreement.

**Majority Holders** shall mean the Beneficial Owners of at least a majority in aggregate principal amount of the Bonds Outstanding, or, if the Bonds shall cease to be in book-entry form, the Holders of at least a majority in aggregate principal amount of the Bonds Outstanding.

**Moody's** shall mean 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 by the Trustee, by notice to the other Notice Parties.

**Mortgage** shall mean collectively, that certain Mortgage and Security Agreement granted by the Institution of the Issuer and the Trustee contemporaneously with the Indenture encumbering the Facility and certain other property recited therein to secure the Institution's payment and performance of its obligations under the Indenture, the Issuer's interest in which is being assigned to the Trustee contemporaneously with the Indenture.

**Nationally Recognized Bond Counsel** shall mean counsel acceptable to the Issuer and the Trustee and experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

**Net Proceeds** shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award,

compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Issuer or the Trustee) incurred in the collection thereof.

**Notice Parties** shall mean the Issuer, the Institution, the Bond Registrar, the Paying Agents and the Trustee.

**Opinion of Counsel** shall mean a written opinion of counsel for the Institution or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

**Organizational Documents** shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the charter, articles of incorporation or certificate of incorporation, and the bylaws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

**Outstanding**, when used with reference to a Bond or Bonds, as of any particular date, shall mean all Bonds which have been issued, executed, authenticated and delivered under the Indenture, except:

(i) Bonds cancelled by the Trustee because of payment or redemption prior to maturity or surrendered to the Trustee under the Indenture for cancellation;

(ii) any Bond (or portion of a Bond) for the payment or redemption of which, in accordance with Article X of the Indenture, there has been separately set aside and held in the Redemption Account of the Bond Fund either:

(A) moneys, and/or

(B) Defeasance Obligations in such principal amounts, of such maturities, bearing such interest and otherwise having such terms and qualifications as shall be necessary to provide moneys,

in an amount sufficient to effect payment of the principal or applicable Redemption Price of such Bond, together with accrued interest on such Bond to the payment or redemption date, which payment or redemption date shall be specified in irrevocable instructions given to the Trustee to apply such moneys and/or Defeasance Obligations to such payment on the date so specified, provided, that, if such Bond or portion thereof is to be redeemed, notice of such redemption shall have been given as provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(iii) Bonds in exchange for or in lieu of which other Bonds shall have been authenticated and delivered under Article III of the Indenture,

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under the Indenture or under any other Security Document, Bonds owned by the Institution or any Affiliate of the Institution shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon

any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. Bonds which have been pledged in good faith may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Institution or any Affiliate of the Institution.

**Participants** shall mean those financial institutions for whom the Securities Depository effects book entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**Paying Agent** shall mean any paying agent for the Bonds appointed pursuant to the Indenture (and may include the Trustee) and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to the Indenture.

**Permitted Encumbrances** shall mean:

- (i) any Project Document;
- (ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable or that are being contested in accordance with the Loan Agreement;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien, security interest, encumbrance or charge or right in respect thereof, placed on or with respect to the Facility or any part thereof, if payment is not yet due and payable, or if such payment is being disputed pursuant to Section 8.11(b) of the Loan Agreement;
- (iv) utility, access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Institution certifies to the Issuer and the Trustee will not materially interfere with or impair the Institution's use and enjoyment of the Facility as provided in the Loan Agreement;
- (v) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Institution delivered to the Issuer and the Trustee, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired or purport to impose liabilities or obligations on the Issuer;
- (vi) those exceptions to title to the Facility Realty enumerated in the title insurance policy delivered pursuant to Section 3.7 of the Loan Agreement insuring the Trustee's mortgagee interest in the Facility Realty, a copy of which is on file at the offices of the Issuer and at the designated corporate trust office of the Trustee;
- (vii) liens arising by reason of good faith deposits with the Institution in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Institution to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

(viii) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Institution to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(ix) any judgment lien against the Institution, so long as the finality of such judgment is being contested in good faith and execution thereon is stayed;

(x) any purchase money security interest in movable personal property, including equipment leases and financing;

(xi) liens on property due to rights of governmental entities or third party payors for recoupment of excess reimbursement paid;

(xii) a lien, restrictive declaration or performance mortgage with respect to the operation of the Facility arising by reason of a grant or other funding received by the Institution from the City, the State or any governmental agency or instrumentality;

(xiii) any lien, security interest, encumbrances or charge which exists in favor of the Trustee or to which the Trustee shall consent in writing;

(xiv) any lease, license or other agreement granted for the siting and operation of telecommunications or similar equipment, for utility or similar infrastructure or services or otherwise granted in furtherance of the educational mission of the Institution or public safety or for any other use that will not have a material adverse effect on the Facility;

(xv) any short term lease, license or other use or occupancy agreement that is subordinate to the Mortgage and does not have a material adverse effect on the Facility;

(xvi) liens in favor of the counterparty under any interest rate protection agreement entered into with respect to the DASNY Financings or the TD Bank Financings (as each such term is defined in the Loan Agreement), which liens and counterparty shall become a party to the Intercreditor Agreement; and

(xvii) liens in connection with Additional Debt, Additional Subordinated Debt, refinancing, refunding or replacing (in whole or in part) and of the foregoing, the DASNY Financings and/or the TD Bank Financings, or other transactions permitted under the Loan Agreement.

**Person** shall mean an individual or any Entity.

**Plans and Specifications** shall mean the plans and specifications prepared for the Project by or on behalf of the Institution, as amended from time to time by or on behalf of the Institution to reflect any remodeling or relocating of the Project or substitutions, additions, modifications and improvements to the Project made by the Institution in compliance with the Loan Agreement, said plans and specifications being duly certified by an Authorized Representative of the Institution and filed in the designated corporate trust office of the Trustee and available to the Issuer.

**Policy(ies)** shall have the meanings specified in Section 8.1(a) of the Loan Agreement.

**Principal Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

**Principals** shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity and any Person shall have the power to Control such Entity, and “principal” shall mean any of such Persons.

**Project** shall mean (i) the renovation, repair of, and improvements to the approximately 58,840 square foot Main Hall building located on the Institution’s at 631 Howard Avenue, Staten Island, New York; (ii) the renovation, repair of, and improvements to the approximately 139,045 square foot Harborview Residence Hall Building located on the Institution’s campus at One Campus Road, Staten Island, New York; and (iii) miscellaneous capital improvements or equipment, and to establish a debt service reserve fund for the bonds and pay certain costs related to the issuance of the bonds.

**Project Costs** shall mean:

(i) all costs of engineering and architectural services with respect to the Project, including the cost of test borings, surveys, estimates, permits, plans and specifications and for supervising demolition, construction and renovation, as well as for the performance of all other duties required by or consequent upon the proper construction of, and the making of alterations, renovations, additions and improvements in connection with, the completion of the Project;

(ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to contractors, suppliers, builders and materialmen in connection with the completion of the Project;

(iii) the interest on the Bonds during the construction and renovation of the Project;

(iv) all costs of contract bonds and of insurance that may be required or necessary during the period of Project construction and renovation;

(v) the cost of acquisition of the Facility Realty;

(vi) all costs of title insurance as provided in Section 3.7 of the Loan Agreement;

(vii) the payment of the Costs of Issuance with respect to the Initial Bonds;

(viii) the payment of the fees and expenses of the Trustee during the period of construction and renovation of the Project;

(ix) all costs which the Institution shall be required to pay, under the terms of any contract or contracts, for the completion of the Project, including any amounts required to reimburse the Institution for advances made for any item otherwise constituting a Project Cost or for any other costs incurred and for work done which are properly chargeable to the Project; and

(x) all other costs and expenses relating to the completion of the Project or the issuance of a Series of Additional Bonds.

“**Project Costs**” shall not include (i) fees or commissions of real estate brokers, (ii) moving expenses, or (iii) operational costs.

**Project Documents** shall mean, collectively, the Institution Documents and the Security Documents.

**Project Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Project Work** shall mean (i) the design, construction and/or renovation of the Improvements on the Facility Realty, including the acquisition of building materials and fixtures, and (ii) the acquisition, whether by title or lease, of the Facility Personalty and any work required to install same.

**Promissory Note** shall mean, with respect to the Initial Bonds, that certain Promissory Note in substantially the form of Exhibit H to the Loan Agreement, and, with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and the Indenture.

**Purchase Price** shall mean an amount equal to the Redemption Price that would be applicable to the Initial Bonds being purchased pursuant to Section 2.03(g) of the Indenture if such Initial Bonds were being optionally redeemed pursuant to Section 2.03(a) of the Indenture on the date such Initial Bonds are being so purchased, plus accrued interest thereon to the date of purchase.

**Qualified Investments** shall mean, to the extent permitted by applicable law, the following:

(i) Direct obligations of, and obligations fully and unconditionally guaranteed as to timely payment by, the United States government and any agency, instrumentality, or establishment of the United States government (“Government Securities”);

(ii) Commercial paper having, at the time of investment or contractual commitment to invest therein, a rating from S&P and Moody's, of A1 and P1, respectively.

(iii) Repurchase and reverse repurchase agreements collateralized with Government Securities, including those of the Trustee or any of its affiliates.

(iv) Investment in money market mutual funds having a rating at time of investment in the highest investment category granted thereby from S&P or Moody's, 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 (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the Trustee collects fees for services rendered pursuant to this Indenture which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;

(v) Demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, and certificates of deposit or bankers acceptances of depository institutions, including the Trustee or any of its affiliates, rated in the AA long-term ratings category or higher by S&P or Moody's or which are fully FDIC-insured.

(vi) Direct and general long-term obligations of any state of the United States on which the full faith and credit of the state is pledged and which are rated in either of the two highest rating categories by Moody's or S&P;

(vii) Direct and general short-term obligations of any state of the United States on which the full faith and credit of the state is pledged and which are rated in the highest rating category by Moody's and S&P;

(viii) Mutual funds with assets in excess of \$150,000,000 investing in obligations of the type specified above; and

(ix) Other obligations, interest on which is excludable from gross income for purposes of federal income taxation, which are rated in the two highest rating categories by S&P and Moody's.

**Rating Agency** shall mean any of S&P, Moody's or Fitch and such other nationally recognized securities rating agency as shall have awarded a rating to the Initial Bonds.

**Rating Category** shall mean one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

**Rating Confirmation Notice** shall mean a notice from a Rating Agency confirming that the rating on the Initial Bonds will not be lowered or withdrawn as a result of the action proposed to be taken.

**Rebate Amount** shall have the meaning assigned to that term in the Tax Regulatory Agreement.

**Rebate Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Record Date** shall mean, with respect to any Interest Payment Date for the Initial Bonds, the close of business on the fifteenth (15<sup>th</sup>) day of the month next preceding such Interest Payment Date, or, if such day is not a Business Day, the next preceding Business Day.

**Redemption Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

**Redemption Date** shall mean the date fixed for redemption of Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Indenture.

**Redemption Price** shall mean, with respect to any Bond or a portion thereof, the principal amount thereof to be redeemed in whole or in part, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or the Indenture.

**Refunding Bonds** shall have the meaning assigned to that term in Section 2.07(c) of the Indenture.

**Reimbursement Resolution** shall mean the resolution adopted by the Institution on February 24, 2012 with respect to the Project and the debt financing thereof.

**Required Disclosure Statement** shall mean that certain Required Disclosure Statement in the form of Exhibit F- "Form of Required Disclosure Statement" of the Loan Agreement.

**Related Security Documents** shall mean all Security Documents other than the Indenture.

**Renewal Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Representations Letter** shall mean the Blanket Issuer Letter of Representations from the Issuer to DTC with respect to the Initial Bonds.

**Responsible Officer** shall mean, with respect to the Trustee, any officer within the corporate trust office of the Trustee, including any vice-president, any assistant vice-president, any secretary, any assistant secretary, the treasurer, any assistant treasurer or other officer of the corporate trust office of the Trustee customarily performing functions similar to those performed by any of the above designated officers, who has direct responsibility for the administration of the trust granted in the Indenture, and shall also mean, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

**S&P** shall mean Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., a corporation organized and existing under the laws of the State, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Securities Depository** shall mean any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book-entry system to record ownership of book-entry interests in the Bonds, and to effect transfers of book-entry interests in the Bonds in book-entry form, and includes and means initially DTC.

**Security Documents** shall mean, collectively, the Loan Agreement, the Promissory Note, the Mortgage, the Intercreditor Agreement, the Indenture and the Tax Regulatory Agreement.

**Series** shall mean all of the Bonds designated as being of the same series authenticated and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter authenticated and delivered in lieu thereof or in substitution therefor pursuant to the Indenture.

**Sinking Fund Installment** shall mean an amount so designated and which is established for mandatory redemption on a date certain of the Bonds of any Series of Bonds pursuant to the Indenture. The portion of any such Sinking Fund Installment of a Series of Bonds remaining after the deduction of any amounts credited pursuant to the Indenture toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall

constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments of such Series of Bonds due on a future date.

**Sinking Fund Installment Account** shall mean the special trust account of the Bond Fund so designated, which is established pursuant to Section 5.01 of the Indenture.

**Special Record Date** shall have the meaning specified in Section 2.02(f) of the Indenture.

**State** shall mean the State of New York.

**Supplemental Indenture** shall mean any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Issuer and the Trustee in accordance with Article XI of the Indenture.

**Tax-Exempt Organization** shall mean an Entity organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code and exempt from Federal income taxes under 501(a) of Code, or corresponding provisions of Federal income tax laws from time to time in effect.

**Tax Regulatory Agreement** shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Institution to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**TD Bank Financings** shall mean, collectively, (i) the letters of credit issued by TD Bank, N.A. in connection with the DASNY Financings, and (ii) the \$25 million term loan from TD Bank, N.A. to the Institution, and any full or partial refunding, refinancing or replacement of each or any of the foregoing.

**Termination Date** shall mean such date on which the Loan Agreement may terminate pursuant to Article X of the Loan Agreement.

**Transfer** shall have the meaning specified in Section 8.20(a)(iv) of the Loan Agreement.

**Trustee** shall mean U.S. Bank National Association, New York, New York in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

**Trust Estate** shall mean all property, interests, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

**Yield** shall have the meaning assigned to such term in the Tax Regulatory Agreement.

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

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## **APPENDIX D- SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT**

*The following is a summary of certain provisions of the Loan Agreement. This summary does not purport to be complete and reference is made to the Loan Agreement for the detailed provisions thereof. This summary is qualified in its entirety by such reference. Headings are not part of the Loan Agreement and are included for ease of reference only.*

### **Loan of Proceeds.**

The Issuer agrees, upon the terms and conditions contained in the Loan Agreement and the Indenture, to make the Loan and lend to the Institution an amount equal to the principal amount of the Initial Bonds. The Loan shall be made by depositing on the Closing Date the proceeds from the sale of the Initial Bonds into the Project Fund in accordance with Section 4.01 of the Indenture. Such proceeds shall be disbursed to or on behalf of the Institution as provided in Section 3.2(c) and Section 5.02 of the Indenture. (Section 4.1)

### **Promissory Note.**

The Institution's obligation to repay the Loan shall be evidenced by the Loan Agreement and the Promissory Note. On the Closing Date, the Institution shall execute and deliver the Promissory Note payable to the Issuer. (Section 4.2)

### **Loan Payments; Pledge of the Loan Agreement and of the Promissory Note.**

The Institution covenants to pay the Promissory Note and repay the Loan made pursuant to the Loan Agreement by making loan payments which the Issuer agrees shall be paid in immediately available funds by the Institution directly to the Trustee on each Loan Payment Date (except as provided in the Loan Agreement) for deposit in the Bond Fund (except to the extent that amounts are on deposit in the Bond Fund and available therefor) in an amount equal to the sum of:

(i) with respect to interest due and payable on the Initial Bonds, an amount equal to the amount of interest which will become due and payable on the Initial Bonds on the next succeeding Interest Payment Date (after taking into account any amounts on deposit in the Interest Account of the Bond Fund, and as shall be available to pay interest on the Initial Bonds on such next succeeding Interest Payment Date);

(ii) with respect to principal due on the Initial Bonds (other than such principal amount as shall become due as a mandatory Sinking Fund Installment payment), on the Loan Payment Date that shall immediately precede a principal payment date of the Initial Bonds, an amount sufficient to pay the principal of the Initial Bonds the Outstanding; provided, however, that in the event of the acceleration of the principal of the Initial Bonds, a loan payment in the amount of the principal amount of the Initial Bonds Outstanding (together with all interest accrued thereon to the date of payment), shall be due and payable on such date of acceleration;

(iii) with respect to Sinking Fund Installment payments due on the Initial Bonds, on each Loan Payment Date as shall precede a Sinking Fund Installment payment date, an amount sufficient to pay the Sinking Fund Installment of the Initial Bonds becoming due on such next succeeding Sinking Fund Installment payment date;

(iv) on each redemption date, with respect to the Redemption Price (other than by Sinking Fund Installments) due and payable on the Initial Bonds, whether as an optional or mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Initial Bonds being redeemed on such redemption date; and

(v) Reserved.

(vi) upon receipt by the Institution of notice from the Trustee pursuant to Section 5.09(f) of the Indenture that the amount on deposit in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Fund Requirement, the Institution shall pay to the Trustee for deposit in the Debt Service Reserve Fund on the first day of the month immediately following the receipt by the Institution of notice of such deficiency, and on the first day of each of the five (5) succeeding months, or over such longer time period as shall be consented to in writing by the Majority Holders, an amount equal to one sixth (1/6th) of such deficiency in the Debt Service Reserve Fund.

In the event the Institution should fail to make or cause to be made any of the payments required under the foregoing provisions, the item or installment not so paid shall continue as an obligation of the Institution until the amount not so paid shall have been fully paid.

