

NEW ISSUE – BOOK-ENTRY ONLY

RATINGS: INSURED BONDS: MOODY'S "A2"  
S&P "AA"

MOODY'S UNDERLYING "A3" (STABLE) (SEE "RATINGS" HEREIN)

*In the opinion of Hodgson Russ LLP, Bond Counsel to the Issuer, under existing statutes, regulations, rulings and court decisions and assuming compliance with certain covenants and the accuracy of certain representations, interest on the Initial Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and is not an item of tax preference for purposes of the individual and corporate alternative minimum taxes imposed by the Code, except that (a) the Company (as hereinafter defined) or another Person, by failing to comply with certain restrictions contained in the Code, may cause interest on the Initial Bonds to become subject to federal income taxation from the date of issuance thereof, and (b) interest on the Initial Bonds is subject to certain alternative minimum taxes imposed on corporations, and certain other taxes. Bond Counsel is further of the opinion that, so long as interest on the Initial Bonds is excluded from gross income for federal income tax purposes, interest on the Initial Bonds is exempt under existing law from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York). For a more complete discussion, including certain other tax considerations, see "TAX MATTERS" herein.*

**\$65,305,000**

**TOWN OF AMHERST DEVELOPMENT CORPORATION**

**TAX-EXEMPT STUDENT HOUSING FACILITY REVENUE REFUNDING BONDS**

**(UBF FACULTY-STUDENT HOUSING CORP. - GREINER AND HADLEY REFUNDING PROJECTS AT SUNY BUFFALO), SERIES 2017A**

**Dated:** Date of Delivery

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

Town of Amherst Development Corporation (the "Issuer") will issue its Tax-Exempt Student Housing Facility Revenue Refunding Bonds (UBF Faculty-Student Housing Corp. - Greiner and Hadley Refunding Projects at SUNY Buffalo) Series 2017A in the aggregate principal amount of \$65,305,000 (the "Initial Bonds"). The Initial Bonds will be issued as fully registered bonds in the denomination of \$5,000 or any integral multiple of \$5,000 in excess thereof. The Initial Bonds are being issued pursuant to a trust indenture dated as of October 1, 2017 (the "Trust Indenture") between the Issuer and Manufacturers and Traders Trust Company, Buffalo, New York, as trustee (the "Trustee") to provide funds to the UBF Faculty-Student Housing Corp. (the "Company") for (i) the refunding, in whole or in part, of the Issuer's Tax-Exempt Student Housing Facility Revenue Bonds (UBF Faculty-Student Housing Corp. - Greiner and Hadley Projects at SUNY Buffalo), Series 2010A (the "Prior Bonds") and (ii) the payment of all or a portion of the costs incidental to the issuance of the Initial Bonds, including issuance costs and any reserve funds as may be necessary to secure the Initial Bonds. Capitalized terms used herein have the meanings ascribed to such terms in APPENDIX A hereto unless otherwise specified herein.

Interest on the Initial Bonds will be payable semi-annually on April 1 and October 1 of each year, commencing April 1, 2018. Principal of and premium, if any, on the Initial Bonds will be payable at the principal corporate trust office of the Trustee. Interest will be paid by check mailed to the registered owner or, at the option of any holder of \$250,000 or more of the Initial Bonds, be transmitted by wire transfer.

The Bonds are initially issuable only as fully-registered bonds without coupons and, when issued, will be registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"), New York, New York. DTC will act as securities depository for the Bonds. Purchases of beneficial interests in the Bonds will be made in the book-entry-only form, in the denomination of \$5,000 or any integral multiple of \$5,000 in excess thereof. Purchasers of beneficial interests will not receive certificates representing their interest in the Bonds. So long as Cede & Co., as nominee of DTC, is the registered owner of the Bonds, reference herein to the Bondholders or Owners shall mean Cede & Co. as aforesaid, and shall not mean the Beneficial Owners of the Bonds. In addition, so long as DTC or Cede & Co., as its nominee, is the registered owner of the Bonds, payments of the principal of, redemption price of and interest on the Bonds shall be made directly to DTC by the Trustee. Disbursements of such payments to DTC Participants is the responsibility of DTC, and disbursements of such payments to the Beneficial Owners is the responsibility of DTC Direct Participants and Indirect Participants as more fully described herein. See "BOOK-ENTRY-ONLY-SYSTEM" herein.

The Bonds are special obligations of the Issuer payable solely out of the revenues and other receipts of the Issuer pledged therefor or otherwise available to the Trustee for the payment thereof, including (1) certain revenues received on behalf of the Issuer from payments made by the Company under a loan agreement dated as of October 1, 2017 (the "Loan Agreement") between the Issuer and the Company, (2) payments made by the Company under a guaranty dated as of October 1, 2017 (the "Guaranty") from the Company to the Trustee, and (3) certain other funds and moneys available to the Trustee under the Trust Indenture. See "THE BONDS – Security for the Bonds" herein.

As additional security for the Initial Bonds, (A) the Company will execute and deliver to the Issuer a mortgage and security agreement dated as of October 1, 2017 (the "Mortgage") from the Company to the Issuer, which Mortgage among other things grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Project Facility, (B) the Issuer will execute and deliver to the Trustee an assignment of mortgage dated as of October 1, 2017 (the "Mortgage Assignment") from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee, (C) the Company will execute an assignment of leases and rents dated as of October 1, 2017 (the "Assignment of Rents") which conditionally assigns to the Trustee all leases, subleases, licenses and rentals affecting the Project Facility and the rents and license fees payable thereunder, and (D) the Issuer will execute and deliver to the Trustee an assignment of rents assignment dated as of October 1, 2017 (the "Assignment of Rents Assignment") from the Issuer to the Trustee pursuant to which the Issuer will assign the Assignment of Rents to the Trustee.

As additional security for the Initial Bonds, the University at Buffalo Foundation Inc. (the "Foundation") has entered into an Unconditional Cash Flow Guaranty dated as of October 1, 2017 (the "Unconditional Cash Flow Guaranty") for the benefit of the Trustee. The Unconditional Cash Flow Guaranty will terminate and the obligations of the Foundation will be discharged prior to the maturity of the Initial Bonds upon the happening of certain events described herein.

The scheduled payment of principal of and interest on the Initial Bonds maturing October 1, 2024 through and including October 1, 2032 and the Initial Bonds issued as Term Bonds due October 1, 2037, October 1, 2042 and October 1, 2045 (collectively, the "Insured Bonds") when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Insured Bonds by Assured Guaranty Municipal Corp. ("AGM" or the "Bond Insurer").



THE INITIAL BONDS WILL BE SUBJECT TO OPTIONAL AND MANDATORY REDEMPTION AND ACCELERATION PRIOR TO MATURITY, ALL AS DESCRIBED HEREIN.

THE INITIAL BONDS ARE NOT AND SHALL NOT BE A DEBT OF THE STATE OF NEW YORK, THE STATE UNIVERSITY OF NEW YORK NOR OF THE TOWN OF AMHERST, NEW YORK AND NEITHER THE STATE OF NEW YORK, THE STATE UNIVERSITY OF NEW YORK NOR THE TOWN OF AMHERST, NEW YORK SHALL BE LIABLE THEREON, NOR SHALL THE INITIAL BONDS BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR.

The Initial Bonds are offered when, as and if issued by the Issuer and accepted for by the purchasers, subject to prior sale, withdrawal or modification of the offer without notice, and subject to the unqualified approving opinion of Hodgson Russ LLP, Albany, New York, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the Issuer by its counsel, Hurwitz & Fine, P.C., Buffalo, New York, for the Company by its counsel, Hodgson Russ LLP, Buffalo, New York, for the Trustee by its counsel, Bond, Schoeneck & King, PLLC, Syracuse, New York and for the Underwriter by its counsel, Trespass & Marquardt LLP, Syracuse, New York. It is expected that the Initial Bonds will be available for delivery in definitive form in New York, New York on or about October 26, 2017.



Dated: September 27, 2017

SERIES 2017A BONDS

MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES AND YIELDS

CUSIP® Base Number: 031358

\$32,005,000 Serial Bonds

Maturing October 1	Amount	Interest Rate	Yield	CUSIP®	Maturing October 1	Amount	Interest Rate	Yield	CUSIP®
2018	2,360,000	3.000%	1.000%	AY0	2026*	1,615,000	5.000%	2.210%	BG8
2019	2,220,000	4.000%	1.100%	AZ7	2027*	1,695,000	5.000%	2.340%	BH6
2020	2,305,000	5.000%	1.210%	BA1	2028*	1,780,000	5.000%	2.450%	BJ2
2021	2,425,000	5.000%	1.360%	BB9	2029*	1,865,000	5.000%	2.520%	BK9
2022	2,545,000	5.000%	1.590%	BC7	2030*	1,960,000	5.000%	2.600%	BL7
2023	2,670,000	5.000%	1.710%	BD5	2031*	2,055,000	5.000%	2.660%	BM5
2024*	2,815,000	5.000%	1.880%	BE3	2032*	2,160,000	5.000%	2.710%	BN3
2025*	1,535,000	5.000%	2.020%	BF0					

\$12,095,000 3.250% Term Bonds Due October 1, 2037 @ 98.266\* CUSIP® 031358 BP8

\$13,250,000 3.375% Term Bonds Due October 1, 2042 @ 97.930\* CUSIP® 031358 BQ6

\$7,955,000 5.00% Term Bonds Due October 1, 2045 @ 116.224\* CUSIP® 031358 BR4

\* The scheduled payment of principal of and interest on the Initial Bonds maturing October 1, 2024 through and including October 1, 2032 and the Initial Bonds issued as Term Bonds due October 1, 2037, October 1, 2042 and October 1, 2045 (collectively, the "Insured Bonds") when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Insured Bonds by Assured Guaranty Municipal Corp. ("AGM" or the "Bond Insurer").

® Registered Trademark, American Bankers Association. CUSIP data herein is provided by Standard & Poor's, CUSIP Services Bureau, a division of the McGraw-Hill Companies, Inc. CUSIP numbers have been assigned by an independent company not affiliated with UBF Faculty-Student Housing Corp. and are included solely for the convenience of the readers of this Official Statement and holders of the Series 2017A Bonds. Neither the Issuer nor the Underwriter is responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the Series 2017A Bonds or as indicated above. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2017A Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of the Series 2017A Bonds.

This Official Statement does not constitute an offering of any security, other than the original offering of the Initial Bonds specifically offered hereby. No person has been authorized by the Issuer, the Company or the Bond Insurer to give any information or to make any representation with respect to the Initial Bonds, other than that contained in this Official Statement, and if given or made, such other information or representation must not be relied upon as having been given or authorized by the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy and there shall be no sale of the Initial Bonds in any jurisdiction in which it is unlawful to make such offer, solicitation or sale. This Official Statement has been approved by the Issuer and the Company and its use and distribution for the purposes set forth above have been authorized by the Issuer and the Company. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any usage made hereunder, under any circumstances, shall create any implication that there has been no change in the affairs of the Issuer, the Company or the Bond Insurer since the date hereof.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL WHICH MIGHT NOT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

The Initial Bonds have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, nor has the Trust Indenture been qualified under the Trust Indenture Act of 1939, as amended, in reliance upon exemptions contained in such acts. The registration or qualification of the Initial Bonds in accordance with applicable provisions of the securities laws of the states, if any, in which the Initial Bonds have been registered or qualified and the exemption from registration or qualification in certain other states cannot be regarded as a recommendation thereof.

All information contained herein has been obtained from the Issuer, the Company, the Bond Insurer and other sources, which are believed to be reliable. Such other information is not guaranteed as to accuracy or completeness by, and is not to be relied upon as or construed as a promise or representation by the Company or the Issuer. No representation, warranty or guarantee is made by the Underwriter as to the accuracy or completeness of any information in this Official Statement, and nothing contained in this Official Statement is or shall be relied upon as a promise or representation by the Underwriter.

All quotations from and summaries and explanations of provisions of laws and documents herein do not purport to be complete and reference is made to such laws and documents for full and complete statements of their provisions. Summaries of the principal legal documents are presented in Appendix A hereto. Any statements made in this Official Statements involving estimates or matters of opinion, whether or not expressly so stated, are intended merely as estimates or opinions and not as representations of fact. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale of the Bonds shall under any circumstances create any implication that there has been no change in the affairs of the Issuer or the Company, the proposed operation of the Project or the other matters described herein since the date hereof or the date as of which specified information is given, if earlier.

THE ORDER AND PLACEMENT OF MATERIALS IN THIS OFFICIAL STATEMENT INCLUDING THE APPENDICES ARE NOT TO BE DEEMED TO BE A DETERMINATION OF RELEVANCE, MATERIALITY OR IMPORTANCE, AND THIS OFFICIAL STATEMENT, INCLUDING THE APPENDICES, MUST BE CONSIDERED IN ITS ENTIRETY. THE OFFERING OF THE INITIAL BONDS IS MADE ONLY BY MEANS OF THIS ENTIRE OFFICIAL STATEMENT. IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER, THE COMPANY, THE PROJECT AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE INITIAL BONDS 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 COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

Assured Guaranty Municipal Corp. (“AGM or the “Bond Insurer”) makes no representation regarding the Initial Bonds or the advisability of investing in the Initial Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted here from, other than with respect to the accuracy of the information regarding AGM supplied by AGM and presented under the heading “Bond Insurance” and “Appendix F - Specimen Municipal Bond Insurance Policy”.

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THE INFORMATION UNDER THE CAPTIONS "INTRODUCTORY STATEMENT", "THE COMPANY", "THE FOUNDATION", "THE MANAGER", "THE STATE UNIVERSITY OF NEW YORK AT BUFFALO", "THE INITIAL BONDS", "SECURITY FOR THE INITIAL BONDS", "ANNUAL DEBT SERVICE REQUIREMENTS", "THE REFUNDING PLAN", "VERIFICATION OF MATHEMATICAL COMPUTATIONS", "SOURCES AND USES OF FUNDS", "BONDHOLDERS' RISKS", "LITIGATION", "LEGAL MATTERS", "TAX MATTERS", "UNDERWRITING", "FINANCIAL ADVISOR", "RATINGS", "CONTINUING DISCLOSURE", "FINANCIAL STATEMENTS", "OTHER MATTERS", APPENDIX A, APPENDIX B, APPENDIX C, APPENDIX D AND APPENDIX E HAS BEEN FURNISHED BY THE COMPANY, BOND COUNSEL, THE BOND INSURER OR OTHERS, AND NOT BY THE TOWN OF AMHERST DEVELOPMENT CORPORATION, WHICH MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION IT DID NOT FURNISH.

## OFFICIAL STATEMENT

Relating to the

\$65,305,000

TOWN OF AMHERST DEVELOPMENT CORPORATION  
TAX-EXEMPT STUDENT HOUSING FACILITY REVENUE REFUNDING BONDS

(UBF FACULTY-STUDENT HOUSING CORP.  
GREINER AND HADLEY REFUNDING PROJECTS AT SUNY BUFFALO)  
SERIES 2017A

### INTRODUCTORY STATEMENT

This Introductory Statement is subject in all respects to the more complete information appearing elsewhere in this Official Statement. This Introductory Statement is not to be read or used without reference to the entire Official Statement. For the definitions of certain capitalized terms used in this Official Statement, which are not otherwise defined, reference should be made to the definitions appearing in Appendix A hereto.

**Purpose of this Official Statement:** The purpose of this Official Statement and the Appendices attached hereto is to provide certain information concerning the issuance by the Town of Amherst Development Corporation (the "Issuer") of its \$65,305,000 aggregate principal amount of Tax-Exempt Student Housing Facility Revenue Refunding Bonds (UBF Faculty-Student Housing Corp.-Greiner and Hadley Refunding Projects at SUNY Buffalo), Series 2017A (the "Initial Bonds").

The Initial Bonds are issued pursuant to the terms of a Trust Indenture dated as of October 1, 2017 (the "Trust Indenture" or "Indenture"), by and between the Issuer and Manufacturers and Traders Trust Company, Buffalo, New York as Trustee (the "Trustee"). The Initial Bonds, together with any other series of bonds hereafter issued under the Trust Indenture (the "Additional Bonds") are referred to herein as the "Bonds".

**The Issuer:** The Town of Amherst Development Corporation is a not-for-profit corporation organized pursuant to Section 1411 of the New York State Not-For-Profit Corporation Law (the "NFPCL"). The Issuer has no taxing power. See "THE ISSUER" herein.

**The Company:** UBF Faculty-Student Housing Corp. (the "Company") is a not-for-profit corporation organized under the laws of New York State in 1990 to support the purposes of the State University of New York at Buffalo ("SUNY Buffalo") by acquiring, constructing, renovating and maintaining residential and other facilities for the use of the faculty and students of SUNY Buffalo. The Company is an organization described in Section 501(c)(3) of the Code and is exempt from Federal income taxation pursuant to Section 501(a) of the Code, as amended. See Appendix B hereto, "Certain Information Concerning the Company."

Attached hereto as Appendix C are the unaudited Financial Statements and Supplementary Information of the Company as of and for the years ended June 30, 2016 and June 30, 2015.

**The Foundation:** The Foundation was chartered in 1962 by the Regents of the State of New York as a non-profit educational corporation in the same year in which the private University at Buffalo became part of the State University of New York (SUNY) system. The Foundation consists of a twenty-two person,

self-perpetuating board of trustees and the Foundation operates in a manner consistent with the guidelines of the SUNY Trustees and the University. However, the Foundation Trustees and Directors are completely independent of the State and of SUNY in the exercise of their fiduciary responsibilities.

Attached hereto as Appendix D are the Consolidated Financial Statements of the University at Buffalo Foundation, Inc. and Affiliates as of and for the years ended June 30, 2016 and June 30, 2015 with Independent Auditors' Report thereon, which statements include the accounts of the Company.

**The Initial Bonds:** The Initial Bonds will be issued as fully registered bonds, in the form and in the denominations, with semiannual interest payments, maturing, and with certain redemption provisions, all as set forth on the inside cover page of this Official Statement and herein. See "The Initial Bonds - General Terms" herein.

**Sources of Payment of the Initial Bonds:** The scheduled payment of principal of and interest on the Initial Bonds maturing October 1, 2024 through and including October 1, 2032 and the Series 2017A Term Bonds due October 1, 2037, October 1, 2042 and October 1, 2045 when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Initial Bonds by Assured Guaranty Municipal Corp. ("AGM" or the "Bond Insurer"). Under the Financing Documents, Assured Guaranty Municipal Corp. has certain rights to consents, notices and to control certain procedures, including, without limitation, the right to control proceedings, without the consent of bondholders, following an event of default under the financing documents. Reference is made to the provisions of the Financing Documents for a more complete description of the Bond Insurer's rights thereunder. See "Bond Insurance" herein and Appendix F attached hereto for further information regarding Assured Guaranty Municipal Corp. and the Municipal Bond Insurance Policy.

The Initial Bonds are limited obligations of the Issuer payable from the Trust Revenues held by the Trustee under the Trust Indenture and from payments made by the Company under the Loan Agreement dated as of October 1, 2017 (the "Loan Agreement") by and between the Issuer and the Company. Under the Loan Agreement, the Company is required to make payments corresponding to the principal or redemption price of and interest on the Initial Bonds. The Issuer will assign to the Trustee its right, title and interest in the Loan Agreement, with the exception of the right to receive payments of certain fees, the right to indemnity, and the right to grant certain approvals and to enforce certain remedies.

As security for the Initial Bonds, (A) the Company will execute and deliver to the Issuer a mortgage and security agreement dated as of October 1, 2017 (the "Mortgage") from the Company to the Issuer, which Mortgage among other things grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Project Facility, (B) the Issuer will execute and deliver to the Trustee an assignment of mortgage dated as of October 1, 2017 (the "Mortgage Assignment") from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee, (C) the Company will execute an assignment of leases and rents dated as of October 1, 2017 (the "Assignment of Rents") which conditionally assigns to the Trustee all leases, subleases, licenses and rentals affecting the Project Facility and the rents and license fees payable thereunder, and (D) the Issuer will execute and deliver to the Trustee an assignment of rents assignment dated as of October 1, 2017 (the "Assignment of Rents Assignment") from the Issuer to the Trustee pursuant to which the Issuer will assign the Assignment of Rents to the Trustee.

As further security for the Bonds, the Issuer will execute and deliver to the Trustee a pledge and assignment dated as of October 1, 2017 (the "Pledge and Assignment") from the Issuer to the Trustee, and acknowledged by the Company, which Pledge and Assignment will assign to the Trustee certain of the Issuer's rights under the Loan Agreement.



The (A) Company's obligation (1) to make all payments under the Loan Agreement and (2) to perform all obligations related thereto and (B) Issuer's obligation to repay the Initial Bonds will be further secured by a guaranty dated as of October 1, 2017 (the "Guaranty") from the Company to the Trustee.

Pursuant to a Facility Management Agreement dated as of April 1, 2009 (the "Greiner Management Agreement") by and between SUNY as manager (the "Manager") and the Company, the Manager has agreed to manage William R. Greiner Hall, including, among other things, to lease or license available units in the William R. Greiner Hall before licensing space in any other student housing facility on the campus (subject to the Manager's prior referral obligations with respect to the University's Hadley Village, South Lake Village, Flint Village and Creekside Village projects), and to advance certain operating costs of the William R. Greiner Hall and to defer reimbursement thereof if the rental income attributable to the William R. Greiner Hall is insufficient to cover such costs.

Pursuant to a Facility Management Agreement dated May, 1999 (the "Hadley Management Agreement") by and between the Manager and the Company, the Manager has agreed to manage the Hadley Project, including, among other things, to lease or license available units in the Hadley Project before licensing space in any other student housing facility on the campus, and to advance certain operating costs of the Hadley Project and to defer reimbursement thereof if the rental income attributable to the Hadley Project is insufficient to cover such costs.

Pursuant to the Unconditional Cash Flow Guaranty dated October 1, 2017, the Foundation will agree to guaranty to the Trustee all of the Company's regularly scheduled principal, interest and sinking fund payment obligations with respect to the Initial Bonds.

The Unconditional Cash Flow Guaranty shall terminate and the obligations of the Foundation created thereunder shall be discharged upon the earlier to occur of (A) the Company having demonstrated in writing based on its annual accountant reviewed financial statements for the Company that the Debt Service Coverage Ratio was at least 1.35 times for three consecutive Fiscal Years commencing not prior to the Fiscal Year following the Fiscal Year in which the certificate of occupancy for the William R. Greiner Hall Project is issued, provided that for purposes of the foregoing calculation Net Revenues Available for Debt Service shall not include any capitalized interest and any income from earnings or Authorized Investments (other than guaranteed investment contracts having a term in excess of one year), or (B) the date when the Initial Bonds are irrevocably paid in full. On the date of such discharge, the Foundation shall be released from any and all conditions, terms, covenants or restrictions created or placed upon it by the Unconditional Cash Flow Guaranty and the Foundation shall not have any further obligation or liability thereunder.

Pursuant to the Guaranty, the Company shall covenant to set rates and charges each Fiscal Year such that (i) during the period for which the Unconditional Cash Flow Guaranty is in effect, Net Revenues Available for Debt Service for each such Fiscal Year shall be equal to at least 1.0x Maximum Annual Debt Service, and (ii) following termination of the Unconditional Cash Flow Guaranty, Net Revenues Available for Debt Service for each such Fiscal Year shall be equal to at least 1.20x Maximum Annual Debt Service (the "Rate Covenant"). The Company's failure to achieve the Rate Covenant shall not constitute an Event of Default if the Company timely engages (within thirty (30) days of submittal of the certificate describing such circumstance or, if such certificate is not timely submitted, within thirty (30) days of the date such certificate was required to be submitted) an independent management consultant, and such consultant timely prepares (within forty-five (45) days of engagement) a report (to be delivered to the Company, the Manager and the Trustee) with recommendations for meeting the Rate Covenant and the Company, to the extent legally permissible, timely implements (within thirty (30) days of receipt of the report) the consultant's recommendations. Notwithstanding the preceding sentence, in no event may the Rate Covenant fall below 1.0x Maximum Annual Debt Service.

Simultaneously with the issuance and delivery of the Initial Bonds, a non-cancelable municipal bond insurance policy (the “Municipal Bond Insurance Policy”) will be issued by Assured Guaranty Municipal Corp., which Municipal Bond Insurance Policy will provide for the prompt payment of the principal of and interest and sinking fund installments on the Initial Bonds maturing October 1, 2024 through and including October 1, 2032 and the Initial Bonds issued as Term Bonds due October 1, 2037, October 1, 2042 and October 1, 2045 which shall have become due, to the extent that the Trustee has not received sufficient funds from or on behalf of the Issuer or the Company for such payment.

Payment of the Initial Bonds is also secured by the Reserve Fund held by the Trustee under the Trust Indenture. The Reserve Fund for the Initial Bonds is required to be maintained in an amount equal to the Reserve Fund Requirement. The Trust Indenture defines the Reserve Fund Requirement as (A) with respect to the Initial Bonds, as of the Closing Date, an amount of money equal to \$4,716,139.50. Moneys on deposit in the Reserve Fund shall be credited towards the Reserve Fund Requirement. In lieu of or in substitution for moneys, the Issuer may deposit or cause to be deposited with the Trustee a Reserve Fund Facility (including a surety bond, insurance policy or letter of credit) for the benefit of the Holders of a Series of the Bonds for all or any part of the Debt Service Reserve Requirement.

The Debt Service Reserve Requirement will be funded with a Reserve Fund Facility acquired by the Company and issued by Assured Guaranty Municipal Corp.

**THE BONDS DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE TOWN OF AMHERST, NEW YORK, THE STATE OF NEW YORK, THE STATE UNIVERSITY OF NEW YORK OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF NEW YORK. SEE “SECURITY FOR THE BONDS” HEREIN.**

**Continuing Disclosure:** In accordance with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission, the Company will agree to provide, or cause to be provided, (i) certain annual financial information and operating data, (ii) timely notice of the occurrence of certain material events with respect to the Initial Bonds and (iii) timely notice of any failure by the Company to provide the required annual financial information, pursuant to a Continuing Disclosure Agreement to be executed by the Company. In the event the obligations of the Company are terminated with respect to the Initial Bonds, the Company will also be relieved of the obligation to provide information under Continuing Disclosure Agreement. See “Continuing Disclosure” herein.

**Bondholders' Risks:** There are risks associated with the purchase of the Initial Bonds. See the caption “Bondholders' Risks” for a discussion of certain of these risks and for a description of certain federal and state regulations affecting health care providers.

**Miscellaneous.** This Official Statement and the Appendices hereto contains brief descriptions of, among other matters, the Issuer, the Company, the Manager, the University at Buffalo, the Trust Indenture, the Loan Agreement, the Pledge and Assignment, the Guaranty and the Mortgage. Those descriptions are qualified by reference to the entire text of such documents, including the forms of the Initial Bonds contained in the Trust Indenture.

Terms used in this Official Statement have the meanings ascribed to those terms in the Trust Indenture, unless otherwise defined in this Official Statement or unless the context indicates a different meaning. For a summary of certain terms defined in those documents and not otherwise defined in this Official Statement, see the definitions appearing in Appendix A hereto. Copies of such documents will be available for inspection at the corporate trust office of the Trustee at One M&T Plaza, Buffalo, New York 14203-2399.

## THE ISSUER

Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the "Enabling Act") (A) authorizes any town to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted.

Pursuant to the provisions of the Enabling Act and Revenue Ruling 57-187 and Private Letter Ruling 200936012, the Town Board of the Town of Amherst, New York (the "Town") adopted a resolution on October 5, 2009 (A) authorizing the reincorporation of Town of Amherst Development Corporation (the "Issuer") under the Enabling Act and (B) appointing the initial members of the board of directors of the Issuer. On February 3, 2010, a certificate of reincorporation was filed with the New York Secretary of State's Office (the "Certificate of Reincorporation") reincorporating the Issuer as a public instrumentality of the Town.

As provided in the Enabling Act, the Issuer is authorized and empowered to make the Loan to the Company for the purpose of financing a portion of the costs of the Project pursuant to the Loan Agreement; to issue, execute and deliver the Initial Bonds; to secure the Initial Bonds by a pledge of the moneys payable by the Company under the Loan Agreement; and to execute and deliver the Indenture, the Loan Agreement and the Pledge and Assignment.

On November 18, 2016, the Issuer held a public hearing, in compliance with the provisions of Section 147(f) of the Code and, as provided in the Certificate of Reincorporation of the Issuer, pursuant to the applicable provisions of Section 859-a and Section 859-b of the General Municipal Law of the State of New York, with respect to the issuance of the Initial Bonds, following the timely publication of notice of the hearing. By a resolution adopted on December 5, 2016 by the Town Board of the Town (the "Board"), the Board approved the issuance of the Bonds. By a resolution adopted by the Issuer on November 18, 2016, the Issuer approved the execution, issuance and delivery of the Initial Bonds and the execution and delivery of the Indenture, the Loan Agreement and the Pledge and Assignment.

The Town is the sole member of the Issuer. Pursuant to the Certificate of Reincorporation of the Issuer, the members of the board of directors of the Issuer are appointed by resolution of the Board of the Town from among the members of the Town of Amherst Industrial Development Agency. The Board has appointed the current seven members of the Town of Amherst Industrial Development Agency to serve as the board of directors of the Issuer. The current seven directors of the Issuer are all residents of the Town.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE THEREBY SOLELY OUT OF CERTAIN FUNDS PLEDGED THEREFOR. NOTHING IN THE INITIAL BONDS, THE INDENTURE OR THE LOAN AGREEMENT SHALL BE CONSIDERED AS PLEDGING OR COMMITTING ANY OTHER FUNDS OR ASSETS OF THE ISSUER TO THE PAYMENT OF THE INITIAL BONDS OR THE SATISFACTION OF ANY OTHER OBLIGATION OF THE ISSUER UNDER THE INITIAL BONDS, THE INDENTURE OR THE LOAN AGREEMENT. NEITHER THE ISSUER NOR ITS MEMBERS, DIRECTORS, OFFICERS, AGENTS (OTHER THAN

THE COMPANY), SERVANTS OR EMPLOYEES, NOR ANY PERSON EXECUTING THE INITIAL BONDS SHALL BE LIABLE PERSONALLY WITH RESPECT TO THE BONDS OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE THEREOF. ACCORDINGLY, NO FINANCIAL INFORMATION REGARDING THE ISSUER OR ITS MEMBERS, DIRECTORS OR OFFICERS HAS BEEN INCLUDED HEREIN.

NEITHER THE STATE OF NEW YORK NOR ANY POLITICAL SUBDIVISION OF THE STATE (INCLUDING, WITHOUT LIMITATION, THE TOWN OF AMHERST, NEW YORK) IS OR SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR REDEMPTION PRICE, IF APPLICABLE, OF OR INTEREST ON THE INITIAL BONDS, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK OR THE TOWN OF AMHERST IS PLEDGED TO SUCH PAYMENT. THE ISSUER HAS NO TAXING POWER.

### **THE COMPANY**

UBF Faculty-Student Housing Corp. (the “Company”) is a not-for-profit corporation organized under the laws of New York State in 1990 to support the purposes of the State University of New York at Buffalo (“SUNY Buffalo”) by acquiring, constructing, renovating and maintaining residential and other facilities for the use of the faculty and students of SUNY Buffalo. The Company is an organization described in Section 501(c)(3) of the Code and is exempt from Federal income taxation pursuant to Section 501(a) of the Code, as amended. See Appendix B hereto, “Certain Information Concerning the Company.”

Attached hereto as Appendix C are the unaudited Financial Statements and Supplementary Information of the Company for the years ended June 30, 2016 and June 30, 2015.

### **THE FOUNDATION**

The Foundation was chartered in 1962 by the Regents of the State of New York as a non-profit educational corporation in the same year in which the private University at Buffalo became part of the State University of New York (SUNY) system. With the exception of the President of the University at Buffalo, who serves as an ex officio voting member of the Board of Trustees, all other Trustees of the Foundation are elected by the Board of Trustees, and the Foundation operates in a manner consistent with the policies of the SUNY Trustees and the University. However, the Foundation Trustees and Directors are completely independent of the State and of SUNY in the exercise of their fiduciary responsibilities.

The mission of the Foundation is to support and promote the activities and programs of the University by providing support, advice and counsel regarding philanthropy, fund raising and development; managing gifts and grants on behalf of the University; providing a wide range of financial services for various units of the University; developing and managing real property on behalf of the University; and providing a strong base of private-sector support for the University through the Foundation's Trustees and Directors.

In carrying out its basic mission the Foundation concentrates its activities in the following areas:

*Fund Raising.* The Foundation supports the University's development efforts by assisting in the identification, cultivation and solicitation of prospective donors, and serves to offer advice and counsel on the University's fund raising goals, objectives, and strategies.

*Financial Services.* Through various ancillary corporations, the Foundation provides financial management for University-related projects, organizations, certain professional practice revenues, continuing education, and other programs.

*Real Estate Development.* The Foundation, through various affiliates, owns and operates several facilities, including an art gallery in Buffalo, an office facility and a retail facility in Downtown Buffalo, and the University President's residence in Amherst. In addition, the Foundation developed the Center for Tomorrow, The Commons and the University Bookstore on the north campus, the high-technology incubator facility in the Baird Research Park and over 2,100 beds in various student apartment complexes located in and around the north campus.

*Investments.* The Foundation manages a substantial investment portfolio for the betterment of the University at Buffalo. The central investment objective for the portfolio is to preserve its real (inflation-adjusted) purchasing power while providing a relatively predictable, constant and stable (in real terms) stream of earnings for current use.

Attached hereto as Appendix D are the audited Consolidated Financial Statements of the University at Buffalo Foundation, Inc. (the "Foundation") and its affiliates as of and for the years ended June 30, 2016 and June 30, 2015, with an Independent Auditors' Report thereon. The Consolidated Financial Statements of the Foundation include the accounts of the Company.

More information about the Foundation can be obtained at its web sites: [www.ub-foundation.org](http://www.ub-foundation.org).

**Prospective investors should not infer from the presentation of the consolidated financial statements of the Foundation that the Foundation is a borrower of the proceeds of the Initial Bonds.**

## THE MANAGER

SUNY acts as the manager of the Project Facility. SUNY is comprised of 29 state-operated campuses, including the University, five statutory colleges located at two private universities and 30 community colleges. Approximately 430,000 students attend SUNY's campuses. SUNY believes that it is the largest single, multi-campus university in the world.

System-wide, SUNY is responsible for the operation of over 2,500 buildings on its various campuses, which have an aggregate replacement value of over \$10 billion for its buildings, infrastructure, improvements and equipment.

The University is the largest of the four university centers in the SUNY system (the other three are located in Stony Brook, Albany and Binghamton, New York). The predecessor of the University was a private institution from its founding in 1846 until 1962. See "THE STATE UNIVERSITY OF NEW YORK AT BUFFALO."

The direct management of six apartment complexes and 12 dormitories serving University students is carried out on SUNY's behalf by the University through its Student Life Campus Living Office (the "Office"), which has an annual operating budget of \$62 million and has a full-time staff of 212 employees. One of the apartment complexes is the 230-bed Flickinger Court, located off-campus. Flickinger Court was built in 1998 and is owned by the Company. The University manages Flickinger Court under a memorandum of understanding with the Company. Residency is limited at Flickinger Court to the University graduate students and their families. A full-time Complex Director, who is a University employee, supervises the management of the buildings with the assistance of two University resident

graduate students who are on call 24 hours a day. Under the memorandum of understanding between the Company and the University, the University is responsible for all operations of the facility, including maintenance and cleaning. The University also directly collects all rents from the residents and transfers the funds to the Company. More information on the Flickinger Court apartment complex can be accessed at the website maintained by the Office of <http://www.buffalo.edu/campusliving.html>

Another apartment complex owned by the Company and managed by the University is the 624-bed Hadley Village, which is located on the University's North Campus. Hadley Village was built in 1999 on land that was ground leased for a period of thirty years from SUNY. The University manages Hadley Village under a Facility Management Agreement with SUNY, pursuant to which, among other things, SUNY has agreed to lease or license available units in the Hadley Village before licensing space in any other student housing facility on the campus. This referral obligation is prior to the referral obligation for the William R. Greiner Hall being financed with the proceeds of the Bonds. Residency is limited at Hadley Village to University upper-division undergraduate students (juniors and seniors). Under the Hadley Facility Management Agreement between the Company and SUNY, SUNY is responsible for all operations of the facility, including maintenance and cleaning. SUNY also directly collects all rents from the residents and transfers the funds to the Company. More information on Hadley Village can be accessed at the website maintained by the Office at <http://www.buffalo.edu/campusliving.html>. Residence in the Hadley Village is limited to University students and related staff.

In August of 2000, the Company opened its third student apartment complex located on the North Campus – the South Lake Village – Village Green Apartments and the South Lake Village – Lakeside Cottage Apartments. These projects, which together contain a total of 552 beds in 228 apartment units, are collectively referred to as the “South Lake Village”. Like the Hadley Village, the University manages South Lake Village under a Facility Management Agreement with SUNY, pursuant to which, among other things, SUNY has agreed after fulfilling its obligation with respect to Hadley Village, to lease or license available units in the South Lake Village before licensing space in any other student housing facility on the campus. This referral obligation is prior to the referral obligation for the William R. Greiner Hall being one of the two apartment complexes financed with the proceeds of the Prior Bonds. As is the case with the Hadley Village, under the Facility Management Agreement between the Company and SUNY, SUNY is responsible for all operations of the facility, including maintenance and cleaning. SUNY also directly collects all rents from the residents and transfers the funds to the Company. More information on South Lake Village can be accessed at the website maintained by the Office at <http://www.buffalo.edu/campusliving.html>. Residence in the South Lake Village is limited to University students and related staff.

In August 2001, the Company opened its fourth student apartment complex located on the North Campus-Flint Village East and Flint Village West. These projects, which together contain a total of 536 beds, are collectively referred to as “Flint Village”. Flint Village is managed under a Facility Management Agreement with the University similar to Hadley Village and South Lake Village. Residence is limited to University students and related staff. Like Hadley Village and South Lake Village, the University manages Flint Village under a Facility Management Agreement with SUNY, pursuant to which, among other things, SUNY has agreed after fulfilling its obligation with respect to Hadley Village, to lease or license available units in the Flint Village on parity with South Lake Village before licensing space in any other student housing facility on the campus. This referral obligation is prior to the referral obligation for the William R. Greiner Hall being one of the two apartment complexes financed with the proceeds of the Prior Bonds.

In August 2002, the Company opened the 232-bed Creekside Village Project which is the fifth apartment complex located on North Campus and managed by the University. Residence in Creekside is limited to sophomore and graduate University students. Creekside Village is managed under a Facility Management Agreement with the University similar to Hadley Village, South Lake Village and Flint

Village. Residence is limited to University students and related staff. Like Hadley Village, South Lake Village and Flint Village, the University manages Creekside Village under a Facility Management Agreement with SUNY, pursuant to which, among other things, SUNY has agreed after fulfilling its obligation with respect to Hadley Village, to lease or license available units in the Creekside Village on parity with South Lake Village and Flint Village before licensing space in any other student housing facility on the campus. This referral obligation is prior to the referral obligation for the William R. Greiner Hall, one of the two apartment complexes financed with the proceeds of the Prior Bonds.

The William R. Greiner Hall is a 606-bed residence hall located on the North Campus that opened in 2014 and is the sixth apartment complex managed by the University. Residence in William R. Greiner Hall is limited to sophomore University students. The Company and SUNY entered into a Facility Management Agreement dated as of April 1, 2009 (the "Greiner Facility Management Agreement") pursuant to which SUNY operates the Project through the Office. SUNY, in its capacity as manager, licenses individual dwelling units in these suites, consisting of a bedroom and the right to use the common areas of the suite within which such bedroom is situated to University students. Under the terms of the Greiner Facility Management Agreement, SUNY agrees, among other things, to operate these suites, to refrain from leasing or licensing any other dormitories or apartments at the University (besides those in the Hadley Village, South Lake Village, Flint Village and Creekside Village) until these apartments are fully licensed, and to refrain from reimbursing itself for any other Greiner related expenses unless all principal, redemption premium, if any, and interest then due and owing in connection with the Bonds has been paid in full.

The Office currently manages dormitory space of nearly 8,100 beds throughout its 12 residence halls and its six apartment complexes. Ten of the halls are on the north campus; the other two are on the south campus. Each hall has a full-time Hall Director in charge of the building and the Resident Advisors assigned there. Each Resident Advisor is assigned to approximately 40 students. The Office also oversees the maintenance and cleaning of the halls by SUNY employees. At the beginning of the school year the halls and apartments are filled to 100% capacity; due to attrition, approximately 3% become vacant during the school year.

## **THE STATE UNIVERSITY OF NEW YORK AT BUFFALO**

The University at Buffalo Medical School was established in downtown Buffalo, New York in 1846. Over the next several decades, additional schools and academic units were added as the expanded University moved to its South Campus location in 1926. In 1962, the private University of Buffalo joined SUNY to become the State University of New York at Buffalo. In the 1970s, the University expanded to a North Campus in Amherst. Recently, UB increased its presence in the city of Buffalo with the creation of a Downtown Campus, primarily located within the boundaries of the Buffalo Niagara Medical Campus.

The University at Buffalo occupies 234 state-owned and non-state owned buildings located throughout the region at a total of 11,028,586 gross square feet (GSF). The South Campus is located on 152 acres in northeast Buffalo. The North Campus is located on 1,077 acres three miles away in the Town of Amherst. The North Campus, South Campus, Downtown Campus and other various off-campus locations share a combination of owned and leased properties. These various facilities provide for the diverse needs of the University.

A flagship institution in the State University of New York system, the University at Buffalo is the largest and most comprehensive campus in the 64-campus SUNY system. It is a member of the Association of American Universities. Enrollment in the fall of 2016 was 30,183 students with 20,411 undergraduates and 9,772 graduate and professional students in over 100 undergraduate degree programs, 205 master's

degree programs, and 84 doctoral and 10 professional degree programs. The University at Buffalo is an important national research center with research money amounting to \$389.6 million for fiscal year 2015 and an economic impact of about \$2.18 billion per year in the region. The University Libraries are the largest and most comprehensive in the SUNY system, housing more than 3.6 million print volumes, as well as media, and special collections. The Libraries subscribes to 350 research databases and maintain over 97,000 full-text electronic journals and thousands of e-books.

Planning for the University's needs, through the master physical planning process began in 2007. The plan provides guidelines for improvements and developments that support the University's academic mission and strategic vision, allowing academic excellence to flourish. The University's master physical planning process is an extension of its 2020 strategic plan for the university's advancement into the ranks of America's premier 21st century public research universities.

Most recently, the University began construction of a new \$375 million medical school building on its Downtown Campus for the Jacobs School of Medicine and Biomedical Sciences. The building will be completed in 2018.

On the North Campus, the University's Heart of the Campus (HOTC) project is an effort to enhance the student academic experience by creating "learning landscapes" along UB's main academic spine. Each project in HOTC is focused on improving services and academic experiences for students. HOTC projects include the renovation of the third floor of the Oscar A. Silverman Library in Capen Hall, completed in 2016, transforming the facility into a 21st-century library to accommodate the different ways students study and learn. The library's third floor now includes rooms for individual and group study; a traditional "grand reading room;" high-tech classrooms; suites for producing, editing and viewing multimedia; and a café. Additional HOTC projects include 1 Capen on North Campus and 1 Diefendorf on South Campus, which were completed in 2017 and consolidated services most frequently used by students into one central space to ensure easy access. Planning is underway for a new HOTC project, the Global Market Cafe, to bring several authentic, interactive, international restaurants to one of the busiest crossroads on the North Campus academic spine.

In addition, UB has started design work on several projects including renovating the 5<sup>th</sup> floor of Cooke/Hochstetter (College of Arts & Sciences) on North Campus, and on South Campus the restoration of Townsend Hall and upgrades to bring Allen Hall into compliance with the Americans with Disabilities Act and other codes. These building renovations will include the replacement of aging infrastructure as well as complete renovations of each buildings' learning spaces. Renovations in Bell Hall and other engineering buildings on the North Campus will address the aging infrastructures of these buildings.

Capital improvements completed include significant investments in South Campus infrastructure. Among them: Addressing the separation of storm and sanitary sewers, implementation of site restoration projects, and the restoration of Hayes Hall. Capital funds for other North and South Campus projects include replacement and renovation of roofs, fire alarm systems, elevator upgrades, masonry repairs, roadway paving and the upgrade of various building mechanical, electrical and plumbing systems.

The renewal of Acheson Hall (renamed Kapoor Hall) for the new home of the School of Pharmacy, valued at \$64 million is completed. The new Engineering building on the North Campus, Davis Hall, valued at nearly \$75 million was completed in 2011. UB's new \$26 million Educational Opportunity Center opened in 2013 in downtown Buffalo. The Greiner Hall student housing project was completed in 2011. This LEED gold project includes approximately 600 beds for sophomores and provides common areas for living and learning environments. The Clinical and Translational Research Center (CTRC) and an urban technology incubator was completed in 2012 on UB's Downtown Campus. This joint facility was built in collaboration with UB partner Kaleida Health and its Gates Vascular Institute.



More information about the University can be obtained at its web sites: [www.buffalo.edu](http://www.buffalo.edu).

## THE INITIAL BONDS

### General Terms

The Initial Bonds will be dated, bear interest at the rates per annum and mature in the years and in the principal amounts shown on the cover page of this Official Statement, subject to redemption prior to maturity as hereinafter described. The Initial Bonds are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any multiple in excess thereof.

Interest on the Initial Bonds will be payable semi-annually on April 1 and October 1, commencing April 1, 2018. Subject to the provisions described below under “Book-Entry Only System”, principal of and any redemption premium on the Initial Bonds are payable upon presentation and surrender of such Bonds at the principal corporate trust office of the Trustee and interest on the Initial Bonds will be payable by check mailed on each bond payment date to the registered holders thereof at their addresses appearing on the registration books maintained by the Trustee.

### Book-Entry Only System

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Initial Bonds. The Initial Bonds will be issued as fully registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Bond certificate will be issued for each maturity of the Initial Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest depository, 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 17 A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instrument from over 85 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, in turn, is a wholly-owned subsidiary of International Clearing Corporation, which is a wholly-owned subsidiary of DTCC, as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Initial Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Initial Bonds on DTC's records. The ownership interest of each actual purchaser of each Initial 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 Initial 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 Initial Bonds, except in the event that use of the book-entry system for the Initial Bonds is discontinued.

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

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

Redemption notices shall be sent to DTC. If less than all of the 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 such other DTC nominee) will consent or vote with respect to Initial Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Company as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Initial Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

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

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

**The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Company believes to be reliable, but the Issuer and the Company take no responsibility for the accuracy thereof.**

The Issuer, the Company and the Trustee cannot and do not give any assurances that Direct Participants or Indirect Participants will distribute to the Beneficial Owners of the Bonds (i) payments of principal of, or interest and premium, if any, on the Bonds, (ii) confirmation of their ownership interests in the Bonds or (iii) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will do so on a timely basis or that DTC, Direct Participants or Indirect Participants will serve and act in the manner described in this Official Statement.

NEITHER THE ISSUER, THE COMPANY NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO THE DIRECT PARTICIPANTS, THE INDIRECT PARTICIPANTS OR THE BENEFICIAL OWNERS WITH RESPECT TO (1) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT, (2) THE PAYMENT BY ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT OR REDEMPTION PRICE OF OR INTEREST ON THE BONDS; (3) THE DELIVERY BY ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT OF ANY NOTICE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED TO BE GIVEN TO BONDHOLDERS UNDER THE TERMS OF THE TRUST INDENTURE; (4) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE BONDS; OR (5) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER.

### **Redemption Prior To Maturity**

#### Extraordinary Redemption Without Premium.

The Bonds are subject to redemption prior to maturity (1) as a whole, without premium, as provided in Section 406 of the Indenture, in the event of (a) a taking in Condemnation of, or failure of title to, all or substantially all of the Project Facility and election by the Company to redeem the Bonds in accordance with Section 7.2 of the Loan Agreement, (b) damage to or destruction of part or all of the Project Facility and election by the Company to redeem the Bonds in accordance with Section 7.1 of the Loan Agreement, or (c) a taking in Condemnation of part of the Project Facility and election by the Company to redeem the Bonds in accordance with Section 7.2 of the Loan Agreement, or (2) as a whole, without premium, in the event that (a) the Loan Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as a result of any change in the United States Constitution or legislative or administrative action (whether state or federal), or by final decree or judgment of any court or administrative body or (b) the Authorized Representative of the Company certifies that unreasonable burdens or excessive liabilities have been imposed on the Company or its property, including, without limitation, taxes not being imposed on the date of the Loan Agreement, or (3) in part, without

premium, (a) as provided in Section 406(G) of the Indenture, in the event that (i) excess moneys remain in the Insurance and Condemnation Fund following damage or condemnation of a portion of the Project Facility and completion of the repair, rebuilding or restoration of the Project Facility by the Company, and (ii) such excess moneys are not paid to the Company pursuant to Section 406(G) of the Indenture, (b) as provided in Section 404 of the Indenture, in the event that excess moneys remain in the related account in the Project Fund after the Completion Date, (c) in the event that excess proceeds of recoveries from contractors are applied to redeem Bonds pursuant to Section 4.6 of the Loan Agreement, or (d) in the event that amounts are transferred to the Trustee for deposit in the Bond Fund pursuant to Section 9.3(D) of the Loan Agreement, in each case to the extent of such excess or such payment. In any such event, the Bonds shall be redeemed, as a whole or in part, as the case may be, in the manner provided in Article III of the Indenture, on the earliest practicable date for which the Trustee can give notice of redemption pursuant to Section 303 of the Indenture, at a Redemption Price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium.

Optional Redemption. The Initial Bonds maturing on or after October 1, 2028 are also subject to redemption prior to maturity on or after October 1, 2027 at the option of the Company by exercise of its right to prepay the Loan Payments payable under the Loan Agreement as provided in Section 5.3 of the Loan Agreement, as a whole or in part at any time, in denominations of \$5,000 or any integral multiple of \$5,000 in excess thereof, at a Redemption Price equal to 100% of the principal amount of the Initial Bonds redeemed plus accrued interest to the Redemption Date.

Event of Taxability. The Tax-Exempt Bonds are also subject to redemption prior to maturity upon the occurrence of an Event of Taxability. In such event, the Tax-Exempt Bonds shall be subject to redemption, as a whole, as soon as possible after the discovery of such Event of Taxability, at a redemption price equal to the principal amount thereof, plus accrued interest thereon to the redemption date, without premium.

Sinking Fund Redemption. (1) The Initial Bonds issued as Term Bonds maturing on October 1, 2037 are subject to scheduled mandatory sinking fund redemption, by lot in such manner as the Trustee shall deem fair and appropriate, prior to maturity, on October 1, 2037 of each year, commencing October 1, 2033 by the application of Sinking Fund Payments at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof to be redeemed, plus accrued interest to the Redemption Date, without premium, in the principal amounts set forth opposite the respective dates set forth below:

<u>Sinking Fund Payment Date</u> <u>(October 1)</u>	<u>Sinking Fund Payment</u>
2033	\$2,265,000
2034	\$2,340,000
2035	\$2,420,000
2036	\$2,495,000

Following retirement by mandatory sinking fund redemption prior to their Stated Maturity, there will remain \$2,575,000 principal amount of the Initial Bonds maturing on October 1, 2037 to be paid at maturity, unless otherwise redeemed pursuant to the Indenture.

(2) The Initial Bonds issued as Term Bonds maturing on October 1, 2042 are subject to scheduled mandatory sinking fund redemption, by lot in such manner as the Trustee shall deem fair and appropriate, prior to maturity, on October 1, 2042 of each year, commencing October 1, 2038 by the application of Sinking Fund Payments at a Redemption Price equal to one hundred

percent (100%) of the principal amount thereof to be redeemed, plus accrued interest to the Redemption Date, without premium, in the principal amounts set forth opposite the respective dates set forth below:

<u>Sinking Fund Payment Date</u> <u>(October 1)</u>	<u>Sinking Fund Payment</u>
2038	\$2,660,000
2039	\$2,750,000
2040	\$2,845,000
2041	\$2,940,000

Following retirement by mandatory sinking fund redemption prior to their Stated Maturity, there will remain \$2,055,000 principal amount of the Initial Bonds maturing on October 1, 2042 to be paid at maturity, unless otherwise redeemed pursuant to the Indenture.

(3) The Initial Bonds issued as Term Bonds maturing on October 1, 2045 are subject to scheduled mandatory sinking fund redemption, by lot in such manner as the Trustee shall deem fair and appropriate, prior to maturity, on October 1, 2045 of each year, commencing October 1, 2043 by the application of Sinking Fund Payments at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof to be redeemed, plus accrued interest to the Redemption Date, without premium, in the principal amounts set forth opposite the respective dates set forth below:

<u>Sinking Fund Payment Date</u> <u>(October 1)</u>	<u>Sinking Fund Payment</u>
2043	\$2,215,000
2044	\$2,415,000

Following retirement by mandatory sinking fund redemption prior to their Stated Maturity, there will remain \$3,325,000 principal amount of the Initial Bonds maturing on October 1, 2045 to be paid at maturity, unless otherwise redeemed pursuant to the Indenture.

Selection of Bonds to be Redeemed. In the event of any partial redemption, the particular Bonds or portions thereof to be redeemed shall be selected by the Trustee not more than sixty (60) days prior to the Redemption Date from maturities designated in writing by the Company, and within each maturity by lot or by such other method as the Trustee shall deem fair and appropriate, provided that for so long as the Bonds shall be Book Entry Bonds, the particular Bonds or portions thereof to be redeemed within a maturity may be selected by lot by the Depository in such manner as the Depository may determine. If any maturity of the Bonds which is subject to sinking fund redemption is to be redeemed in part, the Trustee shall apply any partial redemption payments (other than a scheduled mandatory redemption) to the schedule of mandatory Sinking Fund Payments thereon as designated by the Company. Further, the Trustee may provide for the selection for redemption of portions (equal to \$5,000 or any integral multiple of \$5,000 in excess thereof) of Bonds. In no event shall the principal amount of Bonds subject to any partial redemption be other than a whole multiple of \$5,000 thereof.

Notice of Redemption. Notice of the intended redemption of each Bond subject to redemption shall be given by the Trustee one time by first class mail postage prepaid to the registered Owner of such Bond at the address of such Owner shown on the bond register maintained by the Trustee as Bond Registrar. All

such redemption notices shall be given not less than thirty (30) days prior nor more than sixty (60) days prior to the date fixed for redemption. A follow-up notice shall be given by the Trustee by registered or certified mail to each registered Owner who has not submitted a Bond subject to redemption within ninety (90) to one hundred twenty (120) days following the Redemption Date. The failure to give any such notice, or any defect therein, shall not affect the validity of any proceeding for the redemption of any Bond with respect to which no such failure to give notice, or defect therein, has occurred.

### **Transfer and Exchange**

The Trustee is designated and agrees to act as Bond Registrar and shall cause a bond register to be kept on behalf of the Issuer at the Office of the Trustee for the registration and transfer of Bonds. Except as provided in Section 213 of the Indenture, any Bond, upon the surrender of such Bond to the Bond Registrar for registration of transfer, may be transferred, but only upon delivery to the Bond Registrar of an assignment duly executed by the registered Owner or his duly authorized legal representative in the form imprinted on the Bond or in such other form as shall be satisfactory to the Bond Registrar.

### **Additional Bonds**

So long as the Loan Agreement is in effect and no Event of Default exists thereunder or hereunder (and no event exists which, upon notice or lapse of time or both, would become an Event of Default thereunder or hereunder), the Issuer may, upon a request from the Company and with the written consent of the Bond Insurer, issue one or more Series of Additional Bonds to provide funds to pay any one or more of the following: (1) costs of completion of the Project in excess of the amount in the Project Fund; (2) costs of any Additional Project; (3) costs of refunding or advance refunding any or all of the Bonds previously issued; (4) costs of making any modifications, additions or improvements to the Project Facility that the Company may deem necessary or desirable; (5) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Project Facility in the event of damage, destruction or taking by eminent domain; and/or (6) costs of the issuance and sale of the Additional Bonds, capitalized interest, funding debt service reserves, and other costs reasonably related to any of the foregoing. Additional Bonds may mature at different times, bear interest at different rates and otherwise vary from the Initial Bonds authorized under Section 209 of this Indenture, all as may be provided in the supplemental Indenture authorizing the issuance of such Additional Bonds.

Prior to the execution of a supplemental Indenture authorizing the issuance of Additional Bonds, the Issuer must deliver the following documents to the Trustee:

(1) an amendment to the Loan Agreement and the other Financing Documents, providing for timely payment by the Company of Loan Payments in an amount at least equal to the sum of the total Debt Service Payments due on the Initial Bonds and all Additional Bonds and all other costs in connection with the Project Facility and all Additional Projects covered thereby;

(2) evidence that the Financing Documents, as amended or supplemented in connection with the issuance of the Additional Bonds, provide that (a) the Bonds referred to therein shall mean and include the Additional Bonds being issued as well as the Initial Bonds originally issued under this Indenture and any Additional Bonds theretofore issued, and (b) the Project Facility referred to in the Financing Documents includes any Additional Facilities being financed;

(3) a copy of the resolution of the board of directors of the Company, duly certified by the secretary or assistant secretary of the Company, which approves the issuance of the Additional Bonds and authorizes the execution and delivery by the Company of the amendments to the Financing Documents described in paragraphs (1) and (2) above;

(4) written opinions of counsel to the Company which shall state that (i) the amendments and supplements to the Financing Documents described in paragraphs (1) and (2) above have been duly authorized, executed and delivered by the Company, (ii) the Financing Documents, as amended and supplemented to the Closing Date for such Additional Bonds, constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, subject to the standard exceptions with respect to bankruptcy laws, equitable remedies and specific performance, and (iii) all conditions precedent provided for in this Indenture to the issuance, execution and delivery of the Additional Bonds have been complied with;

(5) a copy of the resolution of the members of the board of directors of the Issuer, duly certified by the secretary or assistant secretary of the Issuer, authorizing the issuance of the Additional Bonds and the execution and delivery by the Issuer of the amendments to the Financing Documents described in paragraph (1) and paragraph (2) above to be executed by the Issuer in connection therewith;

(6) an opinion of counsel to the Issuer stating that the amendments and supplements to the Financing Documents described above have been duly authorized and lawfully executed and delivered on behalf of the Issuer; and that such amendments and supplements to the Financing Documents are in full force and effect and are valid and binding upon the Issuer, subject to the standard exceptions with respect to bankruptcy laws, equitable remedies and specific performance;

(7) an opinion of Bond Counsel stating that, in the opinion of such Bond Counsel, the Issuer is duly authorized and entitled to issue such Additional Bonds and that, upon the execution, authentication and delivery thereof, such Additional Bonds will be duly and validly issued and will constitute valid and binding special obligations of the Issuer, enforceable in accordance with their terms, subject to the standard exceptions with respect to bankruptcy laws, equitable remedies and specific performance; that the issuance of the Additional Bonds will not, in and of itself, adversely affect the validity of the Initial Bonds originally issued under this Indenture or any Additional Bonds theretofore issued or the exclusion of the interest payable on the Initial Bonds and any Additional Bonds theretofore issued as Tax-Exempt Bonds from the gross income of the Holders thereof for federal income tax purposes; and that all conditions precedent provided for in the Indenture to the issuance, execution and delivery of the Additional Bonds have been complied with;

(8) written evidence from each Rating Agency, if any, by which the Bonds are then rated, to the effect that the issuance of such Additional Bonds will not, by itself, result in a reduction or withdrawal of the rating(s) on the Outstanding Bonds applicable immediately prior to the issuance of the Additional Bonds;

(9) a written order to the Trustee executed by an Authorized Representative of the Issuer requesting that the Trustee authenticate and deliver the Additional Bonds to the purchasers therein identified;

(10) the written consent of the Bond Insurer; and

(11) such other documents as the Trustee may reasonably request.

Each Series of Additional Bonds shall be equally and ratably secured under this Indenture with the Initial Bonds issued on the Closing Date and with all other Series of Additional Bonds, if any, previously issued under this Indenture, without preference, priority or distinction of any Bond over any other Bond.

The consent of the Holders of the Bonds shall not be required prior to the issuance of Additional Bonds, or to the execution and delivery of any amendments to the Financing Documents required in connection therewith. Prior to the issuance by the Issuer of a series of Additional Bonds, the Company shall provide to the Trustee the following: (1) a notice of the proposed issuance of such series of Additional Bonds; and (2) a proposed form of notice to be sent to the Holders of the Bonds and each Rating Agency, if any, by which the Bonds are then rated of the proposed issuance of the Additional Bonds (a "Notice to Holders"), detailing, at least, the aggregate principal amount of such Additional Bonds, and summarizing the nature of the amendments to the Financing Documents proposed to be executed in connection therewith. Within five Business Days of receipt of the foregoing, the Trustee shall mail the Notice to Holders to the Holders of the Bonds and each Rating Agency, if any, by which the Bonds are then rated of the proposed issuance of the Additional Bonds.

### **Acceleration**

Upon (1) the occurrence of an Event of Default under Section 601(A) of the Indenture the Trustee shall, or (2) the occurrence of an Event of Default under Section 601(B) or Section 601(C) of the Indenture and so long as such Event of Default is continuing, the Trustee may, with the prior written consent of the Bond Insurer (unless the Bond Insurer elects to direct the Trustee to continue to pay principal and interest on the Bonds on the originally scheduled due dates of the Bonds) and upon the written request of the Bond Insurer or the Holders of not less than fifty-one percent (51%) in aggregate principal amount of Bonds then Outstanding with the consent of the Bond Insurer, the Trustee shall, by notice in writing delivered to the Company, with a copy of such notice being sent to the Issuer, declare the entire principal amount of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable; provided, however, that the prior written consent of the Bond Insurer shall not be required if the Bond Insurer is then in default under the Municipal Bond Insurance Policy, or if the Municipal Bond Insurance Policy shall not be in effect. Upon any such declaration, the Trustee shall immediately declare an amount equal to all amounts then due and payable on the Bonds to be immediately due and payable under the Loan Agreement.

Upon the occurrence of any declaration by the Trustee under Section 602 of the Indenture, the principal of the Bonds then Outstanding and the interest accrued thereon shall thereupon become and be immediately due and payable, and interest shall continue to accrue thereon until the date of payment.

## **SECURITY FOR THE INITIAL BONDS**

### **General**

The Initial Bonds will be issued under and will be equally and ratably secured under the Indenture, pursuant to which the Issuer will grant a security interest in, pledge and assign to the Trustee the following:

1. All right, title and interest of the Issuer in and to (A) all payments of loan payments made or to be made by or on behalf of the Company under the Loan Agreement (except payments made with respect to the Unassigned Rights), (B) all other amounts pledged to the Trustee by the Issuer or the Company to secure the Bonds or performance of their respective obligations under the Loan Agreement and the Indenture, (C) the Net Proceeds (except proceeds with respect to the Unassigned Rights) of insurance settlements and Condemnation awards with respect to the Project Facility, (D) moneys and investments held from time to time in each fund and account established under the Indenture and all investment income thereon, except (1) moneys and investments held in the Rebate Fund, (2) moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, (3) unclaimed funds held under Section 409 of the Indenture, and (4) as specifically otherwise provided, and



(E) all other moneys received or held by the Trustee for the benefit of the Bondholders pursuant to the Indenture. Notwithstanding anything to the contrary, amounts held in the Rebate Fund shall not be considered Trust Revenues and shall not be subject to the Lien of the Indenture, and amounts held therein shall not secure any amount payable on the Bonds.

2. The Municipal Bond Insurance Policy, and any and all amounts received by the Trustee from the Bond Insurer pursuant to the Municipal Bond Insurance Policy, which shall be held in the particular accounts in the Bond Fund relating to the Insured Bonds insured pursuant to the Municipal Bond Insurance Policy until disbursed.
3. Any and all moneys, securities and other investment property from time to time held by the Trustee under the terms of the Indenture, except (A) moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of which has been duly given, (B) moneys on deposit in the Rebate Fund, and (C) unclaimed funds held under Section 409 of the Indenture; and
4. Any and all other Property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder, by the Issuer or by anyone in its behalf or with its written consent in favor of the Trustee.

The Indenture is intended to constitute a security agreement under the Uniform Commercial Code of the State so that the Trustee shall have and may enforce a security interest, to secure payment of all sums due or to become due under the Bonds and this Indenture, in so much of the Property described in 1 through 4 above as may be made subject to such a security interest, including the moneys held by the Trustee under the Indenture. Subject, however, to Permitted Encumbrances and excepting therefrom, the Unassigned Rights. See Appendix A under the caption "Summary of Certain Provisions of the Indenture."

### **Special, Limited Obligations**

THE INITIAL BONDS, TOGETHER WITH THE INTEREST PAYABLE THEREON AND ALL PAYMENTS BY THE ISSUER PURSUANT TO THE INDENTURE, ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE BY THE ISSUER SOLELY FROM THE TRUST ESTATE AS PROVIDED IN THE INDENTURE. THE INITIAL BONDS ARE SPECIAL OBLIGATIONS OF THE ISSUER AND SHALL NEVER CONSTITUTE A DEBT OF THE STATE OF NEW YORK, THE STATE UNIVERSITY OF NEW YORK OR OF THE TOWN OF AMHERST, NEW YORK, AND NEITHER THE STATE OF NEW YORK, THE STATE UNIVERSITY OF NEW YORK NOR THE TOWN OF AMHERST, NEW YORK SHALL BE LIABLE THEREON, NOR SHALL THE INITIAL BONDS BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR.

### **Loan Agreement**

Under the Loan Agreement between the Company and the Issuer and assigned to the Trustee, (A) the Issuer will agree (1) to issue the Initial Bonds, and (2) to make a loan to the Company of the proceeds of the Initial Bonds (the "Loan") for the purpose of assisting in financing the Project, and (B) in consideration of the Loan, the Company will agree (1) to cause the Project to be undertaken and completed, (2) to use the proceeds of the Loan disbursed under the Indenture to pay (or reimburse the Company for the payment of) the costs of the Project, and (3) to make payments in amounts sufficient to pay when due all amounts due with respect to the Initial Bonds (the "Loan Payments") to or upon the order of the Issuer in repayment of the Loan, which Loan Payments shall include amounts equal to the Debt Service Payments

(as defined in the Indenture) due on the Initial Bonds. See Appendix A under the caption "Summary of Certain Provisions of the Loan Agreement."

### **Pledge and Assignment**

As security for the Initial Bonds, (A) the Issuer will execute and deliver to the Trustee a pledge and assignment dated as of October 1, 2017 (the "Pledge and Assignment") from the Issuer to the Trustee, and acknowledged by the Company, which Pledge and Assignment will assign to the Trustee certain of the Issuer's rights under the Loan Agreement, and (B) pursuant to the Pledge and Assignment, payments made by the Company under the Loan Agreement are to be paid directly to the Trustee.

### **Mortgage**

As additional security for the Initial Bonds, (A) the Company will execute and deliver to the Issuer a mortgage and security agreement dated as of October 1, 2017 (the "Mortgage") from the Company to the Issuer, which Mortgage among other things, grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Project Facility, (B) the Issuer will execute and deliver to the Trustee an assignment of mortgage dated as of October 1, 2017 (the "Mortgage Assignment") from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee, (C) the Company will execute an assignment of leases and rents dated as of October 1, 2017 (the "Assignment of Rents") which conditionally assigns to the Trustee all leases, subleases, licenses and rentals affecting the Project Facility and the rents and license fees payable thereunder and (D) the Issuer will execute and deliver to the Trustee an assignment of rents assignment dated as of October 1, 2017 (the "Assignment of Rents Assignment") from the Issuer to the Trustee pursuant to which the Issuer will assign the Assignment of Rents to the Trustee.

### **Guaranty**

The (A) Company's obligation (1) to make all Loan Payments under the Loan Agreement and (2) to perform all obligations related thereto and (B) Issuer's obligation to repay the Initial Bonds will be further secured by a guaranty dated as of October 1, 2017 (the "Guaranty") from the Company to the Trustee.

Pursuant to the Guaranty, the Company shall covenant to set rates and charges each Fiscal Year such that (i) during the period for which the Unconditional Cash Flow Guaranty is in effect, Net Revenues Available for Debt Service for each such Fiscal Year shall be equal to at least 1.0x Maximum Annual Debt Service, and (ii) following termination of the Unconditional Cash Flow Guaranty, Net Revenues Available for Debt Service for each such Fiscal Year shall be equal to at least 1.20x Maximum Annual Debt Service (the "Rate Covenant"). The Company's failure to achieve the Rate Covenant shall not constitute an Event of Default if the Company timely engages (within thirty (30) days of submittal of the certificate describing such circumstance or, if such certificate is not timely submitted, within thirty (30) days of the date such certificate was required to be submitted) an independent management consultant, and such consultant timely prepares (within forty-five (45) days of engagement) a report (to be delivered to the Company, the Manager and the Trustee) with recommendations for meeting the Rate Covenant and the Company, to the extent legally permissible, timely implements (within thirty (30) days of receipt of the report) the consultant's recommendations. Notwithstanding the preceding sentence, in no event may the Rate Covenant fall below 1.0x Maximum Annual Debt Service. See Appendix A under the caption "Summary of Certain Provisions of the Guaranty."

### **Unconditional Cash Flow Guaranty**

Pursuant to the Unconditional Cash Flow Guaranty, the Foundation will agree to guaranty to the Trustee all of the Company's regularly scheduled principal, interest and sinking fund payment obligations with respect to the Initial Bonds.

The Unconditional Cash Flow Guaranty shall terminate and the obligations of the Foundation created thereunder shall be discharged upon the earlier to occur of (A) the Company having demonstrated in writing based on its annual accountant reviewed financial statements for the Company that the Debt Service Coverage Ratio was at least 1.35 times for three consecutive Fiscal Years commencing not prior to the Fiscal Year following the Fiscal Year in which the certificate of occupancy for the William R. Greiner Hall Project is issued, provided that for purposes of the foregoing calculation Net Revenues Available for Debt Service shall not include any capitalized interest and any income from earnings or Authorized Investments (other than guaranteed investment contracts having a term in excess of one year), or (B) the date when the Obligations are irrevocably paid in full. On the date of such discharge, the Foundation shall be released from any and all conditions, terms, covenants or restrictions created or placed upon it by this Unconditional Cash Flow Guaranty and the Foundation shall not have any further obligation or liability thereunder. See Appendix A under the caption "Summary of Certain Provisions of the Unconditional Cash Flow Guaranty."

### **Reserve Fund**

The Indenture creates a Reserve Fund to be held by the Trustee as additional security for the Initial Bonds. The Reserve Requirement will be funded with the Bond Debt Service Reserve Insurance Policy acquired by the Company and issued by Assured Guaranty Municipal Corp. In the event of any deficiency in the Bond Fund under the Indenture, moneys from the Reserve Fund will be transferred to the Bond Fund to the extent necessary to make up any deficiency therein.

If, on the fourth Business Day immediately preceding any Bond Payment Date, the amount on deposit in the Accounts within the Bond Fund is not sufficient to pay the respective Debt Service Payments due on such Bond Payment Date with respect to the Initial Bonds then Outstanding, and, to the extent other funds are not available therefor pursuant to the Indenture, the Trustee shall deliver a Notice of Nonpayment to the Bond Insurer in accordance with the terms of the Bond Debt Service Reserve Insurance Policy and the provisions of Section 419 of the Indenture. Upon receipt of the proceeds of the draw from the Bond Insurer, the Trustee shall deposit such amounts into the Bond Fund and the Trustee shall then make the Debt Service Payments coming due on the Initial Bonds on such Bond Payment Date.

The Trustee shall notify the Company in writing of any delivery of a Notice of Nonpayment to the Bond Insurer. Pursuant to the Loan Agreement, the Company has agreed to repay any draws on the Bond Debt Service Reserve Insurance Policy in monthly payments commencing immediately succeeding receipt by the Company from the Trustee of the notice of such draw, each such monthly payment to be in an amount at least equal to one-twelfth of the Policy Costs related to such draw; provided that no further payments shall be required as a result of such notice if and when the Policy Costs have been paid in full. See Appendix A under the caption "Summary of Certain Provisions of the Indenture."

### **Flow of Funds**

If there has been a draw on the Reserve Fund to pay Debt Service Payments or an Event of Default under the Financing Documents shall have occurred and be continuing, all Revenues delivered by or on behalf of the Company to the Trustee pursuant to Section 3.9 of the Guaranty shall be transferred and

deposited by the Trustee in the Revenue Fund, and once deposited into the Revenue Fund such moneys shall be transferred on the 25<sup>th</sup> day of each month in the following order:

(a) To the Bond Fund, the additional amount, if any, required for the balance therein to equal the following amounts:

(i) an amount equal to one-sixth (1/6) of the interest component of the Debt Service Payments due on the Bonds on the next succeeding Bond Payment Date, so that the amount on deposit in the Bond Fund and available for the payment of interest on the eighth (8th) Business Day next preceding such Interest Payment Date, when added to the amount in the Bond Fund and available to the Trustee for such purpose, shall equal the interest payable on the Bonds on such Interest Payment Date; and

(ii) an amount equal to one-twelfth (1/12) of the Sinking Fund Payments and the principal component of the Debt Service Payments due on the Bonds on the next succeeding Bond Payment Date upon which a Sinking Fund Payment or a principal payment is due on the Bonds, so that the amount on deposit in the Bond Fund and available for the payment of interest on the eighth (8th) Business Day next preceding such Interest Payment Date, when added to the amount in the Bond Fund and available to the Trustee for such purpose, shall equal the amount due as Sinking Fund Payments and the principal component of the Debt Service Payments due on the Bonds on such Bond Payment Date; and

(iii) the fractional payments to be made under paragraphs (i) and (ii) above shall be appropriately adjusted to reflect the date the Company begins to deliver the Revenues to the Trustee pursuant to the Guaranty. The Trustee shall make sufficient deposits into the Bond Fund from Revenues received from the Company or from transfers from the Surplus Fund so that there will be available in immediately available funds no later than the eighth (8th) Business Day next preceding each Bond Payment Date on the Bonds the amount necessary to pay the interest, principal and premium, if any, due or coming due on the Bonds.

(b) To the Operating Fund, the amount required to cause the balance therein to equal the budgeted Operating Expenses for the Project Facility through the end of the next calendar month, plus any amount necessary to cause the amount on deposit in the Operating Fund to be equal to ten percent (10%) of the Operating Expenses, as shown on the Annual Budget then in effect, as shown on a certificate to be provided to the Trustee by the Company;

(c) To the Reserve Fund, an amount sufficient to cause the balance therein to at least equal the Reserve Fund Requirement or, if less, the amount, if any, certified by the Company to the Trustee to be the amount required to discharge the Company's restoration obligations under Section 408(D) of the Indenture;

(d) (i) To the Repair and Replacement Fund, an amount equal to one-twelfth (1/12) of the Repair and Replacement Requirement then in effect; and

(ii) The fractional payments to be made under paragraph (i) above shall be appropriately adjusted to reflect the date the Company begins to deliver the Revenues to the Trustee pursuant to the Guaranty. The Trustee shall make

sufficient deposits into the Repair and Replacement Fund from Revenues received from the Company or from transfers from the Surplus Fund so that the total amount of moneys deposited into the Repair and Replacement Fund in the calendar year will equal the Repair and Replacement Fund Requirement; and

(e) To the Surplus Fund, the moneys remaining in the Revenue Fund.

Under Section 403(c)(2) of the Indenture, the Trustee is required to make the transfers described above on the 25<sup>th</sup> day of each month from Revenues delivered each month by or on behalf of the Company. In the event that such Revenues are not sufficient to make the transfers in the amounts and at the times described above, the Trustee is authorized to make such transfers from moneys held in the Surplus Fund automatically and without any requisition or direction from the Company.

Moneys held in the Surplus Fund shall be used to make monthly transfers, deposits and payments described above as set forth in Section 403(C) of the Indenture, as necessary and thereafter shall be transferred to the Company in accordance with the terms of Section 412(C) of the Indenture as described below.

Except as described above pursuant to Section 4.03(C) and Section 412(D) of the Indenture, all moneys deposited in the Surplus Fund during any Fiscal Year shall remain in the Surplus Fund subsequent to such Fiscal Year-end until receipt by the Trustee, with a copy to the Bond Insurer, of (1) audited financial statements of the Company for such prior Fiscal Year; and (2) a certificate of an Authorized Representative of the Company affirming that (a) no Event of Default exists under the Financing Documents, and (b) the financial statements referred to in (1) above demonstrate that the Debt Service Coverage Ratio for such prior Fiscal Year was not less than 1.2:1.0. As a condition precedent to the release of any such moneys remaining in the Surplus Fund from the prior Fiscal Year to the Company, (1) there shall not be any Policy Costs due and owing under the Bond Debt Service Reserve Insurance Policy and (2) all amounts required to have been deposited to the Repair and Replacement Fund shall have been so deposited. If any moneys remain in the Surplus Fund subsequent to the Fiscal Year-end due to the failure of the Company to produce a Debt Service Coverage Ratio of not less than 1.2:1.0 of the prior Fiscal Year, such moneys shall be released to the Company only upon receipt by the Trustee, with a copy to the Bond Insurer, of unaudited financial statements for a period of two consecutive subsequent fiscal quarters (which unaudited financial statements shall be submitted with the certificate referred to in (2) above) demonstrating that the Debt Service Coverage Ratio for such period was not less than 1.2:1.0 and the provisions set forth under (a) have been satisfied.

Under Section 412(D) of the Indenture, if, on any Bond Payment Date, the amount on deposit in the Accounts within the Bond Fund is not sufficient to pay the respective Debt Service Payments due on such Bond Payment Date with respect to the Bonds then Outstanding, the Trustee shall transfer automatically from the Surplus Fund and deposit into the Bond Fund an amount of money sufficient, when added to the amounts then on deposit in the applicable Accounts within the Bond Fund and available to make the respective Debt Service Payments coming due on the Bonds on such Bond Payment Date, to enable the Trustee to make all such Debt Service Payments coming due on the Bonds on such Bond Payment Date. Appendix A under the caption "Summary of Certain Provisions of the Indenture."

THE BONDS ISSUED PURSUANT TO THE TRUST INDENTURE WILL BE SPECIAL AND LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY OUT OF THE REVENUES AND FUNDS PLEDGED THEREFOR OR OTHERWISE AVAILABLE TO THE TRUSTEE FOR THE PAYMENT THEREOF, INCLUDING REVENUES DERIVED FROM THE COMPANY UNDER THE LOAN AGREEMENT. THE BONDS DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE TOWN OF AMHERST, NEW YORK, THE STATE OF NEW YORK, THE STATE

UNIVERSITY OF NEW YORK OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF NEW YORK. THE HOLDERS OR OWNERS OF THE BONDS WILL HAVE NO RIGHT TO HAVE EXCISES OR TAXES LEVIED BY THE TOWN OF AMHERST OR THE STATE OF NEW YORK OR THE TAXING AUTHORITY OF ANY POLITICAL SUBDIVISION FOR THE PAYMENT THEREOF.

## **BOND INSURANCE**

### **BOND INSURANCE POLICY**

Concurrently with the issuance of the Bonds, Assured Guaranty Municipal Corp. ("AGM") will issue its Municipal Bond Insurance Policy for the Initial Bonds maturing October 1, 2024 through and including October 1, 2032 and the Initial Bonds issued as Term Bonds due October 1, 2037, October 1, 2042 and October 1, 2045 (collectively, the "Insured Bonds")(the "Policy"). The Policy guarantees the scheduled payment of principal of and interest on the Insured Bonds when due as set forth in the form of the Policy included as Appendix F to this Official Statement.

The Policy is not covered by any insurance security or guaranty fund established under New York, California, Connecticut or Florida insurance law.

### **ASSURED GUARANTY MUNICIPAL CORP.**

AGM is a New York domiciled financial guaranty insurance company and an indirect subsidiary of Assured Guaranty Ltd. ("AGL"), a Bermuda-based holding company whose shares are publicly traded and are listed on the New York Stock Exchange under the symbol "AGO". AGL, through its operating subsidiaries, provides credit enhancement products to the U.S. and global public finance, infrastructure and structured finance markets. Neither AGL nor any of its shareholders or affiliates, other than AGM, is obligated to pay any debts of AGM or any claims under any insurance policy issued by AGM.

AGM's financial strength is rated "AA" (stable outlook) by S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("S&P"), "AA+" (stable outlook) by Kroll Bond Rating Agency, Inc. ("KBRA") and "A2" (stable outlook) by Moody's Investors Service, Inc. ("Moody's"). Each rating of AGM should be evaluated independently. An explanation of the significance of the above ratings may be obtained from the applicable rating agency. The above ratings are not recommendations to buy, sell or hold any security, and such ratings are subject to revision or withdrawal at any time by the rating agencies, including withdrawal initiated at the request of AGM in its sole discretion. In addition, the rating agencies may at any time change AGM's long-term rating outlooks or place such ratings on a watch list for possible downgrade in the near term. Any downward revision or withdrawal of any of the above ratings, the assignment of a negative outlook to such ratings or the placement of such ratings on a negative watch list may have an adverse effect on the market price of any security guaranteed by AGM. AGM only guarantees scheduled principal and scheduled interest payments payable by the issuer of bonds insured by AGM on the date(s) when such amounts were initially scheduled to become due and payable (subject to and in accordance with the terms of the relevant insurance policy), and does not guarantee the market price or liquidity of the securities it insures, nor does it guarantee that the ratings on such securities will not be revised or withdrawn.

#### *Current Financial Strength Ratings*

On June 26, 2017, S&P issued a research update report in which it affirmed AGM's financial strength rating of "AA" (stable outlook). AGM can give no assurance as to any further ratings action that S&P may take.

On December 14, 2016, KBRA issued a financial guaranty surveillance report in which it affirmed AGM's insurance financial strength rating of "AA+" (stable outlook). AGM can give no assurance as to any further ratings action that KBRA may take.

On August 8, 2016, Moody's published a credit opinion affirming its existing insurance financial strength rating of "A2" (stable outlook) on AGM. AGM can give no assurance as to any further ratings action that Moody's may take.

For more information regarding AGM's financial strength ratings and the risks relating thereto, see AGL's Annual Report on Form 10-K for the fiscal year ended December 31, 2016.

### *Capitalization of AGM*

At June 30, 2017:

- The policyholders' surplus of AGM was approximately \$2,222 million.
- The contingency reserves of AGM and its indirect subsidiary Municipal Assurance Corp. ("MAC") (as described below) were approximately \$1,289 million. Such amount includes 100% of AGM's contingency reserve and 60.7% of MAC's contingency reserve.
- The net unearned premium reserves of AGM and its subsidiaries (as described below) were approximately \$1,699 million. Such amount includes (i) 100% of the net unearned premium reserves of AGM and AGM's wholly owned subsidiaries Assured Guaranty (Europe) plc, Assured Guaranty (UK) plc, CIFG Europe S.A. and Assured Guaranty (London) plc (together, the "AGM European Subsidiaries") and (ii) 60.7% of the net unearned premium reserve of MAC.

The policyholders' surplus of AGM and the contingency reserves and net unearned premium reserves of AGM and MAC were determined in accordance with statutory accounting principles. The net unearned premium reserves of the AGM European Subsidiaries were determined in accordance with accounting principles generally accepted in the United States of America.

### *Incorporation of Certain Documents by Reference*

Portions of the following documents filed by AGL with the Securities and Exchange Commission (the "SEC") that relate to AGM are incorporated by reference into this Official Statement and shall be deemed to be a part hereof:

- (i) the Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (filed by AGL with the SEC on February 24, 2017);
- (ii) the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2017 (filed by AGL with the SEC on May 5, 2017); and
- (iii) the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2017 (filed by AGL with the SEC on August 3, 2017).

All consolidated financial statements of AGM and all other information relating to AGM included in, or as exhibits to, documents filed by AGL with the SEC pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, excluding Current Reports or portions thereof "furnished"

under Item 2.02 or Item 7.01 of Form 8-K, after the filing of the last document referred to above and before the termination of the offering of the Bonds shall be deemed incorporated by reference into this Official Statement and to be a part hereof from the respective dates of filing such documents. Copies of materials incorporated by reference are available over the internet at the SEC's website at <http://www.sec.gov>, at AGL's website at <http://www.assuredguaranty.com>, or will be provided upon request to Assured Guaranty Municipal Corp.: 1633 Broadway, New York, New York 10019, Attention: Communications Department (telephone (212) 974-0100). Except for the information referred to above, no information available on or through AGL's website shall be deemed to be part of or incorporated in this Official Statement.

Any information regarding AGM included herein under the caption "BOND INSURANCE – Assured Guaranty Municipal Corp." or included in a document incorporated by reference herein (collectively, the "AGM Information") shall be modified or superseded to the extent that any subsequently included AGM Information (either directly or through incorporation by reference) modifies or supersedes such previously included AGM Information. Any AGM Information so modified or superseded shall not constitute a part of this Official Statement, except as so modified or superseded.

#### *Miscellaneous Matters*

AGM makes no representation regarding the Initial Bonds or the advisability of investing in the Initial Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AGM supplied by AGM and presented under the heading "BOND INSURANCE".



## ANNUAL DEBT SERVICE REQUIREMENTS

The following table sets forth the amounts required each year to be made available for debt service payments by the Company with respect to the Initial Bonds offered hereunder.

Series 2017A Bonds			
Period Ending	Principal	Interest	Debt Service
10/1/2018	\$2,360,000	\$2,576,592.01	\$4,936,592.01
10/1/2019	2,220,000	2,698,075.00	4,918,075.00
10/1/2020	2,305,000	2,609,275.00	4,914,275.00
10/1/2021	2,425,000	2,494,025.00	4,919,025.00
10/1/2022	2,545,000	2,372,775.00	4,917,775.00
10/1/2023	2,670,000	2,245,525.00	4,915,525.00
10/1/2024	2,815,000	2,112,025.00	4,927,025.00
10/1/2025	1,535,000	1,971,275.00	3,506,275.00
10/1/2026	1,615,000	1,894,525.00	3,509,525.00
10/1/2027	1,695,000	1,813,775.00	3,508,775.00
10/1/2028	1,780,000	1,729,025.00	3,509,025.00
10/1/2029	1,865,000	1,640,025.00	3,505,025.00
10/1/2030	1,960,000	1,546,775.00	3,506,775.00
10/1/2031	2,055,000	1,448,775.00	3,503,775.00
10/1/2032	2,160,000	1,346,025.00	3,506,025.00
10/1/2033	2,265,000	1,238,025.00	3,503,025.00
10/1/2034	2,340,000	1,164,412.50	3,504,412.50
10/1/2035	2,420,000	1,088,362.50	3,508,362.50
10/1/2036	2,495,000	1,009,712.50	3,504,712.50
10/1/2037	2,575,000	928,625.00	3,503,625.00
10/1/2038	2,660,000	844,937.50	3,504,937.50
10/1/2039	2,750,000	755,162.50	3,505,162.50
10/1/2040	2,845,000	662,350.00	3,507,350.00
10/1/2041	2,940,000	566,331.26	3,506,331.26
10/1/2042	2,055,000	467,106.26	2,522,106.26
10/1/2043	2,215,000	397,750.00	2,612,750.00
10/1/2044	2,415,000	287,000.00	2,702,000.00
10/1/2045	3,325,000	166,250.00	3,491,250.00

## THE REFUNDING PLAN

The Refunding Plan for the Initial Bonds consists of the advance refunding of all of the Issuer's then outstanding Tax-Exempt Student Housing Facility Revenue Bonds (UBF Faculty-Student Housing Corp. - Greiner and Hadley Projects at SUNY Buffalo), Series 2010A (the "Prior Bonds") issued in the original aggregate principal amount of \$82,865,000 and which will have an outstanding principal balance of \$69,650,000 (the "Refunded Bonds"). A portion of the proceeds of the Initial Bonds and other funds will be used to acquire Defeasance Securities (as defined in Appendix A), the maturing principal and

interest on which will be sufficient, together with any uninvested cash, to pay the interest on, redemption premium, if any and the maturing principal of the Refunded Bonds maturing October 1, 2018 and October 1, 2019 and the remaining Refunded Bonds will be paid on the redemption date of October 1, 2020. The Defeasance Securities and cash described above will be deposited with the trustee for the Refunded Bonds upon the issuance and delivery of the Initial Bonds and will be held in trust solely for the payment of the maturing principal, redemption price of and interest on the Refunded Bonds. At the time of or prior to such deposit, the Issuer will give such trustee irrevocable instructions to give notice of the defeasance and redemption of the Refunded Bonds and to apply the proceeds from the Defeasance Securities, together with any initial cash deposit, to the payment of the maturing principal, redemption price of and interest on the Refunded Bonds. In the opinion of Hodgson Russ LLP, upon making such deposits with such trustee and the issuance of certain irrevocable instructions to such trustee, the Refunded Bonds will, under the terms of the Indenture for the Refunded Bonds, be deemed to have been paid and will no longer be outstanding thereunder and the pledge of the revenues or other moneys and securities pledged to the Refunded Bonds shall be discharged and satisfied.

A portion of the proceeds of the Prior Bonds were used to construct and equip a suite style student housing complex, containing approximately 146 student suites having two double rooms per suite (providing for a total of 584 rental housing units), along with 26 single occupancy rooms for residents (the "William R. Greiner Hall") on an approximately 13.47 acre parcel of land (the "Ground Lease Land") located on the North Campus (the "Campus") of the State University of New York at Buffalo (the "University") in the Town of Amherst, Erie County, New York. The Ground Lease Land was leased by the State University of New York ("SUNY"), as landlord, to the UB Alumni Association, Inc. (the "UB Alumni Association"), as tenant for a term of up to forty-nine years pursuant to a ground lease dated as of May 1, 2009 (the "Ground Lease").

Pursuant to a Sublease dated as of May 1, 2009 (the "Sublease") between the UB Alumni Association and the Company, the UB Alumni Association subleased the Ground Lease Land to the Company, on the condition that the Company develop and construct the William R. Greiner Hall on behalf of the UB Alumni Association.

A portion of the proceeds of the Prior Bonds were used to refund certain outstanding tax-exempt revenue bonds issued by the Village of Kenmore Housing Authority in 1999 for the benefit of the Company, the proceeds of which were used to finance the construction and equipping of the Company's Hadley Village (the "Hadley Village Bonds"). Hadley Village is a 156-unit apartment complex located at the juncture of John James Audubon Parkway, Rensch Road and Hadley Road on the University's North Campus (the "Hadley Village"). These apartments consist of 13 three-story buildings, each containing 12 apartments of approximately 1,040 square feet each, together with a community center arranged on an approximately 10.5 acre site.

#### **VERIFICATION OF MATHEMATICAL COMPUTATIONS**

The Arbitrage Group, Inc. ([www.thearbitragegroup.com](http://www.thearbitragegroup.com)), upon the issuance of the Initial Bonds, shall issue a report regarding (a) the mathematical computations of the adequacy of the cash, the maturing principal amounts and the interest on the Defeasance Securities, if any, deposited with the Prior Bond trustee to pay, when due, the principal, whether at maturity or upon prior prepayment, interest and redemption price coming due on the Refunded Bonds, as described herein and (b) the mathematical computations supporting the conclusion of Bond Counsel that the Initial Bonds are not "arbitrage bonds" under the Code and the applicable income tax regulations.

## SOURCES AND USES OF FUNDS

### Estimated Sources of Funds

Principal Amount of Initial Bonds	\$65,305,000.00
Series 2010A Debt Service Reserve Fund	5,489,424.38
Series 2010A Bond Fund	228,621.96
Less: Net Original Issue Premium	<u>6,182,666.60</u>
<b>Total Sources of Funds</b>	<b>\$77,205,712.94</b>

### Estimated Uses of Funds

Deposit to Escrow Fund	\$75,521,378.99
Costs of Issuance*	<u>1,684,333.95</u>
<b>Total Uses of Funds</b>	<b>\$77,205,712.94</b>

\* Includes Municipal Bond Insurance Policy and Reserve Fund Surety Bond premiums.

## BONDHOLDERS' RISKS

The discussion herein of risks to the registered owners of the Bonds is not intended as dispositive, comprehensive or definitive, but rather is to summarize certain matters that could affect payment on the Bonds. Other sections of this Official Statement, as cited herein, should be referred to for a more detailed description of risks described in this section, which descriptions are qualified by reference to any documents discussed therein. Copies of all such documents are available for inspection at the principal office of the Trustee.

### General

The Company is a not-for-profit corporation organized under the laws of New York State in 1990. The Company is an organization described in Section 501(c)(3) of the Code and is exempt from Federal income taxation pursuant to Section 501(a) of the Code.

The Bonds are payable solely from revenues and funds pledged under the Indenture (except the Rebate Fund) and from amounts payable by the Company pursuant to the Loan Agreement and the Guaranty. Future revenues and expenses of the Company are subject to conditions which may change in the future and that cannot be determined at this time. No assurances can be made that revenues will be realized by the Company in the amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds, or that the Trustee, upon the taking of remedial action under the Trust Indenture, the Loan Agreement or the Guaranty will be able to realize amounts sufficient for such purpose. Future revenues and expenses of the Company are generally subject to numerous factors, including changes in the economy in general, and other conditions which are unpredictable and which may adversely affect the payment of principal of, premium if any, and interest on the Bonds.

## **No Obligation of the State, the State University of New York or the Town**

THE BONDS ARE NOT A DEBT OR LIABILITY OF THE TOWN OF AMHERST, NEW YORK, THE STATE OF NEW YORK, THE STATE UNIVERSITY OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, OR A PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF NEW YORK OR ANY SUCH POLITICAL SUBDIVISION, BUT ARE SPECIAL AND LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE REVENUES RECEIVED BY THE ISSUER FROM THE COMPANY IN ACCORDANCE WITH THE LOAN AGREEMENT, THE FUNDS AND ACCOUNTS HELD PURSUANT TO THE TRUST INDENTURE (EXCEPT THE REBATE FUND) AND CERTAIN INVESTMENT INCOME THEREON. THE ISSUER HAS NO TAXING POWER.

## **The Bond Insurer**

The Bond Insurer will issue the Municipal Bond Insurance Policy pursuant to which it will unconditionally guarantee the payment of principal of and interest on the Initial Bonds maturing October 1, 2024 through and including October 1, 2032 and the Initial Bonds issued as Term Bonds due October 1, 2037, October 1, 2042 and October 1, 2045 (collectively, the “Insured Bonds”) when due. The ongoing stability and financial condition of the Bond Insurer and the Bond Insurer’s ability to pay the principal and interest on, and otherwise perform its obligations under the Policy are the basis for the rating assigned to the Insured Bonds by the Rating Agency, and the proceeds of claims under the Policy are the Bondholders’ primary expected security for the timely payment of the principal of and interest on the Insured Bonds in the event of default on the part of the Company. See “RATINGS” herein.

## **Default by the Company or the Issuer**

No representations or assurances can be given that the Company or the Issuer will not default in performing their respective obligations under the Loan Agreement. If an Event of Default occurs under the Trust Indenture, the Trustee may, with the consent of the Bond Insurer, accelerate the maturity of all Bonds Outstanding and interest will cease to accrue on the date of acceleration, notwithstanding the fact that the Bondholders may not receive notice of such acceleration until after such date. In addition, no premium will be received upon an acceleration of the Bonds due to a default

The ability of the Company to generate revenues sufficient to provide for the payment of debt service on the Initial Bonds and its other obligations, is subject to, among other things, future economic and other conditions which are unpredictable and may not be determinable at this time.