The Institution has the option to make advance loan payments for deposit in the Bond Fund to effect the retirement, defeasance or redemption of the Bonds in whole or in part, all in accordance with the terms of the Indenture; provided, however, that no partial redemption of the Bonds may be effected through advance loan payments under the Loan Agreement if there shall exist and be continuing an Event of Default. The Institution shall exercise its option to make such advance loan payments by delivering a written notice of an Authorized Representative of the Institution to the Trustee in accordance with the Indenture, with a copy to the Issuer, setting forth (i) the amount of the advance loan payment, (ii) the principal amount of Bonds Outstanding requested to be redeemed with such advance loan payment (which principal amount shall be in such minimum amount or integral Authorized Denomination as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Bonds are to be redeemed (which date shall be not earlier than forty-five (45) days after the date of such notice). In the event the Institution shall exercise its option to make advance loan payments to effect the redemption in whole of the Bonds, and such redemption is expressly permitted under the Indenture as a result of the damage, destruction or condemnation of the Facility, or changes in law, or executive or judicial action, the Institution shall further deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution stating that, as a result of the occurrence of the event giving rise to such redemption, the Institution has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes. Such advance loan payment shall be paid to the Trustee in legal tender, for deposit in the Redemption Account of the Bond Fund on or before the redemption date and shall be an amount which, when added to the amounts on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents in connection with such redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Institution shall further pay on or before such redemption date, in legal tender, to the Issuer, the Trustee, the Bond Registrar and the Paying Agent all fees and expenses owed such party or any other party entitled thereto under the Loan Agreement or the Indenture together with (i) all other amounts due and payable under the Loan Agreement and the other Security Documents, and (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement.

At its option, to be exercised on or before the forty-fifth (45th) day next preceding the date any Bonds of a Series are to be redeemed from mandatory Sinking Fund Installments, the Institution may deliver to the Trustee Bonds of such Series which are subject to mandatory Sinking Fund Installment redemption in an aggregate principal amount not in excess of the principal amount of Bonds of such Series to be so redeemed on such date. Each such Bond so delivered shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against the obligation of the Issuer on such Sinking Fund Installment payment date and any excess over such Sinking Fund Installment shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by operation of the mandatory Sinking Fund Installments shall be accordingly reduced.

In the event Defaulted Interest (as defined in Section 2.02(f) of the Indenture) shall become due on any Initial Bond, the Institution shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Initial Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with Section 2.02(f) of the Indenture), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment.

No further loan payments need be made to the Issuer on account of the Bonds when and so long as the amount of cash and/or Defeasance Obligations on deposit in the Bond Fund is sufficient to satisfy and discharge the obligations of the Issuer under the Indenture and pay the Bonds as provided in Article X of the Indenture.

Any amounts remaining in the Earnings Fund, the Rebate Fund, the Bond Fund, the Debt Service Reserve Fund, the Project Fund or the Renewal Fund after payment in full of (i) the Bonds (in accordance with Article X of the Indenture), (ii) the fees, charges and expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents in accordance with the Indenture, (iii) all loan payments and all other amounts payable under the Loan Agreement and under the Promissory Note, and all amounts required to be rebated to the Federal government pursuant to the Tax Regulatory Agreement or the Indenture, and (iv) all amounts required to be paid under any Project Document, shall have been so paid, shall belong to and be paid to the Institution by the Trustee as overpayment of the loan payments.

In the event that the Institution fails to make any loan payment required in the Loan Agreement, the installment so in default shall continue as an obligation of the Institution until the amount in default shall have been fully paid.

Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal of, Sinking Fund Installments for, redemption premium, if any, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Institution shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund. (*Section 4.3*)

#### **Nature of Institution's Obligation Unconditional.**

The Institution's obligation under the Loan Agreement and under the Promissory Note to pay the loan payments and all other payments provided for in the Loan Agreement and in the Promissory Note shall be absolute, unconditional and a general obligation of the Institution, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Issuer, the Trustee or the Holder of any Bond and the obligation of the Institution shall arise whether or not the Project has been completed as

provided in the Loan Agreement and whether or not any provider of a credit facility or liquidity facility with respect to the Bonds shall be honoring its obligations thereunder. The Institution will not suspend or discontinue any such payment or terminate the Loan Agreement (other than such termination as is provided for under the Loan Agreement), or suspend the performance or observance of any covenant or agreement required on the part of the Institution under the Loan Agreement, for any cause whatsoever, and the Institution waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender the Loan Agreement or any obligation of the Institution under the Loan Agreement except as provided in the Loan Agreement or to any abatement, suspension, deferment, diminution or reduction in the loan payments or other payments under the Loan Agreement or under the Promissory Note. (Section 4.5)

**Advances by the Issuer or the Trustee.**

In the event the Institution fails to make any payment or to perform or to observe any obligation required of it under the Loan Agreement, under the Promissory Note or under any other Security Document, the Issuer or the Trustee, after first notifying the Institution in writing of any such failure on its part (except that no prior notification of the Institution shall be required in the event of an emergency condition that, in the reasonable judgment of the Issuer or the Trustee, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Issuer or the Trustee under the Loan Agreement or any other Security Document to which the Issuer or the Trustee is a party, make such payment or otherwise cure any failure by the Institution to perform and to observe its other obligations under the Loan Agreement or thereunder. All amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Institution to the Issuer or the Trustee, as the case may be, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum, compounded daily, from the date advanced, the Institution will pay upon demand therefor by the Issuer or the Trustee, as applicable. Any remedy vested in the Issuer or the Trustee in the Loan Agreement or in any other Security Document for the collection of the loan payments or other payments or other amounts due under the Loan Agreement, under the Promissory Note or under any other Security Document shall also be available to the Issuer or the Trustee for the collection of all such amounts so advanced. No advance shall be made by the Trustee except upon the written direction of the Majority Holders. (Section 4.6)

**Damage, Destruction and Condemnation.**

In the event that the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement to which the Institution and those authorized to exercise such right are parties, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "Loss Event"):

(i) the Issuer shall have no obligation to rebuild, replace, repair or restore the Facility or to advance funds therefor,

(ii) there shall be no abatement, postponement or reduction in the loan payments or other amounts payable by the Institution under the Loan Agreement or the Promissory Note or any other Security Document to which it is a party, and the Institution waives by the Loan Agreement, to the extent permitted by law, any provisions of law which would permit the Institution to terminate the Loan Agreement, the Promissory Note or any other Security Document, or eliminate or reduce its payments under the Loan Agreement, under the Promissory Note or under any other Security Document, and

(iii) the Institution will promptly give written notice of such Loss Event to the Issuer and the Trustee, generally describing the nature and extent thereof. *(Section 6.1)*

### **Loss Proceeds.**

The Issuer, the Trustee and the Institution shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromise, arbitration or adjustment of any such claim or demand shall, as between the Issuer and the Institution, be subject to the written approval of the Institution (such approval not to be unreasonably withheld).

Subject to the terms of the Intercreditor Agreement, the Net Proceeds with respect to the Facility shall be paid to the Trustee and deposited in the Renewal Fund. Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund shall be applied, and may be invested, as provided in the Indenture. The Institution shall be entitled to the Net Proceeds of any insurance proceeds or condemnation award, compensation or damages attributable to the Institution's Property. *(Section 6.2)*

### **Pledge and Assignment to Trustee.**

As security for the payment of the Bonds and the obligations of the Institution under the Security Documents, (i) the Institution shall, pursuant to the Mortgage, grant to the Issuer a mortgage lien and security interest in the Facility and certain additional property as set forth in the Mortgage, (ii) the Issuer shall assign all of its right, title and interest in and to the Mortgage to the Trustee pursuant to an assignment of mortgage that is in recordable form and is otherwise satisfactory to the Institution, the Issuer and the Trustee, (iii) the Issuer shall pledge and assign to the Trustee pursuant to the Indenture all of the Issuer's right, title and interest in the Promissory Note and all of the Issuer's right, title and interest (except for the Issuer's Reserved Rights) in the Loan Agreement, including all loan payments thereunder and under the Loan Agreement, and (iv) in furtherance of said pledge, the Issuer will unconditionally assign such loan payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture. The Institution consents to the Loan Agreement and the Promissory Note described in the Loan Agreement. *(Section 7.4)*

### **Insurance.**

Except during periods of Construction, the Institution shall obtain and maintain for itself as a primary insured the insurance required by the Loan Agreement. *(Section 8.1)*

### **Indemnity.**

The Institution shall at all times indemnify, defend, protect and hold the Issuer, the Trustee, the Bond Registrar and the Paying Agents, and any director, member, officer, employee, servant, agent (excluding for this purpose the Institution, which is not obligated by the Loan Agreement to indemnify its own employees, Affiliates or affiliated individuals) thereof and persons under the Issuer's control or supervision (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses, including attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing on the Indemnification Commencement Date, and

continuing until the termination of the Loan Agreement, arising upon, about, or in any way connected with the Facility, the Project, or any of the transactions with respect thereto, including:

- (i) the financing of the costs of the Facility or the Project and the marketing, offering, issuance, sale and remarketing of the Bonds for such purpose,
- (ii) the planning, design, acquisition, site preparation, Project Work, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, construction, renovation, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,
- (iv) the execution and delivery by an Indemnified Party, the Institution or any other Person of, or performance by an Indemnified Party, the Institution or any other Person, as the case may be, of, any of their respective obligations under, the Loan Agreement or any other Project Document, or other document or instrument delivered in connection with the Loan Agreement or therewith or the enforcement of any of the terms or provisions of the Loan Agreement or thereof or the transactions contemplated by the Loan Agreement or thereby,
- (v) any damage or injury to the person or property of any Person in or on the premises of the Facility,
- (vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including failure to comply with the requirements of the City's zoning resolution and related regulations, or
- (vii) the presence, disposal, release, or threatened release of any Hazardous Materials that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Issuer, which are based upon or in any way related to such Hazardous Materials.

The Institution releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Institution or its Affiliates for, any Claim or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in the Loan Agreement including any Claim or Liability arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party, or at the direction of the Institution with respect to any of such matters above referred to. The Institution further waives its right to pursue subrogation against any Indemnified Party. The Institution agrees and represents to the Indemnified Parties that no Insurer shall have the right to pursue subrogation against any Indemnified Party.

An Indemnified Party shall promptly notify the Institution in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Institution pursuant to the Loan Agreement; such notice shall be given in sufficient time to allow the Institution to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute

a defense under the Loan Agreement nor in any way impair the obligations of the Institution under the Loan Agreement.

Anything to the contrary in the Loan Agreement notwithstanding, the covenants of the Institution contained under this heading shall be in addition to any and all other obligations and liabilities that the Institution may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the 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 of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions specified in the Loan Agreement. *(Section 8.2)*

**Assignment of the Loan Agreement or Lease of Facility.**

The Institution shall not at any time, except as permitted by the Loan Agreement, assign or transfer the Loan Agreement without the prior written consent of the Issuer (which consent may be withheld by the Issuer in its absolute discretion); provided further, that if the Issuer consents to any such assignment or transfer,

(i) the Institution shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative to the effect that the transfer or assignment to the assignee or transferee (the "New Institution") shall not cause the Facility to cease being the Approved Facility;

(ii) the New Institution shall be liable to the Issuer for the payment of all loan and other payments and for the full performance of all of the terms, covenants and conditions of the Loan Agreement and of any other Project Document to which it shall be a party;

(iii) the New Institution shall have assumed in writing (and shall have executed and delivered to the Issuer and the Trustee such document and have agreed to keep and perform) all of the terms of the Loan Agreement and each other Project Document on the part of the New Institution to be kept and performed, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) the New Institution shall be a not-for-profit corporation or a limited liability company constituting a Tax-Exempt Organization;

(v) such assignment or transfer shall not violate any provision of the Loan Agreement or any other Project Document;

(vi) in the Opinion of Counsel addressed to the Issuer and the Trustee (x) such assignment or transfer shall constitute the legally valid, binding and enforceable obligation of the New Institution and shall not legally impair in any respect the obligations of the New Institution for the payment of all loan payments nor for the full performance of all of the terms, covenants and conditions of the Loan Agreement, of the Promissory Note or of any other Project Document to which the New Institution shall be a party, nor impair or limit in any respect the obligations of any other obligor under any other Project Document, and (y) the Loan Agreement and each of the other Project Documents to which the New Institution is a party constitute the legally valid, binding and enforceable obligation of the New Institution;

(vii) the New Institution shall deliver to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Issuer acting in its sole discretion, then the Institution shall be in default under the Loan Agreement;

(viii) each such assignment shall contain such other provisions as the Issuer or the Trustee may reasonably require; and

(ix) in the opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee, such assignment or transfer shall not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes.

The Institution shall furnish or cause to be furnished to the Issuer and the Trustee a copy of any such assignment or transfer in substantially final form at least thirty (30) days prior to the date of execution thereof.

The Institution shall not at any time lease all or substantially all of the Facility, without the prior written consent of the Issuer (which consent may be withheld by the Issuer in its absolute discretion); nor shall the Institution lease part (*i.e.*, not constituting substantially all) of the Facility without the prior written consent of the Issuer (which consent shall, in such case, not be unreasonably withheld and, such consent to be requested by the Institution of the Issuer in the form prescribed by the Issuer, and such consent of the Issuer to take into consideration the Issuer's policies as in effect from time to time); provided however, that the Institution's existing lease agreements referenced in the Tax Regulatory Agreement (and only such leases) have previously been approved by the Issuer; and provided further, that if the Issuer consents to any such future letting,

(i) the Institution shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative to the effect that the lease shall not cause the Facility to cease being the Approved Facility;

(ii) the Institution shall remain primarily liable to the Issuer for the payment of all loan and other payments and for the full performance of all of the terms, covenants and conditions of the Loan Agreement and of the Promissory Note and of any other Project Document to which it shall be a party;

(iii) any lessee in whole or substantially in whole of the Facility shall have assumed in writing (and shall have executed and delivered to the Issuer and the Trustee such document) and have agreed to keep and perform all of the terms of the Loan Agreement and each other Project Document on the part of the Institution to be kept and performed, shall be jointly and severally liable with the Institution for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) any lessee shall utilize the Facility as the Approved Facility and shall constitute a Tax-Exempt Organization; provided that the provision of this clause (iv) requiring that the lessee constitute a Tax-Exempt Organization shall not prohibit or apply to any renewal, extension, or replacement (with no material changes) of the leases specifically referenced in Section [7] of the Tax Regulatory Agreement;

(v) such lease shall not violate any provision of the Loan Agreement or any other Project Document;

(vi) with respect to any letting in part of the Facility, the term of each such lease shall not exceed five (5) years at any given date, and no more than an aggregate of twenty percent (20%) of the Rentable Square Footage shall be leased by the Institution;

(vii) in the Opinion of Counsel addressed to the Issuer and the Trustee, such lease shall constitute the legally valid, binding and enforceable obligation of the lessee and shall not legally impair in any respect the obligations of the Institution for the payment of all loan or other payments nor for the full performance of all of the terms, covenants and conditions of the Loan Agreement, of the Promissory Note or of any other Project Document to which the Institution shall be a party, nor impair or limit in any respect the obligations of any other obligor under any other Project Document; provided that the provisions of this clause (vii) shall not prohibit or apply to any renewal, extension, or replacement (with no material changes) of the leases specifically referenced in Section [7] of the Tax Regulatory Agreement;

(viii) such lease shall in no way diminish or impair the obligation of the Institution to carry the insurance required under the Loan Agreement and the Institution shall furnish written evidence satisfactory to the Issuer and the Trustee that such insurance coverage shall in no manner be diminished or impaired by reason of such assignment, transfer or lease;

(ix) any such lessee shall deliver to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Issuer acting in its sole discretion, then the Institution shall be in default under the Loan Agreement;

(x) each such lease shall contain such other provisions as the Issuer or the Trustee may reasonably require; and

(xi) in the opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee, such lease shall not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes; provided that the requirements set forth in this clause (xi) shall not apply to any leases or occupancy arrangements that satisfy (in all respects) the requirements set forth in the Tax Regulatory Agreement.

The Institution shall furnish or cause to be furnished to the Issuer and the Trustee a copy of any such lease in substantially final form at least thirty (30) days prior to the date of execution thereof.

Any consent by the Issuer to any act of assignment, transfer or lease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Institution, or the successors or assigns of the Institution, to obtain from the Issuer consent to any other or subsequent assignment, transfer or lease, or as modifying or limiting the rights of the Issuer under the foregoing covenant by the Institution.

For purposes of the provisions under this heading, any license or other right of possession or occupancy granted by the Institution with respect to the Facility shall be deemed a lease subject to the provisions under this heading.

Nothing in the Loan Agreement shall:

(i) Prohibit or apply to occupancy arrangements for students attending the Institution; or

(ii) Prohibit the Institution from affording housing to faculty, officers or staff of the Institution; provided that affording such housing is in furtherance of the Institution's charitable purposes. (*Section 8.9*)

**Retention of Title to or of Interest in Facility; Grant of Easements; Release of Portions of Facility.**

The Institution shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its fee title to or interest in the Facility, including the Improvements, or any part of the Facility or interest therein, except as set forth in the Loan Agreement, without the prior written consent of the Issuer, and any purported disposition without such consents shall be void.

The Institution may, with the prior written consents of the Issuer (such consent not to be unreasonably withheld or delayed), so long as there exists no Event of Default under the Loan Agreement, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the lien and security interest of any mortgage, as shall be necessary or convenient in the opinion of the Institution for the operation or use of the Facility, or required by any utility company for its utility business, provided that, in each case, such rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility as the Approved Facility, and provided, further, that any consideration received by the Institution from the granting of said rights-of-way, easements, permits or licenses shall be paid to the Trustee and deposited in the Redemption Account of the Bond Fund. The Issuer agrees, at the sole cost and expense of the Institution, to execute and deliver, and to cause and direct the Trustee to execute and deliver, any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the lien and security interest of any mortgage.

So long as there exists no Event of Default under the Loan Agreement, and the Institution delivers to the Trustee and the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that the following action will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes, the Institution may from time to time request in writing to the Issuer and the Trustee the release of and removal from the property comprising the Facility under the Loan Agreement and the lien and security interest of any mortgage, of any unimproved part of the Land (on which none of the Improvements, including the buildings, structures, major appurtenances, fixtures or other property comprising the Facility Realty, is situated); provided that such release and removal will not adversely affect the use or operation of the Facility as the Approved Facility. Upon any such request by the Institution, the Issuer shall, at the sole cost and expense of the Institution, cause and direct the Trustee to execute and deliver any and all instruments necessary or appropriate to so release and remove such unimproved Land from the property comprising the Facility under the Loan Agreement and the lien and security interest of any mortgage, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject on the Closing Date; (ii) any liens, easements and encumbrances created at the request of the Institution or to the creation or suffering of which the Institution consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Institution to perform or observe any of the agreements on its respective part contained in the Loan Agreement or any other Project Document; (iv) Permitted Encumbrances (other than the lien of the mortgage); and (v) any liens for taxes or assessments not then delinquent; provided, that, no such release shall be effected unless there shall be deposited with the Trustee the following:

(i) a certificate of an Independent Engineer, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the person signing such certificate, the unimproved Land and the release thereof so proposed to be made is not needed for the operation of the remaining Facility, will not adversely affect the use or operation of the

Facility as the Approved Facility and will not destroy the means of ingress thereto and egress therefrom;

(ii) an amount of cash for deposit in the Redemption Account of the Bond Fund equal to the greatest of (A) the original cost of the unimproved Land so released, such allocable cost to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, (B) the fair market value of such unimproved Land, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, and (C) if such unimproved Land is released in connection with its sale, the amount received by the Institution upon such sale; and

Notwithstanding any provision of any Project Document to the contrary, upon request by the Institution, the Issuer and the Trustee shall promptly execute and deliver to the Institution such instruments and other documents as are reasonably necessary to release from the lien of the Mortgage and the Indenture any property (real or personal) not constituting a portion of the Facility, provided that the Institution has delivered to the Issuer and the Trustee a certificate of an Authorized Representative that such property has been or is being released from TD Bank Financings and the DASNY Financings (or any refinancing, refunding or replacement thereof) or is otherwise no longer subject to the Intercreditor Agreement. Any release under the Loan Agreement shall not require the redemption of any Bonds.

No conveyance or release effected under the provisions under this heading shall entitle the Institution to any abatement or diminution of the loan payments or other amounts payable under the Loan Agreement or any other payments required to be made by the Institution under the Loan Agreement or any other Project Document to which it shall be a party. (*Section 8.10*)

#### **Discharge of Liens.**

If any lien, encumbrance or charge is filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Trust Estate, the Facility or any part thereof or the interest therein of the Institution or against any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Security Documents, or the interest of the Issuer or the Institution in any Security Document, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by the Loan Agreement, the Institution forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Issuer and the Trustee and take all action (including the payment of money and/or the securing of a bond with respect to any such Lien) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full of such Lien and to remove or nullify the basis therefor. Nothing contained in the Loan Agreement shall be construed as constituting the express or implied consent to or permission of the Issuer for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien not permitted under the first paragraph under this heading.

The Institution may at its sole cost and expense contest (after prior written notice to the Issuer and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (i) such proceeding shall suspend the execution or enforcement of such Lien against the Trust Estate, the Facility or any part thereof or interest therein, or against any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Project Documents or the interest of the Issuer or the Institution in any Project

Document, (ii) neither the Facility nor any part thereof or interest therein, the Trust Estate or any portion thereof, the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Security Documents or the interest of the Issuer or the Institution in any Security Document would be in any danger of being sold, forfeited or lost, (iii) neither the Institution, the Issuer nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Institution shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents. *(Section 8.11)*

#### **No Further Encumbrances Permitted.**

The Institution shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against (i) the Facility or any part thereof, or the interest of the Institution in the Facility, except for Permitted Encumbrances, or (ii) the Trust Estate or any portion thereof, the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Security Documents or the interest of the Issuer or the Institution in any Security Document, except in connection with Additional Debt, Additional Subordinated Debt or the refinancing, refunding or replacement, in whole or in part, of the DASNY Financings and/or the TD Bank Financings. The Institution covenants that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that there are no mortgage liens on, or security interests in, the Facility (other than Permitted Encumbrances) prior to the mortgage liens thereon, and security interests therein created by the Security Documents. Nothing in the Loan Agreement shall preclude the Institution from refinancing, refunding or replacing the DASNY Financings and/or the TD Bank Financings (in whole or in part). *(Section 8.13)*

#### **Taxes, Assessments and Charges.**

The Institution shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Trust Estate, the Facility Realty or any part thereof, or interest of the Institution in the Facility, or against any of the loan payments or other payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility Realty, all of which are herein called "Impositions". The Institution may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility Realty is exempt from Impositions solely due to the Issuer's involvement with the Project and the Facility Realty, the Institution shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facility Realty if and the Issuer had no involvement with the Project and the Facility Realty.

The Institution may at its sole cost and expense contest (after prior written notice to the Issuer and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition, if (i) such proceeding shall suspend the execution or enforcement of such Imposition against the Trust Estate, the Facility or any part thereof, or interest of the Institution in the Facility, or against any of the loan payments or other amounts payable under the Loan

Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, (ii) none of the Trust Estate, the Facility nor any part thereof or interest of the Institution in the Facility, or any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, would be in any danger of being sold, forfeited or lost, (iii) neither the Institution, the Issuer nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Institution shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents. *(Section 8.17)*

### **Compliance with Legal Requirements.**

The Institution shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

At its sole cost and expense, the Institution shall promptly observe and comply with all applicable Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Institution, the Facility, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Institution will not, without the prior written consent of the Issuer (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof.

The Institution may at its sole cost and expense contest in good faith the validity, existence or applicability of any of the matters described in the paragraph above and delay compliance therewith if (i) such contest shall not result in the Trust Estate, the Facility or any part thereof or interest of the Institution in the Facility, or any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Institution, the Issuer or the Trustee being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Institution shall have furnished such security, if any, as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents for failure to comply therewith. *(Section 8.18)*

### **Operation as Approved Facility.**

The Institution will not take any action, or suffer or permit any action, if such action would cause the Facility not to be the Approved Facility.

The Institution will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be the Approved Facility.

The Institution will permit the Trustee and its duly authorized agents, at all reasonable times upon written notice to enter upon the Facility and to examine and inspect the Facility and exercise its rights under the Loan Agreement, under the Indenture and under the other Security Documents with respect to the Facility. The Institution will further permit the Issuer, or its duly authorized agent, upon reasonable

notice, at all reasonable times, to enter the Facility, but solely for the purpose of assuring that the Institution is operating the Facility, or is causing the Facility to be operated, as the Approved Facility consistent with the Approved Project Operations and with the corporate purposes of the Issuer. (*Section 8.19*)

**Preservation of Exempt Status.**

The Institution agrees that (i) it shall not perform any acts, enter into any agreements, carry on or permit to be carried on at the Facility, or permit the Facility to be used in or for any trade or business, which shall adversely affect the basis for its exemption under Section 501 of the Code; (ii) it shall not use more than three percent (3%) of the proceeds of the Bonds or permit the same to be used, directly or indirectly, in any trade or business that constitutes an unrelated trade or business as defined in Section 513(a) of the Code or in any trade or business carried on by any Person or Persons who are not governmental units or Section 501(c)(3) organizations; (iii) it shall not directly or indirectly use the proceeds of the Bonds to make or finance loans to Persons other than governmental units or Section 501(c)(3) organizations, provided that no loan shall be made to another Section 501(c)(3) organization unless such organization is using the funds for a purpose that is not an unrelated trade or business for either the Institution or the borrower; (iv) it shall not take any action or permit any circumstances within its control to arise or continue, if such action or circumstances, or its expectation on the Closing Date, would cause the Bonds to be "arbitrage bonds" under the Code or cause the interest paid by the Issuer on the Bonds to be subject to Federal income tax in the hands of the Holders thereof; and (v) it shall use its best efforts to maintain the tax-exempt status of the Bonds. (*Section 8.21*)

**Special Covenants.**

The Institution covenants that, for so long as any Bonds shall be Outstanding, it will be registered with the New York State Department of Education as an eligible education institution.

The Institution further covenants that the Institution shall not discriminate in admissions, hiring, the granting of scholarships or loans, or the administration of educational policies generally.

The Institution may incur Additional Debt (including Additional Bonds), provided that:

- (i) the Trustee shall have consented to such Additional Debt; or
- (ii) each of the following shall have been satisfied, as determined by an Independent Accountant:
  - (A) for the last full Fiscal Year of the Institution immediately preceding the issuance of such Additional Debt the Cash Flow Coverage Ratio (calculated as if such Additional Debt, had been issued and utilizing the maximum annual debt service for such Additional Debt, excluding any final or balloon payment) is at least 1.20; and
  - (B) After giving effect to the incurrence of such Additional Debt, the Institution's Total Net Assets (as set forth in the Institution's most recent audited financial statements) is not less than 30% of the Institution's Total Assets (as set forth in the Institution's most recent audited financial statements).

The Institution may incur Additional Subordinated Debt; provided, that after giving effect to the incurrence of such Subordinated Debt, the Institution's Total Net Assets (as set forth in the Institution's most recent audited financial statements) shall not be less than 30% of the Institution's total assets.

The Institution covenants that, as long as the Initial Bonds are outstanding, it will maintain rates, fees, charges, rents and other sources of revenue and support such that the Cash Flow Coverage Ratio shall equal or exceed 1.20 in each Fiscal Year of the Institution.

- (i) the Failure of the Institution to maintain the Cash Flow Coverage Ratio described immediately above will require the Institution to develop a series of financial plans to correct such failure. The failure of the Institution to maintain such ratios shall not constitute a default of the Institution under the Loan Agreement, provided that the Institution continues to develop and comply with such financial plans.

The Institution covenants that it shall not grant any security interest in its endowment or board-designated funds unless the Institution shall first grant to the Trustee a security interest in such funds which is in all respects equal to any other security interest it grants in such funds. The Institution may remove the board designation from previously board-designated funds at any time without restriction, and the foregoing covenant will not apply to such funds thereafter.

The Institution must have on hand Liquidity of at least \$10,000,000 at the end of each Fiscal Year. (*Section 8.28*)

#### **Events of Default.**

Any one or more of the following events shall constitute an "Event of Default" under the Loan Agreement:

- (a) Failure of the Institution to pay any loan payment that has become due and payable by the terms of the Loan Agreement which results in an Event of Default under the Indenture;

- (b) Failure of the Institution to pay any amount (except as set forth above) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under certain provisions of the Loan Agreement and continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Institution specifying the nature of such failure by the Issuer or the Trustee or the Holders of more than fifty per cent (50%) in aggregate principal amount of the Bonds Outstanding;

- (c) Failure of the Institution to observe and perform any covenant, condition or agreement under Loan Agreement on its part to be performed (except as set forth above) and (i) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Institution specifying the nature of same by the Issuer or the Trustee or the Holders of more than fifty per cent (50%) in aggregate principal amount of the Bonds Outstanding, or (ii) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Institution fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice;

- (d) The Institution shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its

property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of the Institution, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Institution or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Institution shall be entered in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Institution as used above shall not be construed to prohibit any action otherwise permitted by the Loan Agreement;

(f) Any representation or warranty made by the Institution (i) in the application and related materials submitted to the Issuer or the initial purchaser(s) of the Bonds for approval of the Project or its financing, or (ii) in the Loan Agreement or in any other Project Document, or (iii) in the Letter of Representation and Indemnity Agreement dated the Closing Date and delivered to the Issuer, the Trustee and the initial purchaser(s) of the Initial Bonds, or (iv) in the Tax Regulatory Agreement, or (v) by or on behalf of the Institution or any other Person in any Required Disclosure Statement, or (vi) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(g) The commencement of proceedings to appoint a receiver or to foreclose any mortgage lien on or security interest in the Facility; or

(h) An "Event of Default" under the Indenture or under any other Security Document shall occur and be continuing; or

(i) If any Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion;

(j) Failure of the Institution to pay the amount required of it under Section 4.3(a)(vi) of the Loan Agreement when required thereunder.

### **Remedies on Default.**

Whenever any Event of Default referred to in the Loan Agreement shall have occurred and be continuing, the Issuer, or the Trustee where so provided, may, take any one or more of the following remedial steps:

(i) The Trustee, as and to the extent provided in Article VIII of the Indenture, may cause all principal installments of loan payments payable under the Loan Agreement until the Bonds are no longer Outstanding to be immediately due and payable, whereupon the same, together with the accrued interest thereon, shall become immediately due

and payable; provided, however, that upon the occurrence of an Event of Default under specific sections of the Loan Agreement, all principal installments of loan payments payable under the Loan Agreement until the Bonds are no longer Outstanding, together with the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Issuer, the Trustee, the Holders of the Bonds or any other Person being a condition to such acceleration;

(ii) The Issuer or the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the loan payments then due and thereafter to become due, or to enforce performance or observance of any obligations, agreements or covenants of the Institution under the Loan Agreement; and

(iii) The Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder.

Upon the occurrence of a default with respect to any of the Issuer's Reserved Rights, the Issuer, without the consent of the Trustee or any other Person, may proceed to enforce the Issuer's Reserved Rights by

(i) bringing an action for damages, injunction or specific performance, and/or

(ii) taking whatever action at law or in equity as may appear necessary or desirable to collect payment of amounts due by the Institution under the Issuer's Reserved Rights or to enforce the performance or observance of any obligations, covenants or agreements of the Institution under the Issuer's Reserved Rights.

No action taken pursuant to the Loan Agreement or by operation of law or otherwise shall, except as expressly provided in the Loan Agreement, relieve the Institution from the Institution's obligations under the Loan Agreement, all of which shall survive any such action. (*Section 9.2*)

### **Bankruptcy Proceedings.**

In case proceedings shall be pending for the bankruptcy or for the reorganization of the Institution under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee (other than the Trustee under the Indenture) shall have been appointed for the property of the Institution or in the case of any other similar judicial proceedings relative to the Institution or the creditors or property of the Institution, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to the Loan Agreement and the Promissory Note, irrespective of whether the principal of the Bonds (and the loan payments payable pursuant to the Promissory Note and the Loan Agreement) shall have been accelerated by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand for payment under the Loan Agreement or thereunder, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Institution, the creditors or property of the Institution, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Indenture after the deduction of its charges and expenses. Any receiver, assignee or trustee in bankruptcy or reorganization is authorized by the Loan Agreement to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including expenses and fees of counsel incurred by it up to the date of such distribution. (*Section 9.3*)

### **Remedies Cumulative.**

The rights and remedies of the Issuer or the Trustee under the Loan Agreement shall be cumulative and shall not exclude any other rights and remedies of the Issuer or the Trustee allowed by law with respect to any default under the Loan Agreement. Failure by the Issuer or the Trustee to insist upon the strict performance of any of the covenants and agreements set forth in the Loan Agreement or to exercise any rights or remedies upon default by the Institution under the Loan Agreement shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy the strict compliance by the Institution with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Institution be continued or repeated. *(Section 9.4)*

### **No Additional Waiver Implied by One Waiver.**

In the event any covenant or agreement contained in the Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under the Loan Agreement. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Issuer and/or the Trustee and the Institution or any delay or omission on the part of the Issuer and/or the Trustee in exercising any rights under the Loan Agreement or under the Indenture or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, by the Loan Agreement the Institution waives the benefit and advantage of, and covenants not to assert against the Issuer or the Trustee, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist. *(Section 9.5)*

### **Agreement to Pay Fees and Expenses of Attorneys and Other Consultants.**

In the event the Institution should default under any of the provisions of the Loan Agreement, and the Issuer or the Trustee should employ outside attorneys or other consultants or incur other expenses for the collection of loan payments or other amounts payable under the Loan Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Institution contained in the Loan Agreement or contained in any other Security Document, the Institution agrees that it will on demand therefor pay to the Issuer or the Trustee, as the case may be, the reasonable fees and disbursements of such attorneys or other consultants and such other expenses so incurred. *(Section 9.7)*

### **Termination of the Loan Agreement.**

The Institution shall have the option to cause the redemption or defeasance in whole of all Outstanding Bonds in accordance with the terms set forth in the Indenture.

After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Article X of the Indenture, but not later than the receipt by the Institution of ten (10) days prior written notice from the Issuer directing termination of the Loan Agreement, the Institution shall terminate the Loan Agreement by giving the Issuer notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to (x) the delivery of those documents referred to in the Loan Agreement, and (y) the survival of those obligations of the Institution set forth in the Loan Agreement. *(Section 10.1)*

### **Issuance of Additional Bonds.**

If a Series of Additional Bonds are to be issued pursuant to the Indenture, the Issuer and the Institution shall enter into an amendment to the Loan Agreement, and the Institution shall execute and deliver a new Promissory Note, in each case providing, among other things, for the payment by the Institution of such additional loan payments as are necessary in order to amortize in full the principal of and interest on such Series of Additional Bonds and any other costs in connection therewith.