## **Default by the Foundation**

No representations or assurances can be given that the Foundation will not default in performing its obligations under the Unconditional Cash Flow Guaranty. A default under the Unconditional Cash Flow Guaranty may give rise to an Event of Default under the Trust Indenture. If an Event of Default occurs under the Trust Indenture, the Trustee may, with the consent of the Bond Insurer, accelerate the maturity of all Bonds Outstanding and interest will cease to accrue on the date of acceleration, notwithstanding the fact that the Bondholders may not receive notice of such acceleration until after such date. In addition, no premium will be received upon an acceleration of the Bonds due to a default

The ability of the Foundation to generate revenues sufficient to provide for its obligations under the Unconditional Cash Flow Guaranty, is subject to, among other things, future economic and other conditions which are unpredictable and may not be determinable at this time.

## **Additional Bonds**

So long as the Loan Agreement is in effect and no Event of Default exists thereunder or under the Trust Indenture (and no event exists which upon notice or lapse of time or both, would become an Event of Default thereunder), the Issuer may, upon request of the Company complying with the provisions of the Trust Indenture, issue one or more series of Additional Bonds. (See the caption “Summary of the Indenture – Additional Bonds” in Appendix A attached hereto.) Each series of Additional Bonds will be equally and ratably secured under the Trust Indenture without performance, priority or distinction of any Bond over any other. The consent of the Bondholders is not required prior to the issuance of Additional Bonds.

## **Governmental Regulation and Accreditation Activities**

The Company is subject to regulation, certification and licensure by various federal, state and local government agencies and by certain non-governmental agencies. No assurance can be given as to the effect of existing laws, regulations, and standards for certification, licensure or accreditation or of any future changes in such laws, regulations and standards on the Company's future operations.

### Internal Revenue Code Limitations

The Code contains restrictions on the issuance of Tax-Exempt bonds for the purpose of financing and refinancing different types of facilities for not-for-profit organizations, including facilities generating taxable income and for profit organizations, including business organizations with which not-for-profit organizations like the Company may wish to enter into joint ventures or other arrangements. Provisions of the Code could thus adversely affect the Company's ability to finance its future capital needs and could have other adverse effects on the Company that cannot be predicted at this time. The Code continues to subject unrelated business income of not-for-profit organizations to taxation.

### No Additional Interest in Case of Loss of Tax Exemption

The exclusion of interest on the Initial Bonds from gross income for federal income tax purposes is dependent upon continuing compliance with the provisions of Section 145 of the Code relating to Qualified 501(c)(3) Bonds as well as certain other provisions of the Code. There is no provision for acceleration of the Bonds or for the payment of additional interest if the interest on the Bonds becomes included in gross income for federal income tax purposes. See “TAX MATTERS” herein.

## **Enforceability of Remedies; Bankruptcy**

The Initial Bonds are payable from the sources of payment and security described in “THE INITIAL BONDS – Security for the Bonds” herein. The practical realization of value from the collateral described in “THE INITIAL BONDS- Security for the Bonds” herein upon any default will depend upon the exercise of various remedies specified by the Trust Indenture, the Guaranty, the Unconditional Cash Flow Guaranty, the Mortgage and the Loan Agreement. These and other remedies may, in many respects, require judicial actions which are often subject to discretion and delay.

Under existing law, the remedies specified by the Trust Indenture, the Guaranty, the Unconditional Cash Flow Guaranty, the Mortgage and the Loan Agreement may not be readily available or may be limited. A court may decide not to order the specific performance of the covenants contained in those documents. The various legal opinions to be delivered concurrently with the delivery of the Initial Bonds will be qualified as to enforceability of the various legal instruments by limitations imposed by state and Federal

laws, rulings and decisions affecting remedies and by bankruptcy, reorganization or other laws affecting the enforcement of creditors' rights generally.

The rights and remedies of the Owners of the Bonds are subject to various provisions of the United States Bankruptcy Code. If the Company were to file a petition for relief (or if a petition were filed against the Company) under the United States Bankruptcy Code, the filing would operate as an automatic stay of the commencement or continuation of any judicial or other proceeding against the Company and its property.

The Company could file a plan for the adjustment of its debts in a proceeding under the United States Bankruptcy Code which could include provisions modifying or altering the rights of creditors generally, or any class of them, secured or unsecured. The plan, when confirmed by the court, would bind all creditors who have notice or knowledge of the plan and would discharge all claims against the debtor provided for in the plan. No plan may be confirmed unless certain conditions are met, among which are that the plan is in the best interests of creditors, is feasible and has been accepted by each class of claims impaired thereunder. Each class of claims has accepted the plan if at least two-thirds in dollar amount and more than one-half in number of the allowed claims of the class that are voted with respect to the plan are cast in its favor. Even if the plan is not so accepted, it may be confirmed if the court finds that the plan is fair and equitable with respect to each class of non-accepting creditors impaired thereunder and does not discriminate unfairly.

### **Event of Taxability**

If the Company does not comply with certain covenants of the Company set forth in the Loan Agreement generally related to restrictions on use of the facilities, arbitrage limitations, rebate of certain excess investment earnings, and restrictions on the amount of issuance costs financed with the proceeds of the Bonds, or if certain representations or warranties made by the Company in the Loan Agreement, or in certain certificates or agreements of the Company, are false or misleading, the interest payable on the Bonds may become includable in the gross income of the owners of the Bonds for purposes of federal income taxation retroactive to the date of issuance of the Bonds, regardless of the date on which such noncompliance or misrepresentation is ascertained. In the event that interest on the Bonds should become includable in the gross income of the owners of the Bonds for purposes of federal income taxation, the owners of the Bonds shall not have the option of redemption. As such, the after-tax return on their investment shall be reduced accordingly.

### **Secondary Market for Bonds**

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

### **Reduction in Rating**

There is also no assurance that the bond rating initially assigned to the Initial Bonds by the rating service will not be lowered or withdrawn, which could adversely affect the market price and the market for the Initial Bonds. See "RATINGS" herein.

## **Expiration of Hadley Village Ground Lease**

Pursuant to Chapter 61 of the Laws of 1997 of the State of New York, SUNY, as landlord, and the Company, as tenant, entered into a ground lease dated August 24, 1998 (the “Hadley Village Ground Lease”), pursuant to which SUNY leased to the Company, for a term of up to thirty years, an approximately 10.5 acre parcel of land on which the Hadley Village is located. The Hadley Village Ground Lease will expire on July 31, 2028. Upon expiration of the Hadley Village Ground Lease, the sole source of Loan Payments under the Loan Agreement will be the revenue from the William R. Greiner Hall Project. Additionally, upon the expiration of the Hadley Village Ground Lease, the Mortgage will also cease to be a lien on Hadley Village.

## **Summary**

The foregoing is intended only as a summary of some of the risk factors attendant to an investment in the Initial Bonds. In order to identify risk factors and make an informed investment decision, potential investors should be thoroughly familiar with this entire Official Statement (including the Appendices hereto) in order to make a judgment as to whether the Initial Bonds are an appropriate investment.

## **LITIGATION**

### **The Company**

No litigation or proceedings are pending or, to the knowledge of the Company, threatened against it except (i) litigation involving claims for liability in which the probable recoveries and the estimated costs and expenses of defense, in the opinion of the Company, will be entirely within the applicable insurance policy limits (subject to applicable deductibles) or within the applicable self-insurance reserves of the Company and (ii) litigation involving other types of claims which if adversely determined would not, in the opinion of the Company, materially and adversely affect the financial condition or the operation of the Company.

### **The Foundation**

There is no litigation pending or, to the Foundation’s knowledge, threatened against the Foundation, wherein an unfavorable decision would adversely affect the ability of the Foundation to carry out its obligations under the Unconditional Cash Flow Guaranty or would have a material adverse impact on the financial position or results of operations of the Foundation.

### **The Issuer**

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

## LEGAL MATTERS

Legal matters incident to the issuance of the Bonds and with regard to the tax exempt status of the interest thereon are subject to the approving legal opinion of Hodgson Russ LLP, Albany, New York, Bond Counsel to the Issuer. A signed copy of such opinion, dated and speaking as of the date of original delivery of the Initial Bonds will be delivered at the time of such original delivery, in substantially the form set forth in Appendix E hereto.

Certain legal matters will be passed upon for the Issuer by Hurwitz & Fine, P.C., Buffalo, New York, counsel for the Issuer. Certain legal matters will be passed upon for the Company by Hodgson Russ, LLP, Buffalo, New York, counsel to the Company. Certain legal matters will be passed upon for the Underwriter by Trespasz & Marquardt, LLP, Syracuse, New York.

## TAX MATTERS

All quotations from and summaries and explanations of provisions of laws appearing under this caption do not purport to be complete and reference is made to such laws for full and complete statements of their provisions.

### *Opinion of Bond Counsel*

In the opinion of Hodgson Russ LLP, Albany, New York, Bond Counsel, under existing law and assuming compliance with certain covenants and the accuracy of certain representations, (1) interest on the Initial Bonds is excludable from the gross income of the owners thereof for federal income tax purposes, and is not an “item of tax preference” for purposes of the individual and corporate alternative minimum taxes imposed by the Code; except that (a) the Company or another Person, by failing to comply with the requirements contained in the Code, may cause interest on the Initial Bonds to become subject to federal income taxation from the date of issuance thereof, and (b) interest on the Initial Bonds is included in the tax base for purposes of computing the alternative minimum tax on corporations under Section 56 of the Code and the branch profits tax under Section 884 of the Code; and (2) so long as interest on the Initial Bonds is excluded from gross income for federal income tax purposes, interest on the Initial Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York). Bond Counsel expresses no opinion as to any other tax consequences regarding the Bonds.

In rendering the foregoing opinions, Bond Counsel noted that exclusion of the interest on the Initial Bonds from gross income for federal income tax purposes may be dependent, among other things, on compliance with the applicable requirements of Sections 145, 147, 148 and 149 of the Code and the regulations thereunder (collectively, the “Tax Requirements”). In the opinion of Bond Counsel, the Tax Regulatory Agreement and the other Financing Documents establish requirements and procedures, compliance with which will satisfy the Tax Requirements. Bond Counsel will not independently verify the accuracy of the certifications and representations of the Issuer and the Company, or the continuing compliance with the covenants by the Issuer and the Company.

Bond Counsel does note that compliance with certain Tax Requirements necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Initial Bonds may necessitate the taking of action, or refraining to take action, by persons not within the control of the Issuer or the Company. The Issuer and the Company have each covenanted to take the actions required of it for the interest on the Initial Bonds to be and to remain excluded from gross income for federal income tax purposes, and not to take any actions that would adversely affect that exclusion. After the date of issuance



of the Initial Bonds, Bond Counsel will not undertake to determine (or to so inform any person) whether any actions taken or not taken, or any events occurring or not occurring, or any other matters coming to Bond Counsel's attention, may adversely affect the exclusion from gross income for federal income tax purposes of the interest paid or payable on the Initial Bonds or the market value of the Initial Bonds.

The opinion of Bond Counsel is based on current legal authority and covers certain matters not directly addressed by such authority. It represents Bond Counsel's legal judgment as to exclusion of interest on the Initial Bonds from gross income for federal income tax purposes, but is not a guaranty of that conclusion. The opinion is not binding upon the Internal Revenue Service ("IRS") or any court. Bond Counsel expresses no opinion about (1) the effect of future changes in the Code and the applicable regulations under the Code or (2) the interpretation and enforcement of the Code or such regulations by the IRS.

### *Tax Requirements*

The Tax Requirements referred to above, which must be complied with in order that interest on the Initial Bonds remain excluded from gross income for federal income tax purposes, include, but are not limited to:

(1) The requirement that (a) all property financed or refinanced with proceeds of the Initial Bonds be owned by a 501(c)(3) organization or by a state or local governmental unit, and (b) no more than five percent (5%) of the proceeds of the Initial Bonds be used for any private business use, treating as private use (i) use (directly or indirectly) in a trade or business carried on by any entity other than (A) a state or local governmental unit or (B) a Section 501(c)(3) organization in a trade or business related to such Section 501(c)(3) organization's purposes and (ii) possession of certain interests in the property financed or refinanced with proceeds of the Initial Bonds by any entity other than (A) a state or local governmental unit or (B) a Section 501(c)(3) organization. The Company has indicated in the Tax Regulatory Agreement that (x) all property financed or refinanced with proceeds of the Initial Bonds will be owned by a 501(c)(3) organization or by a state or local governmental unit, and (y) no more than five percent (5%) of the proceeds of the Initial Bonds will be used for any private business use.

(2) The requirement that not more than two percent (2%) of the proceeds of the Initial Bonds be utilized to finance the costs of the issuance of the Initial Bonds. The Company has indicated in the Tax Regulatory Agreement that not more than two percent (2%) of the proceeds of the Initial Bonds will be utilized to finance the costs of issuance of the Initial Bonds.

(3) The requirements contained in Section 148 of the Code relating to arbitrage bonds, including but not limited to the requirement that, unless the Company satisfies one of the applicable exceptions provided by Section 148 of the Code, the excess of all amounts earned on the investment of the Gross Proceeds of the Initial Bonds over that which would have been earned on such Gross Proceeds had such Gross Proceeds been invested at a Yield equal to that on the Initial Bonds, and any investment income earned on such excess, be rebated to the United States. The Company has agreed in the Tax Regulatory Agreement and in the Loan Agreement to comply with the requirements of Section 148 of the Code.

(4) The requirement that the Project Facility not be used for a purpose prohibited under Section 147(e) of the Code (relating to, among others, any facility primarily used for gambling, or store, the principal business of which is the sale of alcoholic beverages for consumption off premises).

(5) The requirement contained in Section 149(b) of the Code that payment of principal or interest on the Initial Bonds not be directly or indirectly guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof).

#### *Certain Collateral Federal Tax Consequences*

You should also be advised that the Initial Bonds are subject to, among others, the following provisions contained in the Code:

(1) a portion of the interest on the Initial Bonds earned by certain corporations may be subject to a federal corporate alternative minimum tax

(2) interest on the Initial Bonds may also be subject to a branch profits tax imposed upon certain foreign corporations doing business in the United States and to a federal tax imposed on excess net passive income of certain S corporations;

(3) interest paid by certain financial institutions on debt allocable to the cost of acquiring and carrying the Initial Bonds is not deductible from Federal income taxation;

(4) a property and casualty insurance company's deduction for losses incurred is reduced by 15% on tax-exempt income received from the Initial Bonds.

Prospective purchasers of the Initial Bonds should also be aware that ownership of, accrual or receipt of interest on, or disposition of, the Initial Bonds may have collateral federal income tax consequences for certain taxpayers, including financial institutions, property and casualty insurance companies, S Corporations, certain foreign corporations, individual recipients of Social Security or Railroad Retirement benefits, individuals otherwise eligible for the earned income tax credit, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. Prospective purchasers should consult their tax advisers as to any possible collateral consequences from their ownership of, or receipt of interest on, or disposition of, the Initial Bonds. Bond Counsel expresses no opinion regarding any such collateral federal income tax consequences.

The applicability and extent of these and other tax consequences will depend upon the particular tax status or other tax items of the owner of the Initial Bonds. Bond Counsel will express no opinion regarding these consequences.

#### *Information Reporting and Backup Withholding*

Interest paid on the Initial Bonds will be subject to information reporting to the IRS in a manner similar to interest paid on taxable obligations. Although such reporting requirement does not, in and of itself, affect the excludability of such interest from gross income for federal income tax purposes, such reporting requirement causes the payment of interest on the Initial Bonds to be subject to backup withholding if such interest is paid to beneficial owners who (a) are not "exempt recipients," and (b) either fail to provide certain identifying information (such as the beneficial owner's taxpayer identification number) in the required manner or have been identified by the IRS as having failed to report all interest and dividends required to be shown on their income tax returns. Generally, individuals are not exempt recipients, whereas corporations and certain other entities generally are exempt recipients. Amounts withheld under the backup withholding rules from a payment to a beneficial owner would be allowed as a refund or credit against such beneficial owner's federal income tax liability provided the required information is furnished to the IRS.

### *Future Legislation or Other Post-Issuance Events*

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authority, and represents Bond Counsel's judgment as to the proper treatment of the Initial Bonds for federal income tax purposes. It is not binding on the IRS or the courts. Current and future legislative proposals, if enacted into law, or administrative actions or court decisions, at either the federal or state level, may cause interest on the Initial Bonds to be subject, directly or indirectly, to federal income taxation or to be subjected to State or local income taxation, or otherwise have an adverse impact on the potential benefits of the exclusion from gross income of the interest on the Initial Bonds for federal or state income tax purposes.

Legislation affecting tax-exempt obligations is regularly considered by the United States Congress and may also be considered by the New York State Legislature. Court proceedings may also be filed, the outcome of which could modify the tax treatment of the Initial Bonds. There can be no assurance that legislation enacted or proposed or actions by a court after the date of issuance of the Initial Bonds will not have an adverse effect on the tax status of the interest on the Initial Bonds or the market value or marketability of the Initial Bonds. These adverse effects could result, for example, 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), or repeal (or reduction in benefit) of the exclusion of the interest on the Initial Bonds from gross income for federal or state income tax purposes for all or certain taxpayers. The introduction or enactment of any such legislative proposals, administrative actions, or court decisions may also affect, perhaps significantly, the value or marketability of the Initial Bonds.

For example, various proposals have been made in Congress and by the President (the "Proposed Legislation"), which if enacted, could limit the exclusion from gross income of interest on obligations like the Initial Bonds for taxpayers who are individuals and whose income is subject to higher marginal tax rates, could subject interest on bonds that is otherwise excludable from gross income for federal income tax purposes, including interest on the Initial Bonds, to a tax payable by certain bondholders that are individuals, estates or trusts with adjusted gross income in excess of thresholds specified in the Proposed Legislation, or that could otherwise significantly reduce the benefit of the exclusion from gross income of interest on obligations like the Initial Bonds. It is unclear if the Proposed Legislation would be enacted, whether in its current or an amended form, or if other legislation that could subject interest on the Initial Bonds to a tax or cause interest on the Initial Bonds to be included in the computation of a tax, will be introduced or enacted.

No representation is made as to the likelihood of such proposals being enacted in their current or similar form, or if enacted, the effective date of any such legislation and no assurances can be given that such proposals or amendments will not materially and adversely affect the market value or the marketability of the Initial Bonds or the tax consequences of ownership of the Initial Bonds. Similarly, it is not possible to predict whether any other legislative or administrative actions or court decisions having an adverse impact on the Federal or state income tax treatment of holders of the Initial Bonds may occur.

Prospective purchasers of the Initial Bonds should consult their own tax advisers regarding pending or proposed federal and state tax legislation and court proceedings, and prospective purchasers of the Initial Bonds at other than their original issuance at the respective prices set indicated on the inside cover of this Official Statement should also consult their own tax advisers regarding other tax considerations such as the consequences of market discount, as to which Bond Counsel expresses no opinion.

Bond Counsel's engagement with respect to the Initial Bonds ends with the issuance of the Initial Bonds. Bond Counsel has not undertaken to advise in the future whether any events occurring after the date of issuance of the Initial Bonds may affect the tax status of interest on the Initial Bonds. Unless separately

engaged, Bond Counsel is not obligated to defend the Issuer or the owners of the Initial Bonds regarding the tax status of the interest thereon in the event of an audit examination by the IRS. If the IRS does audit the Initial Bonds, under current IRS procedures, the IRS will treat the Issuer as the taxpayer and the beneficial owners of the Initial Bonds will have only limited rights, if any, to obtain and participate in judicial review of such audit. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the Issuer legitimately disagrees may not be practicable. Any action by the IRS, including but not limited to the selection of the Initial Bonds for audit, or the course or result of such audit, or an audit of other obligations presenting similar tax issues, may alter the market value for, or the marketability of, the Initial Bonds, and may cause the Issuer, the Company or the Bondholders to incur significant expense.

The excess, if any, of the tax adjusted basis of a maturity of any of the Initial Bonds purchased as part of the initial public offering by a purchaser (other than a purchaser who holds such Initial Bonds as inventory, stock in trade or for sale to customers in the ordinary course of business) over the amount payable at maturity is “bond premium.” Owners of a maturity of the Initial Bonds with bond premium (a “Premium Bond”) will be subject to requirements under the Code relating to tax cost reduction associated with the amortization of bond premium and, under certain circumstances, the initial owner of a Premium Bond may realize taxable gain upon disposition of Premium Bonds even though sold or redeemed for an amount less than or equal to such owner’s original cost of acquiring such Premium Bonds. In general, bond premium is amortized over the term of a Premium Bond for Federal income tax purposes in accordance with constant yield principles based on the owner’s yield over the remaining term of such Premium Bond (or, in the case of a bond with bond premium callable prior to its stated maturity, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on such bond). The Owner of a Premium Bond is required to decrease such Owner’s adjusted basis in such Premium Bond by the amount of amortizable bond premium attributable to each taxable year such Premium Bond is held. The amortizable bond premium on such Premium Bond attributable to a taxable year is not deductible for federal income tax purposes; however, bond premium is treated as an offset to qualified stated interest received on such Premium Bond.

Prospective purchasers of any Premium Bond should consult their tax advisors with respect to the determination for purposes of federal income taxation of the treatment of bond premium upon the sale or other disposition of such Premium Bond and with respect to the state and local tax consequences of acquiring, owning, and disposing of such Premium Bond.

#### *New York State Taxes*

In the opinion of Bond Counsel, so long as interest on the Initial Bonds is excluded from gross income for federal income tax purposes, interest on the Initial Bonds is exempt, under existing law, from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York).

#### *Tax Risks - Loss of Federal Tax Exemption*

As described above, interest on the Initial Bonds may become subject to federal income taxation if certain events occur subsequent to the date of issuance of the Initial Bonds that violate the requirements and limitations prescribed by the Code. Although the Company has agreed not to violate the requirements and limitations of the Code, there can be no assurance that these events will not occur. If certain requirements are violated, the interest on the Initial Bonds may be deemed to be taxable from the date of issuance. The Initial Bonds are not subject to mandatory redemption or acceleration in the event of such an occurrence, nor is there any provision for additional interest to be paid to the Bondholders or former

Bondholders to compensate such Bondholders for any losses they may incur as a result of the interest on the Initial Bonds becoming subject to federal income taxation.

*Form of Opinion of Bond Counsel*

The form of the approving opinion of Bond Counsel is attached hereto as Appendix E. See “Form of Bond Counsel Opinion” in Appendix E.

ALL PROSPECTIVE PURCHASERS OF THE INITIAL BONDS SHOULD CONSULT WITH THEIR TAX ADVISORS IN ORDER TO UNDERSTAND THE IMPLICATIONS OF THE CODE AS TO THE TAX CONSEQUENCES OF PURCHASING OR HOLDING THE INITIAL BONDS.

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## **UNDERWRITING**

The Bonds are being purchased by Janney Montgomery Scott LLC, the Underwriter, who has agreed to purchase the Bonds at an aggregate underwriting discount of \$417,298.95 from the public offering prices set forth on the cover page hereof. The Underwriter may offer and sell the Bonds to certain dealers (including dealers depositing Bonds into investment trusts) and others at prices lower than the public offering prices stated on the cover page hereof. The purchase of the Bonds by the Underwriter is subject to certain conditions and requires that the Underwriter will purchase all Bonds, if any are purchased. The public offering prices set forth on the cover page hereof may be changed after the initial offering by the Underwriter.

## **FINANCIAL ADVISOR**

Fairmount Capital Advisors, Inc., an independent financial advisory and consulting firm, has served as Financial Advisor to the Company with respect to the issuance of the Initial Bonds. The Financial Advisor assisted the Company in matters relating to the planning, structuring and issuance of the Initial Bonds and provided other financial advice. Fairmount is not obligated to undertake, and has not undertaken, either to make an independent verification of or to assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement and Appendix hereto. Fairmount is a financial advisory and consulting organization and is not engaged in the underwriting, marketing or trading of municipal securities or other negotiable instruments.

## **RATINGS**

Moody's Investors Service, Inc. ("Moody's") and S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("S&P") are each expected to assign ratings of "A2" and "AA", respectively to the Initial Bonds maturing October 1, 2024 through and including October 1, 2032 and the Initial Bonds issued as Term Bonds due October 1, 2037, October 1, 2042 and October 1, 2045 (collectively, the "Insured Bonds") with the understanding that, simultaneously with the delivery of the Insured Bonds, the Municipal Bond Insurance Policy will be issued by the Bond Insurer. In addition, Moody's has assigned an underlying rating of "A3" with a stable outlook to the uninsured Initial Bonds maturing October 1, 2018 through and including October 1, 2023, without regard to the Municipal Bond Insurance Policy. Such ratings reflect only the views of Moody's and S&P and an explanation of the significance of such ratings may be obtained only from Moody's and S&P, respectively. There can be no assurance that the ratings will continue for any given period of time or that such rating will not be revised downward or withdrawn entirely, if in their respective judgment, circumstances so warrant. The Underwriter has taken no responsibility either to bring to the attention of the holders of the Initial Bonds any proposed revision or withdrawal of the rating on the Initial Bonds or to oppose any such proposed revision or withdrawal. Any downward revision or withdrawal of such rating may have an adverse effect on the market price of the Initial Bonds. The ratings should not be taken as a recommendation to buy or hold the Initial Bonds.

## **CONTINUING DISCLOSURE**

In order to assist the Underwriter in complying with Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended ("Rule 15c2-12"), the Company has undertaken in a Continuing Disclosure Agreement dated as of October 1, 2017 (the "Continuing Disclosure Agreement") between the Company and the Trustee, for the benefit of the holders of the Bonds, to provide to the Trustee certain annual information and notices required to be provided by

Rule 15c2-12. The Continuing Disclosure Agreement may be amended or modified without the consent of the holders of the Bonds under certain circumstances set forth therein. Copies of the Continuing Disclosure Agreement when executed by the parties thereto at or prior to the delivery of the Bonds will be on file at the principal corporate trust office of the Trustee. The Issuer has not committed to provide any continuing disclosure to the owners of the Bonds or to any other person. The Company has covenanted with the Trustee for the benefit of Bondholders to provide certain financial information and operating data relating to the Company by not later than 150 days following the end of the Company's fiscal year beginning with the fiscal year ending June 30, 2017 (the "Annual Report"), and to provide notices of the occurrence of certain enumerated events, if deemed by the Company to be material. The Annual Report will be filed on behalf of the Company with the Municipal Securities Rulemaking Board. In the event the obligations of the Company are terminated with respect to the Bonds, such parties will also be relieved of the obligation to provide information under the Continuing Disclosure Agreement.

The Company has previously failed to meet its continuing disclosure obligations with regards to timely posting required disclosures for outstanding bonds. The filing deficiencies have been corrected, and the Company is now in compliance with its continuing disclosure obligations.

### **FINANCIAL STATEMENTS**

The Financial Statements of the Company and Supplemental Information as of and for the fiscal years ended June 30, 2016 and June 30, 2015 included in Appendix C of this Official Statement are unaudited.

The consolidated Financial Statements of the Foundation and its affiliates (including the Company) as of and for the fiscal years ended June 30, 2016 and June 30, 2015 included in Appendix D of this Official Statement have been audited by KPMG LLP, independent auditors, as stated in their Report appearing therein.

### **OTHER MATTERS**

The Company has furnished information in this Official Statement relating to itself and the Project. Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact.

The foregoing summaries or descriptions of provisions of the Bonds, the Trust Indenture, the Loan Agreement, the Guaranty, the Unconditional Cash Flow Guaranty, the Pledge and Security Agreement, the Mortgage and all references to other materials not purporting to be quoted in full, are only brief outlines of some of the provisions thereof and do not purport to summarize or describe all of the provisions thereof. For a complete statement of the provisions of the Trust Indenture, the Loan Agreement, the Pledge and Assignment, the Guaranty the Unconditional Cash Flow Guaranty and the Mortgage reference is made to such documents in their entireties.

The agreement of the Issuer with the owners of the Bonds is fully set forth in the Trust Indenture. Neither any advertisement of the Bonds nor this Official Statement is to be construed as constituting an agreement with the purchasers of the Bonds. Statements made in this Official Statement involving matters of opinion or estimates, whether or not expressly so stated, are intended merely as such and not as representations of facts.

The attached Appendices A through E are integral parts of this Official Statement and should be read in their entirety together with all of the foregoing statements.

It is anticipated that CUSIP identification numbers will be printed on the Series 2017A Bonds, but neither the failure to print such numbers on any Series 2017A Bond nor any error in the printing of such numbers shall constitute cause for a failure or refusal by the purchaser thereof to accept delivery of or pay for any Series 2017A Bonds.

The information assembled in this Official Statement has been supplied by the Company and other sources believed to be reliable, and, except for the statements under the heading "THE ISSUER" herein and information relating to the Issuer under the heading "LITIGATION - The Issuer," the Issuer makes no representations with respect to nor warrants the accuracy of such information. The Company has agreed to indemnify the Issuer and the Underwriter against certain liabilities relating to the Official Statement.

The Company has reviewed the information contained herein which relates to it, their property and other assets and their operations, and has approved all such information for use within this Official Statement.

The execution and delivery of this Official Statement have been duly authorized by the Issuer and the Company.

**TOWN OF AMHERST DEVELOPMENT  
CORPORATION**

By: /s/ David S. Mingoia  
Executive Director

**UBF FACULTY-STUDENT HOUSING CORP.**

By: /s/ Edward P. Schneider  
Executive Director



## Appendix A

### **Glossary and Summaries of the Trust Indenture, the Loan Agreement, the Pledge and Assignment, the Guaranty, the Unconditional Cash Flow Guaranty and the Mortgage**

#### **GLOSSARY**

The following terms have the meanings stated herein when used in this Appendix and the documents summarized below:

“Account” means, with respect to any Series of Bonds, an account created within any Fund designated and created pursuant to Section 401 of the Indenture.

“Accountant” means an independent certified public accountant or a firm of independent certified public accountants selected by the Company.

“Act” means the Enabling Act.

“Additional Bonds” means any bonds issued by the Issuer pursuant to Section 214 of the Indenture.

“Additional Equipment” means, in connection with any Additional Project, any additional materials, machinery, equipment, fixtures or furnishings intended to be acquired with the proceeds of a related Series of Additional Bonds, or intended to be acquired with any payment which the Company incurred in anticipation of the issuance of such Series of Additional Bonds and for which the Company will be reimbursed from the proceeds of such Series of Additional Bonds, and such substitutions and replacements therefor and additions thereto as may be made from time to time pursuant to the Loan Agreement.

“Additional Facility” means, in connection with any Additional Project, any buildings, improvements, structures, and other related facilities (A) located on the Land or the Additional Land, (B) financed or refinanced with the proceeds of the sale of a Series of Additional Bonds or any payment made by the Company pursuant to Section 3.5 of the Loan Agreement or any payment which the Company incurred in anticipation of the issuance of such Series of Additional Bonds and for which the Company will be reimbursed from the proceeds of such Series of Additional Bonds, and (C) not constituting a part of the Additional Equipment, all as they may exist from time to time.

“Additional Land” means, with respect to any Series of Additional Bonds, any real estate which will be the site of an Additional Project Facility intended to be financed with the proceeds of such Series of Additional Bonds.

“Additional Project” means the purposes for which any Series of Additional Bonds may be issued.

“Additional Project Facility” means any Additional Land, Additional Facility, or Additional Equipment acquired by the Issuer in connection with the issuance of any Series of Additional Bonds.

“Annual Budget” shall mean the Annual Budget for each Initial Project Facility prepared in accordance with the respective Management Agreement.

“Applicable Laws” means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all

Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Issuer were the owner of the Project Facility and as if the Company and not the Issuer were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“Arbitrage Certificate” means (A) with respect to the Series 2017A Bonds, the Initial Arbitrage Certificate and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt Bonds, any similar document executed by the Issuer in connection with the issuance and sale of such Series of Additional Bonds.

“Assignment of Rents” means the assignment of rents and leases dated as of October 1, 2017 from the Company to the Issuer, which, among other things, assigns to the Issuer (a) the rents, issues and profits of the Project Facility and (b) all leases, subleases, licenses or occupancy agreements affecting the Project Facility, as said assignment of rents and leases may be amended or supplemented from time to time.

“Authorized Denominations” means: (A) with respect to the Initial Bonds, \$5,000 and any integral multiple of \$5,000 in excess thereof, except that, if as a result of a redemption, partially redeemed Initial Bonds cannot be issued in such denominations, such partially redeemed Initial Bonds shall be reissued in such other denominations to the extent required to effect such redemption; and (B) with respect to any Series of Additional Bonds, the authorized denominations for such Series of Additional Bonds as set forth in the supplemental indenture relating thereto.

“Authorized Investments” means any of the following: (A) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS, TIGRS and STRIPS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America; (B) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (1) U.S. Export-Import Bank (“Eximbank”), (2) Farmers Home Administration (“FmHA”), (3) Federal Financing Bank, (4) Federal Housing Administration Debentures (“FHA”), (5) General Services Administration, (6) Government National Mortgage Association (“GNMA” or “Ginnie Mae”), (7) U.S. Maritime Administration, and (8) U.S. Department of Housing and Urban Development (“HUD”); (C) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself): (1) Federal Home Loan Bank System, (2) Federal Home Loan Mortgage Corporation (“FHLMC” or “Freddie Mac”), (3) Federal National Mortgage Association (“FNMA” or “Fannie Mae”), (4) Student Loan Marketing Association (“SLMA” or “Sallie Mae”), (5) Resolution Funding Corp. (“REFCORP”) obligations, and (6) Farm Credit System; (D) money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by Standard & Poor’s of “AAAm-G”, “AAA-m”; or “AA-m” and if rated by Moody’s rated “Aaa”, “Aa1” or “Aa2”; (E) certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations, or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral;

(F) certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF; (G) investment agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements acceptable to the Trustee; (H) commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by Standard & Poor's; (I) bonds or notes issued by any state or municipality which are rated by Moody's and Standard & Poor's in one of the two highest rating categories assigned by such agencies; (J) federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by Standard & Poor's; and (K) repurchase agreements for 30 days or less must follow the following criteria. The criteria is described as follows: (1) Repos must be between the municipal entity and a dealer bank or securities firm (a) primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard & Poor's Corporation and Moody's Investor Services, or (b) banks rated "A" or above by Standard & Poor's Corporation and Moody's Investor Services; (2) the written repo contract must include the following: (a) securities which are acceptable for transfer are: (i) direct U.S. governments, or (ii) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC), (b) the term of the repo may be up to 30 days, (c) the collateral must be delivered to the municipal entity, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities), (d) valuation of collateral - the securities must be valued weekly, marked-to-market at current market price plus accrued interest. The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%, and (3) legal opinion which must be delivered to the municipal entity: (a) repo meets guidelines under state law for legal investment of public funds.

"Authorized Representative" means the Person or Persons at the time designated to act on behalf of the Issuer or the Company, as the case may be, by written certificate furnished to the Trustee containing the specimen signature of each such Person and signed on behalf of (A) the Issuer by its Chairman or Vice-Chairman, or such other person as may be authorized by resolution of the Issuer to act on behalf of the Issuer, (B) the Company by its Executive Director or Associate Executive Director, or such other person as may be authorized by the board of directors of the Company to act on behalf of the Company and (C) the Trustee by any Vice President, Assistant Vice President or Trust Officer, or such other person as may be authorized by the board of directors of the Trustee to act on behalf of the Trustee.

"Available Moneys" means any moneys on deposit with the Trustee for the benefit of the Bondholders which are (A) proceeds of the Bonds, or of any bonds issued for the purpose of refunding the Bonds, (B) amounts on deposit for a period of 124 consecutive days during which no petition in bankruptcy under the Bankruptcy Code has been filed against the entity which paid such money, and no similar proceedings have been instituted under state insolvency or other laws affecting creditors' rights generally, or (C) any moneys with respect to which an unqualified opinion from nationally recognized counsel has been received stating that such payments to Bondholders would not constitute voidable preferences under Section 547 of the Bankruptcy Code, or similar state or federal laws with voidable preferences in the event of the filing of a petition for relief under the Bankruptcy Code, or similar state or federal laws with voidable preference provisions by or against the entity from which the money is received.

"Bankruptcy Code" means the United States Bankruptcy Code, constituting Title 11 of the United States Code, as amended from time to time, and any successor statute.

“Beneficial Owner” means, with respect to a Bond, a Person owning a Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

“Beneficial Ownership Interest” means the beneficial right to receive payments and notices with respect to the Bonds which are held by the Depository under a Book Entry System.

“Bond” or “Bonds” means, collectively, (A) the Initial Bonds and (B) any Additional Bonds.

“Bond Counsel” means the law firm of Hodgson Russ LLP, Albany, New York or such other attorney or firm of attorneys located in the State whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and who are acceptable to the Issuer.

“Bond Debt Service Reserve Insurance Policy” means (A), with respect to the Initial Bonds, the municipal bond debt service reserve insurance policy relating thereto issued by the Bond Insurer providing for the funding of the Series 2017A Debt Services Reserve Account as provided therein, and (B) with respect to any series of Additional Bonds, a financial guaranty bond debt service reserve insurance policy issued by a bond insurance company on the Closing Date with respect thereto providing for the funding of the Reserve Fund relating to said series of Additional Bonds as provided therein.

“Bond Fund” means the fund so designated established pursuant to Section 401(A)(3) of the Indenture.

“Bondholder” or “Holder” or “Owner of the Bonds” means the registered owner of any Bond, as indicated on the bond register maintained by the Bond Registrar, except that wherever appropriate the term “Owners” shall mean the owners of the Bonds for federal income tax purposes.

“Bond Insurance Policy” means (A), with respect to the Initial Bonds, the municipal bond insurance policy relating thereto issued by the Bond Insurer guaranteeing the scheduled payment when due of the principal of and interest and Sinking Fund Payments on the portion of the Insured Bonds as provided therein, and (B) with respect to any series of Additional Bonds, a financial guaranty insurance policy issued by a bond insurance company on the Closing Date with respect thereto insuring the payment when due of the principal of and Sinking Fund Payments, if any, and interest on said series of Additional Bonds as provided therein.

“Bond Insurer” means (A), with respect to the Insured Bonds, Assured Guaranty Municipal Corp., a New York domiciled stock insurance company, or any successor thereto as issuer of the Bond Insurance Policy relating to the Insured Bonds, and (B) with respect to any series of Additional Bonds, the issuer of the Bond Insurance Policy relating to such series of Additional Bonds.

“Bond Payment Date” means each Interest Payment Date and each date on which principal or interest or premium, if any, or a Sinking Fund Payment, shall be payable on the Bonds according to their terms and the terms of the Indenture, including without limitation scheduled mandatory Redemption Dates, unscheduled mandatory Redemption Dates, dates of acceleration of the Bonds pursuant to Section 602 of the Indenture, optional Redemption Dates and Stated Maturity, so long as any Bonds shall be Outstanding.

“Bond Proceeds” means (A) with respect to the Initial Bonds, the proceeds of the sale of the Initial Bonds, including any accrued interest, paid to the Trustee on behalf of the Issuer by the Underwriter as the purchase price of the Initial Bonds, and (B) with respect to any Series of Additional Bonds, the proceeds of the sale of such Series of Additional Bonds, including any accrued interest, paid to the Trustee on behalf of

the Issuer by the purchasers of such Series of Additional Bonds as the purchase price of such Series of Additional Bonds.

“Bond Purchase Agreement” means (A) with respect to the Initial Bonds, the Initial Bond Purchase Agreement, and (B) with respect to any Series of Additional Bonds, any similar document executed by the Issuer and/or the Company in connection with the issuance and sale of such Series of Additional Bonds.

“Bond Rate” means, with respect to any Bond, the applicable rate of interest on such Bond, as set forth in such Bond.

“Bond Register” means the register maintained by the Bond Registrar in which, subject to such reasonable regulations as the Issuer, the Trustee or the Bond Registrar may prescribe, shall provide for the registration of the Bonds and for the registration of transfers of the Bonds.

“Bond Registrar” means the Trustee, acting in its capacity as bond registrar under the Indenture, and its successors and assigns as bond registrar under the Indenture.

“Bond Resolution” means (A) with respect to the Initial Bonds, the resolution of the members of the board of directors of the Issuer duly adopted on November 18, 2016 authorizing the Issuer to undertake the Project, to issue and sell the Initial Bonds in accordance with the provisions of the Certificate of Determination and to execute and deliver the Initial Financing Documents to which the Issuer is a party, and (B) with respect to any Series of Additional Bonds, any resolution adopted by the members of the board of directors of the Issuer authorizing the issuance of such Series of Additional Bonds.

“Bond Year” (A) with respect to the Initial Bonds, means each one (1) year period ending on the anniversary of the Closing Date relating to the Initial Bonds, or such other bond year as the Company and the Issuer may select from time to time in a manner complying with the Code, and (B) with respect to any Series of Additional Bonds issued as Tax-Exempt Bonds, shall have the meaning set forth in the supplemental indenture related to such Series of Additional Bonds.

“Book Entry Bonds” means Bonds held in Book Entry Form with respect to which the provisions of Section 213 of the Indenture shall apply.

“Book Entry Form” or “Book Entry System” means, with respect to the Bonds, a form or system, as applicable, under which (A) the Beneficial Ownership Interests may be transferred only through a book entry and (B) physical Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Bondholder, with the physical Bond certificates “immobilized” in the custody of the Depository or a custodian on behalf of the Depository. The Book Entry System which is maintained by and the responsibility of the Depository (and which is not maintained by or the responsibility of the Issuer or the Trustee) is the record that identifies, and records the transfer of the interests of, the Owners of book entry interests in the Bonds.

“Business Day” means any day of the year other than (A) a Saturday or Sunday, (B) a day on which the New York Stock Exchange is closed or (C) a day on which commercial banks in New York, New York, or the city or cities in which the Office of the Trustee is located, are authorized or required by law, regulation or executive order to close.

“Certificate of Authentication” means the certificate of authentication in substantially the form attached to the form of the Initial Bonds attached as Schedule I to the Indenture.

“Certificate of Determination” means, (A) with respect to the Initial Bonds, the certificate of determination executed by the Chairman, Vice Chairman or Chief Executive Officer of the Issuer relating to the Initial Bonds, and (B) with respect to any Series of Additional Bonds, the document by which the Issuer evidences its approval of the terms of such Series of Additional Bonds.

“Closing Date” means (A) with respect to the Initial Bonds, the date on which authenticated Initial Bonds are delivered to or upon the order of the Underwriter and payment is received therefor by the Trustee on behalf of the Issuer, and (B) with respect to any Series of Additional Bonds, the date on which such Additional Bonds of such Series are authenticated and delivered to the purchaser thereof and payment therefor is received by the Trustee on behalf of the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of said Code, and the applicable regulations (whether proposed, temporary or final) of the United States Treasury Department promulgated under said Code and the statutory predecessor of said Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“Company” means UBF Faculty-Student Housing Corp., not-for-profit corporation organized and existing under the laws of the New York, and its successors and assigns, to the extent permitted by Section 8.4 of the Loan Agreement.

“Completion Date” means (A) with respect to the Project, the date of substantial completion of the Project and (B) with respect to any Series of Additional Project, the date of substantial completion of the undertaking of such Additional Project, as evidenced in the manner provided in supplement to the Loan Agreement related to such Series of Additional Bonds.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

“Construction Period” means, with respect to any Additional Project, as the case may be, the period (A) beginning on the earlier of the Inducement Date or the Official Action Date relating thereto and (B) ending on the Completion Date relating thereto.

“Continuing Disclosure Agreement” means (A) with respect to the Initial Bonds, the Initial Continuing Disclosure Agreement and (B) with respect to any Series of Additional Bonds, any similar document executed by the Company in connection with the issuance of such Series of Additional Bonds.

“Cost of the Project” means (A) with respect to the Project, all those costs and items of expense relating thereto enumerated in Section 3.3(A) of the Loan Agreement incurred subsequent to the Inducement Date, including costs which the Company incurred prior to the Inducement Date with respect to the Project in anticipation of the issuance of the Initial Bonds and for which the Company may be reimbursed from proceeds of the Initial Bonds pursuant to the provisions of the Initial Tax Regulatory Agreement, and (B) with respect to any Additional Project, all those costs and items of expense relating thereto enumerated in Section 3.3 of the Loan Agreement, including costs which the Company incurred with respect to such Additional Project in anticipation of the issuance of the related Series of Additional Bonds and for which the Company will be reimbursed from proceeds of the related Series of Additional Bonds.

“Debt Service Coverage Ratio” means the ratio of the Net Revenues Available for Debt Service for a Fiscal Year to Maximum Annual Debt Service (expressed as the number of times covered).

“Debt Service Payment” means, with respect to any Bond Payment Date, (A) the interest payable on the Bonds on such Bond Payment Date, plus (B) the principal, if any, payable on the Bonds on such Bond Payment Date, plus (C) the premium, if any, payable on the Bonds on such Bond Payment Date, plus (D) the Sinking Fund Payments, if any, payable on the Bonds on such Bond Payment Date.

“Default Interest Rate” means the rate of interest equal to fifteen percent (15%) per annum, or the maximum permitted by law, whichever is less.

“Defaulted Payment” shall have the meaning ascribed to such term in Section 207(C) of the Indenture.

“Defeasance Escrow Agreement” means a defeasance escrow agreement dated as of October 1, 2017 among the Prior Issuer, the Prior Trustee, the Trustee and the Company, as said agreement may be amended or supplemented from time to time.

“Defeasance Obligations” means (A) cash, or (B) direct obligations of the United States of America or of any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States of America, including, but not limited to, United States Treasury obligations.

“Depository” means, initially, The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State, or its nominee, or any other securities depository designated in any supplemental resolution of the Issuer to serve as securities depository for the Bonds 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 Bonds, and to effect transfers of book entry interests in Book Entry Bonds.

“Depository Letter” means (A) with respect to the Initial Bonds, the Initial Depository Letter, and (B) with respect to any Series of Additional Bonds issued as Book Entry Bonds, any letter of representations by and among the Issuer, the Trustee and the Depository relating to such Series of Additional Bonds, and any amendments or supplements thereto entered into with respect thereto.

“Direct Participant” means a Participant as defined in the Depository Letter.

“Enabling Act” means Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended.

“Equipment” means, collectively, the Initial Equipment and any Additional Equipment.

“Event of Default” means (A) with respect to the Indenture, any of those events defined as an Event of Default by the terms of Article VI of the Indenture, (B) with respect to the Loan Agreement, any of those events defined as an Event of Default by the terms of Article X of the Loan Agreement, and (C) with respect to any other Financing Document, any of those events defined as an Event of Default by the terms thereof.

“Event of Taxability” means, with respect to any Series of Tax-Exempt Bonds, (A) the enactment of a statute or promulgation of a regulation eliminating, in whole or in part, the applicable exemption, as such exists on the Closing Date, from gross income for federal income tax purposes for interest payable under such Series of Tax-Exempt Bonds, (B) a “final determination by decision or ruling by a duly constituted administrative authority” to the effect that such exemption for interest payable under such Series of Tax-Exempt Bonds is not available, is no longer available or is contrary to law, (C) the expiration of the right to further administrative review of any determination, decision or ruling to the effect that such exemption for interest payable under such Series of Tax-Exempt Bonds is not available, is no longer

available or is contrary to law, or (D) receipt by the Trustee of a written opinion of Bond Counsel that there is no longer a basis for the Holders of such Series of Tax-Exempt Bonds (or any former Holder, other than a Holder who is or was a Substantial User of the Project Facility or a Related Person thereto) to claim that any interest paid and payable on such Series of Tax-Exempt Bonds is not excluded from gross income for federal income tax purposes. For the purposes of clause (B) above, a “final determination by decision or ruling by a duly constituted administrative authority” shall mean (1) the issuance of a ruling (including, but not limited to, a revenue ruling or a letter ruling) by the IRS or any successor thereto, or (2) the issuance of a preliminary notice of proposed deficiency (“30-Day Letter”), a statutory notice of deficiency (“90-Day Letter”), or other written order or directive of similar force and effect by the IRS, or any other United States Governmental Authority having jurisdiction therein. Notwithstanding the foregoing, nothing in this definition of “Event of Taxability” shall be construed (x) to mean or include consideration of the interest payable on a Series of the Tax-Exempt Bonds for purposes of calculating the interest expense which may be deducted by a bank or other Financial Institution, or (y) to mean that the Holder of such Series of the Tax-Exempt Bonds shall have any obligation to contest or appeal any assertion or decision that any interest payable under such Series of the Tax-Exempt Bonds is subject to taxation, or (z) to mean or include the imposition of an alternative minimum tax or preference tax or environmental tax or branch profits tax on any Holder of a Series of the Tax-Exempt Bonds, in the calculation of which is included the interest paid or payable under the Tax-Exempt Bonds.