Any such completion, repair, relocation, replacement, rebuilding, restoration, additions, extensions or improvements shall become a part of the Facility and shall be included under the Loan Agreement to the same extent as if originally included under the Loan Agreement. *(Section 11.1)*

### **Determination of Taxability.**

If any Holder of Bonds receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Bond, an appeal may be taken by such Holder at the option of either such Holder or the Institution. If such appeal is taken at the option of the Institution (exercised in accordance with the procedures set forth in the definition of "Determination of Taxability"), all expenses of the appeal including reasonable counsel fees shall be paid by the Institution, and the Institution shall control the procedures and terms relating to such appeal, and such Holder and the Institution shall cooperate and consult with each other in all matters pertaining to any such appeal which the Institution has elected to take, except that no Holder of Bonds shall be required to disclose or furnish any non-publicly disclosed information, including without limitation, financial information and tax returns. Before the taking of any appeal which the Institution has elected to take, however, the Bondholder shall have the right to require the Institution to pay the tax assessed and conduct the appeal as a contest for reimbursement. *(Section 11.2)*

### **Mandatory Redemption of Bonds as Directed by the Issuer.**

Upon the determination by the Issuer that (w) the Institution is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not for the Approved Project Operations in accordance with the Loan Agreement and the failure of the Institution within thirty (30) days of the receipt by the Institution of written notice of such noncompliance from the Issuer to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee), (x) the Institution, any Principal of the Institution or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Institution has committed a material violation of a material Legal Requirement and the failure of the Institution within thirty (30) days of the receipt by the Institution of written notice of such determination from the Issuer to cure such material violation (which cure, in the case of a Principal who shall have committed the material violation of a material Legal Requirement, may be effected by the removal of such Principal), (y) as set forth in the Loan Agreement, any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, the Institution covenants and agrees that it shall, no later than ten (10) days following the termination of such thirty (30) day period, pay to the Trustee advance loan payments in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of 100% of the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to the redemption date. The Issuer shall give prior written notice of the meeting at which the Board of Directors of the Issuer are to consider such resolution to the Institution and the Trustee, which notice shall be no less than fifteen (15) days prior to such meeting.

In the event the Institution fails to obtain or maintain the liability insurance with respect to the Facility required under the Loan Agreement, and the Institution shall fail to cure such circumstance within ten (10) days of the receipt by the Institution of written notice of such noncompliance from the Issuer and a demand by the Issuer on the Institution to cure such noncompliance, upon notice or waiver of notice as provided in the Indenture, the Institution shall pay to the Trustee advance loan payments in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Bonds, together with interest accrued thereon to the date of redemption. *(Section 11.3)*

#### **Option to Purchase or Invite Tenders of Bonds.**

Except as provided in the Loan Agreement, neither the Institution nor any Related Person (as defined in the Tax Regulatory Agreement) to the Institution shall purchase Bonds in an amount related to the amount of the Loan. The Institution shall have the option, at any time during the term of the Loan Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by making a tender offer to the Holders thereof. The Bonds so purchased by the Institution or by any Affiliate of the Institution shall be delivered to the Trustee for cancellation within fifteen (15) days of the date of purchase unless the Institution shall deliver to the Trustee and the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that the failure to surrender such Bonds by such date will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes. *(Section 11.6)*

#### **Investment of Funds.**

Any moneys held as part of the Rebate Fund, the Earnings Fund, the Project Fund, the Bond Fund, the Debt Service Reserve Fund or the Renewal Fund or in any special fund provided for in the Loan Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the written request of an Authorized Representative of the Institution, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the Tax Regulatory Agreement). Neither the Issuer nor the Trustee nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom.

Interest and profit derived from such investments shall be credited and applied as provided in the Indenture, and any loss resulting from such investments shall be similarly charged. *(Section 11.7)*

#### **Amendments.**

The Loan Agreement may be amended only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture and only by a written instrument executed by the parties thereto. *(Section 12.3)*

#### **Recourse Under the Loan Agreement.**

All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Loan Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer, and not of any member, director, officer, employee or agent of the Issuer or any natural person executing the Loan Agreement on behalf of the Issuer in such person's individual capacity, and no recourse shall be had for any reason whatsoever under the Loan Agreement against any member, director, officer, employee or agent of the Issuer or any natural person executing the Loan Agreement on behalf of the Issuer. No recourse shall be had for the payment of the principal of, redemption premium, if any, Sinking Fund Installments for, Purchase Price or interest on the Bonds or for any claim based thereon or

under the Loan Agreement against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds. In addition, in the performance of the agreements of the Issuer contained in the Loan Agreement, any obligation the Issuer may incur for the payment of money shall not subject the Issuer to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Issuer by the Institution under the Loan Agreement and under the Promissory Note. *(Section 12.14)*

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**SUMMARY OF CERTAIN PROVISIONS  
OF THE INDENTURE OF TRUST**

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## **APPENDIX E- SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST**

*The following is a summary of certain provisions of the Indenture of Trust. This summary does not purport to be complete and reference is made to the Indenture of Trust for the detailed provisions thereof. This summary is qualified in its entirety by such reference. Headings are not part of the Indenture of Trust and are included for ease of reference only.*

### **Authorized Amounts of Bonds; Pledge Effected by the Indenture.**

The proceeds of the Bonds deposited in the Project Fund and certain of the loan payments, receipts and revenues derived from or in connection with the Facility, including moneys which are required to be set apart, transferred and pledged to the Earnings Fund, to the Bond Fund, to the Debt Service Reserve Fund, to the Renewal Fund or to certain special funds, including the investments, if any, thereof (subject to disbursements from such Funds in accordance with the provisions of the Indenture) are pledged by the Indenture for the payment of the principal or Redemption Price, if any, of, Sinking Installments for, and interest on, the Bonds. All such Funds shall be held by the Trustee in trust for the benefit of the Bondholders, and while held by the Trustee constitute part of the Trust Estate and be subject to the lien hereof. The Rebate Fund (including amounts on deposit therein) shall not be subject to any assignment, pledge, lien or security interest in favor of the Trustee or any Bondholder or any other Person. The Bonds shall be the special limited revenue obligations of the Issuer and shall be payable by the Issuer as to the principal or Redemption Price, if any, of the Bonds, Sinking Fund Installments for the Bonds, and interest on the Bonds only from the Funds, special funds and loan payments, revenues and receipts pledged therefor. The Bonds are additionally secured by a pledge and assignment of the Promissory Note and substantially all of the Issuer's right, title and interest in and to the Loan Agreement.

In no event shall any obligations of the Issuer under the Indenture or the Bonds or under the Loan Agreement or under any other Security Document or related document for the payment of money create a debt of the State or the City and neither the State nor the City shall be liable on any obligation so incurred, but any such obligation shall be a special limited revenue obligation of the Issuer secured and payable solely as provided in the Indenture. *(Section 2.01(b))*

### **Additional Bonds.**

So long as the Promissory Note, the Loan Agreement and the other Security Documents are each in effect, and subject to Section 8.28(d) of the Loan Agreement, one or more Series of Additional Bonds may be issued, authenticated and delivered upon original issuance for the purpose of (i) completing the Project, (ii) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility, the purpose of which shall be for the Approved Project Operations, or (iv) refunding Outstanding Bonds. Such Additional Bonds shall be payable from the loan payments, receipts and revenues of the Facility including such extensions, additions and improvements thereto. Prior to the issuance of a Series of Additional Bonds and the execution of a Supplemental Indenture in connection therewith, the Issuer and the Institution shall enter into an amendment to the Loan Agreement, and the Institution shall execute a new Promissory Note, which shall provide, among other things, that the loan payments payable by the Institution under the Loan Agreement and the aggregate amount to be paid under all Promissory Notes shall be increased and computed so as to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith. In addition, the Institution and the Issuer shall enter into an amendment to each Security Document with the Trustee which shall provide that the amounts guaranteed or otherwise secured thereunder be increased accordingly. *(Section 2.07(a))*

Upon the request of the Institution, one or more Series of Additional Bonds may be authenticated and made available for pick-up upon original issuance to refund ("Refunding Bonds") all Outstanding Bonds or any Series of Outstanding Bonds or any part of one or more Series of Outstanding Bonds. Bonds of a Series of Refunding Bonds shall be issued in a principal amount sufficient, together with other moneys available therefor, to accomplish such refunding and to make such deposits required by the provisions of the Indenture and of the resolution authorizing said Series of Refunding Bonds. In the case of the refunding under Section 2.07 of the Indenture of less than all Bonds Outstanding of any Series or of any maturity within such Series, the Trustee shall proceed to select such Bonds in accordance with the Indenture.

A Series of Refunding Bonds may be authenticated and made available for pick-up only upon receipt by the Trustee (in addition to the receipt by it of the documents required by the Indenture, as may be applicable) of:

(A) Irrevocable instructions from the Issuer to the Trustee, satisfactory to it, to give due notice of redemption pursuant to the Indenture to the Holders of all the Outstanding Bonds to be refunded prior to maturity on the redemption date specified in such instructions; and

(B) Either:

(i) moneys in an amount sufficient to effect payment at maturity or upon redemption at the applicable Redemption Price of the Bonds to be refunded, together with accrued interest on such Bonds to the maturity or redemption date, which moneys shall be held by the Trustee or any Paying Agent in a separate account irrevocably in trust for and assigned to the respective Holders of the Outstanding Bonds being refunded, or

(ii) Defeasance Obligations in such principal amounts, having such maturities, bearing such interest, and otherwise having such terms and qualifications, as shall be necessary to comply with the provisions of the Indenture relating to defeasance, and any moneys required pursuant to said Section (with respect to all Outstanding Bonds or any part of one or more Series of Outstanding Bonds being refunded), which Defeasance Obligations and moneys shall be held in trust and used only as provided in the Indenture.

The Institution shall furnish to the Trustee and the Issuer at the time of delivery of the Series of Refunding Bonds a certificate of an independent certified public accountant stating that the Trustee and/or the Paying Agent (and/or any escrow agent as shall be appointed in connection therewith) hold in trust the moneys or such Defeasance Obligations and moneys required to effect such payment at maturity or earlier redemption. *(Section 2.07(c))*

Each Series of Additional Bonds issued pursuant to the Indenture shall be equally and ratably secured under the Indenture with the Initial Bonds and all other Series of Additional Bonds, if any, issued pursuant to the Indenture, without preference, priority or distinction of any Bond over any other Bonds except as expressly provided in or permitted by the Indenture. *(Section 2.07(d))*

No Series of Additional Bonds shall be issued unless the Promissory Note, the Loan Agreement, the Mortgage and the other Security Documents are in effect and, at the time of issuance, there is no Event of Default nor any event which upon notice or lapse of time or both would become an Event of Default. *(Section 2.07(e))*

### **Creation of Funds and Accounts.**

The Indenture establishes and creates the following special trust Funds and Accounts comprising such Funds:

- (1) Project Fund
- (2) Bond Fund
  - (a) Principal Account
  - (b) Interest Account
  - (c) Redemption Account
  - (d) Sinking Fund Installment Account
- (3) Renewal Fund
- (4) Earnings Fund
- (5) Rebate Fund
- (6) Debt Service Reserve Fund

All of the Funds and Accounts created under the Indenture shall be held by the Trustee. All moneys required to be deposited with or paid to the Trustee for the credit of any Fund or Account under any provision of the Indenture and all investments made therewith shall be held by the Trustee in trust and applied only in accordance with the provisions of the Indenture, and while held by the Trustee shall constitute part of the Trust Estate (subject to the granting clauses of the Indenture), other than the Rebate Fund, and be subject to the lien hereof. (*Section 5.01*)

### **Project Fund.**

There shall be deposited in the Project Fund any and all amounts required to be deposited therein pursuant to the Indenture or otherwise required to be deposited therein pursuant to the Loan Agreement.

The Trustee shall apply the amounts on deposit in the Project Fund to the payment, or reimbursement to the extent the same have been paid by or on behalf of the Institution or the Issuer, of Project Costs (including interest on the Bonds during the period of Project construction and renovation) to the extent requisitioned as described in the Indenture.

The Trustee is authorized by the Indenture to disburse from the Project Fund amounts required to pay (in whole or in part) the Project Costs and is directed to issue its checks (or, at the direction of the Institution, make wire transfers) for each disbursement from the Project Fund for the Project Costs, upon a requisition submitted to the Trustee, signed by an Authorized Representative of the Institution; provided, however, that the Trustee shall retain in the Project Fund an amount equal to such retainage amount as is provided for in the Institution's construction contracts, until an Authorized Representative of the Institution shall have delivered the completion certificate and other documents required by Section 3.2(f) of the Loan Agreement.

The requisition from the Project Fund shall be accompanied by bills or invoices (stamped "paid" by the Person to whom payment was due or with other evidence of payment if reimbursement is to be made to the Institution), including evidence that the bill, invoice or other evidence was not incurred on a date prior to sixty (60) days prior to the date of adoption by the Issuer or the Institution of the Reimbursement Resolution for the Project. Such requisition shall be as set forth in Exhibit D - "Form of Requisition from the Project Fund" and shall be submitted to the Trustee. The Trustee shall disburse amounts from the Project Fund not later than five (5) Business Days following the receipt of the executed requisition and accompanying bills or invoices, except that any such requisition and accompanying bills or invoices submitted on the Closing Date shall have disbursements made by the Trustee on such Closing Date. The Trustee shall be entitled to conclusively rely on the correctness and accuracy of such requisition as well as the propriety of the signature thereon.

In addition to the foregoing, any requisition submitted to the Trustee for costs of construction, improving and/or renovating the Facility Realty shall be accompanied by a notice of title continuation or an endorsement to the title insurance policies theretofore delivered pursuant to Section 3.7 of the Loan Agreement, indicating that since the last preceding disbursement of any amounts held in the Project Fund, there has been no change in the state of title and no exceptions not theretofore approved by the Issuer and the Trustee (which approvals shall not be unreasonably withheld), which notice or endorsement shall contain no exception for inchoate mechanic's liens (and such affirmative insurance relating thereto as the Issuer and/or the Trustee shall reasonably require) and shall have the effect of redating such policies to the date of the disbursement then being made and increasing the coverage of the policies by an amount equal to the disbursement then being made if the policies do not by their terms provide for such an increase.

The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom and shall furnish copies of same to the Issuer or the Institution upon reasonable written request.

The Trustee shall on written request furnish to the Issuer and the Institution within a reasonable time period a written statement of disbursements from the Project Fund, enumerating, among other things, item, cost, amount disbursed, date of disbursement and the person to whom payment was made, together with copies of all bills, invoices or other evidences submitted to the Trustee for such disbursement.

The completion of the Project shall be evidenced as set forth in Section 3.2(f) of the Loan Agreement including the filing of the certificate of an Authorized Representative of the Institution referred to therein. Upon the filing of such certificate, the balance in the Project Fund in excess of the amount, if any, stated in such certificate for the payment of any remaining part of the costs of the Project, shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and the Indenture, be deposited by the Trustee in the Redemption Account of the Bond Fund. Upon payment of all the costs and expenses incident to the completion of the Project, any balance of such remaining amount in the Project Fund, together with any amount on deposit in the Earnings Fund derived from transfers made thereto from the Project Fund, shall, after making any such transfer to the Rebate Fund, and after depositing in the Debt Service Reserve Fund an amount equal to any deficiency therein, be deposited in the Redemption Account of the Bond Fund to be applied to the redemption of Bonds at the earliest practicable date. The Trustee shall promptly notify the Institution of any amounts so deposited in the Redemption Account of the Bond Fund pursuant to the Indenture.

In the event the Institution shall be required to or shall elect to cause the Bonds to be redeemed in whole pursuant to the Loan Agreement, the balance in the Project Fund, in the Earnings Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to the Tax Regulatory Agreement and the Indenture) and in the Debt Service Reserve Fund shall be deposited in the Redemption

Account of the Bond Fund. In the event the unpaid principal amount of the Bonds shall be accelerated upon the occurrence of an Event of Default under the Indenture, the balance in the Project Fund, in the Earnings Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to the Tax Regulatory Agreement and the Indenture) and in the Debt Service Reserve Fund shall be deposited in the Bond Fund as provided in the Indenture.

Except as provided in the Indenture, all earnings on amounts held in the Project Fund shall be transferred by the Trustee and deposited in the Earnings Fund. Any transfers by the Trustee of amounts to the Rebate Fund shall first be drawn by the Trustee from the Earnings Fund prior to drawing any amounts from the Project Fund. (*Section 5.02*)

**Payments into Renewal Fund; Application of Renewal Fund.**

The Net Proceeds resulting from any Loss Event with respect to the Facility, together with any other amounts so required to be deposited therein under the Loan Agreement or the Mortgage, shall be deposited in the Renewal Fund (except as otherwise provided in Section 3.11 of the Mortgage).

In the event the Bonds shall be subject to redemption in whole (either by reason of such Loss Event or otherwise) pursuant to the terms thereof or the Indenture, and the Institution shall have so directed the Trustee in writing within ninety (90) days of the occurrence of such Loss Event, the Trustee shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and the Indenture, transfer the amounts deposited in the Renewal Fund to the Redemption Account of the Bond Fund.

If, on the other hand,

(1) the Bonds shall not be subject to optional redemption in whole (whether by reason of such Loss Event or otherwise), or

(2) the Bonds shall be subject to optional redemption in whole (whether by reason of such Loss Event or otherwise) and the Institution shall have failed to take action to effect such redemption, or

(3) the Institution shall have notified the Trustee of its intent to rebuild, replace, repair and restore the Facility,

the Trustee shall apply the amounts on deposit in the Renewal Fund, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and the Indenture, to such rebuilding, replacement, repair and restoration.

If an Event of Default shall exist at the time of the receipt by the Trustee of the Net Proceeds in the Renewal Fund, the Trustee shall promptly request the written direction of the Majority Holders and shall thereupon apply such Net Proceeds, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and the Indenture, to the rebuilding, replacement, repair and restoration of the Facility, or for deposit in the Redemption Account of the Bond Fund, as directed by the Majority Holders (or if no such direction shall be received within ninety (90) days after request therefor by the Trustee shall have been made, for deposit in the Redemption Account of the Bond Fund).