“Extraordinary Services” and “Extraordinary Expenses” means all reasonable services rendered and all reasonable expenses incurred by the Trustee or any paying agent under the Indenture, other than Ordinary Services and Ordinary Expenses, including, but not limited to, reasonable attorney fees and any services rendered and any expenses incurred with respect to an Event of Default or with respect to the occurrence of an event which upon the giving of notice or the passage of time would ripen into an Event of Default under any of the Financing Documents.

“Facility” means the Initial Facility and any Additional Facilities.

“Final Maturity” means, with respect to any particular Bond, the final Stated Maturity of the principal due on such Bond, unless such Bond is called for redemption in whole prior to such date, in which case any such term shall mean the Redemption Date relating to such Bond.

“Financing Documents” means (A) with respect to the Initial Bonds, the Initial Financing Documents and (B) with respect to any Series of Additional Bonds, any similar documents executed by the Company and/or the Issuer in connection with the issuance of such Series of Additional Bonds.

“Financing Statements” means any and all financing statements (including continuation statements) or other instruments filed or recorded from time to time to perfect the security interests created in the Financing Documents.

“Foundation” means the University at Buffalo Foundation, Inc., a New York education corporation.

“Fund” means any Fund designated and created pursuant to Section 401 of the Indenture.

“Government Obligations” means (A) cash, (B) direct obligations of the United States of America, (C) obligations unconditionally guaranteed by the United States of America and (D) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (B) or (C).



“Governmental Authority” means the United States of America, the State, any political subdivision thereof, any other state and any agency, department, commission, board, bureau or instrumentality of any of them.

“Gross Bond Proceeds” means “gross proceeds” as defined in Section 148(f)(6)(B) of the Code, presently including, without limitation, the original proceeds of the Bonds, investment proceeds, amounts held in a sinking fund, amounts invested in a reasonably required reserve or replacement fund, certain investment-type property pledged as security for the Bonds by the Company or by the Issuer, amounts received with respect to the Loan Agreement, any amounts used to pay Debt Service Payments on the Bonds, and any amounts received as a result of investing any of the foregoing.

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

“Ground Lease” means collectively the William R. Greiner Hall Ground Lease and the Hadley Village Ground Lease.

“Guaranty” means the guaranty dated as of October 1, 2017 from the Company to the Trustee, as said guaranty may be amended or supplemented from time to time.

“Hadley Village Facility Management Agreement” means (A) the facility management agreement dated as of May, 1999 by and between the Company and the Manager, as said facility management agreement may be amended or supplemented from time to time, or (B) any such management agreement with a successor manager.

“Hadley Village Ground Lease” means the ground lease dated August 24, 1998, by and between SUNY, as landlord, and the Company, as tenant, as said ground lease may be amended or supplemented from time to time.

“Holder” or “holder”, when used with respect to a Bond, means Bondholder.

“Immediate Notice” means notice transmitted through a time-sharing terminal, if operative as between any two parties, or if not operative, same-day notice by telephone, telecopy or telex, followed by prompt written confirmation sent by overnight delivery.

“Indebtedness” means (A) the payment of the Debt Service Payments on the Bonds according to their tenor and effect, (B) all other payments due from the Company or the Issuer to the Trustee pursuant to any Financing Document, (C) the performance and observance by the Issuer and the Company of all of the covenants, agreements, representations and warranties made for the benefit of the Trustee pursuant to any Financing Document, (D) the monetary obligations of the Company to the Issuer and its members, directors, officers, agents, servants and employees under the Loan Agreement and the other Financing Documents, and (E) all interest, penalties and late charges accruing on any of the foregoing.

“Indemnified Parties” shall mean the Trustee, the Issuer, the Underwriter and the payee and holder of any Initial Bond.

“Indenture” means the trust indenture dated as of October 1, 2017 by and between the Issuer and the Trustee, as said trust indenture may be amended or supplemented from time to time.

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

“Independent Engineer” means an engineer or architect or firm of engineers or architects duly admitted to practice engineering or architecture in the State selected by the Company, with the consent of the Bond Insurer, and not a full-time employee of the Company or the Issuer.

“Indirect Participant” means a Person utilizing the Book Entry System of the Depository by, directly or indirectly, clearing through or maintaining a custodial relationship with a Direct Participant.

“Inducement Date” means (A) with respect to the Project, the date which is sixty (60) days prior to the earlier of (1) July 21, 2016 or (2) the date on which the Company declared its official intent to reimburse expenditures made with respect to the Project with proceeds of borrowed money, and (B) with respect to any Additional Project, the date which is sixty (60) days prior to the earlier of (1) the date on which the Issuer adopts an inducement resolution with respect to such Additional Project or (2) the date on which the Company declares its official intent to reimburse expenditures made with respect to such Additional Project with proceeds of borrowed money.

“Initial Arbitrage Certificate” means the certificate dated the Closing Date for the Series 2017A Bonds executed by the Issuer and relating to certain requirements set forth in Section 148 of the Code applicable to the Series 2017A Bonds and the Project.

“Initial Bond Purchase Agreement” means the bond purchase agreement dated September 27, 2017 by and among the Underwriter, the Issuer and the Company relating to the purchase of the Initial Bonds by the Underwriter, as said bond purchase agreement may be amended or supplemented from time to time.

“Initial Bonds” means the Series 2017A Bonds.

“Initial Continuing Disclosure Agreement” means the continuing disclosure agreement dated as of October 1, 2017 by and between the Company and the Trustee relating to the Initial Bonds, as said continuing disclosure agreement may be amended or supplemented from time to time.

“Initial Depository Letter” means any letter of representations by and among the Issuer and the Depository relating to the Initial Bonds, and any amendments or supplements thereto entered into with respect thereto.

“Initial Equipment” means all materials, machinery, equipment, fixtures or furnishings acquired with the proceeds of the Prior Bonds being refunded with the proceeds of the Initial Bonds, or acquired with any payment which the Company incurred in anticipation of the issuance of the Prior Bonds and for which the Company was reimbursed from the proceeds of the Prior Bonds, and such substitutions and replacements therefor and additions thereto as may be made from time to time pursuant to the Loan Agreement, including, without limitation, all of the Property described in Exhibit B attached to the Loan Agreement.

“Initial Facility” means all buildings (or portions thereof), improvements, structures and other related facilities, and improvements thereto, (A) located on the Initial Land, (B) financed or refinanced with the proceeds of the sale of the Initial Bonds or any payment which the Company incurred in anticipation of the issuance of the Initial Bonds and for which the Company will be reimbursed from the proceeds of the Initial Bonds or any payment made by the Company pursuant to Section 3.5 of the Loan Agreement, and (C) not constituting a part of the Initial Equipment, all as they may exist from time to time.

“Initial Financing Documents” means the Initial Bonds, the Indenture, the Loan Agreement, the Pledge and Assignment, the Guaranty, the Unconditional Cash Flow Guaranty, the Initial Tax Documents, the Initial Underwriter Documents and any other document now or hereafter executed by the Issuer or the Company in favor of the Holders of the Initial Bonds or the Trustee which affects the rights of the Holders of the Initial Bonds or the Trustee in or to the Project Facility, in whole or in part, or which secures or guarantees any sum due under the Initial Bonds or any other Initial Financing Document, each as amended from time to time, and all documents related thereto and executed in connection therewith.

“Initial Land” means the real estate described on Exhibit A attached to the Loan Agreement, which is the site of the Project.

“Initial Letter of Representation” means the letter of representation dated September 27, 2017 by and among the Company, the Issuer, and the Underwriter, pursuant to which the Company will provide indemnification to the Issuer and the Underwriter relating to the issuance and sale of the Initial Bonds.

“Initial Tax Documents” means, collectively, the Initial Arbitrage Certificate and the Initial Tax Regulatory Agreement.

“Initial Tax Regulatory Agreement” means the tax regulatory agreement dated the Closing Date for the Initial Bonds executed by the Company in favor of the Issuer and the Trustee regarding, among other things, the restrictions prescribed by the Code in order for interest on the Series 2017A Bonds to be and remain excludable from the gross income of the Holders thereof for federal income tax purposes.

“Initial Underwriter Documents” means the Initial Bond Purchase Agreement, the Initial Letter of Representation, the Initial Continuing Disclosure Agreement, the Initial Preliminary Official Statement, the Initial Official Statement and any other document now or hereafter executed by the Issuer or the Company in connection with the sale of the Initial Bonds by the Underwriter.

“Insurance and Condemnation Fund” means the fund so designated established pursuant to Section 401(A)(3) of the Indenture.

“Insured Bonds” means, with respect to a particular Bond Insurance Policy, the particular Bonds which are insured by the Bond Insurer pursuant to such Bond Insurance Policy.

“Interest Payment Date” means (A) with respect to the Initial Bonds, April 1 and October 1 of each year, commencing April 1, 2018, and (B) with respect to any Additional Bonds, the Stated Maturity of each installment of interest on such Additional Bonds, as set forth in the supplemental Indenture authorizing the issuance of such Series of Additional Bonds. In any case, the final Interest Payment Date of any Series of the Bonds shall be the Maturity Date relating thereto.

“Issuer” means (A) the Town of Amherst Development Corporation and its successors and assigns, and (B) any public instrumentality or political subdivision resulting from or surviving any consolidation or merger to which the Town of Amherst Development Corporation or its successors or assigns may be a party.

“Land” means the Initial Land and any Additional Land.

“Late Payment Rate” shall have the meaning provided in Section 419 of the Indenture.

“Letter of Representation” means the Initial Letter of Representation.

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

“Loan” means the loan by the Issuer of the proceeds received from the sale of the Bonds to the Company pursuant to the provisions of the Loan Agreement.

“Loan Agreement” means the loan agreement dated as of October 1, 2017 by and between the Issuer and the Company, as said loan agreement may be amended or supplemented from time to time.

“Loan Payments” means the amounts required to be paid by the Company pursuant to the provisions of Section 5.1 of the Loan Agreement.

“Management Agreement” means collectively the William R. Greiner Hall Facility Management Agreement and the Hadley Village Facility Management Agreement.

“Manager” means SUNY, acting in its capacity as manager pursuant to the Management Agreement and its successors and assigns. Any successor manager shall be subject to the approval of the Bond Insurer.

“Maturity Date” means, with respect to any Bond, the final Stated Maturity of the principal of such Bond.

“Maximum Annual Debt Service” means, with respect to the Bonds, at the time of computation, the greatest aggregate Debt Service Payments with respect to Outstanding Bonds for the then current or any future Fiscal Year.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of the Company.

“Mortgage” means the mortgage and security agreement dated as of October 1, 2017 from the Company to the Issuer, which, among other things, (A) grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Project Facility and (B) assigns to the Issuer the rents, issues and profits of the Project Facility, as said mortgage and security agreement may be amended or supplemented from time to time.

“Mortgage Assignment” means the assignment of mortgage dated as of October 1, 2017 from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee, as said assignment of mortgage may be amended or supplemented from time to time.

“Mortgaged Property” means all Property which may from time to time be subject to the Lien of the Mortgage.

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

“Net Revenues Available For Debt Service” means the amount of unrestricted revenues, gains and other support less unrestricted expenses and losses (excluding from such revenues and expenses unrealized capital gains or losses, the receipt of insurance proceeds [except business interruption insurance], and extraordinary items and further excluding from such expenses depreciation, interest on long-term indebtedness, all as determined in accordance with generally accepted accounting principles; provided, however, that to the extent that under generally accepted accounting principles required deposits to the reserve replacement fund required pursuant to the Guaranty or under the Indenture, as applicable, would not be included in “unrestricted expenses and losses”, such deposits shall be so included for purposes of the forgoing calculation).

“Nonexempt Person” or “Nonexempt Entity” means any Person other than (A) a state or local governmental entity or (B) a Person described in Section 501(c)(3) of the Code which has been recognized in writing by the Internal Revenue Service as being exempt from taxation under Sections 501(a) and Section 501(c)(3) of the Code.

“Notice of Nonpayment” shall have the meaning ascribed to such term in the Bond Debt Service Reserve Insurance Policy.

“Office of the Trustee” means the corporate trust office of the Trustee specified in Section 1103 of the Indenture, or such other address as the Trustee shall designate pursuant to Section 1103 of the Indenture.

“Official Statement” means (A) with respect to the Initial Bonds, the official statement delivered in connection with the sale of the Initial Bonds by the Underwriter, and (B) with respect to any Series of Additional Bonds, any similar document approved by the Issuer and the Company in connection with the sale by the Underwriter of the related Series of Additional Bonds.

“Operating Fund” means the fund so designated established pursuant to Section 401(A)(4) of the Indenture.

“Optional Redemption Premium” means the premium payable upon an optional redemption of the Bonds, as determined pursuant to Section 301(B) of the Indenture.

“Ordinary Services” and “Ordinary Expenses” means those reasonable services normally rendered with those reasonable expenses, including reasonable attorneys’ fees, normally incurred by a trustee or a paying agent, as the case may be, under instruments similar to the Indenture.

“Outstanding” means, when used with reference to the Bonds as of any date, all Bonds which have been duly authenticated and delivered by the Trustee under the Indenture, except:

(A) Bonds theretofore cancelled or deemed cancelled by the Trustee or theretofore delivered to the Trustee for cancellation;

(B) Bonds for the payment or redemption of which moneys or Defeasance Obligations shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or Redemption Date of any such Bonds) in accordance with the Indenture (whether upon or prior to the maturity or Redemption Date of any such Bonds); provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or

arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form and substance to the Trustee shall have been filed with the Trustee; and

(C) Bonds in lieu of or in substitution for which other Bonds have been authenticated and delivered under the Indenture.

In determining whether the Owners of a requisite aggregate principal amount of Bonds Outstanding have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions hereof, Bonds which are held by or on behalf of the Company (unless all of the outstanding Bonds are then owned by the Company) shall be disregarded for the purpose of any such determination.

If the Indenture shall be discharged pursuant to Article X of the Indenture, no Bonds shall be deemed to be Outstanding within the meaning of this definition. Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, and the assignment and pledge of the Trust Estate shall continue and run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such the Holders of such Bonds.

“Owner” or “owner”, when used with respect to a Bond, means the Registered Owner of such Bond, except that wherever appropriate the term “Owner” shall mean the owner of such Bond for federal income tax purposes.

“Participant” shall have the meaning assigned to such term in Section 213(B) of the Indenture.

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

“Permitted Encumbrances” means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens, (C) Liens for taxes, assessments and utility charges (1) to the extent permitted by Section 6.2(B) of the Loan Agreement, or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Financing Document, (E) any Lien on the Project Facility in favor of the Trustee, (F) any lease of the Project Facility permitted by the Tax Documents, and (G) any Lien on the Project Facility approved in writing by the Trustee.

“Person” means an individual, partnership, corporation, limited liability company, trust, unincorporated organization or Governmental Authority.

“Plans and Specifications” means: (A) with respect to the Project, the description of the Project Facility appearing in the fourth recital clause to the Indenture and the Loan Agreement; and (B) with respect to any Additional Project, (1) as to the Issuer, the description of such Additional Project appearing in the Issuer’s preliminary inducement resolution relating thereto, and (2) as to the Trustee, the plans and specifications for such Additional Project prepared by the Company, and all amendments and modifications thereof made by approved change orders; and, if an item for the construction of the Additional Facility is not specifically detailed in the aforementioned plans and specifications, but rather is described by way of manufacturer’s or supplier’s or contractor’s shop drawings, catalog references or similar descriptions, the term also includes such shop drawings, catalog references and descriptions.

“Pledge and Assignment” means the pledge and assignment dated as of October 1, 2017 from the Issuer to the Trustee, and acknowledged by the Company, pursuant to which the Issuer has assigned to the Trustee its rights under the Loan Agreement (except the Unassigned Rights), as said pledge and assignment may be amended or supplemented from time to time.

“Policy Costs” means the repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate pursuant to the Bond Debt Service Reserve Insurance Policy and Section 419 of the Indenture.

“Predecessor Bonds” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by such particular Bond; and, for purposes of this definition, any Bond authenticated and delivered under Section 205 of the Indenture in lieu of a lost, destroyed or stolen Bond shall be deemed to evidence the same debt as the lost, destroyed or stolen Bond.

“Preliminary Official Statement” means (A) with respect to the Initial Bonds, the preliminary official statement delivered in connection with the sale of the Initial Bonds by the Underwriter, and (B) with respect to any Series of Additional Bonds, any similar document approved by the Issuer and the Company for use in connection with the issuance of the related Series of Additional Bonds.

“Principal Payment Date” means (A) with respect to the Initial Bonds, each Interest Payment Date on which a Sinking Fund Payment is due on the Bonds, and the Maturity Date of each of the Initial Bonds, and (B) with respect to any Additional Bonds, the Stated Maturity of each installment of principal due on such Additional Bonds.

“Prior Bonds” shall have the meaning assigned to such term in the fourth recital clause to the Indenture.

“Prior Issuer” means the Town of Amherst Development Corporation.

“Prior Reserve Funds” means, collectively, the reserve funds held by the Prior Trustee with respect to the Prior Bonds.

“Prior Trustee” means Manufacturers and Traders Trust Company, a banking corporation constituting a trust company organized and existing under the laws of the State of New York, acting as trustee under a trust indenture dated as of May 1, 2010, as amended, by and between the Prior Issuer and the Prior Trustee.

“Project” (A) with respect to the Initial Bonds, shall have the meaning assigned to such term in the fourth recital clause to the Indenture and the Loan Agreement, and (B) with respect to any Series of Additional Bonds, means the Additional Project with respect to which such Series of Additional Bonds were issued.

“Project Costs” means Costs of the Project.

“Project Facility” means, collectively, the Initial Land, the Initial Facility and the Initial Equipment and all Additional Project Facilities.

“Project Fund” means the fund so designated established pursuant to Section 401(A)(1) of the Indenture.

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

“Rating Agency” means Moody’s, if the Bonds are rated by Moody’s at the time, and Standard & Poor’s, if the Bonds are rated by Standard & Poor’s at the time, and their successors and assigns.

“Rebate Amount” shall have the meaning assigned to such term in the Tax Documents.

“Rebate Fund” means the fund so designated established pursuant to Section 401(A)(5) of the Indenture.

“Rebate Fund Earnings Account” means the special account so designated within the Rebate Fund established pursuant to Section 401(A)(5)(b) of the Indenture.

“Rebate Fund Principal Account” means the account so designated within the Rebate Fund established pursuant to Section 401(A)(5)(a) of the Indenture.

“Record Date” means either a Regular Record Date or a Special Record Date.

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

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

“Regular Record Date” means, with respect to the interest and any Sinking Fund Payment or principal payment due on the Bonds on or prior to maturity payable on any Bond on any Interest Payment Date, the fifteenth (15th) day (whether or not a Business Day) of the calendar month preceding the calendar month in which such Interest Payment Date occurs.

“Repair and Replacement Fund” means the fund so designated established pursuant to Section 401(A)(7) of the Indenture.

“Repair and Replacement Fund Requirement” means the amount determined pursuant to Section 3.9 of the Guaranty as the amount required to be deposited and held in the Repair and Replacement Fund.

“Request for Disbursement” means a request from the Company, as agent of the Issuer, signed by an Authorized Representative of the Company, stating the amount of the disbursement sought and containing the statements, representations and other items required by Article IV of the Indenture and by Section 3.3 of the Loan Agreement, which Request for Disbursement shall be in substantially the form of Exhibit A attached to the Indenture.

“Requirement” or “Local Requirement” means any law, ordinance, order, rule, or regulation of a Governmental Authority.

“Reserve Fund” means the fund so designated established pursuant to Section 401(A)(6) of the Indenture.

“Reserve Fund Requirement” means, (A) with respect to the Initial Bonds, as of the Closing Date, an amount equal to \$4,716,139.50 and satisfied by the Bond Debt Service Reserve Insurance Policy, and



(B) with respect to any series of Additional Bonds, an amount which shall not exceed, as of a particular date of computation, the lesser of (1) ten percent (10%) of the original principal amount of such series of Additional Bonds, (2) one hundred percent (100%) of the Maximum Annual Debt Service with respect to the Outstanding Bonds of such series of Additional Bonds, (3) one hundred twenty-five percent (125%) of the average annual debt service with respect to the Outstanding Bonds of such series of Additional Bonds in the then current or any future Bond Year, or (4) the maximum amount that may, in the opinion of Bond Counsel, be held in the Reserve Fund with respect to such series of the Additional Bonds.

“Revenue Fund” shall mean the fund so designated established pursuant to Section 401(A)(2) of the Indenture.

“Revenues” shall mean (A) all rents, fees and other revenue from or in lieu of the operation of the Project Facility, and (B) all investment proceeds and proceeds of insurance (including proceeds of business interruption insurance), condemnation, sale, or other disposition of the Project Facility or any part thereof received by the Company (other than the proceeds of insurance with respect to the damage or destruction of all or any portion of the Project Facility), together with all operating aid with respect to the Project Facility received by the Company from any governmental entity, Federal, State or local, but shall not include any amount received by the Company from any governmental entity, Federal, State or local, in aid of, for or with respect to the Cost of the Project. The term “Revenues” does not include room deposits collected and held by or on behalf of the Company; provided, however, in the case of room deposits, as such time as a student is invoiced for a room in the Project Facility, the student’s room deposit shall constitute Revenues and shall be transferred to the Revenue Fund, as applicable.

“Securities Laws” means the Securities Act of 1933, as amended, and all other securities laws of the United States of America or the State to the extent that such laws may now or hereafter be applicable to or affect the issuance, sale and delivery of the Bonds and any transfer or resale thereof.

“Security Documents” shall have the meaning assigned to such term in Section 4.1 of the Loan Agreement.

“SEQRA” means Article 8 of the Environmental Conservation Law of the State and the statewide and local regulations thereunder.

“Series” or “Series of Bonds” means all of the Bonds of a single series authenticated and delivered pursuant to the Indenture.

“Series 2017A Bonds” means the Issuer’s Tax-Exempt Student Housing Revenue Refunding Bonds (UBF Faculty-Student Housing Corp. – Greiner and Hadley Refunding Projects at SUNY Buffalo), Series 2017A in the aggregate principal amount of \$65,305,000 issued pursuant to the Bond Resolution, the Certificate of Determination and Article II of the Indenture and sold to the Underwriter pursuant to the provisions of the Initial Bond Purchase Agreement, in substantially the form attached to the Indenture as Schedule I thereto, and any Series 2017A Bonds issued in exchange or substitution therefor.

“Series 2017A Debt Service Reserve Account” means the account so designated within the Reserve Fund established pursuant to Section 401(A)(6)(a) of the Indenture.

“Series 2017A Project Account” means the account so designated within the Project Fund established pursuant to Section 401(A)(1)(a) of the Indenture.

“Sinking Fund Payments” means (A) with respect to the Initial Bonds, the sinking fund redemption payments due on the Initial Bonds pursuant to Section 301(C) of the Indenture and (B) with respect to any

Additional Bonds, the sinking fund redemption payments (if any) required pursuant to the supplemental Indenture authorizing issuance of such Additional Bonds.

“Special Record Date” means a date for the payment of any Defaulted Payment on the Bonds fixed by the Trustee pursuant to Section 207(C) of the Indenture.

“Standard & Poor’s” or “S&P” means S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, and its successors and assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of the Company.

“State” means the State of New York.

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

“Substantial User” means any Person constituting a “substantial user” within the meaning ascribed to such term in Section 147(a) of the Code.

“SUNY” means the State University of New York.

“Supplemental Indenture” means any indenture supplemental to or amendatory of the Indenture executed by the Issuer in accordance with Article VIII of the Indenture.

“Surplus Fund” means the fund so designated established pursuant to Section 401(A)(9) of the Indenture.

“Tax Documents” means, collectively, (A) with respect to the Initial Bonds, the Initial Tax Documents and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt Bonds, any similar documents executed by the Issuer and/or the Company in connection with the issuance of such Series of Additional Bonds.

“Tax-Exempt Bond” means any Bond issued as an obligation of the Issuer, the interest on which is intended to be excluded from the gross income of the Holder thereof for federal income tax purposes pursuant to Section 103 and Section 145 of the Code, including but not limited to the Initial Bonds.

“Tax Regulatory Agreement” means (A) with respect to the Initial Bonds, the Initial Tax Regulatory Agreement and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt Bonds, any similar document executed by the Company in connection with the issuance and sale of such Series of Additional Bonds.

“Term Bonds” means Bonds having a single stated maturity for which Sinking Fund Installments are specified in Section 301(C) of the Indenture (or, if such Bonds are Additional Bonds, in the supplemental indenture authorizing the issuance of such Bonds).

“Termination of Loan Agreement” means a termination of Loan Agreement by and between the Company, as borrower, and the Issuer, as lender, intended to evidence the termination of the Loan Agreement, substantially in the form attached as Exhibit C to the Loan Agreement.

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

“Trust Revenues” means (A) all payments of loan payments made or to be made by or on behalf of the Company under the Loan Agreement (except payments made with respect to the Unassigned Rights), (B) all other amounts pledged to the Trustee by the Issuer or the Company to secure the Bonds or performance of their respective obligations under the Loan Agreement and the Indenture, (C) the Net Proceeds (except proceeds with respect to the Unassigned Rights) of insurance settlements and Condemnation awards with respect to the Project Facility, (D) all payments received by the Trustee under the Guaranty or the Unconditional Cash Flow Guaranty, (E) moneys and investments held from time to time in each fund and account established under the Indenture and all investment income thereon, except (1) moneys and investments held in the Rebate Fund, (2) moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, (3) unclaimed funds held under Section 413 of the Indenture, and (4) as specifically otherwise provided, and (F) all other moneys received or held by the Trustee for the benefit of the Bondholders pursuant to the Indenture. Notwithstanding anything to the contrary, amounts held in the Rebate Fund shall not be considered Trust Revenues and shall not be subject to the Lien of the Indenture, and amounts held therein shall not secure any amount payable on the Bonds.

“Trustee” means Manufacturers and Traders Trust Company, a banking corporation constituting a trust company organized and existing under the laws of the State of New York, or any successor trustee or co-trustee acting as trustee under the Indenture.

“Unassigned Rights” means (A) the rights of the Issuer granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 3.8, 4.4, 5.1(B)(2), 5.1(C), 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.11, 8.14, 8.16, 8.17, 8.18, 9.1, 9.2, 11.1, 11.4, 11.8 and 11.10 of the Loan Agreement, (B) the moneys due and to become due to the Issuer for its own account or the members, directors, officers, agents (other than the Company), servants and employees of the Issuer for their own account pursuant to Sections 2.2, 5.1(B)(2), 5.1(C), 6.4(B), 8.2, 10.2 and 10.4 of the Loan Agreement, and (C) the right to enforce the foregoing pursuant to Article X of the Loan Agreement. Notwithstanding the preceding sentence, to the extent the obligations of the Company under the Sections of the Loan Agreement listed in (A), (B) and (C) above do not relate to the payment of moneys to the Issuer for its own account or to the members, officers, directors, agents (other than the Company), servants and employees of the Issuer for their own account, such obligations, upon assignment of the Loan Agreement by the Issuer to the Trustee pursuant to the Pledge and Assignment, shall be deemed to and shall constitute obligations of the Company to the Issuer and the Trustee, jointly and severally, and either the Issuer or the Trustee may commence an action to enforce the Company’s obligations under the Loan Agreement.

“Unconditional Cash Flow Guaranty” means the unconditional cash flow guaranty dated as of October 1, 2017 from the Foundation to the Trustee, as said guaranty may be amended or supplemented from time to time.

“Underwriter” means (A) with respect to the Initial Bonds, Janney Montgomery Scott LLC, as original purchaser of the Initial Bonds on the Closing Date relating thereto, and (B) with respect to any Series of Additional Bonds, the original purchaser of such Series of Additional Bonds on the Closing Date relating thereto.

“Underwriter Documents” means, collectively, (A) with respect to the Initial Bonds, the Initial Underwriter Documents and (B) with respect to any Additional Bonds, any similar documents executed by the Issuer and/or the Company in connection with the issuance of such Additional Bonds.

“William R. Greiner Hall Facility Management Agreement” means (A) the facility management agreement dated as of April 1, 2009 by and between the Company and the Manager, or (B) any such management agreement with a successor manager.

“William R. Greiner Hall Ground Lease” means the ground lease dated as of April 1, 2009, by and between SUNY, as landlord, and the UB Alumni Association, as tenant, as said ground lease may be amended or supplemented from time to time.

“Yield”, when used with respect to the Initial Bonds, shall have the meaning assigned to such term in the Initial Tax Regulatory Agreement.

### **SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE**

The following summarizes certain provisions of the Indenture to which reference is made for the detailed provisions thereof. Certain provisions of the Indenture are also described in the Official Statement under the captions “INTRODUCTORY STATEMENT,” “THE INITIAL BONDS,” and “SECURITY FOR THE INITIAL BONDS.”

The Initial Bonds will be issued under and secured by the Indenture. Reference is made to the Indenture for complete details of the terms thereof. The following is a brief summary of certain provisions of the Indenture and should not be considered a full statement thereof.

#### Restriction on Issuance of Bonds (Section 201)

Except for substitute Bonds and Additional Bonds issued pursuant to the Indenture, the total aggregate principal amount of Bonds that may be issued and authenticated under the Indenture is expressly limited to \$65,305,000.

#### Limited Obligations (Section 202)

The Bonds, together with the premium, if any, and the interest thereon, shall be limited obligations of the Issuer payable, with respect to the Issuer, solely from the Trust Revenues, which Trust Revenues are pledged and assigned to the Trustee for the equal and ratable payment of all sums due under the Bonds, and shall be used for no other purpose than to pay the principal of, premium, if any, on and interest on the Bonds, except as may be otherwise expressly provided in the Indenture.

THE BONDS DO NOT CONSTITUTE AND SHALL NOT BE A DEBT OF THE STATE OR OF THE TOWN OF AMHERST, NEW YORK AND NEITHER THE STATE NOR THE TOWN OF AMHERST, NEW YORK SHALL BE LIABLE THEREON. THE BONDS DO NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE STATE OR OF THE TOWN OF AMHERST, NEW YORK.

No recourse shall be had for the payment of the principal of, or the premium, if any, or the interest on, any Bond or for any claim based thereon or on the Indenture against any past, present or future member, director, officer, agent (other than the Company), servant or employee, as such, of the Issuer or of any predecessor or successor corporation, either directly or through the Issuer or otherwise, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise.

Delivery of the Initial Bonds (Section 210)

Upon the execution and delivery of the Indenture, the Issuer shall execute and deliver the Initial Bonds (including a reasonable number of additional Initial Bonds to be retained by the Trustee for authentication and delivery upon transfer or exchange of any Initial Bond) to the Trustee, and the Trustee shall authenticate and deliver the Initial Bonds to the purchasers thereof against payment of the purchase price therefor, plus accrued interest to the day preceding the date of delivery, upon receipt by the Trustee of the following:

- (1) a certified copy of the Bond Resolution;
- (2) executed originals of the Initial Bonds;
- (3) executed counterparts of the Indenture, the Loan Agreement, and the other Initial Financing Documents;
- (4) the executed Bond Insurance Policy;
- (5) the executed Bond Debt Service Reserve Insurance Policy;
- (6) a request and authorization to the Trustee on behalf of the Issuer signed by an Authorized Representative of the Issuer to deliver the Initial Bonds to or upon the order of the Underwriter upon payment to the Trustee for the account of the Issuer of the purchase price therefor specified in such request and authorization;
- (7) signed copies of the opinions of counsel to the Issuer, the Company, and the Trustee, and of Bond Counsel, as required by the Initial Bond Purchase Agreement;
- (8) the certificates and policies, if available, of the insurance required by the Loan Agreement;
- (9) evidence that a completed Internal Revenue Service Form 8038 with respect to the Series 2017A Bonds has been signed by the Issuer; and
- (10) such other documents as the Trustee or Bond Counsel may reasonably require.

Additional Bonds (Section 214)

So long as the Loan Agreement is in effect and no Event of Default exists thereunder or under the Indenture (and no event exists which, upon notice or lapse of time or both, would become an Event of Default thereunder or under the Indenture), the Issuer may, upon a request from the Company complying with the provisions of Section 214 of the Indenture and with the prior written consent of the Bond Insurer, issue one or more Series of Additional Bonds to provide funds to pay any one or more of the following: (1) costs of completion of the Project in excess of the amount in the Project Fund; (2) costs of any Additional Project; (3) costs of refunding or advance refunding any or all of the Bonds previously issued; (4) costs of making any modifications, additions or improvements to the Project Facility that the Company may deem necessary or desirable; (5) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Project Facility in the event of damage, destruction or taking by eminent domain; and/or (6) costs of the issuance and sale of the Additional Bonds, capitalized interest, funding debt service reserves, and other costs reasonably related to any of the foregoing. Additional Bonds may mature at different times, bear interest at different rates and otherwise vary from the Initial Bonds authorized under

Section 209 of the Indenture, all as may be provided in the supplemental Indenture authorizing the issuance of such Additional Bonds.

Prior to the execution of a supplemental Indenture authorizing the issuance of Additional Bonds, the Issuer must deliver the following documents to the Trustee:

(1) an amendment to the Loan Agreement and the other Financing Documents, providing for timely payment by the Company of Loan Payments in an amount at least equal to the sum of the total Debt Service Payments due on the Initial Bonds and all Additional Bonds and all other costs in connection with the Project Facility and all Additional Projects covered thereby;

(2) evidence that the Financing Documents, as amended or supplemented in connection with the issuance of the Additional Bonds, provide that (a) the Bonds referred to therein shall mean and include the Additional Bonds being issued as well as the Initial Bonds originally issued under the Indenture and any Additional Bonds theretofore issued, and (b) the Project Facility referred to in the Financing Documents includes any Additional Facilities being financed;

(3) a copy of the resolution of the board of directors of the Company, duly certified by the secretary or assistant secretary of the Company, which approves the issuance of the Additional Bonds and authorizes the execution and delivery by the Company of the amendments to the Financing Documents described in paragraphs (1) and (2) above;

(4) written opinions of counsel to the Company which shall state that (i) the amendments and supplements to the Financing Documents described in paragraphs (1) and (2) above have been duly authorized, executed and delivered by the Company, (ii) the Financing Documents, as amended and supplemented to the Closing Date for such Additional Bonds, constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, subject to the standard exceptions with respect to bankruptcy laws, equitable remedies and specific performance, and (iii) all conditions precedent provided for in the Indenture to the issuance, execution and delivery of the Additional Bonds have been complied with;

(5) a copy of the resolution of the members of the board of directors of the Issuer, duly certified by the secretary or assistant secretary of the Issuer, authorizing the issuance of the Additional Bonds and the execution and delivery by the Issuer of the amendments to the Financing Documents described in paragraph (1) and paragraph (2) above to be executed by the Issuer in connection therewith;

(6) an opinion of counsel to the Issuer stating that the amendments and supplements to the Financing Documents described above have been duly authorized and lawfully executed and delivered on behalf of the Issuer; and that such amendments and supplements to the Financing Documents are in full force and effect and are valid and binding upon the Issuer, subject to the standard exceptions with respect to bankruptcy laws, equitable remedies and specific performance;

(7) an opinion of Bond Counsel stating that, in the opinion of such Bond Counsel, the Issuer is duly authorized and entitled to issue such Additional Bonds and that, upon the execution, authentication and delivery thereof, such Additional Bonds will be duly and validly issued and will constitute valid and binding special obligations of the Issuer, enforceable in accordance with their terms, subject to the standard exceptions with respect to bankruptcy laws, equitable remedies and specific performance; that the issuance of the Additional Bonds will not, in and of itself, adversely affect the validity of the Initial Bonds originally issued under the Indenture or any Additional Bonds

theretofore issued or the exclusion of the interest payable on the Initial Bonds and any Additional Bonds theretofore issued as Tax-Exempt Bonds from the gross income of the Holders thereof for federal income tax purposes; and that all conditions precedent provided for in the Indenture to the issuance, execution and delivery of the Additional Bonds have been complied with;

(8) written evidence from each Rating Agency, if any, by which the Bonds are then rated, to the effect that the issuance of such Additional Bonds will not, by itself, result in a reduction or withdrawal of the rating(s) on the Outstanding Bonds applicable immediately prior to the issuance of the Additional Bonds;

(9) a written order to the Trustee executed by an Authorized Representative of the Issuer requesting that the Trustee authenticate and deliver the Additional Bonds to the purchasers therein identified;

(10) the written consent of the Bond Insurer; and

(11) such other documents as the Trustee may reasonably request.

Each Series of Additional Bonds shall be equally and ratably secured under the Indenture with the Initial Bonds issued on the Closing Date and with all other Series of Additional Bonds, if any, previously issued under the Indenture, without preference, priority, or distinction of any Bond over any other Bond.

The consent of the Holders of the Bonds shall not be required prior to the issuance of Additional Bonds, or to the execution and delivery of any amendments to the Financing Documents required in connection therewith. Prior to the issuance by the Issuer of a series of Additional Bonds, the Company shall provide to the Trustee the following: (1) a notice of the proposed issuance of such series of Additional Bonds; and (2) a proposed form of notice to be sent to the Holders of the Bonds and each Rating Agency, if any, by which the Bonds are then rated of the proposed issuance of the Additional Bonds (a "Notice to Holders"), detailing, at least, the aggregate principal amount of such Additional Bonds, and summarizing the nature of the amendments to the Financing Documents proposed to be executed in connection therewith. Within five Business Days of receipt of the foregoing, the Trustee shall mail the Notice to Holders to the Holders of the Bonds and each Rating Agency, if any, by which the Bonds are then rated of the proposed issuance of the Additional Bonds.

#### Establishment of Funds (Section 401)

The Indenture creates nine trust funds to be held by the Trustee: (1) the Project Fund, and, within the Project Fund, the following special accounts: (a) a Series 2017A Project Account, and (b) an additional, separate account for each series of Additional Bonds, each such additional account to be known as the "Series \_\_\_\_ Project Account", with the blank to be filled in with the same series designation as borne by the related series of Additional Bonds; (2) the Revenue Fund; (3) the Bond Fund, and, within the Bond Fund, the following special accounts: (a) a Series 2017A Bond Account, and (b) an additional, separate account for each series of Additional Bonds, each such additional account to be known as the "Series \_\_\_\_ Bond Account", with the blank to be filled in with the same series designation as borne by the related series of Additional Bonds; (4) the Operating Fund; (5) the Insurance and Condemnation Fund, and, within the Insurance and Condemnation Fund, the following special accounts: (a) a Series 2017A Insurance Condemnation Account, and (b) an additional, separate account for each series of Additional Bonds, each such additional account to be known as the "Series \_\_\_\_ Insurance and Condemnation Account", with the blank to be filled in with the same series designation as borne by the related series of Additional Bonds; (6) the Reserve Fund, and, within the Reserve Fund, the following special accounts: (a) a Series 2017A Debt Service Reserve Account, and (b) an additional, separate account for each series of Additional Bonds,

each such additional account to be known as the “Series \_\_\_\_\_ Debt Service Reserve Account”, with the blank to be filled in with the same series designation as borne by the related series of Additional Bonds; (7) the Repair and Replacement Fund; (8) the Rebate Fund, and, within the Rebate Fund, the following special accounts: (a) the Rebate Fund Principal Account and (b) the Rebate Fund Earnings Account; and (9) the Surplus Fund.

All moneys required to be deposited with or paid to the Trustee under any provision of the Indenture (1) shall be held by the Trustee in trust, and (2) (except for moneys held by the Trustee (a) for the redemption of Bonds, notice of redemption of which has been duly given, (b) as unclaimed monies held under Section 413 of the Indenture or (c) in the Rebate Fund) shall, while held by the Trustee, constitute part of the Trust Revenues and be subject to the Lien of the Indenture. Moneys which have been deposited with, paid to or received by the Trustee for the redemption of a portion of the Bonds or for the payment of Bonds or interest thereon due and payable otherwise than upon acceleration by declaration, shall be held in trust for and be subject to a Lien in favor of only the Holders of such Bonds so redeemed or so due and payable.

Moneys held in the Rebate Fund shall not be subject to a security interest, pledge, assignment, Lien or charge in favor of the Trustee or any other Person.

#### Application of Proceeds of Bonds and Other Moneys (Section 402)

The Issuer shall deposit with the Trustee all of the net proceeds from the sale of the Initial Bonds, including accrued interest payable on the Initial Bonds. The Trustee shall deposit the proceeds from the sale of the Initial Bonds as follows: (1) the Trustee shall deposit the portion of the proceeds of the sale of the Initial Bonds representing accrued interest on the Initial Bonds, if any, into the Bond Fund; and (2) the Trustee shall deposit the remainder of the proceeds of the sale of each Series of the Initial Bonds into the related Project Account in the Project Fund.

The amounts held in the Series 2017A Project Account shall be disbursed in accordance with the provisions of Section 404 of the Indenture.

The proceeds of any Additional Bonds shall be deposited as provided in the supplement to the Indenture authorizing the issuance of such Additional Bonds. Any such proceeds required to be deposited in the Project Fund shall be deposited in the appropriate account relating to such Additional Bonds within the Project Fund.

#### Transfers of Trust Revenues to Funds (Section 403)

Except as provided in Section 403(C) of the Indenture, moneys shall be transferred and deposited by the Trustee as follows:

(1) Commencing on the first date on which Loan Payments are received from the Company pursuant to Section 5.1(A) of the Loan Agreement, and thereafter, the Trustee shall deposit such payments, upon the receipt thereof, into the Bond Fund as provided in Section 405(A).

(2) The Trustee shall deposit any moneys received from the Company pursuant to Sections 5.1(B)(3) of the Loan Agreement into the Reserve Fund.

The Net Proceeds of any insurance settlement or Condemnation award received by the Trustee shall, upon receipt thereof, be deposited into the Insurance and Condemnation Fund.



If there has been a draw on the Reserve Fund to pay Debt Service Payments or an Event of Default under the Financing Documents shall have occurred and be continuing, all Revenues delivered by or on behalf of the Company to the Trustee pursuant to Section 3.9 of the Guaranty shall be transferred and deposited by the Trustee in the Revenue Fund, and once deposited into the Revenue Fund such moneys shall be transferred on the 25th day of each month in the following order:

(1) To the Bond Fund, the additional amount, if any, required for the balance therein to equal the following amounts:

(a) an amount equal to one-sixth (1/6) of the interest component of the Debt Service Payments due on the Bonds on the next succeeding Bond Payment Date, so that the amount on deposit in the Bond Fund and available for the payment of interest on the eighth (8th) Business Day next preceding such Interest Payment Date, when added to the amount in the Bond Fund and available to the Trustee for such purpose, shall equal the interest payable on the Bonds on such Interest Payment Date; and

(b) an amount equal to one-twelfth (1/12) of the Sinking Fund Payments and the principal component of the Debt Service Payments due on the Bonds on the next succeeding Bond Payment Date upon which a Sinking Fund Payment or a principal payment is due on the Bonds, so that the amount on deposit in the Bond Fund and available for the payment of interest on the eighth (8th) Business Day next preceding such Interest Payment Date, when added to the amount in the Bond Fund and available to the Trustee for such purpose, shall equal the amount due as Sinking Fund Payments and the principal component of the Debt Service Payments due on the Bonds on such Bond Payment Date; and

(c) The fractional payments to be made under paragraphs (i) and (ii) above shall be appropriately adjusted to reflect the date the Company begins to deliver the Revenues to the Trustee pursuant to the Guaranty. The Trustee shall make sufficient deposits into the Bond Fund from Revenues received from the Company or from transfers from the Surplus Fund so that there will be available in immediately available funds no later than the eighth (8th) Business Day next preceding each Bond Payment Date on the Bonds the amount necessary to pay the interest, principal and premium, if any, due or coming due on the Bonds.

(2) To the Operating Fund, the amount required to cause the balance therein to equal the budgeted Operating Expenses for the Project Facility through the end of the next calendar month, plus any amount necessary to cause the amount on deposit in the Operating Fund to be equal to ten percent (10%) of the Operating Expenses, as shown on the Annual Budget then in effect, as shown on a certificate to be provided to the Trustee by the Company;

(3) To the Reserve Fund, an amount sufficient to cause the balance therein to at least equal the Reserve Fund Requirement or, if less, the amount, if any, certified by the Company to the Trustee to be the amount required to discharge the Company's restoration obligations under Section 408(D) of the Indenture;

(4) (a) To the Repair and Replacement Fund, an amount equal to one-twelfth (1/12) of the Repair and Replacement Requirement then in effect; and

(b) The fractional payments to be made under paragraph (i) above shall be appropriately adjusted to reflect the date the Company begins to deliver the Revenues to

the Trustee pursuant to the Guaranty. The Trustee shall make sufficient deposits into the Repair and Replacement Fund from Revenues received from the Company or from transfers from the Surplus Fund so that the total amount of moneys deposited into the Repair and Replacement Fund in the calendar year will equal the Repair and Replacement Fund Requirement; and

(5) To the Surplus Fund, the moneys remaining in the Revenue Fund.

The Trustee shall make the transfers described in Section 403(C)(1) of the Indenture on the 25th day of each month from Revenues delivered each month by or on behalf of the Company. In the event that such Revenues are not sufficient to make the transfers in the amounts and at the times described in Section 403(C)(1) of the Indenture, the Trustee is authorized to make such transfers from moneys held in the Surplus Fund automatically and without any requisition or direction from the Company.

#### Project Fund (Section 404)

In addition to moneys deposited in the Project Fund from the proceeds of the sale of the Bonds pursuant to Section 402 of the Indenture, there shall be deposited into the Project Fund all other moneys received by the Trustee under or pursuant to the Indenture or the other Financing Documents which, by the terms thereof, are to be deposited in the Project Fund. Moneys on deposit in the Series 2017A Project Account of the Project Fund with respect to the Initial Bonds shall be disbursed and applied by the Trustee to pay the Costs of the Project relating to the Project pursuant to the provisions of Section 3.3 of the Loan Agreement, Section 404 of the Indenture and the Initial Tax Regulatory Agreement. Moneys on deposit in the Project Fund with respect to the Additional Bonds shall be disbursed in accordance with the provisions of the supplemental Indenture authorizing issuance of such Additional Bonds.

The Trustee is instructed to enter into the Defeasance Escrow Agreement relating to the defeasance of the Prior Bonds. On the Closing Date relating to the Initial Bonds, or as soon thereafter as is practicable, following execution and delivery of the Defeasance Escrow Agreement, the Trustee shall pay to the Prior Trustee, from the moneys on deposit in the Project Fund, an amount equal to the Defeasance Cash Deposit relating to the Prior Bonds. Pursuant to the provisions of the Defeasance Escrow Agreement, the Defeasance Cash Deposit relating to the Prior Bonds shall become part of the Defeasance Escrow Deposit relating to the Prior Bonds, and the Defeasance Escrow Deposit relating to the Prior Bonds shall be held by the Prior Trustee pursuant to the Defeasance Escrow Agreement and applied to pay debt service coming due on the Prior Bonds and to redeem the Prior Bonds on the earliest possible optional redemption date relating to the Prior Bonds following the date of the issuance of the Initial Bonds.