The Trustee is authorized by the Indenture to apply the amounts in the Renewal Fund to the payment (or reimbursement to the extent the same have been paid by or on behalf of the Institution or the Issuer) of the costs required for the rebuilding, replacement, repair and restoration of the Facility upon

written instructions from the Institution. The Trustee is further authorized and directed to issue its checks for each disbursement from the Renewal Fund upon a requisition submitted to the Trustee and signed by an Authorized Representative of the Institution. Each such requisition shall be accompanied by bills, invoices or other evidences or documentation (including, without limitation, a title continuation or other evidence that no mechanics or other liens have been filed) satisfactory to the Trustee. The Trustee shall be entitled to rely on such requisition. The Trustee shall keep and maintain adequate records pertaining to the Renewal Fund and all disbursements therefrom and shall furnish copies of same to the Issuer and the Institution upon reasonable written request therefor.

The date of completion of the restoration of the Facility shall be evidenced to the Issuer and the Trustee by a certificate of an Authorized Representative of the Institution stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Trustee, has been made, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that all property constituting part of the Facility is subject to the terms of the Loan Agreement, and the mortgage liens and security interests of the Mortgage subject to Permitted Encumbrances, (v) the Rebate Amount applicable with respect to the Net Proceeds 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 (vi) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Institution against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of the Indenture and Section 6.4 of the Loan Agreement, and (z) that no Person other than the Issuer or the Trustee may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if is a temporary certificate of occupancy, the Institution will proceed with due diligence to obtain a permanent 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 Facility for the purposes contemplated by the Loan Agreement; (ii) a certificate of an Authorized Representative of the Institution that all costs of rebuilding, repair, restoration and reconstruction of the Facility have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the rebuilding, repair, restoration and reconstruction of the Facility (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence to the Trustee that such costs have been appropriately bonded or that the Institution shall have posted a surety or security at least equal to the amount of such costs); and (iii) a search prepared by a title company, or other evidence satisfactory to the Trustee, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances other than those encumbrances consented to by the Issuer and the Trustee.

All earnings on amounts on deposit in the Renewal Fund shall be transferred by the Trustee and deposited in the Earnings Fund. Any transfers by the Trustee of amounts to the Rebate Fund shall first be drawn by the Trustee from the Earnings Fund prior to drawing any amounts from the Renewal Fund.

Any surplus remaining in the Renewal Fund after the completion of the rebuilding, replacement, repair and restoration of the Facility shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and the Indenture, and after depositing in the Debt Service Reserve Fund an amount equal to any deficiency therein, be transferred by the Trustee to the Redemption Account of the Bond Fund.

Notwithstanding any other provision described under this heading, the terms and conditions described under this heading, shall be subject to the terms and conditions of the Intercreditor Agreement. (Section 5.03)

**Payments into Bond Fund.**

The Trustee shall promptly deposit the following receipts into the Bond Fund:

(a) The interest accruing on any Series of Bonds from the date of original issuance thereof to the date of delivery, which shall be credited to the Interest Account of the Bond Fund and applied to the payment of interest on such Series of Bonds.

(b) Amounts disbursed from the Project Fund for the payment of interest on the Bonds during the period of Project Work, which shall be credited to the Interest Account of the Bond Fund and applied to the payment of interest on the Bonds;

(c) Excess or remaining amounts in the Project Fund required to be deposited (subject to any transfer required to be made to the Rebate Fund in accordance with directions received pursuant to the Tax Regulatory Agreement and the Indenture, or to the Debt Service Reserve Fund to the extent of any deficiency therein) (i) in the Redemption Account of the Bond Fund pursuant to the Indenture, which shall be kept segregated from any other moneys within such Account, or (ii) in the Bond Fund pursuant to the Indenture.

(d) Loan payments received by the Trustee pursuant to Section 4.3(a)(i), (ii), (iii), (iv) or (v), or Section 4.3(i), of the Loan Agreement, which shall be deposited in and credited, to the extent necessary, first to the Interest Account, second to the Principal Account, and third to the Sinking Fund Installment Account of the Bond Fund.

(e) Advance loan payments received by the Trustee pursuant to Section 4.3(c) of the Loan Agreement, which shall be deposited in and credited to the Redemption Account of the Bond Fund.

(f) Any amounts transferred from the Earnings Fund pursuant to the Indenture, which shall be deposited in and credited to the Interest Account of the Bond Fund.

(g) The excess amounts referred to in the Indenture, which shall be deposited in and credited to the Interest Account of the Bond Fund.

(h) Any amounts transferred from the Redemption Account pursuant to the Indenture, which shall be deposited to the Interest Account, the Principal Account and the Sinking Fund Installment Account of the Bond Fund, as the case may be and in such order of priority, and applied solely to such purposes.

(i) Amounts in the Renewal Fund required by the Indenture or by the Mortgage to be deposited (subject to any transfer required to be made to the Rebate Fund in accordance with directions received pursuant to the Tax Regulatory Agreement and the Indenture or to the Debt Service Reserve Fund to the extent of any deficiency therein) to the Redemption Account of the Bond Fund pursuant to the Indenture.

(j) All other receipts when and if required by the Loan Agreement or by the Indenture or by any other Security Document to be paid into the Bond Fund, which shall be credited (except as provided in the Indenture) to the Redemption Account of the Bond Fund.

(k) Any amounts transferred from the Debt Service Reserve Fund pursuant to the Indenture, which shall be deposited in and credited to the Interest Account, the Principal Account, the Sinking Fund Installment Account or the Redemption Account, as the case may be, of the Bond Fund. (Section 5.04)

**Application of Bond Fund Moneys.**

The Trustee shall (i) on each Interest Payment Date pay or cause to be paid out of the Interest Account in the Bond Fund the interest due on the Bonds, and (ii) further pay out of the Interest Account of the Bond Fund any amounts required for the payment of accrued interest upon any purchase or redemption (including any mandatory Sinking Fund Installment redemption) of Bonds.

The Trustee shall on each principal payment date on the Bonds pay or cause to be paid to the respective Paying Agents therefor out of the Principal Account of the Bond Fund, the principal amount, if any, due on the Bonds (other than such as shall be due by mandatory Sinking Fund Installment redemption), upon the presentation and surrender of the requisite Bonds.

There shall be paid from the Sinking Fund Installment Account of the Bond Fund to the Paying Agents on each Sinking Fund Installment payment date in immediately available funds the amounts required for the Sinking Fund Installment due and payable with respect to Bonds which are to be redeemed from Sinking Fund Installments on such date (accrued interest on such Bonds being payable from the Interest Account of the Bond Fund). Such amounts shall be applied by the Paying Agents to the payment of such Sinking Fund Installment when due. The Trustee shall call for redemption, in the manner provided in the Indenture, Bonds for which Sinking Fund Installments are applicable in a principal amount equal to the Sinking Fund Installment then due with respect to such Bonds. Such call for redemption shall be made even though at the time of mailing of the notice of such redemption sufficient moneys therefor shall not have been deposited in the Bond Fund.

Amounts in the Redemption Account of the Bond Fund shall be applied, at the written direction of the Institution, as promptly as practicable, to the purchase of Bonds at prices not exceeding the Redemption Price thereof applicable on the earliest date upon which the Bonds are next subject to optional redemption, plus accrued interest to the date of redemption. Any amount in the Redemption Account not so applied to the purchase of Bonds by forty-five (45) days prior to the next date on which the Bonds are so redeemable shall be applied to the redemption of Bonds on such redemption date. Any amounts deposited in the Redemption Account and not designated by the Institution in writing to the Trustee for payment of Interest, Principal or Sinking Fund Installments and not applied within twelve (12) months of their date of deposit to the purchase or redemption of Bonds (except if held in accordance with the provisions of the Indenture relating to defeasance) shall be transferred to the Interest Account. Upon the purchase of any Bonds out of advance loan payments as provided in this subsection, or upon the redemption of any Bonds, an amount equal to the principal of such Bonds so purchased or redeemed shall be credited against the next ensuing and future Sinking Fund Installments for such Bonds in chronological order of the due dates of such Sinking Fund Installments until the full principal amount of such Bonds so purchased or redeemed shall have been so credited. The portion of any such Sinking Fund Installment remaining after the deduction of such amounts so credited shall constitute and be deemed to be the amount of such Sinking Fund Installment for the purposes of any calculation thereof under the Indenture. The Bonds to be purchased or redeemed shall be selected by the Trustee in the manner provided in the Indenture. Amounts in the Redemption Account to be applied to the redemption of Bonds shall be paid to the respective Paying Agents on or before the redemption date and applied by them on such redemption date to the payment of the Redemption Price of the Bonds being redeemed plus interest on such Bonds accrued to the redemption date.

In connection with purchases of Bonds out of the Bond Fund as provided in the Indenture, the Institution shall arrange and the Trustee shall execute such purchases (through brokers or otherwise, and with or without receiving tenders) at the written direction of the Institution. The payment of the purchase price shall be made out of the moneys deposited in the Redemption Account of the Bond Fund and the payment of accrued interest shall be made out of moneys deposited in the Interest Account of the Bond Fund.

The Issuer shall receive a credit in respect of Sinking Fund Installments for any Bonds which are subject to mandatory Sinking Fund Installment redemption and which are delivered by the Issuer or the Institution to the Trustee on or before the forty-fifth (45th) day next preceding any Sinking Fund Installment payment date and for any Bonds which prior to said date have been purchased or redeemed (otherwise than through the operation of the Sinking Fund Installment Account) and cancelled by the Trustee and not theretofore applied as a credit against any Sinking Fund Installment (whether pursuant to this paragraph or otherwise). Each Bond so delivered, cancelled or previously purchased or redeemed shall be credited by the Trustee at one hundred per cent (100%) of the principal amount thereof against the obligation of the Issuer on such Sinking Fund Installment payment date with respect to Bonds of such Series and maturity and the principal amount of such Bonds to be redeemed by operation of the Sinking Fund Installment Account on the due date of such Sinking Fund Installment shall be reduced accordingly, and any excess over such principal amount shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by application of Sinking Fund Installment payments shall be accordingly reduced.

The Institution shall on or before the forty-fifth (45th) day next preceding each Sinking Fund Installment payment date furnish the Trustee with the certificate of an Authorized Representative of the Institution indicating whether or not and to what extent the provisions of the Indenture are to be availed of with respect to such Sinking Fund Installment payment, stating, in the case of the credit provided for, that such credit has not theretofore been applied against any Sinking Fund Installment and confirming that immediately available cash funds for the balance of the next succeeding prescribed Sinking Fund Installment payment will be paid on or prior to the next succeeding Sinking Fund Installment payment date. (*Section 5.05*)

#### **Payments into Earnings Fund; Application of Earnings Fund.**

All investment income or earnings on amounts held in the Project Fund, the Renewal Fund, the Debt Service Reserve Fund or any other special fund (other than the Rebate Fund or the Bond Fund) shall be deposited upon receipt by the Trustee into the Earnings Fund. The Trustee shall keep separate accounts of all amounts deposited in the Earnings Fund and by journal entry indicate the Fund source of the income or earnings.

On the first Business Day following each Computation Period (as defined in the Tax Regulatory Agreement), the Trustee shall withdraw from the Earnings Fund and deposit to the Rebate Fund an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated as of the last day of the Computation Period. In the event of any deficiency, the balance required shall be provided by the Institution pursuant to the Tax Regulatory Agreement. Computations of the amounts on deposit in each Fund and of the Rebate Amount shall be furnished to the Trustee by the Institution in accordance with the Tax Regulatory Agreement.

The foregoing notwithstanding, the Trustee shall not be required to transfer amounts from the Earnings Fund to the Rebate Fund (and shall instead apply such amounts in the Earnings Fund as provided in the immediately following sentence), if the Institution shall deliver to the Trustee a certificate of an Authorized Representative of the Institution to the effect that (x) the applicable requirements of a

spending exception to rebate has been satisfied as of the relevant semiannual period as set forth in the Tax Regulatory Agreement, (y) the proceeds of the Bonds have been invested in obligations the interest on which is not included in gross income for Federal income tax purposes under Section 103 of the Code or (z) the proceeds of the Bonds have been invested in obligations the Yield on which (calculated as set forth in the Tax Regulatory Agreement) does not exceed the Yield on such Bonds (calculated as set forth in the Tax Regulatory Agreement). Any amounts on deposit in the Earnings Fund following the transfers to the Rebate Fund required by the Indenture shall be deposited in the Project Fund until the completion of the Project as provided in Section 3.2(f) of the Loan Agreement, and thereafter in the Interest Account of the Bond Fund. *(Section 5.06)*

#### **Payments into Rebate Fund; Application of Rebate Fund.**

The Rebate Fund and the amounts deposited therein shall not be subject to a security interest, pledge, assignment, lien or charge in favor of the Trustee, any Bondholder or any other Person.

The Trustee, upon the receipt of a certification of the Rebate Amount (as defined in the Tax Regulatory Agreement) from an Authorized Representative of the Institution, shall deposit in the Rebate Fund within sixty (60) days following each Computation Date (as defined in the Tax Regulatory Agreement), an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated as of such Computation Date. If there has been delivered to the Trustee a certification of the Rebate Amount in conjunction with the completion of the Project pursuant to Section 3.2(f) of the Loan Agreement or the restoration of the Facility pursuant to the Indenture, at any time during a Bond Year, the Trustee shall deposit in the Rebate Fund at that time an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated at the completion of the Project or the restoration of the Facility as aforesaid. The amount deposited in the Rebate Fund pursuant to the previous sentences shall be withdrawn from the Earnings Fund. If the amount on deposit in the Rebate Fund following such deposit is less than the Rebate Amount, the Trustee shall promptly deliver a notice stating the amount of such deficiency to the Institution. It is provided in the Loan Agreement that promptly upon receipt of such notice, the Institution shall deliver the amount necessary to make up such deficiency to the Trustee for deposit in the Rebate Fund.

If within sixty (60) days following any Computation Date, the amount on deposit in the Rebate Fund exceeds the Rebate Amount, the Trustee, upon the receipt of written instructions from an Authorized Representative of the Institution, shall withdraw such excess amount and deposit it in the Project Fund until the completion of the Project as provided in Section 3.2(f) of the Loan Agreement, or, after the completion of the Project, deposit it in the Interest Account of the Bond Fund.

The Trustee, upon the receipt of written instructions from an Authorized Representative of the Institution, shall pay to the United States, out of amounts in the Rebate Fund, (i) not less frequently than once each five (5) years after the Closing Date, an amount such that, together with prior amounts paid to the United States, the total paid to the United States is equal to 90% of the Rebate Amount with respect to the Initial Bonds as of the date of such payment and (ii) notwithstanding the provisions of the defeasance provisions of the Indenture, not later than thirty (30) days after the date on which all Initial Bonds have been paid in full, 100% of the Rebate Amount as of the date of payment. *(Section 5.07)*

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

Amounts in any Fund or Account established under the Indenture may, if and to the extent then permitted by law, be invested only in Qualified Investments provided that any Qualified Investment shall not have a maturity date greater than five (5) years from the date of the making of such investment unless such Qualified Investment may be put at par at any time at the option of the owner thereof, and provided,

further, that any investment of amounts held in the Debt Service Reserve Fund shall be limited to Government Obligations. Any investment authorized in the Indenture is subject to the condition that no portion of the proceeds derived from the sale of the Bonds shall be used, directly or indirectly, in such manner as to cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. In particular, unexpended Bond proceeds transferred from the Project Fund (or from the Earnings Fund with respect to amounts deposited therein from the Project Fund) to the Redemption Account of the Bond Fund pursuant to the Indenture may not be invested at a Yield (as defined in the Tax Regulatory Agreement) which is greater than the Yield on the applicable Series of Bonds. Such investments shall be made by the Trustee only at the written request of an Authorized Representative of the Institution; and if such investment is to be in one or more certificates of deposit, investment agreements or guaranteed investment contracts, then such written request shall include written assurance to the effect that such investment complies with the Tax Regulatory Agreement. Any investment under the Indenture shall be made in accordance with the Tax Regulatory Agreement, and the Institution shall so certify to the Trustee with each such investment direction as referred to below. Such investments shall mature in such amounts and at such times as may be necessary to provide funds when needed to make payments from the applicable Fund. Net income or gain received and collected from such investments shall be credited and losses charged to (i) the Rebate Fund with respect to the investment of amounts held in the Rebate Fund, (ii) the Bond Fund with respect to the investment of amounts held in the Bond Fund, and (iii) the Earnings Fund with respect to the investment of amounts held in any other Fund.

At the written request of an Authorized Representative of the Institution no sooner than ten (10) days prior to each Loan Payment Date under the Loan Agreement, the Trustee shall notify the Institution of the amount of such net investment income or gain received and collected subsequent to the last such loan payment and the amount then available in the various Accounts of the Bond Fund.

Upon the written direction of an Authorized Representative of the Institution, the Trustee shall sell at the best price reasonably obtainable, or present for redemption or exchange, any obligations in which moneys shall have been invested to the extent necessary to provide cash in the respective Funds or Accounts, to make any payments required to be made therefrom, or to facilitate the transfers of moneys or securities between various Funds and Accounts as may be required from time to time pursuant to the provisions of the Indenture. The Trustee shall not be liable for losses incurred as a result of actions taken in good faith in accordance with the Indenture. As soon as practicable after any such sale, redemption or exchange, the Trustee shall give notice thereof to the Issuer and the Institution.

Neither the Trustee nor the Issuer shall be liable for any loss arising from, or any depreciation in the value of any obligations in which moneys of the Funds and Accounts shall be invested in accordance with the Indenture. The investments authorized by the Indenture shall at all times be subject to the provisions of applicable law, as amended from time to time.

In computing the amount in any Fund or Account, obligations purchased as an investment of moneys therein shall be valued at fair market value as determined by the Trustee one month prior to each Interest Payment Date.