The Trustee is authorized and directed to disburse the balance of the moneys on deposit in the Project Fund relating to the Initial Bonds upon receipt by the Trustee of a Request for Disbursement certified to by an Authorized Representative of the Company in accordance with the applicable provisions of the Indenture and the Loan Agreement and the Initial Tax Regulatory Agreement.

Moneys on deposit in the Project Fund may be invested in Authorized Investments in accordance with the provisions of the Indenture. All interest and other income accrued and earned on amounts held in the Project Fund shall be deposited by the Trustee into the appropriate account of the Project Fund related to such monies and may be used to pay the Costs of the Project related to such account.

Except for any amount retained for the payment of incurred and unpaid items of the Cost of the Project, after the Completion Date related to a particular Project, all moneys in the related account in the Project Fund (in excess of any amount required to be transferred to the Rebate Fund pursuant to the Indenture and the Tax Documents) shall be transferred from the Project Fund to the Bond Fund or to an

escrow fund to be created by the Trustee at the written direction of the Company, to be applied to the defeasance of a portion of the Bonds then Outstanding pursuant to the provisions of the Tax Documents.

In the event that the unpaid principal amount of the Bonds shall be accelerated upon the occurrence of an Event of Default, the balance in the Project Fund (in excess of any amount required to be transferred to the Rebate Fund pursuant to the Indenture and the Tax Documents) shall be transferred from the Project Fund to the Bond Fund as soon as possible and shall be used to pay the principal of, premium, if any, on and interest on the Bonds.

The Trustee shall maintain adequate records pertaining to the Project Fund and all disbursements therefrom and shall, upon request of the Issuer or the Company, and within sixty (60) days after the Completion Date, file an accounting thereof with the Issuer and the Company.

#### Bond Fund (*Section 405*)

In addition to the moneys deposited into the Bond Fund (1) from the proceeds of the Bonds pursuant to Section 402 of the Indenture and (2) pursuant to Sections 403, 404 and 414 of the Indenture, there shall be deposited into the Bond Fund (a) all Loan Payments received from the Company under the Loan Agreement (except payments made with respect to the Unassigned Rights, which shall be paid to the Issuer), (b) any amount in the Insurance and Condemnation Fund directed to be paid into the Bond Fund under Section 406 of the Indenture, (c) any amounts received from the Company pursuant to Section 3.6 of the Loan Agreement, (d) all prepayments by the Company in accordance with Section 5.3 of the Loan Agreement in connection with which notice has been given to the Trustee pursuant to Section 302 of the Indenture, (e) all moneys held in the Accounts within the Reserve Fund which are in excess of the amount required to be held in the Reserve Fund as of such date, (f) any amount received by the Trustee from the Bond Insurer pursuant to the Bond Insurance Policy, which amount shall be held in the applicable Accounts within the Bond Fund until disbursed, (g) any amount transferred and deposited by the Trustee pursuant to Section 403(C) of the Indenture, and (h) all other moneys received by the Trustee under and pursuant to the Indenture or the other Financing Documents which by the terms thereof are to be deposited into the Bond Fund, or are accompanied by directions from the Company or the Issuer that such moneys are to be paid into the Bond Fund.

Moneys on deposit in the Bond Fund may be invested in Authorized Investments in accordance with the provisions of the Indenture. All interest and other income accrued and earned on moneys on deposit in the Bond Fund will be deposited by the Trustee in the Bond Fund.

On the Business Day immediately following a Bond Payment Date, if any amounts remain in the Bond Fund, such amounts in the Bond Fund shall be transferred as follows: (1) in the event payment has been made by the Bond Insurer pursuant to the provisions of this Indenture and the Bond Insurance Policy, to the Bond Insurer until the Bond Insurer has been reimbursed in full for all amounts paid under the Bond Insurance Policy; and (2) (a) in the event payment has been made by the Bond Insurer pursuant to the provisions of the Indenture and the Bond Debt Service Reserve Insurance Policy, to the Bond Insurer until the Bond Insurer has been reimbursed in full for all amounts paid under the Bond Debt Service Reserve Insurance Policy, and, (b) thereafter, to the applicable Accounts within the Reserve Fund, until the amount held in such Accounts of the Reserve Fund held in the Reserve Fund is at least equal to the Reserve Fund Requirement. Once all transfers provided in this paragraph have been made, the Trustee shall inform the Company of the amount remaining in the Accounts within the Bond Fund, and such moneys shall be applied by the Trustee to the respective Debt Service Payments due on the following Bond Payment Date.

#### Insurance and Condemnation Fund (Section 406)

The Net Proceeds of any insurance settlement or Condemnation award received by the Trustee in connection with damage to or destruction of or the taking of part or all of the Project Facility, together with any other amounts so required to be deposited therein under the Loan Agreement, shall be deposited into the Insurance and Condemnation Fund. If, following damage to or Condemnation of all or a portion of the Project Facility, (1) the Company exercises its option not to repair, rebuild or restore the Project Facility and to provide for the defeasance and/or redemption of the Bonds, or (2) if a taking in Condemnation as described in Section 7.2(C) of the Loan Agreement occurs, the Trustee shall, after any transfer to the Rebate Fund required pursuant to the Indenture and the Tax Documents is made, transfer all moneys held in the Insurance and Condemnation Fund to an escrow fund to be created by the Trustee at the written direction of the Company, to be applied to the defeasance and/or redemption of the Bonds then Outstanding pursuant to the provisions of the Tax Documents, except as provided in Section 416 of the Indenture.

If, following damage to or Condemnation of all or a portion of the Project Facility, the Company elects to repair, rebuild or restore the Project Facility, and provided no Event of Default under the Indenture or under any other Financing Document has occurred and is continuing, moneys held in the Insurance and Condemnation Fund and attributable to the damage to or the destruction of or the taking of the Project Facility shall, after any transfer to the Rebate Fund required by the Indenture and the Tax Documents is made, be applied to pay the costs of such repairs, rebuilding or restoration in accordance with the Indenture.

If the cost of the repairs, rebuilding or restoration of the Project Facility effected by the Company shall be less than the amount in the Insurance and Condemnation Fund, then on the completion of such repairs, rebuilding or restoration, the Trustee shall transfer such difference to the Bond Fund and use such amounts so transferred to provide for the defeasance and/or redemption of the Bonds in accordance with the Tax Documents; provided that such amounts may be transferred to the Company for its purposes if (1) the Company so requests, (2) the Bond Insurer approves such transfer, and (3) the Company furnishes to the Trustee an opinion of Bond Counsel to the effect that payment of such moneys to the Company will not, in and of itself, adversely affect the exclusion of the interest paid or payable on the Tax-Exempt Bonds from gross income for federal income tax purposes.

#### Rebate Fund (Section 407)

The Trustee shall make information regarding the Bonds and investments under the Indenture available to the Company. If a deposit to the Rebate Fund is required as a result of the computations made or caused to be made by the Company, the Trustee shall upon receipt of written direction from the Company accept such payment for the benefit of the Company. If amounts in excess of that required to be rebated to the United States of America accumulate in the Rebate Fund, the Trustee shall upon written direction from the Authorized Representative of the Company transfer such amount to the Company. Records of the determinations required by Section 407 of the Indenture and the instructions must be retained by the Trustee until six years after the Tax-Exempt Bonds are no longer outstanding. Any provision of the Indenture to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien under the Indenture.

The Trustee, upon the receipt of a certification of the Rebate Amount from an Authorized Representative of the Company, shall deposit in the Rebate Fund Principal Account, within thirty (30) days after the end of each Bond Year commencing with the first Bond Year, an amount such that the amount held in the Rebate Fund Principal Account after such deposit is equal to the Rebate Amount calculated as of the last day of the prior Bond Year and so certified to the Trustee. If there has been delivered to the Trustee a certification of the Rebate Amount in conjunction with the completion or restoration of the Project Facility pursuant to the Loan Agreement or the Indenture at any time during a Bond Year, the Trustee shall

deposit in the Rebate Fund Principal Account upon receipt of such certification an amount such that the amount held in the Rebate Fund Principal Account after such deposit is equal to the Rebate Amount calculated on the Completion Date or at the time of restoration of the Project Facility, as the case may be. The amount to be deposited in the Rebate Fund shall be withdrawn from the fund or funds established under the Indenture designated by the Company or from other moneys made available by the Company.

In the event that on the first day of any Bond Year, after the calculation of the Rebate Amount, the amount on deposit in the Rebate Fund Principal Account with respect to such Series of Tax-Exempt Bonds exceeds the Rebate Amount with respect to a Series of Tax-Exempt Bonds, the Trustee, upon the receipt of written instructions from an Authorized Representative of the Issuer or the Company, shall withdraw such excess amount and (1) prior to the Completion Date, shall transfer such excess to the Project Fund to be applied to the payment of Costs of the Project related to such Series of Tax-Exempt Bonds or (2) after the Completion Date, shall transfer such excess to the Bond Fund to be applied to the payment of the principal and interest and Sinking Fund Payments coming due on such Series of Tax-Exempt Bonds on the next following Bond Payment Date.

The Trustee, upon the receipt of written instructions satisfactory to the Trustee from an Authorized Representative of the Company, shall pay to the United States of America, from amounts on deposit in the Rebate Fund or from other moneys supplied by the Company, (1) not less frequently than once every five (5) years after the date of original issuance of a Series of Tax-Exempt Bonds (or such other date as the Company may choose, provided the Company and the Trustee receive an opinion of Bond Counsel that such change will not cause interest on such Series of Tax-Exempt Bonds to be included in gross income for federal income tax purposes) and every five years thereafter until final retirement of such Series of Tax-Exempt Bonds, an amount such that, together with prior amounts paid to the United States of America, the total amount paid to the United States of America is equal to ninety percent (90%) of the Rebate Amount with respect to such Series of Tax-Exempt Bonds as of the date of such payment plus all amounts then held in the Rebate Fund Earnings Account with respect to such Series of Tax-Exempt Bonds, and (2) not later than thirty (30) days after the date on which all Bonds of any particular Series of Tax-Exempt Bonds have been paid in full, one hundred percent (100%) of the Rebate Amount with respect to such Series of Tax-Exempt Bonds as of the date of such payment plus all amounts relating thereto then held in the Rebate Fund Earnings Account with respect to such Series of Tax-Exempt Bonds.

The foregoing described provisions of the Indenture may be amended, without notice to or consent of the Bondholders, at the request of the Issuer or the Company, to comply with the applicable regulations of the Treasury Department, upon the delivery by the Issuer or the Company to the Trustee of an opinion of Bond Counsel that such amendment will not, in and of itself, adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds which exists on the Closing Date.

As indicated in Section 513 of the Indenture, the Issuer shall not be responsible for the calculation or payment of any rebate amount required by Section 148 of the Code.

#### The Reserve Fund (Section 408)

On the Closing Date for the Initial Bonds, the Issuer shall cause to be deposited with the Trustee the Bond Debt Service Reserve Insurance Policy to the credit of the Series 2017A Debt Service Reserve Account, in the amounts equal to the Reserve Fund Requirement relating to the Initial Bonds. No credit facilities, insurance policies, forward delivery agreements, hedge or par-put agreements may be used without the prior written consent of the Bond Insurer.

If, on the fourth Business Day immediately preceding any Bond Payment Date, the amount on deposit in the Accounts within the Bond Fund is not sufficient to pay the respective Debt Service Payments due on such Bond Payment Date with respect to the Initial Bonds then Outstanding, and, to the extent other funds are not available therefor pursuant to the Indenture, the Trustee shall deliver a Notice of Nonpayment to the Bond Insurer in accordance with the terms of the Bond Debt Service Reserve Insurance Policy and the provisions of the Indenture. Upon receipt of the proceeds of the draw from the Bond Insurer, the Trustee shall deposit such amounts into the Bond Fund and the Trustee shall then make the Debt Service Payments coming due on the Initial Bonds on such Bond Payment Date.

Any earnings on amounts held in Accounts within the Reserve Fund shall be deposited by the Trustee into the applicable Accounts within the Bond Fund and may be used to pay the respective Debt Service Payments due on the Bonds. If the principal of all the Bonds shall become due and payable, whether by maturity, by redemption or otherwise, the Trustee shall transfer from the applicable Accounts within the Reserve Fund and deposit into the applicable Accounts within the Bond Fund any balance remaining in the Accounts within the Reserve Fund.

The Trustee shall notify the Company in writing of any delivery of a Notice of Nonpayment to the Bond Insurer. Pursuant to Section 5.1(B)(3) of the Loan Agreement, the Company has agreed to repay any draws on the Bond Debt Service Reserve Insurance Policy in monthly payments commencing immediately succeeding receipt by the Company from the Trustee of the notice of such draw, each such monthly payment to be in an amount at least equal to one-twelfth of the Policy Costs related to such draw; provided that no further payments shall be required as a result of such notice if and when the Policy Costs have been paid in full.

#### Revenue Fund (Section 409)

From and after such time as all Revenues are required to be delivered by the Company to the Trustee pursuant to Section 3.9 of the Guaranty, the Trustee shall deposit such Revenues into the Revenue Fund.

All reasonable fees and expenses of the Trustee then due, if any, shall be paid out of moneys held by the Trustee in the Revenue Fund.

The Trustee shall transfer moneys out of the Revenue Fund into the other funds and accounts created under Section 401(A) of the Indenture in accordance with the terms of Section 403(C) of the Indenture.

#### Operating Fund (Section 410)

The Trustee shall deposit moneys into the Operating Fund in accordance with the provisions of Section 403(C) of the Indenture.

Moneys held in the Operating Fund shall be used to pay monthly operating expenses for the immediately succeeding month as described in the Annual Budget.

The Trustee is authorized to and shall make disbursements, at the Company's request, upon receipt by the Trustee of a certificate of an Authorized Representative of the Company, with a copy to the Bond Insurer, stating, with respect to each payment to be made: (1) the amount or amounts to be paid, the Person or Persons (which may include the Company for reimbursement of such costs) to whom an amount is to be paid and the total sum of all such amounts; (2) that the Company has expended, or is expending, concurrently with the delivery of such certificate, such amount or amounts on account of costs incurred in connection with the operation of the Project Facility; (3) that the amount requested represents the monthly

operating expenses for the immediately succeeding month as described in the Annual Budget; (4) that the amount requested does not include any amounts payable to the Manager under the Management Agreement or to SUNY under the Ground Lease and (5) that the requested payment is a proper charge against the Operating Fund. The Trustee shall be entitled to rely on such certificate.

The Trustee is authorized to make the disbursements provided under Section 410 of the Indenture not more often than one each week, pursuant to the written certification from the Company described in Section 410(C) of the Indenture.

#### Repair and Replacement Fund (Section 411)

The Trustee shall deposit moneys into the Repair and Replacement Fund in accordance with the provisions of Section 403(C) of the Indenture.

Except as provided in Section 411(E) of the Indenture, moneys held in the Repair and Replacement Fund shall be used to pay the costs of replacement or repair of Equipment or other components of the Project Facility as provided in Section 411(C) of the Indenture.

The Trustee is authorized to and shall make disbursements, at the Company's request, either upon the completion of replacement or repair of Equipment or other components of the Project Facility or periodically as such replacement or repair progress, upon receipt by the Trustee of a certificate of an Authorized Representative of the Company, with a copy to the Bond Insurer, stating, with respect to each payment to be made: (1) the amount or amounts to be paid, the Person or Persons (which may include the Company for reimbursement of such costs) to whom an amount is to be paid and the total sum of all such amounts; (2) that the Company has expended, or is expending, concurrently with the delivery of such certificate, such amount or amounts on account of costs incurred in connection with the replacement or repair of Equipment or other components of the Project Facility; (3) that all contractors, workmen and suppliers have been or will be paid through the date of such certificate from the funds to be disbursed; (4) that no certificate with respect to such expenditures has previously been delivered to the Trustee; and (5) that the requested payment is a proper charge against the Repair and Replacement Fund. The Trustee shall be entitled to rely on such requisition.

The Trustee is authorized to make the disbursements provided under Section 411 of the Indenture not more often than one each month, pursuant to the written certification from the Company described in Section 411(C) of the Indenture.

If, on any Bond Payment Date, the amount on deposit in the Accounts within the Bond Fund and the Surplus Fund is not sufficient to pay the respective Debt Service Payments due on such Bond Payment Date with respect to the Bonds then Outstanding, the Trustee shall transfer automatically, without any requisition from the Company, from the Repair and Replacement Fund and deposit into the Bond Fund an amount of money sufficient, when added to the amounts then on deposit in the applicable Accounts within the Bond Fund and available to make the respective Debt Service Payments coming due on the Bonds on such Bond Payment Date, to enable the Trustee to make all such Debt Service Payments coming due on the Bonds on such Bond Payment Date.

#### Surplus Fund (Section 412)

The Trustee shall deposit moneys into the Surplus Fund in accordance with the provisions of Section 403(C) of the Indenture.

Moneys held in the Surplus Fund shall be used to make monthly transfers, deposits and payments described in Section 403(C) of the Indenture, as necessary and thereafter shall be transferred to the Company in accordance with the terms of Section 412(C) of the Indenture.

Other than as applied pursuant to Section 403(C) and Section 412(D) of the Indenture, all moneys deposited in the Surplus Fund during any Fiscal Year shall remain in the Surplus Fund subsequent to such Fiscal Year-end until receipt by the Trustee, with a copy to the Bond Insurer, of (1) audited financial statements of the Company for such prior Fiscal Year; and (2) a certificate of an Authorized Representative of the Company affirming that (a) no Event of Default exists under the Financing Documents, and (b) the financial statements referred to in (1) above demonstrate that the Debt Service Coverage Ratio for such prior Fiscal Year was not less than 1.2:1.0. As a condition precedent to the release of any such moneys remaining in the Surplus Fund from the prior Fiscal Year to the Company, (1) there shall not be any Policy Costs due and owing under the Bond Debt Service Reserve Insurance Policy and (2) all amounts required to have been deposited to the Repair and Replacement Fund shall have been so deposited. If any moneys remain in the Surplus Fund subsequent to the Fiscal Year-end due to the failure of the Company to produce a Debt Service Coverage Ratio of not less than 1.2:1.0 of the prior Fiscal Year, such moneys shall be released to the Company only upon receipt by the Trustee, with a copy to the Bond Insurer, of unaudited financial statements for a period of two consecutive subsequent fiscal quarters (which unaudited financial statements shall be submitted with the certificate referred to in (2) above) demonstrating that the Debt Service Coverage Ratio for such period was not less than 1.2:1.0 and the provisions set forth under (a) have been satisfied.

(D) If, on any Bond Payment Date, the amount on deposit in the Accounts within the Bond Fund is not sufficient to pay the respective Debt Service Payments due on such Bond Payment Date with respect to the Bonds then Outstanding, the Trustee shall transfer automatically from the Surplus Fund and deposit into the Bond Fund an amount of money sufficient, when added to the amounts then on deposit in the applicable Accounts within the Bond Fund and available to make the respective Debt Service Payments coming due on the Bonds on such Bond Payment Date, to enable the Trustee to make all such Debt Service Payments coming due on the Bonds on such Bond Payment Date.

#### Non-Presentation of Bonds (Section 413)

Subject to the provisions of the Indenture, 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, or in the event any interest payment on a Bond shall be unclaimed, if moneys sufficient to pay such Bond or interest shall have been deposited with the Trustee for the benefit of the Holder thereof, such Bond shall be deemed cancelled, redeemed or retired on such date even if not presented on such date or such interest shall be deemed paid, as the case may be, and all liability of the Issuer to the Holder thereof for the payment of such Bond or interest shall forthwith cease, terminate and be completely discharged; and thereupon it shall be the duty of the Trustee to hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond or interest thereon who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under the Indenture or with respect to such Bond or interest.

Subject to any law to the contrary, if any Bond shall not be presented for payment or any interest payment shall not be claimed prior to the earlier of (1) two years following the date when such Bond or interest becomes due, either at maturity or at the date fixed for redemption or otherwise, or (2) the Business Day prior to the date on which such moneys would escheat to the State, the Trustee shall, upon written request of the Company, return to the Company all funds held by the Trustee for the payment of such Bond or interest. Thereafter, (a) the Owner of such Bond shall be entitled to look only to the Company for payment of such Bond or interest, and then only to the extent of the amount so repaid to the Company, who



shall not be liable for any interest thereon and shall not be regarded as a trustee of such money, (b) all liability of the Trustee with respect to such moneys shall terminate, and (c) such Bond shall, subject to the defense of any applicable statute of limitations, thereafter be an unsecured obligation of the Company.

Final Disposition of Moneys (Section 416)

In the event there are no Bonds Outstanding, and subject to any applicable law to the contrary, after payment of all fees, charges and expenses, including, but not limited to reasonable attorney's fees, of the Issuer and the Trustee and all other amounts required to be paid under the Indenture and under the other Financing Documents and after payment of any amounts required to be rebated to the United States of America under the Indenture and under the Tax Documents or any provision of the Code, all amounts remaining in any fund established under the Indenture shall be transferred to the Company (except amounts held with respect to the Unassigned Rights, which amounts shall be paid to the Issuer, and except for moneys held for the payment or redemption of Bonds which have matured or been defeased or notice of the redemption of which has been duly given and any other monies held under Section 413, which shall be held for the benefit of the Owners of such Bonds).

Duties with Respect to the Bond Insurance Policy (Section 418)

As long as the Bond Insurance Policy shall be in force and effect, the Issuer and the Trustee agree to comply with the following payment procedures in respect of the Bond Insurance Policy:

If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Trustee, after making all transfers and deposits required under the Indenture, moneys sufficient to pay the principal of and interest on the Insured Bonds due on such Payment Date, the Trustee shall give notice to the Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Insured Bonds due on such Payment Date, the Trustee shall make a claim under the Bond Insurance Policy and give notice to the Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Insured Bonds and the amount required to pay principal of the Insured Bonds, confirmed in writing to the Bond Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Bond Insurance Policy.

The Trustee shall designate any portion of payment of principal on Insured Bonds paid by the Bond Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Insured Bonds registered to the then current holder of the Insured Bonds, whether DTC or its nominee or otherwise, and shall issue a replacement Initial Bond to the Bond Insurer, registered in the name of Assured Guaranty Municipal Corp., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Initial Bond shall have no effect on the amount of principal or interest payable by the Issuer on any Initial Bond or the subrogation rights of the Bond Insurer.

The Trustee shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal of any Initial Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

Upon payment of a claim under the Bond Insurance Policy, the Trustee shall establish a separate special purpose trust account within the Bond Fund for the benefit of holders of the Insured Bonds referred to herein as the “Policy Payments Account” and over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under the Bond Insurance Policy in trust on behalf of holders of the Insured Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Trustee to holders of the Insured Bonds in the same manner as principal and interest payments are to be made with respect to the Insured Bonds under the sections of the Indenture regarding payment of Insured Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything herein to the contrary, the Issuer agrees to pay to the Bond Insurer (i) a sum equal to the total of all amounts paid by the Bond Insurer under the Bond Insurance Policy (the “Insurer Advances”); and (ii) interest on such Insurer Advances from the date paid by the Bond Insurer until payment thereof in full, payable to the Bond Insurer at the Late Payment Rate per annum (collectively, the “Insurer Reimbursement Amounts”). “Late Payment Rate” means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in The City of New York, as its prime or base lending rate (any change in such rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then applicable highest rate of interest on the Insured Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. The Issuer covenants and agrees that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the Trust Estate and payable from such Trust Estate on a parity with debt service due on the Insured Bonds.

Funds held in the Policy Payments Account shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses, or liabilities of the Trustee. Any funds remaining in the Policy Payments Account following a bond payment date shall promptly be remitted to the Bond Insurer.

#### No Modification of Security; Limitation on Liens (Section 508)

The Issuer covenants that it will not alter, modify or cancel, or agree to alter, modify or cancel, the Loan Agreement or any other Financing Document to which the Issuer is a party, or which has been assigned to the Issuer, and which relates to or affects the security for the Bonds, except as contemplated by the Indenture or pursuant to the terms of such document. The Issuer further covenants that, except for the Financing Documents and other Permitted Encumbrances, the Issuer will not incur, or suffer to be incurred, any mortgage, Lien, charge or encumbrance on or pledge of any of the Trust Estate prior to or on a parity with the Lien of the Indenture.

#### Covenant Against Arbitrage Bonds (Section 513)

So long as any Tax-Exempt Bonds shall be Outstanding, the Issuer shall not use or direct or permit the use of the proceeds of the Tax-Exempt Bonds or any other moneys in its control (including, without limitation, the proceeds of any insurance settlement or Condemnation award with respect to the Project Facility) in such manner as would cause any of the Tax-Exempt Bonds to be an “arbitrage bond” within the meaning of such quoted term in Section 148 of the Code. The Issuer shall not be responsible for the calculation or payment of any rebate amount required by Section 148 of the Code. The Trustee shall not be responsible for the calculation, or the payment from its own funds, of any amount required to be rebated to the United States of America under Section 148 of the Code. The Trustee shall, however, make such transfers to the Rebate Fund and pay such amounts from the funds and accounts created under the Indenture and from the Company’s funds to the United States of America as the Company, in accordance with the Indenture and the Tax Documents, shall direct.

### Events of Default (Section 601)

The Indenture provides that each of the following events will constitute an Event of Default under the Indenture:

- (1) failure by the Issuer to make due and punctual payment of the interest or premium or Sinking Fund Payments on any Bond, or failure by the Issuer to make due and punctual payment of the principal of any Bond, whether at the Stated Maturity thereof, or upon proceedings for the redemption thereof, or upon the maturity thereof by declaration;
- (2) subject to any right to waive the same as set forth in the Financing Documents, receipt by the Trustee of notice, or actual notice on the part of the Trustee, of the occurrence of an Event of Default under any of the other Financing Documents; or
- (3) subject to the provisions of the Indenture, default in the performance or observance of any other covenant, agreement or condition on the part of the Issuer in the Indenture or in any Bond to be performed or observed and the continuance thereof for a period of thirty (30) days after written notice thereof is given to the Issuer, the Bond Insurer, and the Company by the Trustee or by the Holders of at least fifty-one percent (51%) in aggregate principal amount of the Bonds then Outstanding.

### Acceleration (Section 602)

Upon the occurrence of any Event of Default and so long as such Event of Default is continuing, the Trustee may, with the prior written consent of the Bond Insurer (unless the Bond Insurer elects to direct the Trustee to continue to pay principal and interest on the Bonds on the originally scheduled due dates of the Bonds), and upon the written request of the Bond Insurer or the Holders of not less than fifty-one percent (51%) in aggregate principal amount of Bonds then Outstanding with the consent of the Bond Insurer, the Trustee shall, declare the principal of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable; provided, however, that the prior written consent of the Bond Insurer shall not be required if the Bond Insurer is then in default under the Bond Insurance Policy, or if the Bond Insurance Policy shall not be in effect. Upon any such declaration, the Trustee will immediately declare an amount equal to all amounts then due and payable on the Bonds to be immediately due and payable under the Loan Agreement.

### Enforcement Of Remedies (Section 603)

Upon the occurrence and during the continuance of any Event of Default, the Trustee shall exercise such of the rights and powers vested in the Trustee by the Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his own affairs. In considering what actions are or are not prudent in the circumstances, the Trustee shall consider whether or not to take such action as may be permitted to be taken by the Trustee under any of the Financing Documents.

Upon the occurrence and during the continuance of any Event of Default, the Trustee may proceed forthwith to protect and enforce its rights under the Enabling Act, the Loan Agreement and the other Financing Documents by such suits, actions or proceedings as the Trustee, being advised by counsel, shall deem expedient.

Upon the occurrence and during the continuance of any Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce payment

of and receive any amounts due or becoming due from the Issuer or the Company under any of the provisions of the Indenture, the Loan Agreement and the other Financing Documents, without prejudice to any other right or remedy of the Trustee or the Bondholders. The Trustee may sue for, enforce payment of and receive any amounts due or becoming due from the Company for principal, premium, interest or otherwise under any of the provisions of the Indenture or the other Financing Documents, without prejudice to any other right or remedy of the Trustee.

Regardless of the happening of an Event of Default, the Trustee may, with the prior written consent of the Bond Insurer, and upon (1) the written request of the Bond Insurer or the Holders of not less than fifty one percent (51%) in aggregate principal amount of Bonds then Outstanding, with the written consent of the Bond Insurer and (2) upon receipt by the Trustee of such security or indemnity as the Trustee may require to hold the Trustee harmless from such action, the Trustee 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 and the other Financing Documents by any acts which may be unlawful or in violation of the Indenture or of any other Financing Document or of any resolution authorizing the Bonds, or to preserve or protect the interest of the Trustee and/or the Bondholders.

#### Rights of Bondholders to Direct Proceedings (Section 607)

The Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall, with the consent of the Bond Insurer, have the right at any time, by an instrument in writing executed and delivered to the Trustee and upon offering the Trustee the security and indemnity provided for in the Indenture, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture, the Loan Agreement or the other Financing Documents, or for the appointment of a receiver or any other proceedings under the Indenture, provided that such direction, in the sole opinion of the Trustee, is in accordance with the provisions of law and is not unduly prejudicial to the interests of the Bondholders not joining such direction and would not involve the Trustee in personal liability.

#### Application of Moneys (Section 609)

All moneys received by the Trustee pursuant to any right given or action taken under the default and remedy provisions of the Indenture shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances (including reasonable attorneys' fees) incurred or made by the Trustee, be deposited into the Bond Fund; and all moneys in the Bond Fund shall be applied, together with the other moneys held by the Trustee under the Indenture (other than amounts on deposit in the Rebate Fund and unclaimed funds held pursuant to Section 413 of the Indenture), as follows:

(1) Unless the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied:

FIRST - to the payment to the Persons entitled thereto of all installments of interest then due 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;

SECOND - to the payment to the Persons entitled thereto of the unpaid principal of and any premium on the Bonds (other than Bonds called for redemption for the payment of which moneys shall be held pursuant to the provisions of the Indenture) which shall have

become due, in order of their maturities, with interest from the date upon which they became due and, if the amount available shall not be sufficient to pay in full the principal of and premium, if any, and interest on the Bonds due on any particular date, then to the payment ratably, according to amounts due respectively for principal, interest and premium, if any, to the Persons entitled thereto, without any discrimination or privilege;

THIRD - to the payment to the Persons entitled thereto of the principal of, premium, if any, on, or interest on the Bonds which may thereafter become due and payable, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with interest and premium, if any, then due and owing thereon, payment shall be made ratably according to the amount of interest, principal and premium, if any, due on such date to the Persons entitled thereto, without any discrimination or privilege; and

FOURTH – to the payment of any amounts owing to the Bond Insurer under the Financing Documents.

(2) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal, premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority of principal and premium over interest or of interest over principal and premium, or of any installment of interest over any other installment of interest, or of any Bonds over any other Bonds, ratably, according to the amounts due respectively for principal, premium, if any, and interest, to the Persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the provisions of item (1) of the preceding paragraph, 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 such application and the likelihood of additional moneys becoming available in the future. Whenever moneys are to be applied pursuant to the provisions of item (2) of the preceding paragraph,, such moneys shall be applied as soon as practicable upon receipt thereof. In either case, the Trustee shall give such notice as the Trustee may deem appropriate of the deposit with the Trustee 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 and a new Bond is issued or the Bond is cancelled if fully paid.

Notice of Defaults; Opportunity to Cure (Section 614)

Anything in the Indenture to the contrary notwithstanding, no Event of Default described in paragraph (2) or paragraph (3) under the caption “Events of Default” above will constitute an Event of Default until the Trustee shall have received written notice thereof or shall have actual notice thereof and until actual notice of such default by registered or certified mail shall be given by the Trustee, the Bond Insurer, or by the Holders of not less than fifty-one (51%) percent of the aggregate principal amount of Bonds then Outstanding to the Issuer and the Company (with a copy to the Trustee if given by the Holders), and the Issuer and the Company shall have had thirty (30) days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within the applicable period; provided, however, if said default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer or the Company within the applicable period and diligently pursued until the default is corrected and the Bond Insurer has consented thereto.

Acceptance of the Trusts (Section 701)

The Trustee accepts the trusts imposed upon it by the Indenture and agrees to perform said trusts upon certain terms and conditions, including but not limited to the following:

The Trustee may execute any of the trusts or powers of the Indenture and perform any of its duties under the Indenture by or through attorneys, agents, receivers or employees, but shall not be answerable for the conduct of the same if appointed without gross negligence, and shall be entitled to advice of counsel concerning all matters of the trusts of the Indenture and the duties under the Indenture, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may be reasonably employed in connection with the trusts of the Indenture. The Trustee may, without gross negligence, act upon the opinion or advice of any attorney appointed, who may be the attorney or attorneys for the Issuer, and shall not be responsible for any loss or damage resulting from any action or nonaction in reliance upon any such opinion or advice.

The Trustee may become the Owner of Bonds secured by the Indenture with the same rights which it would have if not the Trustee.

Before taking any action under the Indenture (except declaring an Event of Default, a mandatory redemption or an acceleration of the Bonds pursuant to the Indenture), the Trustee may require that a security and indemnity reasonably satisfactory to it be deposited with it for the reimbursement of all fees, costs and expenses including, but not limited to, reasonable attorney's fees and expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

The Trustee shall not be required to take notice or be deemed to have notice of the occurrence of any Event of Default or an Event of Taxability other than an Event of Default under paragraph (1) under the caption "Events of Default" above, unless the Trustee shall have actual knowledge of such Event of Default or Event of Taxability or unless the Trustee shall be specifically notified in writing of such Event of Default or Event of Taxability by the Issuer or the Company or the Owners of at least fifty-one percent (51%) in aggregate principal amount of Bonds Outstanding under the Indenture, and all notices or other instruments required by the Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Office of the Trustee, and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no Event of Default or Event of Taxability, except as aforesaid.

Appointment of Successor Trustee by the Bondholders; Temporary Trustee (Section 708)

In case the Trustee under the Indenture shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting under the Indenture, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing signed by such Owners, or by their duly authorized attorneys; provided, nevertheless, that in case of vacancy, the Issuer (at the written direction of the Company) by an instrument executed and signed by the Chairman or Vice Chairman and attested by the Secretary or Assistant Secretary of the Issuer under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by such Bondholders in the manner above provided; and any such temporary Trustee so appointed by the Issuer (at the written direction of the Company) shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders.

Every such successor or temporary Trustee appointed pursuant to the provisions of the paragraph above shall (1) be a trust company or bank organized under the laws of the United States of America or any state thereof and which is in good standing, (2) be located within or outside the State, (3) be duly authorized to exercise trust powers in the State, (4) be subject to examination by a federal or state authority, (5) maintain a reported capital and surplus of not less than \$20,000,000 (or a combined capital and surplus in excess of \$5,000,000 and the obligations of which, whether now in existence or hereafter incurred, are fully guaranteed by a corporation organized and doing business under the laws of the United States of America, and State or Territory thereof or of the District of Columbia, that has a combined capital and surplus of at least \$50,000,000), if there be one able and willing to accept the trust on reasonable and customary terms, and (6) be acceptable to the Bond Insurer.

A successor Trustee may not be appointed without the prior written approval of such successor Trustee by the Bond Insurer.

Supplemental Indentures Not Requiring Consent of Bondholders (Section 801)

The Issuer and the Trustee, without the consent of or notice to any of the Bondholders, but with the consent of the Bond Insurer, may enter into an indenture or indentures supplemental to the Indenture and not inconsistent with the terms and provisions of the Indenture or, in the sole judgment of the Trustee, materially adverse to the interests of the Trustee or the Holders of the Bonds, for any one or more of the following purposes:

- (1) to cure any ambiguity, inconsistency or formal defect or omission in the Indenture;
- (2) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (3) to subject additional rights and revenues to the Lien of the Indenture, or to identify more precisely the Trust Estate;
- (4) to obtain or maintain a rating on the Bonds from Moody's or Standard & Poor's;
- (5) to comply with the provisions of the Code necessary to maintain the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes;
- (6) to modify, amend or supplement the Indenture or any indenture supplemental to the Indenture in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar Federal statute hereafter in effect or under any state Blue Sky Law;
- (7) to enable the issuance of Additional Bonds;
- (8) to permit the Bonds to be converted to certificated securities to be held by the registered owners thereof; or
- (9) for any other purpose not materially adverse to the interests of the Holders of the Bonds.

Supplemental Indentures Requiring Consent of Bondholders (Section 802)

Other supplemental indentures modifying the Indenture may be approved by the Bond Insurer and the Holders of not less than two-thirds (2/3) in aggregate principal amount of the Bonds Outstanding, with the prior written consent of the Bond Insurer; provided that no supplemental indenture is permitted which would permit, in all cases with the prior written consent of the Bond Insurer, (1) without the consent of the Holder of such Bond, (a) a reduction in the rate, or extension of the time of payment, of interest on any Bond, (b) a reduction of any premium payable on the redemption of any Bond, or an extension of time for such payment, or (c) a reduction in the principal amount payable on any Bond, or an extension of time in which the principal amount of any Bond is payable, whether at the stated or declared maturity or redemption thereof, (2) the creation of any Lien prior to or on a parity with the Lien of the Indenture (other than that parity Lien created to secure the Additional Bonds), (3) a reduction in the aforesaid aggregate principal amount of Bonds, the Holders of which are required to consent to any such supplemental indenture, without the consent of the Holders of all the Bonds at the time Outstanding which would be affected by the action to be taken, (4) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, or (5) a privilege or priority of any Bond or Bonds over any other Bond or Bonds.

Supplemental Indentures; Consent of the Company (Section 803)

Supplemental indentures which affect the rights or liabilities of the Company under the Indenture require the consent of the Company.

Amendments to Loan Agreement or other Financing Documents Not Requiring Consent of Bondholders (Section 901)

The Issuer, the Company and the Trustee may, without the consent of or notice to the Bondholders, but with the consent of the Bond Insurer, consent to any amendment, change or modification of the Loan Agreement or any other Financing Document (other than the Indenture) as may be required (1) by the provisions of any Financing Document, (2) for the purpose of curing any ambiguity, inconsistency or formal defect therein or omission therefrom, (3) so as to identify more precisely the Trust Estate or the Project Facility, (4) in connection with any supplemental indenture entered into pursuant to Section 801 of the Indenture, or to effect any purpose for which there could be a supplemental indenture pursuant to Section 801 of the Indenture, (5) to obtain or maintain a rating on the Bonds from Moody's or Standard & Poor's, (6) to permit the issuance of Additional Bonds, (7) to comply with the provisions of the Code necessary to maintain the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes, or (8) in connection with any other supplemental indenture, but only if any such amendment, change or modification, in the sole judgment of the Trustee, is not materially adverse to the interests of the Trustee or the Bondholders.

Amendments to Loan Agreement or other Financing Documents Requiring Consent of Bondholders (Section 902)

Except for the amendments, changes or modifications as provided under the above caption, neither the Issuer, the Company nor the Trustee shall consent to any other amendment, change or modification of the Loan Agreement or any other Financing Document (other than the Indenture) without mailing notice thereof to, and obtaining the written approval or consent thereto of, the Bond Insurer and the Holders of not less than two-thirds in aggregate principal amount of the Bonds at the time Outstanding given as provided in the Indenture.



### Satisfaction and Discharge of Lien (Section 1001)

If the Issuer (1) shall pay or cause to be paid, to the Holders and Owners of the Bonds, the principal of the Bonds and premium, if any, due on the Bonds, at the times and in the manner stipulated therein and in the Indenture, (2) shall pay or cause to be paid from any source, to the Holders and Owners of the Bonds, the interest to become due on the Bonds, at the times and in the manner stipulated therein and in the Indenture, (3) shall have paid all fees, costs and expenses including, but not limited to, reasonable attorney's fees of the Trustee and each paying agent, (4) shall pay or cause to be paid the entire Rebate Amount to the United States of America in accordance with the Tax Documents and the Indenture, (5) shall have paid all amounts owing to the Bond Insurer under the Financing Documents, and (6) shall cause to be delivered an opinion of Independent Counsel stating that all conditions precedent with respect to the satisfaction and discharge of the Indenture have been met, then the Indenture and the trust and rights thereby granted will cease, terminate and be void, and thereupon the Trustee will (a) cancel and discharge the Lien of the Indenture upon the Trust Estate and the Trustee's rights under the other Financing Documents and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy same, (b) reconvey to the Issuer the Loan Agreement and the trust conveyed by the Indenture, and (c) assign and deliver to the Company any interest in Property at the time subject to the Lien of the Indenture and the other Financing Documents which may then be in its possession, except amounts held by the Trustee for the payment of principal of, and the interest and premium, if any, on, the Bonds.

All Outstanding Bonds will, prior to the maturity or Redemption Date thereof, be deemed to have been paid if, under circumstances which, in the opinion of Bond Counsel, do not adversely affect the exclusion under the Code of interest on the Tax-Exempt Bonds from the gross income of the Holders thereof for federal income tax purposes, the following conditions shall have been fulfilled: (1) in case any of the Bonds are to be redeemed on any date prior to their maturity, the Company shall have given to the Trustee in form satisfactory to it irrevocable instructions to give notice of redemption of such Bonds on said date as provided in the Indenture; and (2) there shall be on deposit with the Trustee moneys, which shall be either cash or Defeasance Obligations, in an amount sufficient, without the need for further investment or reinvestment, but including any scheduled interest on or increment to such obligations, to pay when due the principal, premium, if any, and interest due and to become due on the Bonds on and prior to the redemption date or maturity date thereof, as the case may be, and to pay the Trustee for its Ordinary Services and Ordinary Expenses and for its Extraordinary Services and Extraordinary Expenses under the Indenture.

The Trustee may rely upon an opinion of an Accountant as to the sufficiency of the cash or such Defeasance Obligations on deposit.

Notwithstanding anything in the Indenture to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, and the assignment and pledge of the Trust Estate shall continue and run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such the Holders of such Bonds.

In addition to the other requirements under Section 1001 of the Indenture, with respect to any defeasance of the Initial Bonds, the Issuer shall cause to be delivered (i) a report of an Accountant as shall be acceptable to the Bond Insurer verifying the sufficiency of the escrow established to pay the Initial Bonds in full on the maturity or redemption date ("Verification"), (ii) an escrow deposit agreement (which shall be acceptable in form and substance to the Bond Insurer), (iii) an opinion of nationally recognized bond counsel to the effect that the Initial Bonds are no longer "Outstanding" under the Indenture, and (iv) a certificate of discharge of the Trustee with respect to the Initial Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Issuer, the Trustee and the Bond

Insurer. The Bond Insurer shall be provided with final drafts of the above referenced documentation not less than five Business Days prior to the funding of the escrow.

No Recourse; Special Obligation (Section 1109)

All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Indenture, in the Bonds, in the other Financing Documents executed by the Issuer, and in the other documents and instruments connected with the Indenture or therewith, and in any documents supplemental thereto shall (A) be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, agent, servant or employee of the Issuer in his individual capacity, (B) not be an obligation of the State of New York or of the Town of Amherst, New York, and (C) be limited obligations of the Issuer, payable solely from the revenues of the Issuer derived and to be derived from the Loan Agreement (except for revenues derived by the Issuer with respect to the Unassigned Rights).

Rights of the Bond Insurer (Section 1111)

While the Bond Insurance Policy is in effect, the following provisions shall apply:

The Bond Insurer shall be deemed to be the sole holder of the Insured Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to the Indenture pertaining to (i) defaults and remedies and (ii) the duties and obligations of the Trustee.

Upon the occurrence of an extraordinary optional, special or extraordinary mandatory redemption in part, the selection of Insured Bonds to be redeemed shall be subject to the approval of the Bond Insurer. The exercise of any provision of the Indenture which permits the purchase of Insured Bonds in lieu of redemption shall require the prior written approval of the Bond Insurer if any Initial Bond so purchased is not cancelled upon purchase.

The rights granted to the Bond Insurer under the Indenture or any other Financing Document to request, consent to or direct any action are rights granted to the Bond Insurer in consideration of its issuance of the Bond Insurance Policy. Any exercise by the Bond Insurer of such rights is merely an exercise of the Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the holders of the Insured Bonds and such action does not evidence any position of the Bond Insurer, affirmative or negative, as to whether the consent of the holders of the Insured Bonds or any other person is required in addition to the consent of the Bond Insurer.

The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Insured Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy. Each obligation of the Issuer to the Bond Insurer under the Financing Documents shall survive discharge or termination of such Financing Documents.

The Bond Insurer shall be entitled to pay principal or interest on the Insured Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Bond Insurance Policy) and any amounts due on the Insured Bonds as a result of acceleration of the maturity thereof in accordance with the Indenture, whether or not the Bond Insurer has received a notice of Nonpayment (as such terms are defined in the Bond Insurance Policy) or a claim upon the Bond Insurance Policy.

The Bond Insurer shall be provided with the following information by the Issuer or the Trustee, as the case may be:

- (1) Notice of the commencement of any Insolvency Proceeding;
- (2) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Initial Bonds;
- (3) A full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Financing Documents;
- (4) All reports, notices and correspondence to be delivered to Bondholders under the terms of the Financing Documents, including copies of all information furnished pursuant to any continuing disclosure agreement or undertaking simultaneously with the furnishing of such information; and
- (5) Such additional information as it may reasonably request.

The Issuer will permit the Bond Insurer to discuss the affairs, finances and accounts of the Issuer or any information the Bond Insurer may reasonably request regarding the security for the Initial Bonds with appropriate officers of the Issuer and will use commercially reasonable efforts to enable the Bond Insurer to have access to the facilities, books and records of the Issuer on any business day upon reasonable prior notice.

Notwithstanding satisfaction of the other conditions to the issuance of Additional Bonds set forth in the Indenture, no such issuance may occur (1) if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance, (2) if there are any Policy Costs due and owing under the Bond Debt Service Reserve Insurance Policy, and (3) unless the Reserve Fund is fully funded at the Reserve Fund Requirement (including the proposed issue) upon the issuance of such Additional Bonds, in either case unless otherwise permitted by the Bond Insurer.

No contract shall be entered into or any action taken by which the rights of the Bond Insurer or security for or sources of payment of the Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Bond Insurer.

Any interest rate exchange agreement (“Swap Agreement”) entered into by the Issuer or the Company in connection with or relating to any Bonds issued under the Indenture shall meet the following conditions: (i) the Swap Agreement must be entered into to manage interest costs related to, or a hedge against (a) assets then held, or (b) debt then outstanding, or (iii) debt reasonably expected to be issued within the next twelve (12) months, and (ii) the Swap Agreement shall not contain any leverage element or multiplier component greater than 1.0x unless there is a matching hedge arrangement which effectively offsets the exposure from any such element or component. Unless otherwise consented to in writing by the Bond Insurer, any uninsured net settlement, breakage or other termination amount then in effect shall be subordinate to debt service on the Bonds and on any debt on parity with the Bonds. The Issuer or the Company shall not terminate a Swap Agreement unless it demonstrates to the satisfaction of the Bond Insurer prior to the payment of any such termination amount that such payment will not cause the Issuer or the Company to be in default under the Financing Documents, including but not limited to, any monetary obligations thereunder. All counterparties or guarantors to any Swap Agreement must have a rating of at least “A-” and “A3” by Standard & Poor’s (“S&P”) and Moody’s Investors Service (“Moody’s”). If the

counterparty or guarantor's rating falls below "A-" or "A3" by either S&P or Moody's, the counterparty or guarantor shall execute a credit support annex to the Swap Agreement, which credit support annex shall be acceptable to the Bond Insurer. If the counterparty or the guarantor's long term unsecured rating falls below "Baa1" or "BBB+" by either Moody's or S&P, a replacement counterparty or guarantor, acceptable to the Bond Insurer, shall be required.

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

Pursuant to the Loan Agreement, the Issuer will make the Loan to the Company of the proceeds of the Initial Bonds for the purpose of assisting in financing the Project. Reference is made to the Loan Agreement for complete details of the terms thereof. The following is a brief summary of certain provisions of the Loan Agreement and should not be considered a full statement thereof.

### Representations, Warranties and Covenants of the Issuer (Section 2.1)

The Issuer will make the following representations, warranties and covenants, among others:

(1) The Issuer is duly established under the provisions of the Enabling Act and has the power to enter into the Loan Agreement and to carry out the obligations thereunder. By proper official action, the Issuer has been duly authorized to execute, deliver and perform the Loan Agreement and the other Financing Documents to which the Issuer is a party.

(2) Subject to the limitations contained in the Loan Agreement, so long as the Bonds shall be Outstanding, the Issuer will not take any action (or omit to take any action required by the Financing Documents or which the Trustee or the Company, together with Bond Counsel, advise the Issuer in writing should be taken) or allow any action to be taken, which action (or omission) would in any way (a) cause the proceeds from the sale of the Bonds to be applied in a manner contrary to that provided in the Financing Documents, or (b) adversely affect the exclusion of the interest paid or payable on any Tax-Exempt Bond from gross income for federal income tax purposes. Notwithstanding the foregoing, there shall be no such obligation upon the Issuer with respect to the use or investment of its administrative fee, provided, however, that if the Company is required to rebate any amount with respect to such administrative fee, the Issuer shall provide, upon the reasonable request of the Company, such information concerning the investment of such administrative fee as shall be requested by the Company and as shall be reasonably available to the Issuer.

### Representations, Warranties and Covenants of the Company (Section 2.2)

The Company makes the following representations, warranties and covenants, among others:

(1) The Company is a not-for-profit corporation duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State, has the power to enter into the Loan Agreement and the other Financing Documents to which the Company is a party and to carry out its obligations thereunder, has been duly authorized to execute the Loan Agreement and the other Financing Documents to which the Company is a party, and is qualified to do business in all jurisdictions in which its operations or ownership of Property so requires. The Loan Agreement and the other Financing Documents to which the Company is a party, and the transactions contemplated thereby, have been duly authorized by all necessary action on the part of the board of directors of the Company.

(2) The Company will not take any action (or omit to take any action required by the Financing Documents or which the Trustee or the Issuer, together with Bond Counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way (a) adversely affect the exclusion of the interest paid or payable on the Tax-Exempt Bonds from gross income for federal income tax purposes, or (b) cause the proceeds of the Bonds to be applied in a manner contrary to that provided in the Financing Documents.

(3) The Project Facility and the operation thereof will comply in all material respects with all Applicable Laws, and the Company will defend and save the Issuer and its members, directors, officers, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith. The Company shall cause all notices required by all Applicable Laws to be given, and shall comply or cause compliance in all material respects with all Applicable Laws, and the Company will defend and save the Issuer and its members, directors, officers, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith.

(4) All of the proceeds of the Initial Bonds shall be used to pay the costs of the Project, and the total cost of the Project is expected to be at least equal to \$65,305,000.

(5) The Company will comply with all of the terms, conditions and provisions of the Tax Regulatory Agreement. All of the representations, certifications, statements of reasonable expectation and covenants made by the Company in the Tax Regulatory Agreement are thereby declared to be for the benefit of, among others, the Issuer and are incorporated in the Loan Agreement as though set forth in full therein.

(6) The Company represents that (a) it is an organization described in Section 501(c)(3) of the Code, or corresponding provisions of prior law; (b) it has received a letter or other notification from the Internal Revenue Service to that effect; (c) such letter or other notification has not been modified, limited or revoked; (d) it is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification; (e) the facts and circumstances which form the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist; and (f) it is exempt from federal income taxes under Section 501(a) of the Code. The Company agrees that it shall not perform any act or enter into any agreement which shall adversely affect such federal income tax status and shall conduct its operations in a manner which will conform to the standards necessary to qualify the Company as a charitable organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law.

Covenant with the Trustee, the Bond Insurer and the Bondholders (*Section 2.3*)

The Issuer and the Company agree that the Loan Agreement is executed in part to induce the purchase of the Bonds by the Holders and Beneficial Owners from time to time of the Bonds and the Bond Insurer to issue the Bond Insurance Policy and the Bond Debt Service Reserve Insurance Policy. Accordingly, all representations, covenants and agreements on the part of the Issuer and the Company set forth in the Loan Agreement (other than the Unassigned Rights) are declared to be for the benefit of the Issuer, the Trustee, the Bond Insurer, and the Holders and Beneficial Owners from time to time of the Bonds.

Undertaking of the Project (Section 3.1)

The Company has previously undertaken and completed the acquisition, construction, reconstruction, and installation of the Project Facility. The Company is the owner of the Project Facility for federal income tax purposes, and the Project Facility is used and will be used by the Company in activities which do not constitute an “unrelated trade or business” within the meaning of Section 513(a) of the Code.

Issuance of the Initial Bonds; Loan of the Proceeds Thereof (Section 3.2)

In order to make the Loan for the purposes of financing a portion of the Cost of the Project relating to the Project, together with other costs and incidental expenses in connection therewith, the Issuer agrees that it will use its best efforts to (a) issue and deliver the Initial Bonds in the aggregate principal amount of \$65,305,000 and (b) cause the Initial Bonds to be delivered to the Underwriter, as original purchaser of the Initial Bonds, all as provided in the Bond Resolution, the Certificate of Determination, the Initial Bond Purchase Agreement and the Indenture.

As provided in the Indenture, the net proceeds from the sale of the Initial Bonds shall be loaned by the Issuer to the Company and paid as follows: (1) a sum equal to any accrued interest, if any, paid by the Underwriter as original purchaser shall be deposited by the Issuer with the Trustee and deposited by the Trustee into the Bond Fund, and (2) the balance of the proceeds from the sale of the Bonds shall be deposited by the Issuer with the Trustee and deposited by the Trustee into the Project Fund. As provided in the Initial Bond Purchase Agreement, the Underwriter will advance the proceeds of the sale of the Initial Bonds to the Trustee in a single advance for deposit in accordance with the provisions of the Indenture. Pending disbursement pursuant to the provisions of the Loan Agreement and the Indenture, the proceeds of the Initial Bonds deposited in accordance with the provisions of the Indenture, together with any investment earnings thereon, shall constitute a part of the Trust Estate assigned by the Issuer to the payment of Debt Service Payments as provided in the Indenture.

Application of Proceeds of the Initial Bonds (Section 3.3)

The portion of the proceeds of the sale of the Initial Bonds on deposit in the Project Fund will be deposited by the Issuer with the Trustee as provided in the Indenture and, upon submission to the Trustee of a Request for Disbursement certified by an Authorized Representative of the Company and complying with the requirements of the Indenture, will be applied to pay certain costs and expenses incurred in connection with the Project as detailed in the Loan Agreement.

Any disbursements from the Project Fund for the payment of the Project Costs relating to the Project shall be made by the Trustee only upon the written order of the Authorized Representative of the Company.

Any moneys relating to the Initial Bonds remaining in the Project Fund after the date of completion of the Project and the payment, or provision for payment, in full of the Project Costs relating to the Project, at the direction of the Authorized Representative of the Company, promptly shall be:

- (1) used for the purchase of Initial Bonds in the open market for the purpose of cancellation at prices not exceeding the full market value thereof plus accrued interest thereon to the date of payment therefor;
- (2) paid into the Bond Fund to be applied to the redemption of the Initial Bonds; or
- (3) used for a combination of the foregoing as is provided in that direction.

In all such cases, any payments made pursuant to the preceding paragraph shall be made only to the extent that such use or application will not, in the opinion of Bond Counsel or under ruling of the Internal Revenue Service, result in the interest on the Tax-Exempt Bonds becoming included in the gross income of the Holders thereof for federal income tax purposes.

Completion of the Project (Section 3.4)

The Company will proceed with due diligence to commence and complete the Project.

Completion by the Company (Section 3.5)

In the event that the Proceeds of the Bonds are not sufficient to pay in full all costs of the Project, the Company agrees to complete the Project and to pay all such sums as may be in excess of the moneys available therefor in the Project Fund.

Investment of Fund Moneys (Section 3.6)

At the oral (promptly confirmed in writing) or written request of the Authorized Representative of the Company, any moneys held as part of any Fund created under the Indenture shall be invested or reinvested by the Trustee in Authorized Investments. The Company covenants that the Company will restrict that investment and reinvestment and the use of the proceeds of the Tax-Exempt Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery of and payment for the Tax-Exempt Bonds, so that the Tax-Exempt Bonds will not constitute arbitrage bonds under Section 148 of the Code.

Rebate Fund (Section 3.7)

The Company agrees to make such payments to the Trustee as are required of it under Section 407 of the Indenture and to pay the costs and expenses of the independent certified public accounting firm or firm of attorneys engaged in accordance with Section 407 of the Indenture. The obligation of the Company to make such payments shall remain in effect and be binding upon the Company notwithstanding the release and discharge of the Indenture.

Loan Payments and other Amounts Payable (Section 5.1)

Upon the terms and conditions of the Loan Agreement, the Issuer will make the Loan to the Company. In consideration of and in repayment of the Loan, the Company shall make, as Loan Payments, payments sufficient in amount to pay when due the Debt Service Payments due and payable on the Bonds. The Company shall pay Loan Payments as follows:

(1) on or before the eighth (8th) Business Day immediately preceding each Interest Payment Date, the Company shall cause immediately available funds to be delivered to the Trustee for deposit into the Bond Fund, in an amount equal to the amount due as interest on the Bonds on the next succeeding Interest Payment Date, so that the amount on deposit in the Bond Fund and available for the payment of interest on the sixth (6th) Business Day next preceding such Interest Payment Date, when added to the amount in the Bond Fund and available to the Trustee for such purpose, shall equal the interest payable on the Bonds on such Interest Payment Date;

(2) on or before the eighth (8th) Business Day immediately preceding each Bond Payment Date upon which a Sinking Fund Payment is due on the Bonds, the Company shall cause

immediately available funds to be delivered to the Trustee for deposit into the Bond Fund, in an amount equal to the amount due as a Sinking Fund Payment on the Bonds on such Bond Payment Date; and

(3) on or before the eighth (8th) Business Day immediately preceding each Bond Payment Date upon which a principal payment is due on the Bonds, the Company shall cause immediately available funds to be delivered to the Trustee for deposit into the Bond Fund, in an amount equal to the amount due as principal on the Bonds on such Bond Payment Date.

provided, however, that the obligation of the Company to make any payment under the preceding paragraphs (1), (2) and (3) shall be deemed satisfied and discharged to the extent of the corresponding transfer and deposit of moneys by the Company to the Trustee in the amounts and at the times described in Section 403(C) of the Indenture.

The Company shall pay as additional Loan Payments under the Loan Agreement any premium when due on the Bonds and the following:

(1) Within thirty (30) days after receipt of a written demand therefor from the Trustee, the Bond Registrar, the Bond Insurer, or any Paying Agent, the Company shall pay to the Trustee, the Bond Registrar, the Bond Insurer, or any Paying Agent, as the case may be, the following amounts: (a) the reasonable fees, costs and expenses of the Trustee, the Bond Registrar or Paying Agent, as applicable, for performing the obligations of the Trustee under the Indenture and the other Financing Documents; (b) the sum of the expenses of the Trustee, the Bond Registrar or Paying Agent reasonably incurred in performing the obligations of (i) the Company under the Loan Agreement, or (ii) the Issuer under the Bonds, the Indenture or the Loan Agreement; (c) the reasonable attorneys' fees of the Trustee, the Bond Registrar or Paying Agent incurred in connection with the foregoing and other moneys due the Trustee, the Bond Registrar or Paying Agent pursuant to the provisions of any of the Financing Documents; and (d) any amounts due and owing to the Bond Insurer under the Financing Documents other than Policy Costs payable under Section 5.1(B)(3) of the Loan Agreement.

(2) (a) On the Closing Date, the Company shall pay to the Issuer, (i) a lump sum payment in an amount equal to the Issuer's administration fee for the issuance of the Initial Bonds; plus (ii) an additional lump sum payment in an amount equal to the fees and expenses of general counsel and Bond Counsel to the Issuer relating to the Project.

(b) Within thirty (30) days after receipt of a demand therefor from the Issuer, the Company shall pay to the Issuer the sum of the reasonable expenses (including, without limitation, reasonable attorney's fees and expenses) of the Issuer and the members, directors, officers, agents, servants and employees thereof incurred by reason of the Issuer's making of the Loan, the financing and/or refinancing of the Project Facility, the issuance and delivery of any Bonds, the marketing or remarketing of any Bonds or in connection with the carrying out of the Issuer's duties and obligations under the Loan Agreement or any of the other Financing Documents, and any other fee or expense of the Issuer with respect to the Project Facility, the Bonds or any of the other Financing Documents, the payment of which is not otherwise provided for under the Loan Agreement.

(3) Upon receipt of notice from the Trustee pursuant to Section 408(D) of the Indenture that a draw has been made under the Bond Debt Service Reserve Insurance Policy, the Company will make available to the Trustee for deposit in the Reserve Fund moneys to replenish such draw from the Bond Debt Service Reserve Insurance Policy in monthly payments



commencing immediately succeeding the date of receipt by the Company from the Trustee of notice of such withdrawal, each such monthly payment to be in an amount at least equal to one-twelfth of the Policy Costs related to such draw; provided that no further payments shall be required as a result of such notice if and when the Policy Costs have been paid in full.

In the event the Company shall fail to make any payment required by Section 5.1 of the Loan Agreement, the Company shall pay the same, together with interest thereon, at the Default Interest Rate (for such other rate specified in the Indenture or any other Financing Document), from the date on which such payment was due (if such failure occurs pursuant to Section 5.1(B)(1) or (2) of the Loan Agreement and the payment is more than ten (10) days from the date such payment is due) until the date on which such payment is made.

The Company shall be entitled to a credit against the Loan Payments next required to be made under the Loan Agreement to the extent that the balance of the Bond Fund is then in excess of amounts required (1) for payment of Bonds theretofore matured or theretofore called for redemption, (2) for payment of interest for which checks or drafts have been drawn and mailed by the Trustee, and (3) for deposit in the Bond Fund for use other than for the payment of Debt Service Payments on the Interest Payment Date next following the applicable date such Loan Payments are due pursuant to the Loan Agreement. In any event, however, if on any Bond Payment Date, the balance in the Bond Fund is insufficient to make required payments of Debt Service Payments on the Bonds, the Company forthwith will pay to the Trustee, for the account of the Issuer and for deposit into the Bond Fund, any deficiency.

#### Nature of Obligations of the Company (Section 5.2)

The obligations of the Company under the Loan Agreement will be general obligations of the Company and will be absolute and unconditional irrespective of any defense or any right of set-off, recoupment, counterclaim, or abatement that the Company may otherwise have against the Issuer or the Trustee. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, the Loan Agreement, or terminate the Loan Agreement for any cause whatsoever.

#### Prepayment of Loan Payments (Section 5.3)

At any time that the Bonds are subject to redemption under the optional redemption provisions of the Indenture, the Company may, at its option, prepay, in whole or in part, the Loan Payments payable under the Loan Agreement by causing there to be moneys in an amount equal to the Redemption Price of the Bonds being redeemed, or the Purchase Price of Bonds being purchased in lieu of redemption, on deposit with the Trustee no later than the date such moneys are to be applied to the redemption of such Bonds under the Indenture.

#### Maintenance and Modification of the Project Facility (Section 6.1)

So long as any of the Bonds are Outstanding, and during the term of the Loan Agreement, the Company shall keep and maintain or make arrangements with others to keep and maintain the Project Facility in accordance with (1) the requirements of the Security Documents, and (2) the purposes and requirements of the Enabling Act and the Code. The Company further agrees that it shall pay at its own expense all extraordinary costs of maintaining, repairing and replacing the Project Facility except insofar as funds are made available therefor from proceeds of insurance, condemnation or eminent domain awards as provided in Article VII of the Loan Agreement.

So long as any of the Tax-Exempt Bonds are Outstanding, and during the term of the Loan Agreement, the Company will keep the and maintain or make arrangements with others to keep and maintain the Project Facility in accordance with purposes and requirements of the Code necessary to preserve the exclusion from gross income for federal income tax purposes of the interest paid and payable on the Tax-Exempt Bonds (including the Initial Bonds).

Taxes, Assessments And Utility Charges (Section 6.2)

The Company will pay or cause to be paid all taxes, assessments, and utility charges associated with the Project Facility.

Insurance Required (Section 6.3)

The Company is required to maintain insurance to protect the interests of the Company, the Issuer and the Trustee.

Damage, Destruction and Condemnation (Section 7.1 and Section 7.2)

In the case of damage to or the destruction or Condemnation of the Project Facility, the Company, but not the Issuer, will have an obligation to replace, repair, rebuild or restore the Project Facility, using insurance or Condemnation proceeds for this purpose to the extent available, unless the Company elects not to replace, repair, rebuild or restore the Project Facility and to cause a defeasance of the Bonds in accordance with the Indenture and the Tax Documents. If the Company opts to provide for the defeasance of the Bonds and if the Net Proceeds collected under any and all policies of insurance or of any Condemnation award are less than the amount necessary to defease the Bonds in full and pay any and all amounts payable under the Financing Documents to the Issuer and the Trustee, the Company will be required to pay to the Trustee the difference between such amounts and the Net Proceeds of all insurance settlements and Condemnation awards so that all of the Bonds then Outstanding will be defeased and any and all amounts payable under the Financing Documents to the Issuer and the Trustee will be paid in full.

Termination (Section 8.17)

Upon (1) payment in full of the Loan evidenced by the Bonds, (2) termination of the Pledge and Assignment, (3) payment in full of all other Indebtedness evidenced by the Loan Agreement, including, without limitation, any amounts due and owing to the Bond Insurer, and (4) performance by the Company of all other obligations of the Company to the Issuer pursuant to the provisions of the Loan Agreement (collectively, the “Termination Preconditions”), the Loan Agreement shall terminate, except as provided in Section 11.8 thereof (Survival of Obligations). Upon satisfaction of the Termination Preconditions, the Issuer agrees to execute and deliver to the Company the Termination of Loan Agreement.

Use of the Project Facility (Section 8.18)

Subsequent to the Closing Date, (A) the Company shall not use the Project Facility, or permit the Project Facility to be used, by any Nonexempt Person or in any “unrelated trade or business”, within the meaning of Section 513(a) of the Code, in such manner or to such extent as would cause the interest paid or payable on the Tax-Exempt Bonds to be includable in the gross income of the recipients thereof for federal income tax purposes or loss of the Company’s status as an exempt organization under Section 501(c)(3) of the Code, and (B) the Company shall be entitled to use the Project Facility as a student housing facility and other directly and indirectly related activities for use by the Company, but not (1) as facilities used or to be used primarily for sectarian instruction or as a place of religious worship or (2) primarily as

in connection with any part of a program of a school or department of divinity for any religious denomination.

Covenants for the Benefit of the Bond Insurer (Section 8.20)

The Company agrees for the sole benefit of the Bond Insurer to comply with the covenants set forth in Section 3.9 of the Guaranty.

Assignments (Section 9.1)

The Loan Agreement may not be assigned by the Company, in whole or in part, without the prior written consent of the Issuer, the Bond Insurer, and the Trustee.

Merger of the Issuer (Section 9.2)

Nothing contained in the Loan Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or assignment by the Issuer of its rights and interests under the Loan Agreement to, any other public instrumentality or a political subdivision of the State or the Town of Amherst, New York which has the legal authority to perform the obligations of the Issuer under the Loan Agreement, provided that (1) the exclusion of the interest payable on the Tax-Exempt Bonds from gross income for Federal income tax purposes shall not be adversely affect thereby; and (2) upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of the Loan Agreement, the Bonds and the Indenture to be kept and performed by the Issuer shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Issuer's rights and interests under the Loan Agreement shall be assigned.

Events of Default Defined (Section 10.1)

Under the Loan Agreement, one or more of the following events will constitute an "Event of Default":

(1) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.1(A) of the Loan Agreement and the continuation of such failure for a period of three (3) Business Days after notice is given to the Company by the Trustee, the Issuer or the Bond Insurer, that the payment referred to in such notice has not been received, or, without regard to notice, for a period of five (5) Business Days after any such amount becomes due, whichever occurs first.

(2) The Company shall fail to deliver to the Trustee, or cause to be delivered on its behalf, the moneys needed to redeem any outstanding Bonds in the manner and upon the date requested in writing by the Trustee as provided in Article III of the Indenture.

(3) A default in the performance or observance of any other of the material covenants, conditions or agreements on the part of the Company in the Loan Agreement and the continuance thereof for a period of thirty (30) days after written notice is given by the Issuer, the Bond Insurer or the Trustee to the Company (with a copy to the Trustee and the Bond Insurer, if given by the Issuer), or, if such covenant, condition or agreement is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to thereafter prosecute the same with due diligence and, in any event, to cure such default within sixty (60) days after such written notice is given.

(4) The occurrence of an “Event of Default” under any of the other Financing Documents.

(5) Any material representation or warranty made by the Company in the Loan Agreement or in any other Financing Document proves to have been materially false at the time it was made.

(6) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.

(7) Any sale, conveyance, lease agreement or any other change of ownership, whether occurring voluntarily or involuntarily, or by operation of law or otherwise, by the Company (except pursuant to the Loan Agreement or a Permitted Encumbrance) of the Company’s interest in the Project Facility or any part thereof, except as permitted in the Loan Agreement, the Other Financing Documents or a Permitted Encumbrance.

(8) (a) The filing by the Company (as debtor) of a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy statute; (b) the failure by the Company within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the Company’s ability to carry out its obligations under the Loan Agreement; (c) the commencement of a case under the Bankruptcy Code against the Company as the debtor or commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days; (d) the entry of an order for relief by a court of competent jurisdiction under the Bankruptcy Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within sixty (60) days of such appointment.

(9) The removal of the Equipment or any portion thereof outside the Town of Amherst, New York, without the prior written consent of the Issuer, other than in connection with a removal permitted under Section 9.3 of the Loan Agreement.

(10) Any provision of the Loan Agreement or any of the other Financing Documents shall at any time for any reason cease to be valid and binding on the related obligor thereunder or shall be declared to be null and void by any court or governmental authority or agency having jurisdiction over the Company, or the validity or the enforceability thereof shall be contested by the Company, the Issuer or the Trustee, in a judicial or administrative proceeding.

(11) Any Financing Document shall cease to be in full force and effect, or any Lien created or purported to be created in any collateral pursuant to any Financing Document shall fail to be a valid, enforceable and perfected Lien in favor of the secured party or parties named in such Financing Document, having the priority purported to be given such Lien under such Financing Documents, or the Company, the Trustee or any Governmental Authority shall assert any of the foregoing, unless such failure of validity, enforceability or perfection is caused by the negligence or intentional act of the Trustee or the Issuer.

Notwithstanding the foregoing, if by reason of force majeure (as hereinafter defined) either party to the Loan Agreement shall be unable, in whole or in part, to carry out its obligations under the Loan

Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Trustee within a reasonable time after the occurrence of the event or cause relied upon, the obligations under the Loan Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this provision shall not be deemed an Event of Default under the Loan Agreement. Notwithstanding anything to the contrary in this provision, an event of force majeure shall not excuse, delay or in any way diminish certain obligations of the Company to make certain payments, to obtain and continue in full force and effect certain insurance, to provide certain indemnity required by the Loan Agreement and to comply with certain other provisions of the Loan Agreement. The term "force majeure" as used herein shall include acts outside of the control of the Issuer and the Company, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, and partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

#### Remedies on Default (Section 10.2)

Whenever any Event of Default shall have occurred, the Issuer and/or the Trustee, with the prior written consent of the Bond Insurer, may, and shall, at the direction of the Bond Insurer, to the extent permitted by law, take any one or more of the following remedial steps:

- (1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all unpaid Loan Payments payable pursuant to the Loan Agreement and (b) all other payments due under the Loan Agreement or any of the other Financing Documents;
- (2) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due under the Loan Agreement and to enforce the obligations, agreements or covenants of the Company under the Loan Agreement;
- (3) terminate disbursement of the Bond Proceeds; or
- (4) exercise any remedies available pursuant to any of the other Financing Documents.

#### No Recourse; Special Obligation (Section 11.10)

All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Loan Agreement, in the Bonds, in the other Financing Documents, and any other instrument or document executed in connection therewith, and any other instrument or document supplemental thereto, shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, agent, servant or employee of the Issuer in his individual capacity, and no recourse under or upon any obligation, covenant or agreement in the Financing Documents contained or otherwise based upon or in respect of the Financing Documents, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent, servant or employee, as such, of the Issuer or of any successor entity or political subdivision or any Person executing

any of the Financing Documents on behalf of the Issuer, either directly or through the Issuer or any successor entity or political subdivision or any Person so executing any of the Financing Documents on behalf of the Issuer, it being expressly understood that the Financing Documents and the Bonds issued thereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, director, officer, agent, servant or employee of the Issuer or of any successor entity or political subdivision or any Person so executing any of the Financing Documents on behalf of the Issuer because of the creation of the indebtedness thereby authorized, or under or by reason of the obligations, covenants or agreements contained in the Financing Documents or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent, servant or employee because of the creation of the indebtedness authorized by the Financing Documents, or under or by reason of the obligations, covenants or agreements contained in the Financing Documents or implied therefrom, are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution by the Issuer of the Financing Documents and the issuance, sale and delivery of the Bonds.

The obligations and agreements of the Issuer contained in the Loan Agreement or such other documents shall not constitute or give rise to an obligation of the State of New York or the Town of Amherst, New York, and neither the State of New York nor the Town of Amherst, New York shall be liable thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Issuer, but rather shall constitute limited obligations of the Issuer payable solely from the revenues of the Issuer derived and to be derived from the Loan Agreement and the other Financing Documents (except for revenues derived by the Issuer with respect to the Unassigned Rights).

No order or decree of specific performance with respect to any of the obligations of the Issuer under the Loan Agreement shall be sought or enforced against the Issuer unless (1) the party seeking such order or decree shall first have requested the Issuer in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Issuer shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Issuer an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it or any of its members, directors, officers, agents (other than the Company), servants or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Issuer and its members, directors, officers, agents (other than the Company), servants and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Issuer, furnish to the Issuer satisfactory security to protect the Issuer and its members, directors, officers, agents (other than the Company), servants and employees against all liability expected to be incurred as a result of compliance with such request. Any failure to provide the indemnity and/or security required in this paragraph shall not affect the full force and effect of an Event of Default under the Loan Agreement.

#### **SUMMARY OF CERTAIN PROVISIONS OF THE PLEDGE AND ASSIGNMENT**

Pursuant to the Pledge and Assignment, to further secure the payment of the Bonds, the Issuer will pledge, assign, transfer and set over to the Trustee, and grant the Trustee a lien on and security interest in, all of the Issuer's right, title and interest in the Loan Agreement and any and all moneys due or to become

due and any and all other rights and remedies of the Issuer under or arising out of the Loan Agreement, except for the Unassigned Rights.

The foregoing is a brief summary of the Pledge and Assignment and should not be considered a complete statement thereof. Reference is made to the Pledge and Assignment for complete details of the terms thereof.

### **SUMMARY OF CERTAIN PROVISIONS OF THE GUARANTY**

The Company's obligation to make all Loan Payments due under the Loan Agreement, and to perform all obligations related thereto, will be further secured by the Guaranty from the Company to the Trustee. Pursuant to the Guaranty, the Company will agree to certain covenants. Reference is made to the Guaranty for complete details of the terms thereof.

The following is a brief summary of certain provisions of the Guaranty and should not be considered a full statement thereof.

#### Guaranty of Payment (Section 3.1)

The Company under the Guaranty irrevocably and unconditionally guarantees to the Trustee (1) the full and prompt payment of moneys sufficient to pay, or to provide for the payment of, (a) the outstanding principal on the Bonds when and as the same becomes due, (b) any and all interest on the Bonds when and as the same becomes due, (c) any premium or redemption payment payable on the Bonds when and as the same becomes due, (d) the Redemption Price of the Bonds, when and as the same becomes due, and (e) any other sum payable by the Issuer or the Company under the Financing Documents, including, without limitation, any amounts owing to the Bond Insurer in connection with payments made under the Bond Insurance Policy and the Bond Debt Service Reserve Insurance Policy, when and as the same shall become due, whether at the stated maturity thereof, by acceleration or upon prepayment or otherwise, and (2) the performance by the Company of its obligations under the Financing Documents. The Company under the Guaranty irrevocably and unconditionally agrees that, upon the occurrence of an Event of Default and the acceleration of the principal balance of the Bonds then Outstanding and all accrued but unpaid interest and any premium on the Bonds by the Trustee, the Company will promptly pay the same.

### **SUMMARY OF CERTAIN PROVISIONS OF THE UNCONDITIONAL CASH FLOW GUARANTY**

The Company's obligation to make all loan payments due under the Loan Agreement, and to perform all obligations related thereto, will be further secured by the Unconditional Cash Flow Guaranty. Reference is made to the Unconditional Cash Flow Guaranty for complete details of the terms thereof. The following is a brief summary of certain provisions of the Unconditional Cash Flow Guaranty and such summary should not be considered a full statement thereof.

Pursuant to the Unconditional Cash Flow Guaranty, the Foundation will agree to guaranty to the Trustee all of the Company's regularly scheduled principal and interest and sinking fund payment obligations with respect to the Bonds.

The Unconditional Cash Flow Guaranty will terminate and the obligations of the Foundation created thereunder shall be discharged upon the earlier to occur of (A) the Company having certified in writing to the Trustee and the Bond Insurer based on its annual audited financial statements for the Projects

that the Debt Service Coverage Ratio was at least 1.35 times for three consecutive Fiscal Years commencing not prior to the Fiscal Year following the Fiscal Year in which the certificate of occupancy for the William R. Greiner Hall Project is issued, provided that for purposes of the foregoing calculation Net Revenues Available for Debt Service shall not include any capitalized interest and any income from earnings or Authorized Investments (other than guaranteed investment contracts having a term in excess of one year), or (B) the date when the Company's regularly scheduled principal and interest payment obligations with respect to the Initial Bonds are irrevocably paid in full. On the date of such discharge, the Foundation will be released from any and all conditions, terms, covenants or restrictions created or placed upon it by the Unconditional Cash Flow Guaranty.



## **APPENDIX B**

### **THE COMPANY**

UBF Faculty-Student Housing Corp. (the “Company”) is a New York not-for-profit corporation, which was formed on March 14, 1990 and received a 501(c)(3) determination letter from the Internal Revenue Service on October 22, 1990. The Company was created for the purpose of developing, constructing and operating student housing for the University at Buffalo (the “University”). The Company has no employees and relies on another affiliate of the Foundation for staff support. Founded in 1846, the University is a flagship institution in the State University of New York (“SUNY”) system. The University is the largest and most comprehensive campus in the 64-campus SUNY system having an enrollment of 28,443 undergraduate, graduate and professional students in the 2016-2017 academic year.

#### **Governance and Management**

The Company operates as a New York not-for-profit corporation and as such is governed by the law applicable to such entities as well as its bylaws. The Company’s bylaws provide that the Company is managed and controlled by a board of directors (the “Board”).

#### **Board of Directors**

The Board is currently composed of nine directors. The Board is self-perpetuating and selects all directors of the Company. Under the Company bylaws, a majority of the directors must be Trustees of the University at Buffalo Foundation, Inc. The bylaws of the Company also afford the President of the University with the right to appoint one director. Thus far, however, the President has not exercised this right. The following sections provide information on the current members of the Board.

##### **Beverly Foit-Albert – Chair**

Dr. Foit-Albert is the Founder and Past President of Foit-Albert Associates which she started in 1977. The firm employs over 85 people in four offices across New York State. The Buffalo office, a renovated four-story on Main Street, is a testament to the firm's commitment to revitalizing Buffalo's downtown and the reuse of urban buildings. In 2000, the Foit-Albert Associates designed the second of UB's new residential apartments, South Lake Village. In addition to running her firm, she taught at UB's School of Architecture and Planning for 25 years and is the winner of numerous awards. Dr. Foit-Albert is now retired from the firm.

##### **Ravinder K. Bansal, Ph.D**

Dr. Bansal is the co-founder, Chairman and Chief Executive Officer of AirSep Corporation. AirSep Corporation began its operations in Buffalo, New York, as a manufacturer of medical and industrial oxygen generators in 1987. It generates over \$120,000,000 in annual revenues, employs 400 people, and has sales in over 100 countries around the world. Dr. Bansal earned his Ph.D. in Mechanical Engineering from the Georgia Institute of Technology in 1977. Over the past 30 years, while promoting his business, he has traveled to more than 80 countries around the world. In 1993, Dr. Bansal was chosen to be the Entrepreneur of the Year for the Upstate New York Region by INC. magazine. In 1998, he was awarded citation as a business leader for his contribution to the Western New York economy and exports by the Buffalo Council on World Affairs. He has since retired from AirSep Corporation.

##### **Sheldon M. Berlow**

Mr. Berlow founded Berlow Real Estate, Inc., a commercial/industrial real estate brokerage firm active in Western New York and Upstate New York for over 30 years. NAI Pyramid Brokerage Co. and Berlow Real Estate, Inc., two of the region's largest commercial real estate firms, merged in 2003. Mr. Berlow has a strong interest in education and in the contemporary arts. He is particularly interested in risk-taking in the arts and opening the mind to

new thinking in all disciplines. He enjoys listening to, seeing, hearing, encouraging and critiquing efforts in the contemporary arts and related fields. In addition, he has championed and encouraged expanded thinking and self-development in the entire educational process.

**Thomas E. Black, Jr.**

Mr. Black is the managing partner of Black, Mann & Graham, and LLP. He is admitted to the practice of law in New York, Texas, West Virginia, Iowa and Washington. Tom holds a Bachelor of Arts degree and Masters in Business Administration from the University of Notre Dame together with a Doctorate of Jurisprudence from the University at Buffalo. He is the Chair of the North Texas Food Bank and the Vice Chair for Saint Mary's College, Notre Dame Indiana. In 2017 he retired as Trustee of the University at Buffalo Foundation, Buffalo, New York

**Daniel M. Hamister**

Mr. Hamister is the Chief Investment Officer of Hamister Group, LLC, a 40-year old management company focusing on hotel and senior housing assets. He joined Hamister Group, LLC in 2001 and, in 2003, left his position to pursue his MBA, yet continued to serve as a consultant acquisition analyst for the company. For two years, Daniel worked as a Financial Analyst for Equity Residential, one of the largest multi-family REITs in the United States. He was the lead analyst on multiple multi-family property acquisitions, valued at over \$500M, in Boston, New York, and Washington, DC and was actively involved in all facets of due diligence including LOI submissions, preparation of investment committee packages, review of purchase and sale agreements and mentoring entry-level analysts. He rejoined the Hamister Group in 2007 as Vice President of Business Development, and is now Executive Vice President and Chief Investment Officer. Mr. Hamister manages the investment team who source and underwrite projects for potential investment opportunities, as well as the construction department. He also negotiates purchase and sale agreements, franchise agreements and actively oversees the due diligence process for acquisitions, development and divestment. Mr. Hamister graduated from Union College with a degree in mechanical engineering and obtained his Masters of Business Administration from Babson College – F.W. Olin Graduate School of Business.

**Judith B. Ittig, Esq.**

Mrs. Ittig practices law in Washington, D.C. and is an internationally-known arbitrator and mediator. She is a Fellow of the American College of Construction Lawyers, a Fellow of the College of Commercial Arbitrators, a member of the National Association of Distinguished Neutrals, and a Chartered Arbitrator with The Chartered Institute of Arbitrators (London). Mrs. Ittig has been named as one of the "Best Lawyers in America" for arbitration, construction law and international arbitration, listed by SuperLawyers for construction litigation, and recognized in The International Who's Who of Commercial Mediation. She has the highest AV ranking from Martindale-Hubbell and her law firm is listed in Best Law Firms in America. Mrs. Ittig is certified as a mediator by the International Mediation Institute.

**Jean C. Powers**

Mrs. Powers is a retired attorney who spent more than 35 years representing developers and other corporate clients in purchasing, selling, financing, constructing and/or leasing commercial real property. She consistently received the highest rating issued by Martindale Hubbell based on the evaluations of other attorneys. She received awards from the University of Buffalo, the UB Law Alumni Association, the Women Lawyers of Western New York and Trocaire College. Jean has served on the UB Foundation Board since 2003 and is currently its Secretary, Chair of its Properties Committee and a member of its Executive Committee. She is also an Emeritus member of the UB Law School Dean's Advisory Council and is

currently a member of the Advisory Board of Gerard Place, which provides housing, educational opportunities and job training for homeless single parents. Ms. Powers was recently a member of the Board of Directors of the Girls Education Collaborative, which has constructed and equipped several buildings for, and was instrumental in the opening of, a boarding school for girls in the remote village of Kitenga, Tanzania. In the past, she has served as the Chair of the Board of Trustees of Trocaire College and as President of the Erie County Volunteer lawyers Project, the Buffalo Niagara Chapter of the National Association of Women Business Owners, the UB Law Alumni Association and the UB Alumni Association.

#### **Ronald M. Schreiber**

Mr. Schreiber is a Co-Founder at Z80 Labs, a Buffalo based Technology Incubator operating in association with 43North in Western New York. He is an experienced entrepreneur and venture capitalist who has achieved upper quartile returns for numerous funds and companies that he co-founded. Mr. Schreiber serves as a Special Partner for SBNY, a Venture Capital firm operating in New York and Buffalo. He was also the Managing General Partner at Seed Capital Partners which he cofounded in 1999 in association with the SoftBank Group and is also currently a partner at Softbank Capital. In 1995, he was a Co-founder of Softbank's initial venture capital investment team. In 1990, Mr. Schreiber co-founded Upgrade Corp. of America, where he served as Co-Chief Executive Officer and Chairman. After a series of acquisitions, Upgrade became Softbank Services Group, and it is now Sitel Worldwide, with over 50,000 employees and facilities around the world. In 1980, he founded Software Distribution Services (SDS) and served as President and Chief Executive Officer. In 1988, through a series of acquisitions, SDS became Ingram-Micro (IM), a \$50 billion dollar distribution company of computer related products and services. In addition, Mr. Schreiber currently serves on the boards of numerous operating companies, as well as a number of non-profit entities. Mr. Schreiber is the recipient of several awards and distinctions including the Ernst and Young Entrepreneur of the Year Award, the Inc. 500 Award for the fastest growing businesses in the United States, the 1997 U.S. SBA Entrepreneurial Success Award, and the UB Distinguished Alumni Award, among others.

#### **Steven H. Shepsman**

Mr. Shepsman is an Executive Managing Director and Founder of New World Realty Advisors, a real estate investment and advisory firm specializing in real estate restructurings, development and finance. Earlier in his career, Mr. Shepsman, a CPA, was a Managing Partner of Kenneth Leventhal and Company, and of Ernst and Young's Real Estate Practice. Mr. Shepsman is a Trustee of the University at Buffalo Foundation, and a member and former chair of the Dean's Advisory Council for the University at Buffalo School of Management.

#### **Administration**

Listed below are members of the Company's key administrative staff, along with a brief description of the responsibilities of their respective positions and biographical information pertaining to each.

#### **Edward P. Schneider**

Mr. Schneider assumed the chief executive position as Executive Director of University at Buffalo Foundation, Inc. and each of its affiliates (collectively "UBF") in 1993 and has responsibility for implementation of board policies, attainment of annual goals and objectives, and management of a wide range of financial operations and services, including payroll and benefits administration for more than 1,000 University employees. He oversees the custodianship, investment and administration of \$850 million in investments; debt financed real estate developments valued in excess of \$150 million; significant

philanthropic and other revenue and related expenditure activities; audits, financial statements, government filings and annual plans; and coordination of insurance coverage.

From 1976 to 1993 Mr. Schneider served in various other capacities for UBF including senior accountant, business manager, secretary-treasurer, and vice president for finance. Prior to 1976 Mr. Schneider worked as an auditor for the national public accounting firm Peat, Marwick, Mitchell & Co. (presently KPMG LLP).

Mr. Schneider holds an MBA from State University of New York at Buffalo, and a BS Accounting from Canisius College.

#### **Richard J. Kustich, CPA**

Mr. Kustich accepted the position of Senior Director of Operations for the University at Buffalo Foundation, Inc. and Affiliates in October 2009 and is responsible for all aspects of accounting, reporting and operation of the organization's real estate, investments, payroll and benefits as well as overseeing IT infrastructure and government compliance.

Prior to accepting this position, for more than twenty years Mr. Kustich owned and operated a successful public accounting/consulting firm that provided a range of services to small business and non-profit clients. His consulting responsibilities included assistance in obtaining financing for private real estate development and campus housing. Prior to starting his accounting/consulting firm Mr. Kustich worked as an accounting supervisor for the University at Buffalo Foundation, Inc. and began his career with Price Waterhouse.

Mr. Kustich holds a B.S. in accounting from Canisius College and is a certified Public Accountant in the State of New York

#### **Summary of Financial Information (unaudited)**

The tables describing various financial information relating to the Company have been prepared and reviewed by the Company. The financial information in the tables was derived from, and should be read in conjunction with the Company's (unaudited) Financial Statements and Supplementary Information as of and for the years ended June 30, 2016 and June 30, 2015 which are included in Appendix C to this Official Statement.

The following (unaudited) table summarizes the unrestricted activities of the Company for the Fiscal Year ended June 30 for the last five years.

**Statement of Financial Position (unaudited)**

	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>
<b>Assets</b>					
Investments	7,011,242	6,667,105	7,185,504	7,771,552	47,474,452
Due from UBF	30,369,386	29,718,940	32,150,661	30,466,687	27,947,868
Accounts receivable, net	331,162	366,549	176,473	1,301,448	2,196,730
Prepaid expenses and other assets	275,110	361,290	1,077,517	286,490	183,707
Land	404,658	404,658	404,658	404,658	404,658
Building and equipment, net	108,493,828	111,816,639	113,216,650	116,120,766	116,240,821
Total Assets	146,885,386	149,335,181	154,211,463	156,351,601	194,448,236
<b>Liabilities</b>					
Accounts payable	2,180,351	2,212,721	2,899,665	2,332,469	3,830,259
Accrued interest	1,083,030	1,115,213	1,132,794	1,157,823	1,909,323
Security deposits	33,979	123,400	185,376	936,728	1,500,669
Deferred rent revenue	422,756	332,876	50,349	503,581	756,538
Fair value of interest rate swaps	9,756,140	7,309,123	6,827,158	6,625,711	10,424,089
Long-term debt, net	125,037,306	128,517,020	131,872,265	135,073,773	171,264,148
Total Liabilities	138,513,562	139,610,353	142,967,607	146,630,085	189,685,026
<b>Net Assets (Unrestricted)</b>	<b>8,371,824</b>	<b>9,724,828</b>	<b>11,243,856</b>	<b>9,721,516</b>	<b>4,763,210</b>
Liabilities and Net Assets	146,885,386	149,335,181	154,211,463	156,351,601	194,448,236

**Statement of Activities (unaudited)**

	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>
<b>Revenue</b>					
Rent	22,943,091	21,674,205	22,234,023	21,364,769	20,762,681
Investment revenue	120,242	94,987	67,452	97,058	764,162
Other revenue	375,394	457,906	841,385	613,788	241,607
Total	23,438,727	22,227,098	23,142,860	22,075,615	21,768,450
<b>Expenses</b>					
Management services	5,109,175	4,688,710	4,186,449	3,891,098	3,717,132
Cleaning services	43,302	36,481	39,582	37,443	40,255
Supplies	37,964	32,631	41,626	33,516	33,851
Utilities	914,951	1,103,293	1,303,670	1,166,694	1,142,046
Maintenance	2,085,869	3,111,621	2,639,721	1,480,406	1,422,992
Insurance	600,189	574,780	524,486	529,407	429,293
Taxes	28,744	26,589	24,520	25,213	24,295
Interest	5,602,022	5,771,479	5,884,260	6,215,550	6,527,881
Depreciation and amortization	6,481,374	6,129,989	5,684,166	7,103,655	4,820,817
Fees charged related to investments	53,873	66,559	75,468	57,369	61,942
Bad debt expense (recovery)	1,746	(6,498)	31,484	152,807	101,815
Other	345,600	273,163	241,560	222,529	236,221
Total	21,304,809	21,808,797	20,676,992	20,915,687	18,558,540
Change in net assets before other revenue, expenses, and gains and losses	2,133,918	418,301	2,465,868	1,159,928	3,209,910
<b>Other revenue, expenses, gains and losses</b>					
Loss on interest rate swaps	(2,447,017)	(481,965)	(201,447)	3,798,378	(3,909,961)
Grants to University at Buffalo	(740,000)	(740,000)	(740,000)	-	(1,252,000)
Loss on disposal of building and equipment	(299,905)	(715,364)	(2,081)	-	-
Change in net assets	(1,353,004)	(1,519,028)	1,522,340	4,958,306	(1,952,051)
Net assets at beginning of year	9,724,828	11,243,856	9,721,516	4,763,210	6,715,261
Net assets at end of year	8,371,824	9,724,828	11,243,856	9,721,516	4,763,210

## Housing Demand and Occupancy

Demand for on-campus housing outstrips supply. As shown in Table 1, enrollment of undergraduate and graduate students at the University for the last five academic years was as follows:

Table 1

<u>ACADEMIC YEAR</u>	<u>UNDERGRADUATE ENROLLMENT</u>	<u>GRADUATE ENROLLMENT</u>
2012-2013	19,505	9,447
2013-2014	19,831	10,019
2014-2015	19,829	10,115
2015-2016	19,951	9,855
2016-2017	20,411	9,772

Neither the University nor SUNY is legally obligated to make debt service payments on the Bonds.

Despite its significant enrollment, the University currently has an inventory of only 8,100 beds on campus. The university's existing residence halls are on average 40 years old. The apartments are newer (on average 15 years old); they include Flickinger Court Apartments, Hadley Village, South Lake Villages, Flint Village and Creekside Village, and Greiner Hall. Table 2 displays the university's residential occupancy over the past five years.

Table 2

<u>ACADEMIC YEAR</u>	<u>CAMPUS HOUSING CAPACITY</u>	<u>CAMPUS HOUSING ENROLLMENT</u>
2012-2013	7,596	99%
2013-2014	7,606	99%
2014-2015	7,628	99%
2015-2016	7,643	99%
2016-2017	7,900	99%
2017-2018	8,100	99%

## Student Housing

Six student housing projects are owned and operated by the UB Foundation through the Company. Each project was financed and constructed with tax-exempt bond proceeds. Five of the housing complexes are located on the University at Buffalo's North Campus and one is located adjacent to the campus. First-fill provisions have allowed the on-campus complexes to operate with historic occupancy rates near 100%. The Company has management agreements with the University for the operation and maintenance of the on-campus properties and a memorandum of understanding for the operation of the off-campus project. Some of the specifics of the student housing projects are as follows:

- Flickinger Court – Opened in 1998 and provides housing to graduate students. The complex consists of 230-student beds on 11.5 acres adjacent to the North Campus of the University.

- Hadley Village – Opened in 1999 and provides housing to upper classmen. Hadley Village is a 624-bed apartment-style complex built on 10.9 acres on the North Campus of the University.
- South Lake Village – Opened in 2000 and provides housing to upper classmen. South Lake Village is a 552-bed apartment-style complex built on 13.7 acres on the North Campus of the University.
- Flint Village – Opened in 2001 and provides housing to upper classmen. Flint Village is a 536-bed apartment-style complex built on 19.9 acres on the North Campus of the University.
- Creekside Village – Opened in 2002 and provides housing to Sophomores and Graduate students. Creekside Village is a 232-bed apartment-style complex built on 12.3 acres on the North Campus of the University.
- Greiner Hall – Opened in 2011 and provides housing to sophomores. Greiner Hall is a 606-bed suite-style complex built on 13.5 acres on the North Campus of the University.