The fair market value of Qualified Investments shall be determined as follows:

- (i) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*), the average bid and asked prices for such investments so published on or most recently prior to such time of determination;

(ii) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or *The New York Times*, the average bid price at such nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or as quoted in the Interactive Data Service; and

(iii) as to certificates of deposit and bankers acceptances and other investments, the face amount thereof, plus accrued interest.

If more than one provision of this definition of "fair market value" shall apply at any time to any particular investment, the fair market value thereof at such time shall be determined in accordance with the provision establishing the lowest value for such investment.

In the case of the Debt Service Reserve Fund, a "surplus" means the amount by which the amount on deposit therein is in excess of the Debt Service Reserve Fund Requirement. On each Debt Service Reserve Fund Valuation Date, and upon any withdrawal from the Debt Service Reserve Fund, the Trustee shall determine the amount on deposit in the Debt Service Reserve Fund. If on any such date a deficiency exists, the Trustee shall notify the Issuer and the Institution of such deficiency and that such deficiency must be replenished by the Institution as required by Section 4.3(a)(vi) of the Loan Agreement. If a surplus exists, the Trustee shall notify the Issuer and the Institution thereof and, subject to the requirements of the Tax Regulatory Agreement, shall upon written instructions of the Institution transfer an amount equal to such surplus to the Project Fund until the completion of the Project as provided in Section 3.2(f) of the Loan Agreement and thereafter shall transfer such amount to the Interest Account of the Bond Fund. (*Section 5.09*)

#### **Non-presentment of Bonds.**

In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, and funds sufficient to pay any such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, together with interest to the date on which principal is due, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to pay such funds to the Person entitled thereto or if the Person is not known to the Trustee, to hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under the Indenture or on, or with respect to, such Bond. Such amounts so held shall, pending payment to the Holder of such Bond, (y) be subject to any rebate requirement as set forth in the Tax Regulatory Agreement or the Indenture, and (z) shall be uninvested, or, if invested, invested or re-invested only in Government Obligations maturing within thirty (30) days. Funds remaining with the Trustee as above and unclaimed for the earlier of two (2) years or one month less than the applicable statutory escheat period shall be paid to the Institution. After the payment of such unclaimed moneys to the Institution, the Holder of such Bond shall thereafter look only to the Institution for the payment thereof, and all obligations of the Trustee or such Paying Agent with respect to such moneys shall thereupon cease. (*Section 5.12*)

#### **Debt Service Reserve Fund.**

If on any Interest Payment Date or redemption date on the Bonds the amount in the Interest Account of the Bond Fund (after taking into account amounts available to be transferred to the Interest Account from the Project Fund) shall be less than the amount of interest then due and payable on the Bonds, or if on any principal payment date on the Bonds the amount in the Principal Account shall be less

than the amount of principal of the Bonds then due and payable, or if on any Sinking Fund Installment payment date for the Bonds the amount in the Sinking Fund Installment Account of the Bond Fund shall be less than the amount of the Sinking Fund Installment then due and payable on the Bonds, in each case, after giving effect to all payments received by the Trustee in immediately available funds by 10:00 a.m. (New York City time) on such date from or on behalf of the Institution or the Issuer on account of such interest, principal or Sinking Fund Installment, the Trustee forthwith shall transfer moneys from the Debt Service Reserve Fund, first, to such Interest Account, second to such Principal Account, and third, to such Sinking Fund Installment Account, all to the extent necessary to make good any such deficiency.

The Trustee shall give to the Institution on or prior to each Loan Payment Date on which the Institution is obligated pursuant to Section 4.3(a)(vi) of the Loan Agreement to pay to the Trustee amounts in respect of any deficiency in the Debt Service Reserve Fund, telephonic notice (to be promptly confirmed in writing) specifying any such deficiency in the Debt Service Reserve Fund. The failure of the Trustee to deliver such notice or any defect in such notice shall not relieve the Issuer from any of its obligations under the Indenture or any other obligor from any of its obligations under any of the Security Documents. Any amounts received by the Trustee for deposit into the Debt Service Reserve Fund shall be promptly so deposited.

In the event that the Institution shall deliver written notice to the Trustee of its intention to redeem Bonds, the Institution may direct the Trustee to apply such amounts in the Debt Service Reserve Fund to effect such redemption such that the amount remaining in the Debt Service Reserve Fund upon such redemption shall not be less than the reduced Debt Service Reserve Fund Requirement as will be applicable to the remainder of the Bonds Outstanding. *(Section 5.13)*

#### **Creation of Liens; Indebtedness.**

The Issuer shall not create or suffer to be created, or incur or issue any evidences of indebtedness secured by, any lien or charge upon or pledge of the Trust Estate, except the lien, charge and pledge created by the Indenture and the other Security Documents. *(Section 7.05)*

#### **Issuer Tax Covenant.**

The Issuer covenants that it shall not take any action within its control, nor refrain from taking any action reasonably requested by the Institution or the Trustee, that would cause the interest on the Bonds to become includable in gross income for Federal income tax purposes; provided, however, the breach of this covenant shall not result in any pecuniary liability of the Issuer and the only remedy to which the Issuer shall be subject shall be specific performance. *(Section 7.08)*

#### **Events of Default; Acceleration of Due Date.**

Each of the following events is defined as and shall constitute an "Event of Default" in the Indenture:

- (1) Failure in the payment of the interest on any Bond when the same shall become due and payable;
- (2) Failure in the payment of the principal or redemption premium, if any, of, or Sinking Fund Installment for, any Bonds, when the same shall become due and payable, whether at the stated maturity thereof or upon proceedings for redemption thereof or otherwise, or interest accrued thereon to the date of redemption after notice of redemption therefor or otherwise;

(3) Failure of the Issuer to observe or perform any covenant, condition or agreement in the Bonds or under the Indenture on its part to be performed (except as set forth above) and (A) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Issuer and the Institution specifying the nature of same from the Trustee or the Holders of more than fifty percent (50%) in aggregate principal amount of the Bonds Outstanding, or (B) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Issuer or the Institution fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice; or

(4) The occurrence of an "Event of Default" under the Loan Agreement or any other Security Document.

Upon the happening and continuance of any Event of Default unless the principal of all the Bonds shall have already become due and payable, either the Trustee (by notice in writing to the Issuer and the Institution) or the Holders of over fifty percent (50%) in aggregate principal amount of the Bonds Outstanding (by notice in writing to the Issuer, the Institution and the Trustee) may declare the principal or Redemption Price, if any, of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything in the Indenture or in any of the Bonds contained to the contrary notwithstanding.

If there shall occur an Event of Default under Section 9.1(d) or (e) of the Loan Agreement, the unpaid principal of all the Bonds (and all principal installments of loan payments under the Loan Agreement) and the interest accrued thereon shall be due and payable immediately without the necessity of any declaration or other action by the Trustee or any other Person.

The right of the Trustee or of the Holders of over fifty percent (50%) in aggregate principal amount of the Bonds Outstanding to make any such declaration as aforesaid, however, is subject to the condition that if, at any time before such declaration, all overdue installments of principal of and interest on all of the Bonds which shall have matured by their terms and the unpaid Redemption Price of the Bonds or principal portions thereof to be redeemed has been paid by or for the account of the Issuer, and all other Events of Default have been otherwise remedied, and the reasonable and proper charges, expenses and liabilities of the Trustee, shall either be paid by or for the account of the Issuer or provision satisfactory to the Trustee shall be made for such payment and the Facility shall not have been sold or otherwise encumbered, and all defaults have been otherwise remedied as provided in the Indenture, then and in every such case any such default and its consequences shall ipso facto be deemed to be annulled, but no such annulment shall extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

Pursuant to the Loan Agreement, the Issuer has granted to the Institution full authority for the account of the Issuer to perform any covenant or obligation the non-performance of which is alleged in any notice received by the Institution to constitute a default under the Indenture, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts with power of substitution. The Trustee agrees to accept such performance by the Institution as performance by the Issuer. (*Section 8.01*)

### **Enforcement of Remedies.**

Upon the occurrence and continuance of any Event of Default then and in every case the Trustee may proceed and upon the written request of the Holders of over fifty percent (50%) in aggregate

principal amount of the Bonds Outstanding shall proceed to protect and enforce its rights and the rights of the Bondholders under the Bonds, the Loan Agreement, the Indenture and under any other Security Document forthwith by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, whether for the specific performance of any covenant or agreement contained in the Indenture or in any other Security Document or in aid of the execution of any power granted in the Indenture or in any other Security Document or for the enforcement of any legal or equitable rights or remedies as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce such rights or to perform any of its duties under the Indenture or under any other Security Document. In addition to any rights or remedies available to the Trustee under the Indenture or elsewhere, upon the occurrence and continuance of an Event of Default the Trustee may take such action, without notice or demand, as it deems advisable.

In the enforcement of any right or remedy under the Indenture or under any other Security Document, the Trustee shall be entitled to sue for, enforce payment on and receive any or all amounts then or during any default becoming, and any time remaining, due from the Issuer, for principal, interest, Sinking Fund Installments, Redemption Price, or otherwise, under any of the provisions of the Indenture, of any other Security Document or of the Bonds, and unpaid, with interest on overdue payments at the rate or rates of interest specified in the Bonds, together with any and all costs and expenses of collection and of all proceedings under the Indenture, under any such other Security Document and under the Bonds, without prejudice to any other right or remedy of the Trustee or of the Bondholders, and to recover and enforce judgment or decree against the Issuer, but solely as provided in the Indenture and in the Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect (but solely from the moneys in the Bond Fund and other moneys available therefor to the extent provided in the Indenture) in any manner provided by law, the moneys adjudged or decreed to be payable. The Trustee shall file proof of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Bondholders allowed in any judicial proceedings relative to the Institution or the Issuer or their creditors or property.

Regardless of the occurrence of an Event of Default, the Trustee, if requested in writing by the Holders of over fifty percent (50%) in aggregate principal amount of the Bonds then Outstanding, and furnished with reasonable security and indemnity, shall institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under the Indenture or under any other Security Document by any acts which may be unlawful or in violation of the Indenture or of such other Security Document or of any resolution authorizing any Bonds, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders; provided, that such request shall not be otherwise than in accordance with the provisions of law and of the Indenture and shall not be unduly prejudicial to the interests of the Holders of the Bonds not making such request. (*Section 8.02*)

#### **Application of Revenues and Other Moneys After Default.**

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture or under any other Security Document shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, be deposited in the Bond Fund and all moneys so deposited and available for payment of the Bonds shall be applied, subject to the Indenture, as follows:

- (A) Unless the principal of all of the Bonds shall have become or have been declared due and payable,

**First** - To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

**Second** - To the payment to the Persons entitled thereto of the unpaid principal or Redemption Price, if any, of any of the Bonds or principal installments which shall have become due (other than Bonds or principal installments called for redemption for the payment of which moneys are held pursuant to the provisions of the Indenture), in the order of their due dates, with interest on such Bonds, at the rate or rates expressed thereon, from the respective dates upon which they become due and, if the amount available shall not be sufficient to pay in full Bonds or principal installments due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(B) If the principal of all the Bonds shall have become or have been declared due and payable, to the payment to the Bondholders of the principal and interest (at the rate or rates expressed in the Bonds) then due and unpaid upon the Bonds and if applicable to the Redemption Price of the Bonds without preference or priority of principal over interest or of interest over principal, Sinking Fund Installments, 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.

(C) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the default provisions of the Indenture, then, subject to the provisions of the Indenture, which shall be applicable in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be applied in accordance with the provisions of paragraph (A) under this heading.

Whenever moneys are to be applied pursuant to the provisions of the default provisions of the Indenture, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue; provided, however, that if the principal or Redemption Price of the Bonds Outstanding, together with accrued interest thereon, shall have been declared to be due and payable pursuant to the Indenture, such date of declaration shall be the date from which interest shall cease to accrue. The Trustee shall give such written notice to all Bondholders as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid. (*Section 8.03*)

#### **Majority Holders Control Proceedings.**

Anything in the Indenture to the contrary notwithstanding, the Majority Holders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to

direct the method and place of conducting all proceedings 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 shall not be otherwise than in accordance with the provisions of law and of the Indenture. *(Section 8.05)*

**Individual Bondholder Action Restricted.**

No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provisions of the Indenture or of any other Security Document or the execution of any trust under the Indenture or for any remedy under the Indenture or under any other Security Document, unless such Holder shall have previously given to the Trustee written notice of the occurrence of an Event of Default as provided in the Indenture, and the Holders of over fifty percent (50%) in aggregate principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, and shall have offered it reasonable opportunity either to exercise the powers granted in the Indenture or in such other Security Document or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of sixty (60) days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by his, its or their action to affect, disturb or prejudice the pledge created by the Indenture, or to enforce any right under the Indenture except in the manner provided in the Indenture; and that all proceedings at law or in equity to enforce any provision of the Indenture shall be instituted, had and maintained in the manner provided in the Indenture and, subject to the provisions of the Indenture, be for the equal benefit of all Holders of the Outstanding Bonds.

Nothing in the Indenture, in any other Security Document or in the Bonds contained shall affect or impair the right of any Bondholder to payment of the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on each of the Bonds to the respective Holders thereof at the time, place, from the source and in the manner in the Indenture and in said Bonds expressed. *(Section 8.06)*

**Notice of Default.**

The Trustee shall promptly mail to the Issuer, to registered Holders of Bonds and to the Institution by first class mail, postage prepaid, written notice of the occurrence of any Event of Default. The Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to mail any notice required by the Indenture. *(Section 8.10)*

**Waivers of Default.**

The Trustee shall waive any default under the Indenture and its consequences and rescind any declaration of acceleration only upon the written request of the Majority Holders; provided, however, that there shall not be waived without the consent of the Holders of all the Bonds Outstanding (a) any default in the payment of the principal of any Outstanding Bonds at the date specified therein or (b) any default in the payment when due of the interest on any such Bonds, unless, prior to such waiver, all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds on overdue installments of interest in respect of which such default shall have occurred, and all arrears of payment of principal when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then and

in every such case the Institution, the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights under the Indenture, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon. (*Section 8.11*)

### **Resignation or Removal of Trustee.**

The Trustee may resign and thereby become discharged from the trusts created under the Indenture for any reason by giving written notice by first class mail, postage prepaid, to the Issuer, to the Institution and to the Holders of all Bonds not less than sixty (60) days before such resignation is to take effect, but such resignation shall not take effect until the appointment and acceptance thereof of a successor Trustee pursuant to the Indenture.

The Trustee may be removed at any time by an instrument or concurrent instruments in writing filed with the Trustee and signed by the Issuer or the Majority Holders or their attorneys-in-fact duly authorized. Such removal shall become effective either upon the appointment and acceptance of such appointment by a successor Trustee or at the date specified in the instrument of removal. The Trustee shall promptly give notice of such filing to the Issuer and the Institution. No removal shall take effect until the appointment and acceptance thereof of a successor Trustee pursuant to the Indenture.

If the Trustee shall resign or shall be removed, such Trustee must transfer and assign to the successor Trustee, not later than the date of this acceptance by the successor Trustee of its appointment as such, or thirty (30) days from the date specified in the instrument of removal or resignation, if any, whichever shall last occur, (i) all amounts (including all investments thereof) held in any Fund or Account under the Indenture, together with a full accounting thereof, (ii) all records, files, correspondence, registration books, Bond inventory, all information relating to the Indenture and to Bond payment status (i.e., outstanding principal balances, principal payment and interest payment schedules, Sinking Fund Installment schedules, pending notices of redemption, payments made and to whom, delinquent payments, default or delinquency notices, deficiencies in any Fund or Account balance, etc.) and all such other information (in whatever form) relating to all Funds and Accounts in the possession of the Trustee being removed or resigning, and (iii) all Security Documents and other documents or agreements, including, without limitation, all Uniform Commercial Code Financing Statements, all insurance policies or certificates, letters of credit or other instruments provided to the Trustee being removed or resigning (clauses (i), (ii) and (iii), together with the Trust Estate, being collectively referred to as the "Trust Corpus"). (*Section 9.07*)

### **Successor Trustee.**

If at any time the Trustee shall be dissolved or otherwise become incapable of acting or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator thereof, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of Trustee shall thereupon become vacant. If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason or if the Trustee shall resign, the Institution shall cooperate with the Issuer and the Issuer shall appoint a successor Trustee and shall use its best efforts to obtain acceptance of such trust by the successor Trustee within sixty (60) days from such vacancy or notice of resignation. Within twenty (20) days after such appointment and acceptance, the Issuer shall notify in writing the Institution and the Holders of all Bonds.

In the event of any such vacancy or resignation and if a successor Trustee shall not have been appointed within sixty (60) days of such vacancy or notice of resignation, the Majority Holders, by an instrument or concurrent instruments in writing, signed by such Bondholders or their attorneys-in-fact thereunto duly authorized and filed with the Issuer, may appoint a successor Trustee which shall,

immediately upon its acceptance of such trusts, and without further act, supersede the predecessor Trustee. If no appointment of a successor Trustee shall be made pursuant to the provisions of the Indenture, within ninety (90) days of such vacancy or notice of resignation, the Holder of any Bond then Outstanding, the Issuer or any retiring Trustee or the Institution may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

Any Trustee appointed under the Indenture shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States authorized to exercise corporate trust powers under the laws of the State and authorized by law and its charter to perform all the duties imposed upon it by the Indenture and each other Security Document. At the time of its appointment, any successor Trustee shall (x) have a capital stock and surplus aggregating not less than \$100,000,000 and (y) have an investment grade rating of at least "Baa3" or "P-3".