#### Flickinger Court

The first project of the University at Buffalo's housing initiative was completed in August of 1998 with the opening of a 115-unit townhouse-style graduate student apartment complex known as Flickinger Court, located at the intersection of Sweet Home and Chestnut Ridge Roads immediately adjacent to the University's North Campus (the "Flickinger Court Apartments"). These apartments, which are fully leased, were financed through the issuance of \$8,700,000 of Tax-Exempt Housing Revenue Bonds (UBF Faculty-Student Housing Corp.) Series 1997A (the "Series 1997A Bonds") by the Village of Kenmore Housing Authority (the "Kenmore Housing Authority"). The Series 1997A Bonds constitute a special obligation of the Kenmore Housing Authority and are payable by the Company out of the rents generated at the Flickinger Court Apartments. To the extent that such rents are insufficient to pay the indebtedness evidenced by the Series 1997A Bonds, the Company is obligated to pay such shortfall out of its other assets. Because the Series 1997A Bonds were not insured or otherwise credit-enhanced, their repayment was partially guaranteed by the Foundation.

In conjunction with the issuance of the Series 1997A Bonds, the Flickinger Court Apartments were leased by the Company to the Kenmore Housing Authority, and, in turn, subleased back to the Company for sub-sublease to University students. The operation of the Flickinger Court Apartments is handled by the University pursuant to the terms of a Memorandum of Understanding between the Company and the University.

#### Hadley Village

The second project of the University at Buffalo's housing initiative was completed in August of 1999 with the opening of a 156-unit apartment complex located at the juncture of John James Audubon Parkway, Rensch Road and Hadley Road on the University's North Campus (the "Hadley Village"). These apartments consist of 13 three-story buildings, each containing 12 apartments of approximately 1,040 square feet each, together with a community center arranged on an approximately 10.5 acre site.

Unlike the Flickinger Court Apartments, which were constructed on land owned by the Company adjacent to the University's North Campus, Hadley Village was constructed on the North Campus on approximately 10.5 acre parcel of land leased from SUNY pursuant to a Ground Lease Agreement dated as of August 24, 1998 (the "Ground Lease"). The term of the Ground Lease commenced upon the completion of the apartment complex and continues for a Period of thirty (30) years thereafter.

The Hadley Village, which is fully leased, was initially financed through the issuance of \$21,835,000 of Tax-Exempt Student Housing Revenue Bonds (State University of New York at Buffalo Student Apartment Project) Series 1999A (the "Series 1999A Bonds") by the Kenmore Housing Authority. The Series 1999A Bonds were currently refunded in 2010 through the issuance by the Town of Amherst Development Corporation of \$82,865,000 of Tax-Exempt Student Housing Facility Revenue Bonds (UBF Faculty-Student Housing Corp.-Greiner and Hadley projects at SUNY Buffalo) Series 2010A.

The Series 2010A Bonds constitute a special obligation of the Town of Amherst Development Corporation and are payable out of the rents generated at the Hadley Village and Greiner Hall student housing projects. To the extent that such rents are insufficient to pay the indebtedness evidenced by the Series 2010A Bonds, the Company is obligated to pay such shortfall out of its other assets. The Series 2010A Bonds are guaranteed by Assured Guaranty Municipal Corp.

The Company and SUNY entered into a Facility Management Agreement dated as of May 1, 1999 (the "Hadley Facility Management Agreement"), pursuant to which SUNY operates the Hadley Village through the Office. SUNY in its capacity as manager, licenses individual dwelling units in the Hadley Village, consisting of a bedroom and the right to use the common areas of the apartment within which such bedroom is situated to University students. Under the terms of the Hadley Facility Management Agreement, SUNY agrees, among other things, to operate the Hadley Village, to refrain from leasing or licensing any other dormitories or apartments at the University until the Hadley Village is fully leased, and to refrain from reimbursing itself for any Hadley Village related expenses unless all principal, redemption premium, if any, and interest then due and owing in connection with the Series 2010A Bonds has been paid in full.

#### South Lake Village

The third project of the University at Buffalo's housing initiative was completed in August, 2000 with the opening of: (i) an 84-unit apartment style dormitory located adjacent to Lake LaSalle on the North Campus (the "Village Green Apartments") and (ii) a 144-unit apartment style dormitory also located adjacent to Lake LaSalle on the North Campus (the "Lakeside Cottage Apartments" and together with the Village Green Apartments, the "South Lake Village Apartments"). The South Lake Village Apartments consist of 9 two-story buildings, 7 three-story buildings and a community center. Each two-story building contains 8 two-bedroom apartments, 6 one bedroom apartments, and 2 studio apartments. Each three-story building contains 12 four-bedroom units. A total of 228 apartments house 552 residents.

Each of these apartments were constructed on the North Campus on land leased from SUNY to the U.B. Alumni Association, Inc. (the "Alumni Association") pursuant to a Ground Lease Agreement dated as of June 1, 2000 (the "South Lake Village Ground Lease"), which land is in turn subleased by the Alumni Association to the Company pursuant to the terms of a sublease agreement dated as of June 1, 2000 (the "South Lake Village Sublease"). The term of the Ground Lease commenced upon the completion of the apartments and continues for a period of forty-nine (49) years thereafter. The term of the South Lake Village Sublease is coincident with the term of the South Lake Village Ground Lease.

The Village Green Apartments, which are fully leased, were initially financed through the issuance of \$14,505,000 Civic Facility Revenue Bonds (UBF Faculty-Student Housing Corp. - Village Green Project) Series 2000A (the "Series 2000A Bonds") by the Town of Amherst Industrial Development Agency (the "Agency"):

The Lakeside Cottage Apartments, which are fully leased, were initially financed through the issuance of \$14,815,000 Civic Facility Revenue Bonds (UBF Faculty-Student Housing Corp. - Lakeside Cottage Project) Series 2000B (the "Series 2000B Bonds") by the Agency.



The Series 2000A Bonds and the Series 2000B Bonds were currently refunded in 2010 through the issuance by the Town of Amherst Development Corporation of \$23,975,000 of Tax-Exempt Student Housing Facility Revenue Refunding Bonds (UBF Faculty-Student Housing Corp.-Lake Village Project – Letter of Credit Secured) Series 2010B.

The Series 2010B Bonds constitute special obligations of the Town of Amherst Development Corporation and are payable out of the rents generated at the Village Green Apartments and Lakeside Cottage Apartments, respectively. To the extent that such rents are insufficient to pay the indebtedness evidenced by the Series 2010B Bonds, the Company is obligated to pay such shortfall out of its other assets. The Series 2010B Bonds are secured by an irrevocable direct pay letter of credit issued by HSBC Bank USA, National Association.

The Company and SUNY have entered into a Facility Management Agreement dated as of June 1, 2000 (the "Village Green/Lakeside Cottage Facility Management Agreement"), pursuant to which SUNY operates the Village Green and Lakeside Cottage Apartments through the Office. SUNY, in its capacity as manager, licenses individual dwelling units in these apartments, consisting of a bedroom and the right to use the common areas of the apartment within which such bedroom is situated to University students. Under the term of the Village Green/Lakeside Cottage Facility Management Agreement, SUNY agrees, among other things, to operate these apartments, to refrain from leasing or licensing any other dormitories or apartments at the University (besides those in the Hadley Village Apartments) until these apartments are fully licensed, and to refrain from reimbursing itself for any South Lake Village related expenses unless all principal, redemption premium, if any, and interest then due and owing in connection with the Series 2010B Bonds has been paid in full.

#### Flint Village

The fourth project of the University at Buffalo's housing initiative was completed in August of 2001 with the opening of the Flint Village East and Flint Village West Projects. The Flint Village East Project is comprised of five buildings consisting of three 3-story apartment buildings, one 2-story apartment building and a community building, containing total of 328 beds in 100 four bedroom and two bedroom apartment units (the "Flint Village East Apartments"). The Flint Village West Project is comprised of five two-story buildings containing a total of 208 beds in 136 one and two bedroom apartment units (the "Flint Village West Apartments" and together with the Flint Village East Apartments, the "Flint Village Apartments").

Each of these apartments were constructed on the North Campus on land leased from SUNY to the Alumni Association pursuant to a Ground Lease Agreement dated as of October 1, 2000 (the "Flint Village Ground Lease"), which land is in turn subleased by the Alumni Association to the Company pursuant to the terms of a sublease agreement dated as of October 1, 2000 (the "Flint Village Sublease"). The term of the Flint Village Ground Lease commenced upon the completion of the apartments and continues for a period of forty-nine (49) years thereafter. The term of Flint Village Sublease is coincident with the term of the Flint Village Ground Lease.

The Flint Village East Apartments, which are fully leased, were initially financed through the issuance of \$14,570,000 Civic Facility Revenue Bonds (UBF Faculty-Student Housing Corp. - Flint Village East Project) Series 2000A (the "Flint Village Series A Bonds") by the Town of Amherst Industrial Development Agency (the "Agency"). The Flint Village West Apartments, which are fully leased, were financed through the issuance of \$12,415,000 Civic Facility Revenue Bonds (UBF Faculty-Student Housing Corp. - Lakeside Cottage Project) Series 2000B (the "Flint Village Series B Bonds") by the Agency.

The Series 2000A Bonds and the Series 2000B Bonds were currently refunded in 2012 through the issuance by the Town of Amherst Development Corporation of \$32,465,000 of Tax-Exempt Multi-Mode Revenue Bonds (Flint Village/Creekside Village Project) Series 2012A.

The 2012A Bonds constitute special obligations of the Town of Amherst Development Corporation and are payable out of the rents generated at the Flint Village East Apartments and Flint Village West Apartments, respectively. To the extent that such rents are insufficient to pay the indebtedness evidenced by the 2012A Bonds, the Company is obligated to pay such shortfall out of its other assets. The 2012A Bonds were purchased by First Niagara Bank, N.A.

The Company and SUNY have entered into a Facility Management Agreement dated on or about December 1, 2000 (the "Flint Village Facility Management Agreement"), pursuant to which SUNY operates the Flint Village Apartments through the Office. SUNY, in its capacity as manager licenses individual dwelling units in these apartments, consisting of a bedroom and the right to use the common areas of the apartment within which such bedroom is situated to University students. Under the terms of the Flint Village Facility Management Agreement, SUNY agrees, among other things, to operate these apartments, to refrain from leasing or licensing any other dormitories or apartments at the University (besides those in the Hadley Village and South Lake Village Apartments) until these apartments are fully licensed, and to refrain from reimbursing itself for any Flint Village related expenses unless all principal, redemption premium, if any, and interest then due and owing in connection with the 2012A Bonds has been paid in full.

#### Creekside Village

The fifth project of the University at Buffalo's housing initiative was completed in August 2002 with the opening of Creekside Village project. It comprises 13 two story buildings and a community building. The residential total is 232 beds in 116 two bedroom style apartment units.

These apartments were constructed on land leased from SUNY to the Alumni Association pursuant to a Ground Lease Agreement dated August 1, 2001. This land was in turn subleased by the Alumni Association to the Company pursuant to the terms of a Sublease Agreement dated as of August 1, 2001. The term of the Creekside Village Ground Lease commenced upon the completion of the apartments and continues for a period of up to 49 years thereafter. The term of the Creekside Village Sublease is coincident with the term of the Creekside Village Ground Lease.

Creekside Village Apartments, which are fully leased, were initially financed through the issuance of \$14,475,000 Civic Facility Revenue Bonds (UBF Faculty Student Housing Corporation – Creekside Project) Series 2000A (Creekside Village Series A Bonds) by the Town of Amherst Industrial Development Agency.

The Series 2000A Bonds were currently refunded in 2012 through the issuance by the Town of Amherst Development Corporation of \$32,465,000 of Tax-Exempt Multi-Mode Revenue Bonds (Flint Village/Creekside Village Project) Series 2012A.

The 2012A Bonds constitute special obligations of the Town of Amherst Development Corporation and are payable out of the rents generated at the Creekside Village Project. To the extent that such rents are insufficient to pay the indebtedness evidenced by the 2012A Bonds, the Company is obligated to pay such shortfall out of its other assets. The 2012A Bonds were purchased by First Niagara Bank, N.A.

The Company and SUNY have entered into a Facility Management Agreement dated August 1, 2001 pursuant to which SUNY operates Creekside Village Apartments. SUNY in its capacity as Manager

licenses individual dwelling units in these apartments, consisting of a bedroom and the right to use the common areas of the apartments within which such bedroom is situated to university students. Under the terms of the Creekside Village Facility Management Agreement, SUNY agrees, among other things, to operate these apartments to refrain from leasing or licensing any other dormitories or apartments at the university (besides those in Hadley Village, South Lake Village and Flint Village Apartments) until these apartments are fully licensed and to refrain from reimbursing itself for any Flint Village related expenses unless all principle, redemption premium, if any, and interest then due and owing in connection with the Series 2012A Bonds have been paid in full.

### Greiner Hall

Unlike South Lake Village, Creekside Village and the Flint Village Apartments, Greiner Hall (the "Greiner Hall Apartments") is comprised of one building, with one 4 story wing and two 6 story wings, containing total of 606 beds in 146 two double occupancy room suites and 18 single occupancy room suites. The Greiner Hall Apartments are located on the North Campus on land leased from SUNY to the Alumni Association pursuant to a Ground Lease Agreement dated as of April 1, 2009 (the "Greiner Ground Lease"), which land is in turn subleased by the Alumni Association to the Company pursuant to a Sublease Agreement dated as of April 1, 2009 (the " Greiner Sublease"). The term of the Greiner Ground Lease commenced on April 1, 2009 and continues for a period of forty two (42) years thereafter. The Alumni Association has an option to renew the term of the Greiner Ground Lease for an additional period of seven (7) years. The term of the Greiner Sublease is coincident with the term of the Greiner Ground Lease.

Greiner Hall Apartments, which are fully leased, were financed through the issuance by the Town of Amherst Development Corporation of \$82,865,000 of Tax-Exempt Student Housing Facility Revenue Bonds (UBF Faculty-Student Housing Corp.-Greiner and Hadley projects at SUNY Buffalo) Series 2010A.

The Series 2010A Bonds constitute a special obligation of the Town of Amherst Development Corporation and are payable out of the rents generated at the Hadley Village and Greiner Hall student housing projects. To the extent that such rents are insufficient to pay the indebtedness evidenced by the Series 2010A Bonds, the Company is obligated to pay such shortfall out of its other assets. The Series 2010A Bonds are guaranteed by Assured Guaranty Municipal Corp.

The Company and SUNY have entered into a Facility Management Agreement dated as of April 1, 2009 (the "Greiner Facility Management Agreement") pursuant to which SUNY operates the Greiner Hall Apartments through the Office. SUNY, in its capacity as manager, licenses individual dwelling units in these suites, consisting of a bedroom and the right to use the common areas of the suite within which such bedroom is situated to University students. Under the terms of the Greiner Facility Management Agreement, SUNY agrees, among other things, to operate these suites, to refrain from leasing or licensing any other dormitories or apartments at the University (besides those in the Hadley Village and those which are on parity with the apartments in the Greiner Hall Apartments) until these apartments are fully licensed, and to refrain from reimbursing itself for any other Greiner related expenses unless all principal, redemption premium, if any, and interest then due and owing in connection with Series 2010A Bonds has been paid in full.

### **Property and Liability Insurance Coverage**

The Company's facilities are covered by (i) a Building and Contents insurance policy having blanket coverage limit of \$208,022,986, (ii) a General Liability insurance policy with a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate, (iii) an Automobile Liability policy with a limit of \$1,000,000, and (iv) an Umbrella Liability insurance policy with a limit of \$50,000,000 going over the General and Automobile Liability limit set forth above.

## **Future Capital Expenditure Needs**

The Company has no plans for future capital projects beyond the routine maintenance of the Company's properties described herein.

## **Debt Summary**

Below is a list of the Company's outstanding debt as of June 30, 2017 (unaudited):

Series 1997A (Flickinger Court)	\$4,673,408
Series 2010A (Greiner Hall & Hadley Village)	\$71,875,000
Series 2010B (South Lake Village)	\$20,830,000
Series 2012A (Flint Village & Creekside Village)	<u>\$28,780,000</u>
Total	\$126,158,408

## **Internal Controls**

The Company's staffs provides internal accounting and financial management services including preparation of monthly financial statements, maintaining its general ledger and underlying subsidiary ledgers, reconciling bank accounts, administering payroll, processing accounts payable and managing grants. Monthly financial statements are prepared by a CPA and include budget vs. actual comparisons and a financial narrative highlighting the Company's financial performance. The Board of Directors and CEO provide fiscal oversight. The Company evaluates and monitors its internal controls periodically to ensure the controls are adhered to and sufficient to ensure proper segregation of duties and protecting the Company's assets. The Company has an overall fiscal policies and procedures manual as well as additional policies and procedures including: credit card policy, cash handling policy and procurement policy.

The Company prepares its financial statements on the accrual basis of accounting and follows standards promulgated by the Financial Accounting Standards Board (FASB). The Company has contracted with an independent Certified Public Accountant (CPA) to provide annual independent reviews. The Company's external accountants are licensed independent Certified Public Accountants who have demonstrated experience working with New York State non-profits.

The Company has a Conflict of Interest policy. All members of the Board of Directors and management sign annual conflict of interest statements. The Company also has a Whistleblower policy and Document Retention policy.

## **Litigation**

There is not now pending nor, to the knowledge of the Company, threatened any litigation restraining or enjoining the execution or delivery of the financing documents to which the Company is a party or questioning or affecting the validity of such documents or the proceedings or authority under which such documents were authorized or delivered. Neither the creation, organization or existence of the Company, nor the title of any of the present members or other officers of the Company to their respective offices is being contested. There is no litigation pending or, to the Company's knowledge, threatened which in any manner questions the right of the Company to enter into the financing documents to which the Company is a party or which would have a material adverse effect on the ability of the Company to meet its obligations under the Loan Agreement.

## **APPENDIX C**

Unaudited Financial Statements and Supplementary Information of the UBF Faculty-Student Housing Corp. as of and for the years ended June 30, 2016 and June 30, 2015.

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**UBF FACULTY-STUDENT HOUSING CORP.**

Financial Statements and Supplementary Information

June 30, 2016 and 2015

(With Independent Accountants' Review Report Thereon)

**UBF FACULTY-STUDENT HOUSING CORP.**

Statements of Financial Position

June 30, 2016 and 2015

<b>Assets</b>	<b>2016</b>	<b>2015</b>
Investments (notes 2, 3, and 5)	\$ 7,011,242	6,667,105
Due from UBF	30,369,386	29,718,940
Accounts receivable, net (note 4)	331,162	366,549
Prepaid expenses and other assets	275,110	361,290
Land	404,658	404,658
Building and equipment, net (note 5)	<u>108,493,828</u>	<u>111,816,639</u>
Total assets	<u>\$ 146,885,386</u>	<u>149,335,181</u>
<b>Liabilities and Net Assets</b>		
Liabilities:		
Accounts payable	\$ 2,180,351	2,212,721
Accrued interest expense	1,083,030	1,115,213
Security deposits	33,979	123,400
Deferred rent revenue	422,756	332,876
Fair value of interest rate swaps (notes 3 and 6)	9,756,140	7,309,123
Long-term debt, net (note 6)	<u>125,037,306</u>	<u>128,517,020</u>
Total liabilities	<u>138,513,562</u>	<u>139,610,353</u>
Net assets:		
Unrestricted	<u>8,371,824</u>	<u>9,724,828</u>
Total net assets	<u>8,371,824</u>	<u>9,724,828</u>
Total liabilities and net assets	<u>\$ 146,885,386</u>	<u>149,335,181</u>

See accompanying notes to financial statements and accompanying independent accountants' review report.



**UBF FACULTY-STUDENT HOUSING CORP.**

Statements of Activities

Years ended June 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
Unrestricted:		
Revenue:		
Rent	\$ 22,943,091	21,674,205
Investment revenue	120,242	94,987
Other revenue	375,394	457,906
Total revenue	<u>23,438,727</u>	<u>22,227,098</u>
Expenses:		
Management services	5,109,175	4,688,710
Cleaning services	43,302	36,481
Supplies	37,964	32,631
Utilities	914,951	1,103,293
Maintenance	2,085,869	3,111,621
Insurance	600,189	574,780
Taxes	28,744	26,589
Interest	5,602,022	5,771,479
Depreciation and amortization	6,481,374	6,129,989
Fees charged related to investments	53,873	66,559
Bad debt expense (recovery) (note 4)	1,746	(6,498)
Other	345,600	273,163
Total expenses	<u>21,304,809</u>	<u>21,808,797</u>
Change in net assets before other revenue, expenses, gains and losses	2,133,918	418,301
Other revenue, expenses, gains and losses:		
Loss on interest rate swaps	(2,447,017)	(481,965)
Grants to University at Buffalo	(740,000)	(740,000)
Loss on disposal of building and equipment	(299,905)	(715,364)
Change in net assets	<u>(1,353,004)</u>	<u>(1,519,028)</u>
Net assets at beginning of year	<u>9,724,828</u>	<u>11,243,856</u>
Net assets at end of year	<u>\$ 8,371,824</u>	<u>9,724,828</u>

See accompanying notes to financial statements and accompanying independent accountants' review report.

**UBF FACULTY-STUDENT HOUSING CORP.**

Statements of Cash Flows

Years ended June 30, 2016 and 2015

	<u>2016</u>	<u>2015</u>
Cash flows from operating activities:		
Change in net assets	\$ (1,353,004)	(1,519,028)
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	6,271,048	5,919,665
Amortization	222,298	222,299
Loss on disposal of building and equipment	299,905	715,364
Net unrealized gains	(12,349)	(474)
Change in fair value of interest rate swaps	2,447,017	481,965
(Increase) decrease in operating assets:		
Due from UBF	(650,446)	2,431,721
Accounts receivable	35,387	(190,076)
Prepaid expenses and other assets	86,180	716,227
Increase (decrease) in operating liabilities:		
Accounts payable and accrued interest expense	(84,765)	(841,110)
Security deposits	(89,421)	(61,976)
Deferred rent revenue	89,880	282,527
Net cash provided by operating activities	<u>7,261,730</u>	<u>8,157,104</u>
Cash flows from investing activities:		
Proceeds from sales of investments	25,728,512	23,214,475
Purchase of investments	(26,060,300)	(22,695,602)
Purchase of building and equipment	(3,227,930)	(5,098,433)
Net cash used in investing activities	<u>(3,559,718)</u>	<u>(4,579,560)</u>
Cash flows from financing activities:		
Repayment of long-term debt	(3,702,012)	(3,577,544)
Net cash used in financing activities	<u>(3,702,012)</u>	<u>(3,577,544)</u>
Net change in cash	—	—
Cash at beginning of year	—	—
Cash at end of year	\$ <u>—</u>	<u>—</u>
Supplemental disclosure of cash flow information:		
Interest paid during the year	\$ 5,634,204	5,789,060
Noncash investing activities:		
Property, plant and equipment acquired by assuming liabilities	20,212	136,585

See accompanying notes to financial statements and accompanying independent accountants' review report.

## UBF FACULTY-STUDENT HOUSING CORP.

Notes to Financial Statements

June 30, 2016 and 2015

### (1) Organization and Summary of Significant Accounting Policies

#### (a) Organization

UBF Faculty-Student Housing Corp. (UBFFSH) is a nonprofit corporation established to construct and operate housing for students of the State University of New York at Buffalo (the University). UBFFSH generates its operating revenues primarily through the rental of housing units. All expenses are considered program in nature relating to housing for students.

The accompanying financial statements of UBFFSH are presented consistent with FASB Accounting Standards Codification (ASC) Topic 958, which addresses the presentation of financial statements for not-for-profit organizations.

#### (b) Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. UBFFSH's significant estimates include the valuation of allowance for uncollectible accounts and fair value of its interest rate swaps. Actual results could differ from those estimates.

#### (c) Due from UBF

Due from UBF represents funds invested through University at Buffalo Foundation, Inc. (UBF) and are generally immediately available to UBFFSH. With respect to these funds, UBFFSH receives a return based on current money market rates.

#### (d) Debt Issuance Costs

Debt issuance costs in connection with issuances of long-term debt are capitalized and are amortized using the effective interest method over the life of the related debt obligation and are presented as a deduction of long-term debt.

#### (e) Land, Building, and Equipment

Land, building, and equipment is recorded at cost and is depreciated using the straight-line method over the estimated useful life of the asset, which generally ranges from 20 to 35 years for real property and 5 to 8 years for furniture, fixtures and equipment.

#### (f) Derivatives

UBFFSH has adopted an interest rate swap policy which provides guidance and authorization levels for entering into interest rate swaps and other derivative arrangements. The policy determines derivatives objectives and limitations, potential instruments, and a standard of prudence.

UBFFSH records interest rate swaps at fair value in the statements of financial position in accordance with ASC Topic 815-10, *Derivatives and Hedging*. The change in fair value of the swap is reported in the statements of activities as gain or loss on interest rate swaps.

**UBF FACULTY-STUDENT HOUSING CORP.**

Notes to Financial Statements

June 30, 2016 and 2015

**(g) Risks and Uncertainties**

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

**(h) Recently Adopted Accounting Pronouncement**

In April 2015, the FASB issued ASU No. 2015-03, *Interest-Imputation of Interest* (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs. The guidance requires that debt issuance costs be presented in the statement of financial position as a direct deduction from the carrying amount of the debt liability. This guidance becomes effective for UBFFSH for fiscal years beginning after December 15, 2016, with early adoption permitted. UBFFSH has early adopted this accounting standard for the fiscal year 2016 and applied it retrospectively to 2015.

**(2) Investments**

Investments are recorded at their fair market value. The investment portfolio is comprised of cash, money market funds, and fixed income securities comprised of U.S. Treasury notes and mortgage-backed securities issued by government sponsored entities. Amounts required to be set aside in a debt service reserve fund are invested directly in U.S. Treasury notes and mortgage-backed securities issued by government sponsored entities.

Investments at June 30, 2016 and 2015 are composed of the following:

	<u>2016</u>	<u>2015</u>
Cash and cash equivalents	\$ 1,733,995	3,146,060
Fixed income securities	<u>5,277,247</u>	<u>3,521,045</u>
	<u>\$ 7,011,242</u>	<u>6,667,105</u>

**UBF FACULTY-STUDENT HOUSING CORP.**

Notes to Financial Statements

June 30, 2016 and 2015

The following table presents the available invested resources at June 30, 2016 and 2015:

	<b>2016</b>	<b>2015</b>
Investments	\$ 7,011,242	6,667,105
Due from UBF	30,369,386	29,718,940
	\$ 37,380,628	36,386,045
Debt service reserve funds	\$ 5,487,047	5,601,683
Surplus cash flow reserve	9,463,229	9,246,289
Replacement reserve fund	4,908,670	4,390,512
Unrestricted invested resources	17,521,682	17,147,562
	\$ 37,380,628	36,386,046

**(3) Fair Value Measurements**

According to ASC Topic 820, fair value is defined as the price that UBFFSH would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants at the measurement date.

ASC 820 also establishes a fair value hierarchy that distinguishes between (1) inputs that reflect the assumptions market participants would use in pricing assets or liabilities based on market data obtained from sources independent of the reporting entity (observable inputs) and (2) inputs that reflect the reporting entity's own assumptions about what other market participants would use in pricing assets or liabilities that are based on the best information available in the circumstances (unobservable inputs). ASC 820 prioritizes these inputs into the following fair value hierarchy:

**Level 1 Inputs** – Unadjusted quoted prices in active markets for identical assets or liabilities that are available at the measurement date.

**Level 2 Inputs** – Inputs other than quoted prices in active markets that are observable for the assets or liabilities, either directly or indirectly. These might include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the assets or liabilities, or inputs that are derived principally from or corroborated by market data by correlation or other means.

**Level 3 Inputs** – Unobservable inputs for determining the fair value of the assets or liabilities and are based on the entity's own assumptions about what market participants would use to price the assets or liabilities.

In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, an investment's level within the fair value hierarchy may be based on the lowest level of input that is significant to the fair value measurement. UBFFSH'S assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment.

**UBF FACULTY-STUDENT HOUSING CORP.**

Notes to Financial Statements

June 30, 2016 and 2015

The following table summarizes the valuation of UBFFSH's financial assets and liabilities within the ASC 820 fair value hierarchy as of June 30, 2016 and 2015 that are measured at fair value on a recurring basis:

		Fair value measurements at June 30, 2016					
		Total	Level 1	Level 2	Level 3	Redemption/ liquidation	Days notice
Financial assets:							
Investments, at fair value:							
	Cash and cash equivalents	\$ 1,733,995	1,733,995	—	—	Daily	One
	Fixed income securities	5,277,247	—	5,277,247	—	Daily	One
		<u>\$ 7,011,242</u>	<u>1,733,995</u>	<u>5,277,247</u>	<u>—</u>		
Financial liabilities:							
	Interest rate swaps	\$ 9,756,140	—	9,756,140	—		
		Fair value measurements at June 30, 2015					
		Total	Level 1	Level 2	Level 3	Redemption/ liquidation	Days notice
Financial assets:							
Investments, at fair value:							
	Cash and cash equivalents	\$ 3,146,060	3,146,060	—	—	Daily	One
	Fixed income securities	3,521,045	—	3,521,045	—	Daily	One
		<u>\$ 6,667,105</u>	<u>3,146,060</u>	<u>3,521,045</u>	<u>—</u>		
Financial liabilities:							
	Interest rate swaps	\$ 7,309,123	—	7,309,123	—		

There were no significant transfers into or out of Level 1 and Level 2 fair value measurements during the years ended June 30, 2016 and 2015.

The following methods and assumptions were used to estimate the fair value for each class of financial instrument measured at fair value:

*Cash and Cash Equivalents* – The fair value of cash and cash equivalents, consisting primarily of cash and money market funds, is classified as Level 1, as these financial instruments are highly liquid.

*Fixed Income Securities* – Investments in fixed income securities are comprised of U.S. Treasury notes and mortgage-backed securities issued by government sponsored agencies, and are classified as Level 2 based on multiple sources of information, which may include quoted market prices from either markets that are not active or are for the same or similar assets in active markets.

*Interest Rate Swaps* – The fair value of UBFFSH's interest rate swaps (swaps) was estimated using primarily Level 2 inputs via netting discounted future fixed cash payments and the discounted expected variable cash payments. Variable cash payments are based on an expectation of future interest rates derived from observable market interest rate curves. However, Level 3 inputs were used to determine credit valuation adjustments, such as estimates of current credit spreads to evaluate the likelihood of default. UBFFSH has determined that the impact of these credit valuation adjustments is not a significant input to the overall valuations of the swaps, and has therefore determined the swaps are most appropriately classified as Level 2.

**UBF FACULTY-STUDENT HOUSING CORP.**

Notes to Financial Statements

June 30, 2016 and 2015

**(4) Accounts Receivable**

Accounts receivable are comprised of student housing rent that has been billed but not yet collected. Accounts receivable are shown net of an allowance for uncollectable accounts. The allowance for uncollectable accounts was approximately \$796,000 and \$802,000 at June 30, 2016 and 2015, respectively. Bad debt expense (recovery) is estimated annually as a percentage of gross revenues and amounted to \$1,746 and \$(6,498) for 2016 and 2015, respectively. The percentage is based on historical trends. Periodically, the allowance for uncollectible accounts is adjusted to reflect the net accounts receivable deemed collectible, which can result in a recovery of bad debt expense.

**(5) Building and Equipment**

Investment in building and equipment at June 30, 2016 and 2015 is comprised of the following:

	<u>2016</u>	<u>2015</u>
Buildings and improvements	\$ 151,356,656	150,541,102
Furniture, fixtures and equipment	12,902,186	11,451,570
Work in progress	25,308	43,471
	<u>164,284,150</u>	<u>162,036,143</u>
Less accumulated depreciation	<u>(55,790,322)</u>	<u>(50,219,504)</u>
	<u>\$ 108,493,828</u>	<u>111,816,639</u>

Depreciation expense for the year ended June 30, 2016 and 2015 was \$6,271,048 and \$5,919,665, respectively.

A summary of the permanent financing relating to the student housing projects is provided in note 6. There was no interest cost capitalized in 2016 and 2015.

**UBF FACULTY-STUDENT HOUSING CORP.**

Notes to Financial Statements

June 30, 2016 and 2015

**(6) Debt Financing**

	<u>2016</u>	<u>2015</u>
Village of Kenmore Housing Authority bonds payable in monthly installments of \$47,516 through 2028 including interest at 4.95%. Outstanding principal is \$5,000,081 and \$5,310,121 at June 30, 2016 and 2015, respectively, net of unamortized debt issuance costs of \$166,487 in 2016 and \$179,906 in 2015. (Flickinger)	\$ 4,833,594	5,130,215
Town of Amherst Development Corporation bonds payable in annual principal installments that escalate in maturity in October 2045 plus interest ranging from 3.25% to 5.00% adjusted annually. Outstanding principal is \$74,010,000 and \$76,045,000 at June 30, 2016 and 2015, respectively, net of unamortized debt issuance costs of \$3,144,764 in 2016 and \$3,282,367 in 2015, and net of discount of \$61,328 in 2016 and \$49,356 in 2015. (Greiner Hall and Hadley Village)	70,803,908	72,713,277
Town of Amherst Development Corporation bonds payable in annual principal installments that escalate through maturity in October 2035 plus variable rate interest. Outstanding principal is \$21,430,000 and \$21,995,000 at June 30, 2016 and 2015, respectively, net of unamortized debt issuance costs of \$746,829 in 2016 and \$785,032 in 2015. (South Lake Village Replacement Bonds)	20,683,171	21,209,968
Town of Amherst Development Corporation bonds payable in monthly principal installments that escalate through maturity in August 2042 plus variable rate interest. Outstanding principal is \$29,560,000 and \$30,340,000 at June 30, 2016 and 2015, respectively, net of unamortized debt issuance costs of \$843,367 in 2016 and \$876,440 in 2015. (Flint Village and Creekside Village Refunding)	<u>28,716,633</u>	<u>29,463,560</u>
	<u>\$ 125,037,306</u>	<u>128,517,020</u>

UBFFSH complied with the terms of its financial debt covenants at June 30, 2016 and 2015.

The Flickinger Project bonds are secured by first mortgage interests in the property and the assignment of all related leases, subleases, and rentals. For the remaining student housing projects, each bond issuance is secured by a first mortgage lien on UBFFSH ground leasehold interest for such project and by assignment of all leases, subleases and rentals related to such project. UBFFSH is required to make payments under leasing arrangements with the bond issuers sufficient to service the bonds.

Each respective bond insurer and letter of credit provider requires a surplus cash flow reserve fund to be maintained related to the South Lake Village, Flint Village, Creekside Village, and Greiner Hall projects. The requirement provides that the reserve will be maintained by setting aside 50% of the net cash flow from each project to a maximum aggregate amount of 10% of the par amount of the bonds financing that



## UBF FACULTY-STUDENT HOUSING CORP.

### Notes to Financial Statements

June 30, 2016 and 2015

project. The surplus cash flow reserve fund will continue as long as the bond insurance policy or letter of credit is in full force and effect. The surplus cash flow reserve fund is designated for capital expenditures with the prior consent of the bond insurer or letter of credit provider. The amounts designated as surplus cash flow reserve were \$9,463,229 and \$9,246,289 at June 30, 2016 and 2015, respectively.

UBF has guaranteed UBFFSH's regularly scheduled principal and interest payment obligations for the bonds issued for the Greiner Hall Project and Hadley Village Refunding debt obligation. This cash flow guarantee remains in effect until the end of the third consecutive year in which the debt service coverage ratio related to the Greiner Hall Project and Hadley Village Refunding debt obligation is 1.35 or better or when the obligations are irrevocably paid in full.

Amounts set aside for debt service and included in investments were \$5,487,047 and \$5,601,683 at June 30, 2016 and 2015, respectively.

On August 26, 2010, UBFFSH issued \$23,975,000 Town of Amherst Development Corporation Bonds. The South Lake Village Replacement Bonds (Replacement Bonds) were issued to provide funds for the refunding of the outstanding principal of the South Lake Village Original Bonds and to provide payment of a portion of the costs incidental to their issuance. Concurrent with the issuance of the Replacement Bonds, UBFFSH entered into an interest rate swap agreement. Under the swap agreement, UBFFSH is obligated to pay the counterparty a fixed rate per annum equal to 4.7755% on a notional amount approximately equal to the outstanding principal amount of the Replacement Bonds, subject to certain conditions. The counterparty, in turn, is obligated to pay to UBFFSH a variable rate per annum on an equal notional amount, which rate is defined as 67% of one-month LIBOR, also subject to certain conditions. The swap agreement matures on October 1, 2035. If the swap agreement is terminated, the amount of any termination payment would depend upon prevailing market conditions, and such amount could be substantial. The interest rate swap agreement does not relieve UBFFSH of its obligations under the Replacement Bonds.

On June 12, 2012, UBFFSH entered into an additional interest rate swap agreement for the purpose of hedging the interest rate exposure of the Series 2012A Bonds (Flint Village and Creekside Village). This swap agreement matures on June 1, 2022. The swap agreement requires that UBFFSH pay to the counterparty monthly payments based on a fixed interest equal to 2.634% and that the counterparty pay UBFFSH monthly payments based on a floating rate equal to 65% of LIBOR plus 140.4 basis points. The notional amortization of the swap matches the principal amortization of the bonds.

Annual aggregate maturities of long-term debt at June 30, 2016 are as follows:

2017	\$	3,853,647
2018		4,015,424
2019		4,158,063
2020		4,306,090
2021		4,516,079
Thereafter		<u>109,089,450</u>
Aggregate annual maturities	\$	129,938,753
Less: Unamortized debt issuance costs		<u>(4,901,447)</u>
		<u><u>125,037,306</u></u>

**UBF FACULTY-STUDENT HOUSING CORP.**

Notes to Financial Statements

June 30, 2016 and 2015

**(7) Income Taxes**

The Internal Revenue Service has ruled that UBFFSH is qualified under Section 501(c)(3) of the Internal Revenue Code and is, therefore, generally not subject to tax on related income under present Federal income tax laws, and is also not a private foundation within the meaning of Section 509(a)(3) of the Internal Revenue Code. UBFFSH follows the provisions of ASC 740, *Accounting for Uncertainty in Income Taxes*, whereby it recognizes income tax positions when it is more-likely than-not that the position will be sustainable based on the merits of the position. Management has concluded that there are no material uncertain tax positions at June 30, 2016 or 2015.

**(8) Subsequent Events**

UBFFSH has evaluated subsequent events from the statement of financial position date through October 19, 2016, the date at which the financial statements were issued, and concluded that no additional disclosures are required.

## UBF FACULTY-STUDENT HOUSING CORP.

## Combining Statement of Financial Position

June 30, 2016

	<u>Flickinger Court</u>	<u>Hadley Village</u>	<u>South Lake Village</u>	<u>Flint Village</u>	<u>Creekside Village</u>	<u>Greiner Hall</u>	<u>Other</u>	<u>Total</u>
Assets:								
Investments	\$ 116,295	1,643,391	503,011	192,243	83,208	4,473,094	—	7,011,242
Due from UBF	1,974,257	4,473,927	6,635,581	9,358,256	2,361,285	5,573,745	(7,665)	30,369,386
Accounts receivable, net	36,180	76,913	58,952	49,387	45,363	64,367	—	331,162
Prepaid expenses and other assets	32,235	30,476	95,843	35,126	25,350	56,080	—	275,110
Land	404,658	—	—	—	—	—	—	404,658
Building and equipment, net	5,778,064	11,624,174	17,213,601	15,215,964	8,410,649	50,251,376	—	108,493,828
Total assets	\$ 8,341,689	17,848,881	24,506,988	24,850,976	10,925,855	60,418,662	(7,665)	146,885,386
Liabilities:								
Accounts payable	\$ 155,666	467,702	579,934	626,384	3,294	347,371	—	2,180,351
Accrued interest expense	—	102,773	255,847	—	—	724,410	—	1,083,030
Security deposits	33,979	—	—	—	—	—	—	33,979
Deferred rent revenue	95,750	—	166,255	—	160,751	—	—	422,756
Fair value of interest rate swaps	—	—	8,712,700	730,408	313,032	—	—	9,756,140
Long-term debt, net	4,833,594	10,285,043	20,683,171	20,116,698	8,599,935	60,518,865	—	125,037,306
Total liabilities	5,118,989	10,855,518	30,397,907	21,473,490	9,077,012	61,590,646	—	138,513,562
Net assets (deficit):								
Unrestricted	3,222,700	6,993,363	(5,890,919)	3,377,486	1,848,843	(1,171,984)	(7,665)	8,371,824
Total net assets (deficit)	3,222,700	6,993,363	(5,890,919)	3,377,486	1,848,843	(1,171,984)	(7,665)	8,371,824
Total liabilities and net assets	\$ 8,341,689	17,848,881	24,506,988	24,850,976	10,925,855	60,418,662	(7,665)	146,885,386

See accompanying independent accountants' review report.

## UBF FACULTY-STUDENT HOUSING CORP.

Combining Statement of Activities

Year ended June 30, 2016

	<u>Flickinger Court</u>	<u>Hadley Village</u>	<u>South Lake Village</u>	<u>Flint Village</u>	<u>Creekside Village</u>	<u>Greiner Hall</u>	<u>Other</u>	<u>Total</u>
Unrestricted:								
Revenue:								
Rent	\$ 1,808,458	4,559,680	4,397,875	4,126,774	2,152,083	5,898,221	—	22,943,091
Investment revenue	180	25,730	6,367	11,807	6,368	69,790	—	120,242
Other revenue	5,411	22,924	16,000	17,094	3,876	310,089	—	375,394
Total revenue	<u>1,814,049</u>	<u>4,608,334</u>	<u>4,420,242</u>	<u>4,155,675</u>	<u>2,162,327</u>	<u>6,278,100</u>	<u>—</u>	<u>23,438,727</u>
Expenses:								
Management services	406,073	1,033,338	960,948	1,095,142	586,393	1,027,281	—	5,109,175
Cleaning services	1,784	5,592	8,181	4,516	2,295	20,934	—	43,302
Supplies	2,792	8,458	4,819	5,983	2,147	13,765	—	37,964
Utilities	122,339	195,069	179,955	168,118	68,721	180,749	—	914,951
Maintenance	308,345	452,843	558,957	338,688	309,560	117,476	—	2,085,869
Insurance	51,864	82,753	127,236	102,778	71,036	164,522	—	600,189
Taxes	28,744	—	—	—	—	—	—	28,744
Interest	260,152	423,031	1,204,796	562,034	240,872	2,911,137	—	5,602,022
Depreciation and amortization	531,395	899,780	1,310,335	1,194,610	516,311	2,028,943	—	6,481,374
Asset management fees	23,795	3,033	12,734	2,605	1,699	10,007	—	53,873
Bad debt (recovery) expense	—	(8,825)	(2,218)	10,001	(1,823)	4,611	—	1,746
Other	33,863	74,432	86,678	58,480	44,383	47,764	—	345,600
Total expenses	<u>1,771,146</u>	<u>3,169,504</u>	<u>4,452,421</u>	<u>3,542,955</u>	<u>1,841,594</u>	<u>6,527,189</u>	<u>—</u>	<u>21,304,809</u>
Change in net assets before other revenue, expenses, gains and losses	42,903	1,438,830	(32,179)	612,720	320,733	(249,089)	—	2,133,918
Other revenue, expenses, gains and losses:								
Transfer of net assets	1,200,000	(1,900,000)	700,000	—	—	—	—	—
Loss on interest rate swaps	—	—	(1,421,250)	(718,037)	(307,730)	—	—	(2,447,017)
Grants to University at Buffalo	—	(181,213)	(160,819)	(156,157)	(67,591)	(174,220)	—	(740,000)
Loss on disposal of building and equipment	(159,376)	(39,989)	(40,996)	(26,603)	(30,841)	(2,100)	—	(299,905)
Change in net assets	<u>1,083,527</u>	<u>(682,372)</u>	<u>(955,244)</u>	<u>(288,077)</u>	<u>(85,429)</u>	<u>(425,409)</u>	<u>—</u>	<u>(1,353,004)</u>
Net assets (deficit) at beginning of year	<u>2,139,173</u>	<u>7,675,735</u>	<u>(4,935,675)</u>	<u>3,665,563</u>	<u>1,934,272</u>	<u>(746,575)</u>	<u>(7,665)</u>	<u>9,724,828</u>
Net assets (deficit) at end of year	<u>\$ 3,222,700</u>	<u>6,993,363</u>	<u>(5,890,919)</u>	<u>3,377,486</u>	<u>1,848,843</u>	<u>(1,171,984)</u>	<u>(7,665)</u>	<u>8,371,824</u>

See accompanying independent accountants' review report.

**UBF FACULTY-STUDENT HOUSING CORP.**  
 Schedule of Debt Service Coverage Ratio and Reserve Funds by Project  
 Year ended June 30, 2016

	Flickinger Court	Hadley Village	South Lake Village	Flint Village	Creekside Village	Greiner Hall	Hadley/ Greiner
Debt service coverage ratio:							
Adjustments to change in net assets for debt service coverage ratio calculation:							
Change in net assets	\$ 1,083,527	(682,372)	(955,244)	(288,077)	(85,429)	(425,409)	(1,107,781)
Add:							
Depreciation and amortization	531,395	919,187	1,310,335	1,194,610	516,311	2,021,509	2,940,696
Interest expense	260,152	423,031	1,204,796	562,034	240,872	2,911,137	3,334,168
Grants	—	181,213	160,819	156,157	67,591	174,220	355,433
Loss on disposal of assets	159,376	39,989	40,996	26,603	30,841	2,100	42,089
Loss on interest rate swaps	—	—	1,421,250	718,037	307,730	—	—
	<u>950,923</u>	<u>1,563,420</u>	<u>4,138,196</u>	<u>2,657,441</u>	<u>1,163,345</u>	<u>5,108,966</u>	<u>6,672,386</u>
Less:							
Addition to reserve replacement fund	(99,763)	(252,043)	(242,763)	(331,509)	(161,697)	(217,291)	(469,334)
Net asset transfer	(1,200,000)	1,900,000	(700,000)	—	—	—	1,900,000
Investment revenue – project funds	—	—	(2,887)	—	—	—	—
	<u>(1,299,763)</u>	<u>1,647,957</u>	<u>(945,650)</u>	<u>(331,509)</u>	<u>(161,697)</u>	<u>(217,291)</u>	<u>1,430,666</u>
Net revenue available for debt service	734,687	2,529,005	2,237,302	2,037,855	916,219	4,466,266	6,995,271
Total debt service for the year	570,192	1,411,781	1,796,046	1,108,034	474,872	4,032,388	5,445,425*
Net available after debt service	\$ 164,495	1,117,224	441,256	929,821	441,347	433,878	1,549,846
Debt service coverage ratio	1.29	1.79	1.25	1.84	1.93	1.11	1.28
Reserve funds:							
Surplus cash flow reserve fund:							
Balance at beginning of year	\$ —	—	2,932,003	2,698,500	1,447,499	2,168,288	2,168,288
Increase for the year	—	—	—	—	—	216,939	216,939
Balance at end of year	\$ —	—	2,932,003	2,698,500	1,447,499	2,385,227	2,385,227
Cash flow reserve fund:							
Balance at beginning of year	\$ (1,026,208)	4,919,733	602,508	3,117,830	799,267	1,812,883	6,732,616
Net asset transfer	1,200,000	(1,900,000)	700,000	—	—	—	(1,900,000)
Addition from operating fund	164,495	1,117,224	441,256	929,821	441,347	216,939	1,334,163
Transfer to reserve replacement fund	(342,802)	(1,797)	(1,506,709)	(408,351)	(6,900)	—	(1,797)
Grants	—	(181,213)	(160,819)	(156,157)	(67,591)	(174,220)	(355,433)
Balance at end of year	\$ (4,515)	3,953,947	76,236	3,483,143	1,166,123	1,855,602	5,809,549
Replacement/reserve fund:							
Balance at beginning of year	\$ 497,466	2,469,100	(721,580)	104,231	1,050,314	990,980	3,460,080
Calculated addition on operating revenues	99,763	252,043	242,763	331,509	161,697	217,291	469,334
Transfer from cash flow reserve fund	342,802	1,797	1,506,709	408,351	6,900	—	1,797
Retirements	—	183,669	8,033	2,196	778	—	183,669
Capitalized expenditures	(983,051)	(987,087)	(785,046)	(232,460)	(259,503)	(995)	(988,082)
Balance at end of year	\$ (43,020)	1,919,522	250,879	613,827	960,186	1,207,276	3,126,798

\* Represents maximum annual debt service

See accompanying independent accountants' review report.