Any predecessor Trustee shall transfer to any successor Trustee appointed under the Indenture as a result of a vacancy in the position the Trust Corpus by a date not later than thirty (30) days from the date of the acceptance by the successor Trustee of its appointment as such. Where no vacancy in the position of the Trustee has occurred, the transfer of the Trust Corpus shall take effect in accordance with the provisions of the Indenture.

Every successor Trustee shall execute, acknowledge and deliver to its predecessor, and also to the Issuer, an instrument in writing accepting such appointment, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers and trusts, and subject to all the duties and obligations, of its predecessor, with like effect as if originally named as such Trustee; but such predecessor shall, nevertheless, on the written request of its successor or of the Issuer, and upon payment of the compensation, expenses, charges and other disbursements of such predecessor which are due and payable pursuant to the Indenture, execute and deliver an instrument transferring to such successor Trustee all the estate, properties, rights, immunities, powers and trusts of such predecessor and the Trust Corpus; and every predecessor Trustee shall deliver all property and moneys, together with a full accounting thereof, held by it under the Indenture to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such Trustee the estate, properties, rights, immunities, powers and trusts vested or intended to be vested in the predecessor Trustee, any such instrument in writing shall, on request, be executed, acknowledged and delivered by the Issuer. Any successor Trustee shall promptly notify the Issuer and the Paying Agent of its appointment as Trustee.

Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States and shall be authorized by law and its charter to perform all the duties imposed upon it by the Indenture and each other Security Document shall be the successor to such Trustee without the execution or filing of any paper or the performance of any further act. *(Section 9.08)*

#### **Defeasance.**

If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, interest and all other amounts due or to become due thereon or in respect thereof, at the times and in the manner

stipulated therein and in the Indenture, and all fees and expenses and other amounts due and payable under the Indenture and the Loan Agreement, and any other amounts required to be rebated to the Federal government pursuant to the Tax Regulatory Agreement or the Indenture, shall be paid in full, then the pledge of any loan payments, revenues or receipts from or in connection with the Security Documents or the Facility under the Indenture and the estate and rights granted by the Indenture, and all covenants, agreements and other obligations of the Issuer to the Bondholders under the Indenture shall thereupon cease, terminate and become void and be discharged and satisfied and the Bonds shall thereupon cease to be entitled to any lien, benefit or security under the Indenture, except as to moneys or securities held by the Trustee or the Paying Agents as provided below in this subsection. At the time of such cessation, termination, discharge and satisfaction, (1) the Trustee shall cancel and discharge the lien of the Indenture and of the Mortgage and execute and deliver to the Institution all such instruments as may be appropriate to satisfy such liens and to evidence such discharge and satisfaction, except as otherwise provided for in Section 10.2(a)(iv) of the Loan Agreement, and (2) the Trustee and the Paying Agents shall pay over or deliver to the Institution or on its order all moneys or securities held by them pursuant to the Indenture which are not required (i) for the payment of the principal or Redemption Price, if applicable, Sinking Fund Installments for, or interest on Bonds not theretofore surrendered for such payment or redemption, (ii) for the payment of all such other amounts due or to become due under the Security Documents, or (iii) for the payment of any amounts the Trustee has been directed to pay to the Federal government under the Tax Regulatory Agreement or the Indenture.

Bonds or interest installments for the payment or redemption of which moneys (or Defeasance Obligations which shall not be subject to call or redemption or prepayment prior to maturity and the full and timely payment of the principal of and interest on which when due, together with the moneys, if any, set aside at the same time, will provide funds sufficient for such payment or redemption) shall then be set aside and held in trust by the Trustee or Paying Agents, whether at or prior to the maturity or the redemption date of such Bonds, shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph under this heading, if (i) in case any such Bonds are to be redeemed prior to the maturity thereof, all action necessary to redeem such Bonds shall have been taken and notice of such redemption shall have been duly given or provision satisfactory under the requirements of the Indenture to the Trustee shall have been made for the giving of such notice, and (ii) if the maturity or redemption date of any such Bond shall not then have arrived, (y) provision shall have been made by deposit with the Trustee or other methods satisfactory to the Trustee for the payment to the Holders of any such Bonds of the full amount to which they would be entitled by way of principal or Redemption Price, Sinking Fund Installments, and interest and all other amounts then due under the Security Documents to the date of such maturity or redemption, and (z) provision satisfactory to the Trustee shall have been made for the mailing of a notice to the Holders of such Bonds that such moneys are so available for such payment on such maturity or redemption date. (*Section 10.01*)

### **Limitation on Modifications.**

The Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of the Indenture. (*Section 11.01*)

### **Supplemental Indentures Without Bondholder's Consent.**

The Issuer and the Trustee may, from time to time and at any time, enter into Supplemental Indentures without the consent of the Bondholders for any of the following purposes:

- (1) To cure any formal defect, omission or ambiguity in the Indenture or in any description of property subject to the lien hereof, if such action is not materially adverse to the interests of the Bondholders.

(2) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with the Indenture as theretofore in effect.

(3) To add to the covenants and agreements of the Issuer in the Indenture other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with the Indenture as theretofore in effect.

(4) To add to the limitations and restrictions in the Indenture other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with the Indenture as theretofore in effect.

(5) To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, the Indenture, of the properties of the Facility, or revenues or other income from or in connection with the Facility or of any other moneys, securities or funds, or to subject to the lien or pledge of the Indenture additional revenues, properties or collateral.

(6) To modify or amend such provisions of the Indenture as shall, in the opinion of Nationally Recognized Bond Counsel, be necessary to assure that the interest on the Bonds not be includable in gross income for Federal income tax purposes.

(7) To effect any other change in the Indenture which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Bondholders.

(8) To modify, amend or supplement the Indenture or any Supplemental Indenture in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America, and, if they so determine, to add to the Indenture or any Supplemental Indenture such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to the Indenture, there shall have been filed with the Trustee an opinion of Nationally Recognized Bond Counsel stating that such Supplemental Indenture is authorized or permitted by the Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms. *(Section 11.02)*

#### **Supplemental Indentures With Bondholders' Consent.**

Subject to the terms and provisions contained in the Indenture, the Majority Holders shall have the right from time to time, to consent to and approve the entering into by the Issuer and the Trustee of any Supplemental Indenture as shall be deemed necessary or desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Indenture. Nothing in the Indenture contained shall permit, or be construed as permitting, (i) a change in the times, amounts or currency of payment of the principal of, Sinking Fund Installments for, redemption premium, if any, or interest on any Outstanding Bonds, a change in the terms of redemption or maturity of the principal of or the interest on any Outstanding Bonds, or a reduction in the principal amount of or the Redemption Price of any Outstanding Bond or the rate of interest thereon, or any extension of the time of payment thereof, without the consent of the Holder of such Bond, (ii) the

creation of a lien upon or pledge of the Trust Estate other than the liens or pledge created by the Indenture and the other Security Documents, except as provided in the Indenture with respect to Additional Bonds, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) a reduction in the aggregate principal amount of Bonds required for consent to such Supplemental Indenture, or (v) a modification, amendment or deletion with respect to any of the terms set forth in this paragraph, without, in the case of items (ii) through and including (v) of this paragraph, the written consent of one hundred percent (100%) of the Holders of the Outstanding Bonds.

If at any time the Issuer shall determine to enter into any Supplemental Indenture for any of the purposes of the Indenture, it shall cause notice of the proposed Supplemental Indenture to be mailed, postage prepaid, to all Bondholders. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture, and shall state that a copy thereof is on file at the offices of the Trustee for inspection by all Bondholders.

Within one year after the date of such notice, the Issuer and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice only if there shall have first been filed with the Trustee (i) the written consents of the Majority Holders or the Holders of not less than 100%, as the case may be, in aggregate principal amount of the Bonds then Outstanding and (ii) an opinion of Nationally Recognized Bond Counsel stating that such Supplemental Indenture is authorized or permitted by the Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms. Each valid consent shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given. A certificate or certificates by the Trustee that it has examined such proof and that such proof is sufficient in accordance with the Indenture shall be conclusive that the consents have been given by the Holders of the Bonds described in such certificate or certificates. Any such consent shall be binding upon the Holder of the Bonds giving such consent and upon any subsequent Holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by the Holder of such Bonds giving such consent or a subsequent Holder thereof by filing such revocation with the Trustee prior to the execution of such Supplemental Indenture.

If the Holders of not less than the percentage of Bonds required by the Indenture shall have consented to and approved the execution thereof as provided in the Indenture, no Holder of any Bond shall have any right to object to the execution of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

Upon the execution of any Supplemental Indenture pursuant to the provisions under this heading, the Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under the Indenture of the Issuer, the Trustee and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced under the Indenture, subject in all respects to such modifications and amendments. (*Section 11.03*)

#### **Amendments of Related Security Documents Not Requiring Consent of the Bondholders.**

The Issuer and the Trustee may, without the consent of or notice to the Bondholders, consent (if required) to any amendment, change or modification of any of the Related Security Documents for any of the following purposes: (i) to cure any ambiguity, inconsistency, formal defect or omission therein; (ii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred; (iii) to subject thereto

additional revenues, properties or collateral; (iv) to evidence the succession of a successor Trustee or to evidence the appointment of a separate or co-Trustee or the succession of a successor separate or co-Trustee; (v) to make any change required in connection with a permitted amendment to a Related Security Document or a permitted Supplemental Indenture; (vi) to release any property from any Security Document pursuant to Section 8.10 of the Loan Agreement, (vii) to enter into any amendments of the Intercreditor Agreement to facilitate any Additional Debt or other transaction permitted under the Loan Agreement and (viii) to make any other change that, in the judgment of the Trustee (which, in exercising such judgment, may conclusively rely, and shall be protected in relying, in good faith, upon an Opinion of Counsel or an opinion or report of engineers, accountants or other experts) does not materially adversely affect the Bondholders. The Trustee shall have no liability to any Bondholder or any other Person for any action taken by it in good faith pursuant to the Indenture. Before the Issuer or the Trustee shall enter into or consent to any amendment, change or modification to any of the Related Security Documents, there shall be filed with the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change or modification will not cause the interest on any of the Bonds to cease to be excluded from gross income for federal income tax purposes under the Code. *(Section 12.02)*

#### **Amendments of Related Security Documents Requiring Consent of Bondholders.**

Except as provided in the Indenture, the Issuer and the Trustee shall not consent to any amendment, change or modification of any of the Related Security Documents, without mailing of notice and the written approval or consent of the Majority Holders given and procured as set forth in the Indenture; provided, however, there shall be no amendment, change or modification to (i) the obligation of the Institution to make loan payments with respect to the Bonds under the Loan Agreement or the Promissory Note or (ii) the Tax Regulatory Agreement, without the delivery of an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change, modification, reduction or postponement will not cause the interest on any Series of Bonds to become includable in gross income for Federal income tax purposes. If at any time the Institution shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change or modification to be mailed in the same manner as is provided in the Indenture with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Trustee for inspection by all Bondholders. The Trustee may, but shall not be obligated to, enter into any such amendment, change or modification to a Related Security Document which affects the Trustee's own rights, duties or immunities under such Related Security Document or otherwise. Before the Trustee shall enter into or consent to any amendment, change or modification to any of the Related Security Documents, there shall be filed with the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change or modification will not cause the interest on any of the Bonds to cease to be excluded from gross income for federal income tax purposes under the Code. *(Section 12.03)*

#### **No Pecuniary Liability of Issuer or Members; No Debt of the State or the City.**

Every agreement, covenant and obligation of the Issuer under the Indenture is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall not create a debt of the State or the City and neither the State nor the City shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor but shall be a limited revenue obligation of the Issuer payable by the Issuer solely from the loan payments, revenues and receipts pledged to the payment thereof in the manner and to the extent in the Indenture specified and nothing in the Bonds, in the Loan Agreement, in the Indenture or in any other Security Document shall be considered as pledging any other funds or assets of the Issuer. The Issuer shall not be required under the Indenture or the Loan Agreement or any other Security Document to expend any of its funds other than

(i) the proceeds of the Bonds, (ii) the loan payments, revenues and receipts and other moneys pledged to the payment of the Bonds, (iii) any income or gains therefrom, and (iv) the Net Proceeds with respect to the Facility. No provision, covenant or agreement contained in the Indenture or in the Bonds or any obligations in the Indenture or therein imposed upon the Issuer or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit.

All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Indenture shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, employee or agent of the Issuer in his individual capacity, and no recourse shall be had for the payment of the principal or Redemption Price, if any, of, Sinking Fund Installments for, or interest on the Bonds or for any claim based thereon or under the Indenture against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds. Neither the Bonds, the interest thereon, the Sinking Fund Installments therefor, nor the Redemption Price thereof shall ever constitute a debt of the State or of the City and neither the State nor the City shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor. (*Section 13.07*)

**Priority of Indenture Over Liens.**

The Indenture is given in order to secure funds to pay for the Project and by reason thereof, it is intended that the Indenture shall be superior to any laborers', mechanics' or materialmen's liens which may be placed upon the Facility. In compliance with Section 13 of the Lien Law, the Issuer will receive the advances secured by the Indenture and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvements and that the Issuer will apply the same first to the payment of the costs of improvements before using any part of the total of the same for any other purpose. (*Section 13.08*)

**PROPOSED FORM OF CONTINUING DISCLOSURE AGREEMENT**

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## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “**Disclosure Agreement**”) is executed and delivered by Wagner College (the “**College**”) and U.S. Bank National Association, as trustee (the “**Trustee**”), in connection with the issuance of \$12,705,000 Build NYC Resource Corporation Revenue Bonds, Series 2012 (Wagner College Project) (the “**Bonds**”). The Bonds are being issued by the Build NYC Resource Corporation (the “**Corporation**”) pursuant to a Loan Agreement dated as of September 1, 2012 (the “**Agreement**”), by and among the Corporation, the College and the Trustee. The proceeds of the Bonds are being loaned by the Corporation to the College pursuant to the Agreement. The College and the Trustee covenant and agree as follows:

**SECTION 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the College and the Trustee for the benefit of the Bondowners and in order to assist the Underwriter (defined below) in complying with the Rule (defined below). The College and the Trustee acknowledge that the Corporation has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Disclosure Agreement, and has no liability to any person, including any Bondowner, with respect to any such reports, notices or disclosures. The Trustee, except as provided in Section 3(c), has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Disclosure Agreement, and has no liability to any person, including any Bondowner, with respect to any such reports, notices or disclosures except for its negligent failure to comply with its obligations under Section 3(c).

**SECTION 2. Definitions.** In addition to the definitions set forth in the Agreement, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“**Annual Report**” shall mean any Annual Report provided by the College pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“**Bondowner**” shall mean the registered owner of a Bond and any beneficial owner thereof, as established to the reasonable satisfaction of the Trustee or the College.

“**Dissemination Agent**” shall mean any Dissemination Agent or successor Dissemination Agent designated in writing by the College and which has filed with the College, the Trustee and the Corporation a written acceptance of such designation. The same entity may serve as both Trustee and Dissemination Agent. The initial Dissemination Agent shall be the Trustee. In the absence of a third-party Dissemination Agent, the College shall serve as the Dissemination Agent.

“**Listed Events**” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“**MSRB**” shall mean the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, or any successor thereto or to the functions of the MSRB as contemplated by this Disclosure Agreement. Filing information relating to the MSRB is set forth in Exhibit B hereto.

“**Underwriter**” shall mean the original underwriter of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

“**Rule**” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

### **SECTION 3. Provision of Annual Reports.**

(a) The Dissemination Agent, not later than 180 days after the end of each fiscal year beginning with the fiscal year ending August 31, 2012 (the "**Filing Deadline**"), shall provide to the MSRB an Annual Report provided by the College, which Annual Report the College agrees shall be consistent with the requirements of Section 4 of this Disclosure Agreement. Not later than three (3) Business Days prior to said date, the College (if it is not the Dissemination Agent) shall provide the Annual Report to the Dissemination Agent. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the College may be submitted separately from, and at a later date than, the balance of the Annual Report if such audited financial statements are not available as of the date set forth above. If the Dissemination Agent submits the audited financial statements of the College at a later date, the College shall provide to the Dissemination Agent, and the Dissemination Agent shall provide to the MSRB, unaudited financial statements by the above-specified deadline and shall provide the audited financial statements as soon as practicable after the audited financial statements become available. The College shall submit the audited financial statements to the Dissemination Agent and the Trustee (if not also the Dissemination Agent) as soon as practicable after they become available and the Dissemination Agent shall submit the audited financial statements to the MSRB as soon as practicable thereafter. The College shall provide a copy of the Annual Report to the Corporation and the Trustee.

(b) The Dissemination Agent shall:

(i) file a report with the College, the Corporation and the Trustee (if not also the Dissemination Agent) certifying that the Annual Report has been provided pursuant to this Disclosure Agreement and stating the date it was provided (the "**Compliance Certificate**"); such report shall include a certification from the College that the Annual Report complies with the requirements of this Disclosure Agreement; and

(ii) upon request of any Bondowner or Beneficial Owner to the Dissemination Agent, the Dissemination Agent shall provide the most recent Annual Report directly to such requesting Bondowner or Beneficial Owner, and the costs of complying with such requests will be borne by the College.

(c) If the Trustee has not received a Compliance Certificate by the Filing Deadline (or while the Trustee is the Dissemination Agent, provided such Compliance Certificate by the Filing Deadline), the Trustee shall send, and the College hereby authorizes and directs the Trustee to submit on its behalf, a notice to the MSRB in substantially the form attached as Exhibit A.

(d) If the Dissemination Agent has not provided the Annual Report to the MSRB by the applicable Filing Deadline, the College shall send, or cause the Dissemination Agent to send, a notice substantially in the form of Exhibit A irrespective of whether the Trustee submits such notice.

**SECTION 4. Content of Annual Reports.** Subject to the provisions of Section 3, the College's Annual Report shall contain or incorporate by reference financial information and operating data relating to the information of the type provided in the following tables contained in Appendix A to the Official Statement pertaining to the Bonds, and in each case substantially in the same level of detail as is found in Appendix A to the Official Statement: "Plant Assets," "Freshmen Admission Statistics," "Enrollment Summary," "Degrees Conferred," "Financial Aid", "Private Gifts", "Investments" and "Long-Term Indebtedness."

The financial statements provided pursuant to Sections 3 and 4 of this Disclosure Agreement shall be prepared in conformity with generally accepted accounting principles, as in effect from time to time. Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues with respect to which the College is an "obligated person" (as defined by the Rule), which have been filed with each of the Repositories or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The College shall clearly identify each such other document so incorporated by reference.

Neither the Trustee nor the Dissemination Agent shall be under any obligation to verify the content or correctness of, and shall not be responsible for the sufficiency of the Annual Report or for the compliance of the contents of any Annual Report with the Rule or this Disclosure Agreement.

#### **SECTION 5. Reporting of Significant Events.**

(a) This Section 5 shall govern the giving of notices of the occurrence of any of the following events with respect to the Bonds, any one of which event is a "Listed Event" and collectively are "Listed Events":

1. principal and interest payment delinquencies;
2. non-payment related defaults, if material;
3. unscheduled draws on debt service reserves reflecting financial difficulties;
4. unscheduled draws on credit enhancements reflecting financial difficulties;
5. substitution of credit or liquidity providers, or their failure to perform;
6. adverse tax opinions, 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 of determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers (the giving of notice of regularly scheduled mandatory sinking fund redemption shall not be deemed material for this purpose under clause (b) of this Section 5);
9. defeasances;
10. release, substitution, or sale of property securing repayment of the Bonds, if material;
11. rating changes;
12. bankruptcy, insolvency, receivership or similar event of the College;

Note to clause (12): For the purposes of the event identified in clause (12) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the College in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or government authority has assumed jurisdiction over substantially all of the assets or business of the College, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the College;

13. the consummation of a merger, consolidation, or acquisition involving the College or the sale of all or substantially all of the assets of the College, 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
14. appointment of a successor or additional Trustee or the change of the name of the Trustee, if material.

(b) Upon the occurrence of a Listed Event, the College shall, in a timely manner not to exceed ten (10) business days after the occurrence of such event, file, or direct the Dissemination Agent to file, a notice of such occurrence with the MSRB. The College shall provide a copy of each such notice to the Corporation and the Trustee. The Dissemination Agent, if other than the College, shall have no duty to file a notice of an event described hereunder unless it is directed in writing to do so by the College, and shall have no responsibility for verifying any of the information in any such notice or determining the materiality of the event described in such notice.

**SECTION 6. Transmission of Information and Notices.** Unless otherwise required by law, all notices, documents and information provided to the MSRB shall be provided in electronic format as prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

**SECTION 7. Termination of Reporting Obligation.** The College's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds or upon delivery to the Trustee of an opinion of counsel expert in federal securities laws selected by the College and acceptable to the Trustee to the effect that compliance with this Disclosure Agreement no longer is required by the Rule. If the College's obligations under the Agreement are assumed in full by some other entity, such person shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the College and the original College shall have no further responsibility hereunder.

**SECTION 8. Dissemination Agent.** The College may, from time to time with notice to the Trustee and the Corporation, appoint or engage a third-party Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may, with notice to the Trustee and the Corporation, discharge any such third-party Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent (if other than the College) may resign upon thirty (30) days' written notice to the College, the Trustee and the Corporation. The initial Dissemination Agent shall be the Trustee.

**SECTION 9. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Agreement, the College and the Trustee may amend this Disclosure Agreement (and, except as provided

in the last sentence of this Section 9, the Trustee shall agree to any amendment so requested by the College and which does not affect the rights and remedies of the Trustee or Dissemination Agent) and any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to both the College and the Trustee to the effect that such amendment or waiver would not, in and of itself, violate the Rule. Without limiting the foregoing, the College and the Trustee may amend this Disclosure Agreement if (a) such amendment is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the College or of the type of business conducted by the College, (b) this Disclosure Agreement, as so amended, would have complied with the requirements of the Rule at the time the Bonds were issued, taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and (c) (i) the Trustee determines, or the Trustee receives an opinion of counsel expert in federal securities laws and acceptable to the Trustee to the effect that, the amendment does not materially impair the interests of the Bondowners or (ii) the amendment is consented to by the Bondowners as though it were an amendment to the Agreement. The annual financial information containing the amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided. Neither the Trustee nor the Dissemination Agent shall be required to accept or acknowledge any amendment of this Disclosure Agreement if the amendment adversely affects its respective rights or immunities or increases its respective duties hereunder.

**SECTION 10. Additional Information.** Nothing in this Disclosure Agreement shall be deemed to prevent the College from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the College chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the College shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**SECTION 11. Default.** In the event of a failure of the College or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of Bondowners representing at least 25% in aggregate principal amount of Outstanding Bonds, shall), take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the College or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. Without regard to the foregoing, any Bondowner or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the College or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Agreement, and the sole remedy under this Disclosure Agreement in the event of any failure of the College, the Trustee, or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance. In no event shall the College or the Dissemination Agent be liable for monetary damages in the event of a default under this Disclosure Agreement.

**SECTION 12. Duties, Immunities and Liabilities of Trustee and Dissemination Agent.** As to the Trustee, Article VII of the Agreement is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Agreement. The Dissemination Agent (if other than the College) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the College agrees to indemnify and save the Dissemination Agent (if

other than the College), its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including reasonable attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the College under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. The College covenants that whenever it is serving as Dissemination Agent, it shall take any action required of the Dissemination Agent under this Disclosure Agreement.

The Trustee, provided that the Trustee is not also the Dissemination Agent, shall have no obligation under this Disclosure Agreement to report any information to the MSRB or any Bondowner. If an officer of the Trustee obtains actual knowledge of the occurrence of an event described in Section 5 hereunder, whether or not such event is material, the Trustee shall timely notify the College of such occurrence, provided, however, that any failure by the Trustee to give such notice to the College shall not affect the College's obligations under this Disclosure Agreement or give rise to any liability by the Trustee for such failure.

**SECTION 13. Beneficiaries.** This Disclosure Agreement shall inure solely to the benefit of the College, the Corporation, the Trustee, the Dissemination Agent, the Underwriter and the Bondowners, and shall create no rights in any other person or entity.

**SECTION 14. Disclaimer.** No Annual Report or notice of a Listed Event filed by or on behalf of the College under this Disclosure Agreement shall obligate the College to file any information regarding matters other than those specifically described in Section 4 and Section 5 hereof, nor shall any such filing constitute a representation by the College or raise any inference that no other material events have occurred with respect to the College or the Bonds or that all material information regarding the College or the Bonds has been disclosed. The College shall have no obligation under this Disclosure Agreement to update information provided pursuant to this Disclosure Agreement except as specifically stated herein.

**SECTION 15. Counterparts.** This Disclosure 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.

**SECTION 16. Governing Law.** This Agreement shall be construed in accordance with the laws of the State of New York.

**SECTION 17. Entire Agreement.** This Agreement, including the Exhibits hereto, constitutes the sole and entire agreement and understanding of the parties with respect to the subject matter hereof. All Exhibits hereto are incorporated herein by reference.

Date: September \_\_, 2012

WAGNER COLLEGE

By: \_\_\_\_\_  
Authorized Officer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**  
**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Build NYC Resource Corporation

Name of Bond Issue: Revenue Bonds, Series 2012 (Wagner College Project)

Name of Obligated Person: Wagner College

Date of Issuance:  
September \_\_, 2012

NOTICE IS HEREBY GIVEN that Wagner College (the "College") has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Agreement dated \_\_\_\_\_, 2012 between the College and U.S. Bank National Association

Dated: \_\_\_\_\_

U.S. BANK NATIONAL  
ASSOCIATION/ DISSEMINATION  
AGENT on behalf of WAGNER  
COLLEGE

cc: Wagner College

**EXHIBIT B**

**FILING INFORMATION FOR THE MSRB**

Filing information relating to the Municipal Securities Rulemaking Board is as follows:

Municipal Securities Rulemaking Board  
<http://emma.msrb.org/>

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**PROPOSED FORM OF OPINION OF BOND COUNSEL**

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[FORM OF OPINION OF BOND COUNSEL]

September [ ], 2012

Build NYC Resource Corporation  
New York, New York

Re: \$12,705,000 Build NYC Resource Corporation  
Revenue Bonds, Series 2012  
(Wagner College Project)

Ladies and Gentlemen:

We have acted as bond counsel to the Build NYC Resource Corporation (New York, New York) (the “**Issuer**”), in connection with the issuance on the date hereof by the Issuer of its Revenue Bonds, Series 2012 (Wagner College Project), in the aggregate principal amount of \$12,705,000 (the “**Bonds**”). The Bonds are authorized to be issued pursuant to:

- (i) Section 1411 of the New York Not-for-Profit Corporation Law (the “**Act**”),
- (ii) the Bond Resolution duly adopted by the Issuer on May 8, 2012 (the “**Resolution**”), and
- (iii) the Indenture of Trust, dated as of September 1, 2012 (the “**Indenture**”), by and between the Issuer and U.S. Bank National Association, as trustee for the benefit of the Owners of the Bonds (the “**Trustee**”). The Bonds were issued to finance or refinance the costs of acquisition, construction, renovating and equipping of certain facilities (as defined in the Loan Agreement referenced below) (collectively, the “**Project**”).

The Issuer will loan the proceeds of the Bonds to Wagner College, a not-for profit corporation (the “**Institution**”), pursuant to the terms of a Loan Agreement, dated as of September 1, 2012 (the “**Loan Agreement**”), between the Issuer and the Institution. The Institution has evidenced its obligations to make loan payments to the Issuer by the issuance and delivery of a certain Promissory Note, dated September [ ], 2012 (the “**Note**”), from the Institution to the Issuer and endorsed by the Issuer to the Trustee.

The Institution has granted mortgage liens on the Project to the Issuer pursuant to (i) a certain Mortgage and Security Agreement (Acquisition Loan), (ii) a certain Mortgage and Security Agreement (Building Loan), and (iii) a certain Mortgage and Security Agreement (Indirect Loan), each dated as of September [ ], 2012 (collectively, the “**Mortgages**”), each from the Institution to the Issuer, and the Issuer has assigned to the Trustee as security for the Bonds, for the benefit of the Owners of the Bonds, substantially all of its rights under the Mortgages pursuant to (i) a certain Assignment of Mortgage and Security Agreement (Acquisition Loan), (ii) a certain Assignment of Mortgage and Security Agreement (Building Loan), and (iii) a certain Assignment of Mortgage and Security Agreement (Indirect Loan),

each dated September [ ], 2012 (collectively, the “**Assignments**”), each from the Issuer to the Trustee.

The Issuer and the Institution have entered into a Tax Regulatory Agreement, dated the date hereof (the “**Tax Regulatory Agreement**”), in which the Issuer and the Institution have made certain representations and covenants, established certain conditions and limitations and created certain expectations, relating to compliance with the requirements imposed by the Internal Revenue Code of 1986, as amended (the “**Code**”). Morgan Stanley & Co. LLC (the “**Underwriter**”) has agreed to place the Bonds to one or more purchasers pursuant to the terms of a Bond Purchase Agreement, dated September [ ], 2012 (the “**Bond Purchase Agreement**”), among the Issuer, the Underwriter and the Institution.

Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in Section 1.01 of the Indenture.

The Bonds are dated the date hereof, and bear interest from the date thereof pursuant to the respective terms of the Bonds. The Bonds are subject to prepayment or redemption prior to maturity, as a whole or in part, at such time or times, under such circumstances and in such manner as is set forth in the Bonds and the Indenture.

As bond counsel, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates and documents (including all documents constituting 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 conducted any independent investigation, we have relied upon, and assumed the accuracy and truthfulness of, the aforesaid instruments, certificates and documents.

In rendering the opinions set forth below, we have relied upon, among other things, certain representations and covenants made by the parties in this transaction including: (i) the Institution in (a) the Bond Purchase Agreement; (b) the Tax Regulatory Agreement; (c) the Loan Agreement; (d) the Mortgages; (e) the Letter of Representation and Indemnification, dated of even date herewith; and (f) the Bond Counsel Questionnaire submitted to us by the Institution; and (ii) the Issuer in (a) the Bond Purchase Agreement; (b) the Indenture; (c) the Tax Regulatory Agreement; (d) the Loan Agreement; (e) the Assignments; and (f) the General Certificate of the Issuer, dated the date hereof. We call your attention to the fact that there are certain requirements with which the Issuer and the Institution must comply after the date of issuance of the Bonds in order for the interest on the Bonds to remain excluded from gross income for Federal income tax purposes. Copies of the aforementioned documents are included in the Record of Proceedings.

In addition, in rendering the opinions set forth below, we have relied upon the opinions of the Vice President for Legal Affairs of the Issuer, Richard E. Marshall, Esq., counsel to the Institution, Hawkins, Delafield & Wood LLP, New York, New York, and

counsel to the Trustee, Carter Ledyard & Milburn LLP, New York, New York, all of even date herewith. Copies of the aforementioned opinions are contained in the Transcript of Proceedings.

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

1. The Issuer is a duly organized and existing corporate entity constituting a local development corporation of the State of New York.

2. The Issuer is duly authorized to issue, execute, sell and deliver the Bonds, for the purpose of paying the costs described above.

3. The Resolution has been duly adopted by the Issuer and is in full force and effect.

4. The Indenture, the Loan Agreement, the Tax Regulatory Agreement, the Assignments and the Bond Purchase Agreement have been duly authorized, executed and delivered by the Issuer, and assuming the due authorization, execution and delivery thereof by the other parties thereto, are in full force and effect in accordance with their terms and are valid and binding upon the Issuer enforceable in accordance with their respective terms.

5. The Indenture creates the valid pledge which it purports to create of the revenues and receipts payable or receivable under the Loan Agreement and the moneys and securities from time to time held by the Trustee under the terms of the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture.

6. The Issuer has the right and power to authorize, execute and deliver the Bonds and the Bonds have been duly and validly authorized, executed and delivered by the Issuer, in accordance with law, including the Act, and in accordance with the Indenture. The Bonds are valid and binding special obligations of the Issuer, are enforceable in accordance with their terms and the terms of the Indenture and are payable from moneys on deposit in the funds and accounts maintained under the Indenture, all as provided in the Indenture and are entitled to the benefits of the Indenture and the Act.

7. The Bonds do not constitute a debt of the State of New York or of The City of New York and neither the State of New York nor The City of New York will be liable thereon.

8. The Code sets forth certain requirements which must be met subsequent to the issuance and delivery of the Bonds for interest thereon to be and remain excluded from gross income for Federal income tax purposes. Noncompliance with such requirements could cause the interest on the Bonds to be included in gross income for Federal income tax purposes retroactive to the date of issue of the Bonds. Pursuant to the Indenture, the Loan Agreement and the Tax Regulatory Agreement, the Issuer and the Institution have covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the Bonds from gross income for Federal income tax purposes pursuant to Section 103 of the Code. In addition, the Issuer and the Institution have made

certain representations and certifications in the Indenture, the Loan Agreement and the Tax Regulatory Agreement. We are also relying on the opinion of Counsel to the Institution, as to all matters concerning the status of the Institution as an organization described in Section 501(c)(3) of the Code and exempt from Federal income tax under Section 501(a) of the Code. We have not independently verified the accuracy of those certifications and representations or that opinion.

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

9. Interest on the Bonds is exempt from income taxes imposed by the State of New York or any political subdivision of the State of New York.

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

The foregoing opinions are qualified to the extent that the enforceability of the Bonds, the Bond Purchase Agreement, the Indenture, the Loan Agreement, the Assignments and the Tax Regulatory Agreement may be limited by bankruptcy, insolvency or other laws or enactments now or hereafter enacted by the State of New York or the United States affecting the enforcement of creditors' rights and by restrictions on the availability of equitable remedies and to the extent, if any, that enforceability of the indemnification provisions of such documents may be limited under law. We express no opinion with respect to the availability of any specific remedy provided for in any of the bond documents.

In rendering the foregoing opinions, we are not passing upon and do not assume any responsibility for the accuracy, completeness, sufficiency or fairness of any documents, information or financial data supplied by the Issuer, the Institution, the Trustee in connection with the Bonds, the Bond Purchase Agreement, the Indenture, the Loan Agreement, the Mortgages, the Tax Regulatory Agreement and the Project, and we make no representation that we have independently verified the accuracy, completeness, sufficiency or fairness of any such documents, information or financial data. In addition, we express no opinion herein with respect to the accuracy, completeness, sufficiency or fairness of the Official Statement, dated September [ ] 2012 (the "Official Statement"), with respect to the Bonds.

We express no opinion with respect to the registration requirements under the Securities Act of 1933, as amended, the registration or qualification requirements under the

Indenture of Trust Act of 1939, as amended, the registration, qualification or other requirements of State Securities laws or the availability of exemptions therefrom.

We express no opinion as to the sufficiency of the description of the Equipment contained in the Loan Agreement or as to the adequacy, perfection or priority of any security interest in any collateral securing the Bonds.

Furthermore, we express no opinion as to the Continuing Disclosure Agreement. We express no opinion with respect to whether the Issuer and the College (i) have complied with the State Environmental Quality Review Act, (ii) have obtained any or all necessary governmental approvals, consents or permits, or (iii) have complied with the New York Labor Law or other applicable laws, rules, regulations, orders and zoning and building codes, all in connection with the renovation, construction, equipping, furnishing and operation of the Project.

The opinions expressed herein may be relied upon by the addressees and may not be relied upon by any other person without our prior written consent.

Very truly yours,

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