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## **APPENDIX D**

Consolidated Financial Statements of the University at Buffalo Foundation, Inc. and Affiliates as of and for the years ended June 30, 2016 and June 30, 2015 with an Independent Auditors' Report thereon.

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**UNIVERSITY AT BUFFALO FOUNDATION, INC.  
AND AFFILIATES**

Consolidated Financial Statements

June 30, 2016 and 2015

(With Independent Auditors' Report Thereon)

**UNIVERSITY AT BUFFALO FOUNDATION, INC.  
AND AFFILIATES**

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**KPMG LLP**  
500 Seneca Street  
Suite 600  
Buffalo, NY 14204

## **Independent Auditors' Report**

The Board of Trustees  
University at Buffalo Foundation, Inc.:

We have audited the accompanying consolidated financial statements of University at Buffalo Foundation, Inc. and affiliates, which comprise the consolidated statements of financial position as of June 30, 2016 and 2015, and the related consolidated statements of activities and cash flows for the years then ended, and the related notes to the consolidated financial statements.

### ***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditors' Responsibility***

Our responsibility is to express an opinion on these consolidated 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 consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Opinion***

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of University at Buffalo Foundation, Inc. and affiliates as of June 30, 2016 and 2015, and the results of their operations and their cash flows for the years then ended in accordance with U.S. generally accepted accounting principles.

**KPMG LLP**

October 14, 2016

**UNIVERSITY AT BUFFALO FOUNDATION, INC.  
AND AFFILIATES**

Consolidated Statements of Financial Position

June 30, 2016 and 2015

<b>Assets</b>	<b>2016</b>	<b>2015</b>
Accounts receivable, net of allowance for uncollectible accounts of \$796,000 in 2016 and \$840,000 in 2015	\$ 1,699,800	1,677,266
Contributions receivable, net (note 2)	47,861,617	26,499,843
Investments (notes 3 and 4)	842,543,222	867,736,805
Property, plant, and equipment, net (note 5)	127,670,159	131,284,116
Fine art collection	12,217,458	11,781,080
Other assets	172,960	465,535
Total assets	<u>\$ 1,032,165,216</u>	<u>1,039,444,645</u>
<b>Liabilities and Net Assets</b>		
Liabilities:		
Accounts payable	\$ 6,216,348	11,460,564
Accrued interest expense	1,083,030	1,115,213
Other accrued liabilities	4,497,651	4,152,722
Fair value of interest rate swaps (notes 4 and 6)	9,756,140	7,309,123
Demand note payable (note 6)	5,789,563	5,789,563
Long-term debt, net (note 6)	125,037,306	128,517,020
Funds held in custody for others (notes 9 and 13)	14,683,304	16,619,382
Annuity and life income obligations	9,678,520	9,481,421
Total liabilities	<u>176,741,862</u>	<u>184,445,008</u>
Net assets (notes 7 and 8):		
Unrestricted:		
Undesignated	14,913,199	14,423,194
Designated for specific operating units	93,112,953	87,410,806
Designated for investment purposes	134,813,696	152,261,294
Total unrestricted	<u>242,839,848</u>	<u>254,095,294</u>
Temporarily restricted	441,147,076	437,220,920
Permanently restricted	171,436,430	163,683,423
Total net assets	<u>855,423,354</u>	<u>854,999,637</u>
Total liabilities and net assets	<u>\$ 1,032,165,216</u>	<u>1,039,444,645</u>

See accompanying notes to consolidated financial statements.

**UNIVERSITY AT BUFFALO FOUNDATION, INC.  
AND AFFILIATES**

Consolidated Statement of Activities

Year ended June 30, 2016

	<u>Unrestricted</u>	<u>Temporarily restricted</u>	<u>Permanently restricted</u>	<u>Total</u>
Revenues, gains and other support:				
Gifts, bequests, and private grants	\$ 1,114,041	46,531,822	8,077,210	55,723,073
Loss on uncollectible contributions	—	(2,747,183)	(60,562)	(2,807,745)
Investment return (loss), net (note 3)	(915,928)	(2,297,204)	614,070	(2,599,062)
Loss on interest rate swaps	(2,447,017)	—	—	(2,447,017)
Loss on sale of property, plant and equipment	(568,981)	—	—	(568,981)
Other revenues:				
Faculty practice	9,110,121	—	—	9,110,121
Rental (note 5)	24,275,044	—	—	24,275,044
Continuing education	7,608,507	—	—	7,608,507
Uniform Data System for Medical Rehabilitation	8,787,925	—	—	8,787,925
Dental student training programs	2,165,780	—	—	2,165,780
Center for the Arts	2,860,209	—	—	2,860,209
Student orientation	1,302,888	—	—	1,302,888
Other activities and services	8,940,053	—	—	8,940,053
Change in value of split interest agreements	—	(24,096)	(877,711)	(901,807)
Net assets released from restrictions	37,537,183	(37,537,183)	—	—
Total revenues, gains and other support	<u>99,769,825</u>	<u>3,926,156</u>	<u>7,753,007</u>	<u>111,448,988</u>
Expenses:				
Program expenses:				
Academic divisions	53,836,178	—	—	53,836,178
Administrative divisions	21,747,914	—	—	21,747,914
Real estate	23,682,409	—	—	23,682,409
Fundraising	8,007,685	—	—	8,007,685
Total program expenses	107,274,186	—	—	107,274,186
Business office administration	3,751,085	—	—	3,751,085
Total expenses	<u>111,025,271</u>	<u>—</u>	<u>—</u>	<u>111,025,271</u>
Total change in net assets	(11,255,446)	3,926,156	7,753,007	423,717
Net assets at beginning of year	<u>254,095,294</u>	<u>437,220,920</u>	<u>163,683,423</u>	<u>854,999,637</u>
Net assets at end of year	<u>\$ 242,839,848</u>	<u>441,147,076</u>	<u>171,436,430</u>	<u>855,423,354</u>

See accompanying notes to consolidated financial statements.

**UNIVERSITY AT BUFFALO FOUNDATION, INC.  
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Consolidated Statement of Activities

Year ended June 30, 2015

	<u>Unrestricted</u>	<u>Temporarily restricted</u>	<u>Permanently restricted</u>	<u>Total</u>
Revenues, gains and other support:				
Gifts, bequests, and private grants	\$ 2,376,255	20,012,179	5,708,426	28,096,860
Loss on uncollectible contributions	—	(15,904,413)	(842,658)	(16,747,071)
Investment return, net (note 3)	8,973,559	9,758,052	949,776	19,681,387
Loss on interest rate swaps	(481,965)	—	—	(481,965)
Gain on sale of property, plant and equipment	821,074	—	—	821,074
Other revenues:				
Faculty practice	9,253,842	—	—	9,253,842
Rental (note 5)	22,796,656	—	—	22,796,656
Continuing education	5,737,195	—	—	5,737,195
Uniform Data System for Medical Rehabilitation	8,420,636	—	—	8,420,636
Dental student training programs	3,966,122	—	—	3,966,122
Center for the Arts	2,816,754	—	—	2,816,754
Student orientation	1,196,194	—	—	1,196,194
Other activities and services	8,982,957	—	—	8,982,957
Change in value of split interest agreements	—	(549,804)	(3,445,009)	(3,994,813)
Net assets released from restrictions	31,415,312	(31,415,312)	—	—
Total revenues, gains and other support	<u>106,274,591</u>	<u>(18,099,298)</u>	<u>2,370,535</u>	<u>90,545,828</u>
Expenses:				
Program expenses:				
Academic divisions	53,085,697	—	—	53,085,697
Administrative divisions	18,514,201	—	—	18,514,201
Real estate	24,309,703	—	—	24,309,703
Fundraising	7,681,245	—	—	7,681,245
Total program expenses	<u>103,590,846</u>	<u>—</u>	<u>—</u>	<u>103,590,846</u>
Business office administration	<u>3,391,506</u>	<u>—</u>	<u>—</u>	<u>3,391,506</u>
Total expenses	<u>106,982,352</u>	<u>—</u>	<u>—</u>	<u>106,982,352</u>
Total change in net assets	(707,761)	(18,099,298)	2,370,535	(16,436,524)
Net assets at beginning of year	<u>254,803,055</u>	<u>455,320,218</u>	<u>161,312,888</u>	<u>871,436,161</u>
Net assets at end of year	<u>\$ 254,095,294</u>	<u>437,220,920</u>	<u>163,683,423</u>	<u>854,999,637</u>

See accompanying notes to consolidated financial statements.

**UNIVERSITY AT BUFFALO FOUNDATION, INC.  
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Consolidated Statements of Cash Flows

Years ended June 30, 2016 and 2015

	<b>2016</b>	<b>2015</b>
Cash flows from operating activities:		
Change in net assets	\$ 423,717	(16,436,524)
Adjustments to reconcile change in net assets to net cash used in operating activities:		
Depreciation	7,252,006	6,878,496
Amortization	241,839	241,837
Net realized and unrealized losses/(gains)	8,463,663	(8,776,182)
Change in value of split interest agreements	901,807	3,994,813
Loss on interest rate swaps	2,447,017	481,965
Loss/(gain) on sale of property, plant and equipment	568,981	(821,074)
Gifts of fine art	(345,920)	(1,545,062)
Contributions restricted for long-term purposes	(10,230,224)	(8,544,358)
Receipts of funds held in custody for others	4,675,202	7,742,994
Disbursements of funds held in custody for others	(6,611,280)	(6,356,751)
Changes in assets and liabilities:		
Contributions receivable	(17,485,923)	14,797,022
Accounts receivable, net	(22,534)	733,065
Other assets	273,035	(37,622)
Accounts payable	(5,244,216)	3,060,673
Accrued interest expense and other accrued liabilities	312,746	(160,067)
Net cash used in operating activities	(14,380,084)	(4,746,775)
Cash flows from investing activities:		
Proceeds from sale of property, plant, and equipment and fine arts	—	2,162,968
Purchase of property, plant, and equipment and fine arts	(4,297,489)	(5,577,018)
Proceeds from sale of investments	346,059,329	463,820,054
Purchase of investments	(329,520,653)	(459,179,443)
Net cash provided by investing activities	12,241,187	1,226,561
Cash flows from financing activities:		
Repayments of long-term debt	(3,702,012)	(3,577,544)
Investments subject to annuity agreements	1,030,288	778,193
Payments and maturities of annuity obligations	(1,543,752)	(1,420,167)
Collections of contributions restricted for long-term purposes	6,354,373	7,739,732
Net cash provided by financing activities	2,138,897	3,520,214
Net change in cash and cash equivalents	—	—
Cash and cash equivalents at beginning of year	—	—
Cash and cash equivalents at end of year	\$ —	—
Supplemental disclosure of cash flow information:		
Interest paid during the year	\$ 5,744,630	5,903,130
Noncash investing activities:		
Gifts of fine art	345,920	1,545,062
Property, plant and equipment acquired by assuming liabilities	20,212	152,200

See accompanying notes to consolidated financial statements.

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Notes to Consolidated Financial Statements  
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**(1) Organization and Summary of Significant Accounting Policies**

**(a) Organization**

University at Buffalo Foundation, Inc. (UBF) was granted a charter as an education corporation in 1962 by the Board of Regents of the State of New York to promote the education, research, and public service mission of the State University of New York (SUNY) at Buffalo (University).

UBF and each of its six affiliates perform an important role in supporting and promoting the mission of the University. The following summarizes the most important roles and responsibilities of each entity:

UBF – Supports the University’s fund raising initiatives by providing advice and counsel regarding philanthropy. UBF also processes and manages gift revenues for the benefit of the University and manages long term investments.

UB Foundation Activities, Inc. (UBFA) – Processes program service revenue for the benefit of all units of the University. UBFA is also responsible for expenditures of gift, program services and investment revenues to support operations of the University in accordance with donor restrictions where applicable. UBFA also provides payroll administration for employees of the University as well as the staff of UBF.

UB Foundation Services, Inc. (UBFS) – Administers sponsored program and other agency activity for the University.

UBF Corporation – Leases, develops, and operates on-campus real estate for the benefit of the University.

FNUB, Inc. – Owns and operates a variety of off-campus real estate for the benefit of the University.

University at Buffalo Foundation Incubator, Inc. (UBFI) – Operates a technology incubator facility aimed at increasing interaction between the University and start-up businesses.

UBF Faculty – Student Housing Corp. (UBFFSH) – Constructs and operates housing for students of the University, which currently consists of six complexes totaling 2,688 beds.

**(b) Principles of Consolidation**

UBF consolidates its financial statements with those of its affiliated entities to reflect all activities supporting UBF. The accompanying consolidated financial statements include the accounts of: UBF; UBFA; UBFS; UBF Corporation; FNUB, Inc.; UBFI; and UBFFSH, collectively referred to herein as the “Foundation.” All significant intercompany balances and transactions have been eliminated in consolidation.

**(c) Use of Estimates**

The consolidated financial statements of the Foundation have been prepared on the accrual basis of accounting. The preparation of financial statements in conformity with U.S. generally accepted



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accounting principles requires management to make estimates and judgments that affect the reported amounts of assets and liabilities, disclosures of contingencies at the date of the financial statements, and revenues and expenses recognized during the reporting period. The Foundation's significant estimates include the valuation of its investments, valuation of allowance for uncollectible accounts, contributions receivable and the valuation of its interest rate swaps. Actual results could differ from those estimates.

**(d) Basis of Accounting**

The accompanying consolidated financial statements of the Foundation are presented consistent with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 958, which addresses the presentation of financial statements for not-for-profit organizations. In accordance with the provisions of ASC 958, net assets and revenue, expenses, gains, and losses are classified based on the existence or absence of donor-imposed restrictions.

The Foundation classifies its net assets and changes therein in the categories described below:

**Unrestricted**

Unrestricted net assets represent resources whose use is not restricted by donor-imposed stipulations; thus, these resources are available for the general support of the Foundation's activities.

Unrestricted net assets are further classified as undesignated and designated resources. Undesignated net assets include the Foundation's net investment in property, plant, and equipment including the fine art collection and amounts set aside for maintenance of properties. Designated net assets represent amounts set aside by the Foundation to be used (1) for the support of specific operating units of the University and (2) for investment purposes in order to maintain the purchasing power of the Foundation's resources.

**Temporarily Restricted**

Temporarily restricted net assets represent resources whose use is limited by donor-imposed stipulations that either expire by the passage of time or are met by specific actions of the Foundation. Specific actions most often involve completion of expenditures for purposes consistent with donor stipulations. Temporarily restricted net assets of the Foundation are comprised of resources (1) for chairs/professorships, research, scholarships/fellowships and campus programs and (2) for investment purposes in order to maintain the purchasing power of the Foundation's resources. When such donor-imposed stipulations are met, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the consolidated statements of activities as net assets released from restrictions.

When temporarily restricted net assets and unrestricted net assets are available for the same purpose, the Foundation uses the temporarily restricted net assets first.

**Permanently Restricted**

Permanently restricted net assets, including split interest agreements, represent resources that donors have stipulated must be maintained permanently. The Foundation is permitted to expend part or all of the investment return derived from the donated assets, restricted only by the donor stipulations.

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Donor restrictions placed on the use of investment return derived from permanently restricted net assets relate principally to the use of the investment return to support chairs/professorships, research, scholarships/fellowships and campus programs.

The New York Prudent Management of Institutional Funds Act (NYPMIFA or Act) provides standards of fund management for those charged with governance of institutional or endowment funds. Among its various provisions, it requires that those responsible for managing institutional funds adopt a written investment policy; requires diversification of investments; and provides institutions with a process by which donor restrictions can be lifted. The Act allows an institution to determine the appropriate level of endowment expenditure, subject to donor-imposed restrictions expressed in the gift instrument. However, it establishes a rebuttable presumption of imprudence if such expenditure in any year is greater than 7% of the five year average fair market value of an endowment fund.

**(e) *Investment and Spending Policies***

The Foundation has adopted investment and spending policies for endowment and certain working capital assets whose purpose is to provide a predictable stream of funding to programs supported by these assets, while seeking to maintain the purchasing power of these assets. The Foundation's investment and spending policies work together to achieve this objective. The investment policy establishes an achievable return objective through diversification of asset classes. The current objective is to earn an average annual total return, net of investment fees, equal to inflation plus 5.0% to 5.5%. Actual returns in any given year may vary significantly from this amount.

To satisfy its long-term rate-of-return objectives, the Foundation relies on a total investment return strategy in which investment return is achieved through both capital appreciation (realized and unrealized) and current yield (interest and dividends). The Foundation targets a diversified asset allocation to achieve its long-term return objectives within prudent risk parameters.

The Foundation's spending policy calculates the amount of funds annually distributed from the Foundation's various endowed funds. A formula governs the portion of total return made available each year for spending that allows spending to increase by the predetermined annual growth rate of 3.0% as long as spending stays within 4.0% and 6.0% of the three-year average market value of principal. This is consistent with the Foundation's objective to maintain the purchasing power of endowment and certain working capital assets, as well as to provide additional growth through new gifts and investment return. The application of the formula for the year ended June 30, 2016 was subject to legal restrictions relating to endowed funds where the fair value is less than their original donated value. In June 2011, the spending policy was revised to accommodate prudent spending measures provided by NYPMIFA. Under this revision, absent of donor direction to the contrary, a fund will receive a full spending distribution provided its value is at least 90% of historic dollar value. The fund will receive one-half spending distribution if its value is below 90% but at least 80% of historic dollar value and will receive no distribution if the fund's value is below 80%.

**(f) *Contributions***

Contributions received, including unconditional promises to give, are generally recognized as revenues in the period received at their fair values. Unconditional promises to give that are expected to be collected in future years are recorded at the present value of their estimated future cash flows. The

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discounts on those amounts are computed using risk-adjusted interest rates applicable to the years in which the promises are received. An allowance for uncollectible contributions receivable is recorded as deemed necessary by management based upon economic factors and historical losses associated with pledges received.

**(g) *Cash and Cash Equivalents***

Cash and money market accounts held for investment purposes are included in investments on the consolidated statements of financial position as management considers a significant portion of such balances as a component of the Foundation's overall investment strategy.

**(h) *Investments***

Investments in marketable securities are recorded at fair value based on exchange or third-party quoted market prices where available, with realized and unrealized gains and losses included in the consolidated statements of activities. In addition to traditional equity securities and fixed-income securities, the Foundation may also hold shares or units in commingled institutional funds as well as in alternative investment structures involving hedged strategies, venture capital/private equity and real assets strategies that are valued using current net assets as a practical expedient to approximate fair values. Hedged strategies involve funds whose managers have the authority to invest in various asset classes at their discretion, including the ability to invest long and short. Funds with hedged strategies generally hold securities or other financial instruments for which a ready market exists and may include stocks, bonds, put or call options, swaps, currency hedges and other instruments, and are valued accordingly. Venture capital/private equity investments employ buyout and venture capital strategies and focus on investments in turn-around situations. Real asset investments generally hold interests in commercial real estate, infrastructure, and other hard assets. Venture capital/private equity and real assets strategies therefore often require the estimation of fair values by the fund managers in the absence of readily determinable market values. Because of the inherent uncertainties of valuation, these estimated fair values may differ significantly from values that would have been used had a ready market existed, and such differences could be material. These valuations generally consider variables such as operating results, comparable earnings multiples, projected cash flows, recent sales prices, and other pertinent information, and may reflect discounts for the illiquid nature of certain investments held. Moreover, the fair values of the Foundation's interests in shares or units of these funds, because of liquidity and capital commitment terms that vary depending on the specific fund or partnership agreement, may differ from the fair value of the funds' underlying net assets.

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

Property, plant, and equipment are recorded at cost or, if donated, at the fair value at the date of donation. Depreciation is recorded using the straight-line method over estimated useful lives of 20 to 35 years for real property and 5 to 8 years for furniture, fixtures and equipment.

The Foundation reports gifts of property, plant, and equipment as unrestricted support unless explicit donor stipulations specify how the donated assets must be used. Gifts of long-lived assets with explicit restrictions that specify how the assets are to be used and gifts of cash or other assets that must be used to acquire long-lived assets are reported as temporarily restricted support. Absent explicit donor

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stipulations about how long those long-lived assets must be maintained, the Foundation reports expirations of donor restrictions when the donated or acquired long-lived assets are placed in service.

**(j) *Fine Art Collection***

Fine art has been capitalized from inception at fair value at the date of donation. Fair value is generally determined by appraisal or a written opinion of value from an expert in the field. If fine art items are sold above or below the recorded amount, a gain or loss will be recognized. The fine art collection is not depreciated.

**(k) *Split Interest Agreements***

The Foundation's split interest agreements with donors consist of gift annuities, lead trusts and charitable remainder unitrusts and annuity trusts. Assets held under these agreements are included in investments and property, plant, and equipment. Generally, contribution revenues are recognized on the dates of donation to the annuities or trusts and are established after recording liabilities for the present value of the estimated future payments to be made to the third-party beneficiaries. The discount rate utilized was 1.8% and 2.0% at June 30, 2016 and 2015, respectively. The liabilities, reflected as annuity and life income obligations on the consolidated statements of financial position, are adjusted during the term of the trusts and annuities for changes in the value of the assets and other changes in the estimates of future benefits. Upon termination of the income obligation, the residual value of the annuities or trusts is held by the Foundation in accordance with the donor's annuity or trust agreement.

**(l) *Derivatives***

UBF has adopted an interest rate swap policy which provides guidance and authorization levels for entering into interest rate swaps and other derivative arrangements. The policy determines derivatives objectives and limitations, potential instruments, and a standard of prudence.

UBF records interest rate swaps at fair value in the consolidated statements of financial position in accordance with ASC Topic 815-10, *Derivatives and Hedging*. The change in fair value of the swap is reported in the consolidated statements of activities as gain or loss on interest rate swaps.

**(m) *Other Activities and Services***

Other activities and services revenue, included in the consolidated statements of activities, reflect amounts generated from educational and training programs, various student activities, laboratory testing and other educational related initiatives, and administrative support provided through the Foundation. Revenue related to other activities and services is recognized as earned.

**(n) *Program Expenses***

Program expenses consist of expenses related to the academic divisions, administrative divisions (athletics, student orientation, Office of the President, Office of the Provost), real estate management and fundraising expenses paid to support the mission of the University.

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**(o) Recently Adopted Accounting Pronouncements**

In May 2015, the FASB issued ASU No. 2015-07 – *Fair Value Measurement (Topic 878): Disclosures for Investments in Certain Entities that Calculate Net Asset Value per Share (or its Equivalent)*. The guidance removes the requirement to categorize within the fair value hierarchy investments whose fair values are measured at NAV (or its equivalent) under the practical expedient in the FASB’s fair value measurement guidance. This guidance becomes effective for the Foundation for fiscal years beginning after December 15, 2016, with early adoption permitted. The Foundation adopted the provisions of ASU No. 2015-7 during fiscal year 2015.

In April 2015, the FASB issued ASU No. 2015-03, *Interest – Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs*. This guidance requires that debt issuance costs be presented in the statement of financial position as a direct deduction from the carrying amount of the debt liability. This guidance becomes effective for fiscal years beginning after December 15, 2015, with early adoption permitted. The Foundation has early adopted this accounting standards for the fiscal year 2016 and applied it retrospectively to 2015.

In January 2016, the FASB issued Accounting Standards Update (ASU) No. 2016-01, *Financial Instruments (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities*. The guidance eliminates the requirement to disclose the fair value of financial instruments measured at amortized cost. This guidance becomes effective for the Foundation for fiscal years beginning after December 15, 2018, with early adoption permitted. The Foundation adopted the provision of ASU No. 2016-01 during fiscal year 2016.

**(2) Contributions Receivable**

Contributions receivable, representing unconditional promises to give, as of June 30, 2016 and 2015, are summarized below:

	<b>2016</b>	<b>2015</b>
Unconditional promises expected to be collected in:		
Less than one year	\$ 11,600,119	9,187,870
One year to five years	22,948,829	14,667,483
Greater than five years	16,006,533	3,593,449
	50,555,481	27,448,802
Less:		
Discount	(1,399,620)	(527,242)
Allowance for uncollectible contributions receivable	(1,294,244)	(421,717)
	\$ 47,861,617	26,499,843

Discount rates utilized ranged from 0.08% to 2.21% based upon the rates reflected at the time of the gift.

As of June 30, 2016, UBF has also received bequest intentions and revocable trusts that management estimates will approximate \$98.1 million. These intentions and conditional promises to give are not recognized as assets in the accompanying consolidated financial statements. Amounts received under these

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conditional promises to give will generally be restricted for specific purposes stipulated by the donors, primarily endowments for faculty support, scholarships, and general operating support of particular departments and divisions of the University.

The UBF allowance for uncollectible contributions is estimated by using collections of contributions receivable as an indication of future collections. At June 30, 2016 and 2015, the five largest outstanding pledge balances represented 67.1% and 30.6% respectively, of UBF's gross contribution receivable.

**(3) Investments**

Investments at June 30, 2016 and 2015 are comprised of the following:

	<u>2016</u>	<u>Percentage</u>	<u>2015</u>	<u>Percentage</u>
Cash and cash equivalents	\$ 12,922,783	1.5%	13,045,665	1.5%
Investment receivable	17,122,588	2.0	302,375	—
Fixed income securities	106,771,542	12.7	104,791,343	12.1
Equity securities	348,392,062	41.4	394,713,527	45.5
Alternative investments:				
Real assets	88,009,703	10.5	82,139,974	9.5
Venture capital/private				
Equity partnerships	102,223,502	12.1	105,970,730	12.2
Hedge funds	166,684,438	19.8	166,384,685	19.2
Other	416,604	—	388,506	—
	<u>\$ 842,543,222</u>	<u>100.0%</u>	<u>867,736,805</u>	<u>100.0%</u>

Investment return, net, on the statements of activities is comprised of net realized and unrealized (losses) gains of \$(8,463,663) and \$8,776,182 in 2016 and 2015, respectively, as well as interest and dividend income, of \$5,864,601 and \$10,905,205 in 2016 and 2015, net of asset management fees, respectively.

Investments held under split interest agreements, included above, were approximately \$21,528,680 and \$21,813,015 at June 30, 2016 and 2015, respectively.

Certain investment assets have been pledged as security for a bank line of credit for the specific use of a University Department. The value of the pledged assets was approximately \$914,000 at June 30, 2016, and \$1,453,000 at June 30, 2015. Also, the South Lake Village swap agreement (see note 6) requires assets to be pledged to the counterparty to serve as collateral in an amount equal to or greater than the outstanding swap. At June 30, 2016 and 2015, UBF pledged the assets held with one of its fixed asset managers valued at approximately \$14,279,000 and \$13,792,000, respectively.

**(4) Fair Value Measurements**

According to ASC 820, fair value is defined as the price that the Foundation would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants at the measurement date.

ASC 820 also establishes a fair value hierarchy that distinguishes between (1) inputs that reflect the assumptions market participants would use in pricing assets or liabilities based on market data obtained from

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sources independent of the reporting entity (observable inputs) and (2) inputs that reflect the reporting entity's own assumptions about what other market participants would use in pricing assets or liabilities that are based on the best information available in the circumstances (unobservable inputs). ASC 820 prioritizes these inputs into the following fair value hierarchy:

*Level 1 Inputs* – Unadjusted quoted prices in active markets for identical assets or liabilities that are available at the measurement date.

*Level 2 Inputs* – Inputs other than quoted prices in active markets that are observable for the assets or liabilities, either directly or indirectly. These might include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the assets or liabilities, or inputs that are derived principally from or corroborated by market data by correlation or other means.

*Level 3 Inputs* – Unobservable inputs for determining the fair value of the assets or liabilities and are based on the entity's own assumptions about what market participants would use to price the assets or liabilities.

The Foundation also reports under the FASB update for *Disclosures for Investments in Certain Entities that Calculate Net Asset Value (NAV) per Share (or Its Equivalent)*, which permits, as a practical expedient, the Foundation to measure the fair value of an investment that is within the scope of the update on the basis of the NAV per share of the investment or its equivalent determined as of the Foundation's fiscal year-end without the requirement to categorize the investment in the fair value hierarchy. Under this approach, certain attributes for the investment, such as restrictions on redemption and transaction prices from principal-to-principal or brokered transactions, are not considered in measuring the fair value of an investment.

In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, an investment's level within the fair value hierarchy may be based on the lowest level of input that is significant to the fair value measurement. The Foundation's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment.

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The following table summarizes the valuation of the Foundation's financial assets and liabilities within the ASC 820 fair value hierarchy as of June 30, 2016 and 2015 that are measured at fair value on a recurring basis:

June 30, 2016						
	Level 1	Level 2	Level 3	Total	Redemption/ liquidation	Days notice
Financial assets:						
Cash and cash equivalents	\$ 12,922,783	—	—	12,922,783	Daily	One
Investment receivable	17,122,588	—	—	17,122,588	Quarterly	N/A
Fixed income securities:						
U.S. fixed income	84,764,073	5,627,908	—	90,391,981	Daily/monthly	One
Global fixed income	1,072,474	—	—	1,072,474	Daily/quarterly	One
U.S. inflation protected	15,307,087	—	—	15,307,087	Daily	One
	<u>101,143,634</u>	<u>5,627,908</u>	<u>—</u>	<u>106,771,542</u>		
Domestic equity:						
U.S. large blend	115,551,886	—	—	115,551,886	Daily	One
U.S. large quality	57,203,128	—	—	57,203,128	Daily	One
U.S. mid/small	426,642	—	—	426,642	Daily	One
	<u>173,181,656</u>	<u>—</u>	<u>—</u>	<u>173,181,656</u>		
International equity:						
International large	63,626,399	—	—	63,626,399		
International emerging	39,183,615	—	—	39,183,615	Daily	One
	<u>102,810,014</u>	<u>—</u>	<u>—</u>	<u>102,810,014</u>		
Real assets:						
Natural resources	10,728,787	—	—	10,728,787	Daily	One
Other	268,676	147,928	—	416,604		
	<u>418,178,138</u>	<u>5,775,836</u>	<u>—</u>	<u>423,953,974</u>		
Investments measured at net asset value:						
International equity:						
International large				40,716,014	Daily/monthly	One/15
Global Opportunity				31,684,378	Monthly/quarterly	25/45/65/180
				<u>72,400,392</u>		
Real assets:						
Global energy				14,879,053	Illiquid	N/A
Infrastructure				15,959,551	Quarterly/Illiquid	90/N/A
Natural resources				949,433	Daily/Illiquid	One/N/A
Real estate – debt				13,413,259	Illiquid	N/A
Real estate – equity				32,079,620	Quarterly/Illiquid	15/N/A
				<u>77,280,916</u>		
Private equity:						
Buyout				28,949,933	Illiquid	N/A
Fund of funds				44,143,346	Illiquid	N/A
Special situations				18,489,950	Illiquid	N/A
Venture capital				10,640,273	Illiquid	N/A
				<u>102,223,502</u>		



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	Level 1	Level 2	Level 3	Total	Redemption/ liquidation	Days notice
Hedge funds:						
Multi-strategy				\$ 56,644,840	Quarterly/annual/bi-annual	45/60/65/90
Long/short credit				33,680,937	Monthly/quarterly/semi/bi-annual	45/65/90
Long/short equity				52,928,592	Monthly/quarterly/semi-annual	45/60/180
Technology				10,000,000	Quarterly	90
Global macro				9,144,705	Quarterly	90
Short credit				4,285,364	Monthly	90
				166,684,438		
 Total investments				 \$ 842,543,222		
Financial liabilities:						
Interest rate swaps	—	9,756,140	—	9,756,140		

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June 30, 2015						
	Level 1	Level 2	Level 3	Total	Redemption/ liquidation	Days notice
Financial assets:						
Cash and cash equivalents	\$ 13,045,665	—	—	13,045,665	Daily	One
Investment receivable	302,375	—	—	302,375	Quarterly	N/A
Fixed income securities:						
U.S. fixed income	84,787,493	3,985,622	—	88,773,115	Daily/monthly	One
Global fixed income	1,168,457	—	—	1,168,457	Daily/quarterly	One/60
U.S. inflation protected	14,849,771	—	—	14,849,771	Daily	One
	<u>100,805,721</u>	<u>3,985,622</u>	<u>—</u>	<u>104,791,343</u>		
Domestic equity:						
U.S. large blend	138,897,286	—	—	138,897,286	Daily	One
U.S. large quality	69,873,780	—	—	69,873,780	Daily	One
U.S. mid/small	730,639	—	—	730,639	Daily	One
	<u>209,501,705</u>	<u>—</u>	<u>—</u>	<u>209,501,705</u>		
International equity:						
International large	78,591,551	—	—	78,591,551	Daily/monthly	One/15
International emerging	44,392,957	—	—	44,392,957	Daily	One
	<u>122,984,508</u>	<u>—</u>	<u>—</u>	<u>122,984,508</u>		
Real assets:						
Natural resources	25,905,379	—	—	25,905,379	Daily	One
Other	236,956	151,550	—	388,506		
	<u>472,782,309</u>	<u>4,137,172</u>	<u>—</u>	<u>476,919,481</u>		
Investments measured at net asset value:						
International equity:						
International large				62,227,314	Daily/monthly	One/15
Real assets:						
Global energy				7,769,211	Illiquid	N/A
Infrastructure				13,007,001	Quarterly/illiquid	90/N/A
Natural resources				845,362	Daily/illiquid	One/N/A
Real estate – debt				9,645,241	Illiquid	N/A
Real estate – equity				24,967,780	Quarterly/illiquid	15/N/A
				<u>56,234,595</u>		
Private equity:						
Buyout				20,122,385	Illiquid	N/A
Fund of funds				57,163,761	Illiquid	N/A
Special situations				19,957,382	Illiquid	N/A
Venture capital				8,727,202	Illiquid	N/A
				<u>105,970,730</u>		

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June 30, 2015						
	Level 1	Level 2	Level 3	Total	Redemption/ liquidation	Days notice
Hedge funds:						
Multi-strategy				\$ 57,755,161	Quarterly/annual/bi-annual	45/60/65/90
Long/short credit				48,624,210	Monthly/quarterly/semi/bi-annual	45/65/90
Long/short equity				43,925,683	Monthly/quarterly	45/60/180
Global macro				10,671,373	Quarterly	90
Short credit				5,408,258	Monthly	30
				166,384,685		
Total investments				\$ 867,736,805		
Financial liabilities:						
Interest rate swaps \$	—	7,309,123	—	7,309,123		

There were no transfers into or out of Level 1, Level 2 and Level 3 for the years ended June 30, 2016 and 2015.

The following methods and assumptions were used to estimate the fair value for each class of financial instrument measured at fair value:

*Cash and Cash Equivalents* – The fair value of cash and cash equivalents, consisting primarily of cash and money market funds, is classified as Level 1, as these financial instruments are highly liquid.

*Fixed Income Securities* – Investments in certain fixed income securities represent investments in commingled funds consisting primarily of fixed income securities. These investments are classified as Level 1 if they are traded in an active market for which daily closing prices are available, and are classified as Level 2 if the observable inputs are from other than quoted prices in active markets.

*Equity Securities* – Equity securities include both domestic equity and international equity asset classes. Investments in certain equity securities represent investments in commingled funds consisting primarily of equity securities. These investments are classified as Level 1 if they are traded in an active market for which daily closing prices are available, and are classified as Level 2 or if invested in closed end investment companies.

Investments in other equity securities that are not considered commingled funds are measured at fair value using quoted market prices on active exchanges. They are classified as Level 1 as they are traded in an active market for which closing stock prices are readily available.

*Alternative Investments* – The alternative investment portion of the portfolio is comprised of the following:

- Real assets include investments in commingled funds, limited partnerships and limited liability companies. These investments are estimated using the NAV basis. At June 30, 2016 and 2015, notice periods for real assets generally range from one day to illiquid, according to the provisions of the respective investment agreements. At June 30, 2016, the Foundation has committed to incrementally invest approximately \$62,437,588 in such investments.

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- Investments in venture capital/private equity partnerships and hedge funds are estimated using current information obtained from the general partner or investment manager for the respective funds. Investments in venture capital/private equity partnerships are generally estimated using partner's capital balances, and the fair value of investments in hedge funds are generally estimated using NAVs. In cases where the investee has provided its investors with a NAV per share or partner capital balances that have been calculated in accordance with the measurement principles of ASC 946 *Financial Service Investment Companies*, the Foundation has estimated its fair value by using the NAV provided by the investee as of June 30.

Investments in venture capital/private equity partnerships are generally made through limited partnerships. Under the terms of such agreements, the Foundation may be required to provide additional funding when capital or liquidity calls are made by fund managers. These partnerships have a limited existence, and they may provide for annual extensions for the purpose of disposing portfolio positions and returning capital to investors. However, depending on market conditions, the inability to execute the fund's strategy, or other factors, a manager may extend the terms of a fund beyond its originally anticipated existence or may wind the fund down prematurely. The Foundation cannot anticipate such changes because they generally arise from unforeseeable events, but should they occur they could reduce liquidity or originally anticipated investment returns. Accordingly, the timing and amount of future capital or liquidity calls in any particular future year are uncertain. Such investments generally do not provide redemption options for investors and, subsequent to final closing, do not permit subscriptions by new or existing investors. As June 30, 2016, the Foundation has committed to incrementally invest approximately \$90,419,151 in such investments. The remaining lives of the Foundation's investments in venture capital/private equity partnerships range from two to twelve years at June 30, 2016.

- Investments in hedge funds have numerous provisions which may restrict the redemptive nature of the investment. Certain of the hedge funds are subject to initial "lock-up" provisions, ranging up to two years. Subject to the expiration of the "lock-up" period, the investor has the ability to liquidate its investments periodically from monthly to bi-annually, accompanied by notice periods ranging from thirty to one hundred eighty days at June 30, 2016 and 2015, according to the provisions of the respective investment fund agreements. A portion or all of the hedge funds investment may be held as "side-pocket" investments, as determined by such investment fund's investment manager. The investor's ability to redeem its interest in the side-pocket investments is restricted until the occurrence of a realization event with respect to the underlying investment positions in such side-pockets per the terms of the respective investment fund's agreement.

In addition, certain investments in hedge funds are subject to redemption "gate" or redemption suspension provisions as defined in the respective investment funds' agreements. The investment manager of the investment funds may restrict or suspend redemption requests for various reasons, including, but not limited to, insufficient liquidity at the investment fund to satisfy redemption requests or to preserve the interests of the shareholders not redeeming from the investment funds. At June 30, 2016 and 2015, no redemption gates or suspension provisions have been imposed on the Foundation's investments in hedge funds of funds.

During September 2015, UBF obtained a currency hedge position to offset the potential negative impact of foreign currency fluctuations on the portfolio. The currency hedge is currently designed to

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cover approximately 25% of the MSCI EAFE exposure in the portfolio. At the same time UBF entered into a program of systematically selling options based on movement of the S&P 500. An initial deposit of underlying cash in the amount of \$10 million secures these strategies. The cash is equitized using futures and is reported as equity securities in notes 3 and 4.

*Interest Rate Swaps* – The fair value of the Foundation’s swaps were estimated using primarily Level 2 inputs via netting discounted future fixed cash payments and the discounted expected variable cash payments. Variable cash payments are based on an expectation of future interest rates derived from observable market interest rate curves. However, Level 3 inputs were used to determine credit valuation adjustments, such as estimates of current credit spreads to evaluate the likelihood of default. The Foundation has determined that the impact of these credit valuation adjustments are not a significant input to the overall valuations of the swaps, and has therefore determined the swaps are most appropriately classified as Level 2.

***Liquidity***

The following presents the fair value of the Foundation’s investments as of June 30, 2016 and 2015 by redemption period.

	<u>2016</u>	<u>2015</u>
Daily	\$ 408,116,593	477,906,337
Monthly	62,736,891	86,448,906
Quarterly	158,629,056	119,337,413
Semi-annual	12,853,075	12,953,978
Annual	10,328,161	10,899,990
Bi-annual	19,861,176	21,690,608
Tri-annual	16,112,084	—
Illiquid	153,906,186	138,499,573
	<u>\$ 842,543,222</u>	<u>867,736,805</u>

The limitation on the Foundation’s ability to redeem or sell these investment positions vary by each individual investment and may be subject to notice periods and redemption restrictions.

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

Property, plant, and equipment at June 30, 2016 and 2015 is comprised of the following:

	<u>2016</u>	<u>2015</u>
Real property, principally rental property	\$ 182,840,990	181,904,075
Furniture, fixtures and equipment	15,528,288	13,822,047
Less accumulated depreciation	<u>(71,836,876)</u>	<u>(65,525,977)</u>
	126,532,402	130,200,145
Work in process	432,707	208,971
Real estate held under split interest agreements	705,050	875,000
	<u>\$ 127,670,159</u>	<u>131,284,116</u>

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UBF Corporation leases land from the State University of New York under an operating lease agreement with an initial term expiring in 2021, renewable to 2037. The base annual rent is \$20,476, adjustable based on the UBF Corporation's net cash flow from this parcel, as defined in the agreement. UBFA leases office space under an operating lease entered into in 2002, extended in 2012, and expiring in 2022. The base annual rent is \$154,060 for the first five years of the extended term and \$161,960 per year for the remaining extended term. Rental expense incurred under all operating leases was \$390,880 and \$447,838 in 2016 and 2015, respectively.

FNUB, Inc., UBF Corporation, UBFFSH, UBFI, and UBFA are the lessor or sublessor under several real estate operating leases. Minimum future rental revenues and expenses under operating leases with original terms in excess of one year as of June 30, 2016 are as follows:

	<u>Revenues</u>	<u>Expenses</u>
Year ending June 30:		
2017	\$ 1,380,433	280,530
2018	1,397,068	287,114
2019	1,415,632	288,430
2020	1,456,280	182,436
2021	1,498,147	182,436
Thereafter	237,874	365,128

Total operating revenue and expense related to UBFFSH was approximately \$23,439,000 and \$ 21,305,000, respectively, in 2016 and approximately \$ 22,227,000 and \$ 21,809,000, respectively, in 2015.

At June 30, 2016 and 2015, the Foundation held replacement reserve funds for the purposes of capital replacement for the student housing complexes owned and operated by UBFFSH of \$4,908,670 and \$4,390,512, respectively. The reserve funds are included in investments in the consolidated statements of financial position.

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**(6) Debt Financing**

A summary of long-term debt at June 30, 2016 and 2015 follows:

	<b>2016</b>	<b>2015</b>
Village of Kenmore Housing Authority bonds payable in monthly installments of \$47,516 through 2028 including interest at 4.95%. Outstanding principal is \$5,000,081 and \$5,310,121 at June 30, 2016 and 2015, respectively, net of unamortized debt issuance costs of \$166,487 in 2016 and \$179,906 in 2015. (Flickinger)	\$ 4,833,594	5,130,215
Town of Amherst Development Corporation bonds payable in annual principal installments that escalate in maturity in October 2045 plus interest ranging from 3.25% to 5.00% adjusted annually. Outstanding principal is \$74,010,000 and \$76,045,000 at June 30, 2016 and 2015, respectively, net of amortized debt issuance costs of \$3,144,764 in 2016 and \$3,282,367 in 2015, and net of discount of \$61,328 in 2016 and \$49,356 in 2015. (Greiner Hall and Hadley Village)	70,803,908	72,713,277
Town of Amherst Development Corporation bonds payable in annual principal installments that escalate through maturity in October 2035 plus variable rate interest. Outstanding principal is \$21,430,000 and \$21,995,000, at June 30, 2016 and 2015, respectively, net of amortized debt issuance costs of \$746,829 in 2016 and \$785,032 in 2015. (South Lake Village Replacement Bonds)	20,683,171	21,209,968
Town of Amherst Development Corporation bonds payable in monthly principal installments that escalate through maturity in August 2042 plus variable rate interest. Outstanding principal is \$29,560,000 and \$30,340,000 at June 30, 2016 and 2015, respectively, net of unamortized debt issuance costs of \$843,367 in 2016 and \$876,440 in 2015. (Flint Village and Creekside Village Refunding)	28,716,633	29,463,560
	\$ 125,037,306	128,517,020

The Foundation complied with the terms of its financial debt covenants at June 30, 2016 and 2015.

Interest expense was \$5,712,448 and \$5,885,549 in 2016 and 2015, respectively.

In June 2012, UBFFSH issued \$32,465,000 Town of Amherst Development Corporation Bonds (Flint Village and Creekside Village). The Flint Village and Creekside Village Refunding Bonds were issued to provide funds for the refunding of the outstanding principal of the original bonds used to finance the respective projects including funds needed for the costs incidental to their issuance.

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The Flickinger Project bonds are secured by first mortgage interests in the property and the assignment of all related leases, subleases and rentals. For the remaining student housing projects, each bond issuance is secured by a first mortgage lien on UBFFSH's ground leasehold interest for such project and by assignment of all leases, subleases and rentals related to such project. UBFFSH is required to make payments under leasing arrangements with the bond issuers sufficient to service the bonds.

Each respective bond insurer or letter of credit provider requires a surplus cash flow reserve fund to be maintained related to the Hadley Village, South Lake Village, Flint Village, Creekside Village, and Greiner Hall projects. The requirement provides that the reserve will be maintained by setting aside 50% of the net cash flow from each project to a maximum aggregate amount of 10% of the initial par amount of the bonds financing that project. The surplus cash flow reserve fund will continue as long as the bond insurance policy or letter of credit is in full force and effect. The surplus cash flow reserve fund is designated for capital expenditures with the prior consent of the bond insurer. The amounts, included in investments, designated as surplus cash flow reserve were \$9,463,229 and \$9,246,289 at June 30, 2016 and 2015, respectively.

UBF has guaranteed UBFFSH's regularly scheduled principal and interest payment obligations for the bonds issued for the Greiner Hall Project and Hadley Village Refunding debt obligation. This cash flow guarantee remains in effect until the end of the third consecutive year in which the debt service coverage ratio related to the Greiner Hall Project and Hadley Village Refunding debt obligation is 1.35 or better or when the obligations are irrevocably paid in full.

In August 2010, UBFA obtained a \$25,000,000 operating line of credit. The outstanding balance amounted to \$5,789,563 at both June 30, 2016 and June 30, 2015 and was used to acquire properties in the downtown area. Borrowings under the new line of credit are payable on demand and bear interest at 1.5% below the bank's prime rate of 2% at June 30, 2016, and 1.75% at June 30, 2015.

On August 26, 2010, UBFFSH issued \$23,975,000 Town of Amherst Development Corporation Bonds. The South Lake Village Replacement Bonds (Replacement Bonds) were issued to provide funds for the refunding of the outstanding principal of the South Lake Village Original Bonds and to provide payment of a portion of the costs incidental to their issuance. Concurrent with the issuance of the Replacement Bonds, UBFFSH entered into an interest rate swap agreement. Under the swap agreement, UBFFSH is obligated to pay the counterparty a fixed rate per annum equal to 4.7755% on a notional amount approximately equal to the outstanding principal amount of the Replacement Bonds, subject to certain conditions. The counterparty, in turn, is obligated to pay to UBFFSH a variable rate per annum on an equal notional amount, which rate is defined as 67% of one-month LIBOR, also subject to certain conditions. The swap agreement matures on October 1, 2035. If the swap agreement is terminated prior to the maturity of the Replacement Bonds, UBFFSH may be required to make a termination payment. The amount of any termination payment would depend upon prevailing market conditions, and such amount could be substantial. The interest rate Swap agreement does not relieve UBFFSH of its obligations under the Replacement Bonds.

The swap agreement also requires that assets be pledged to the counterparty to serve as collateral in an amount equal to or greater than the outstanding swap liability. At June 30, 2016 and 2015, UBF pledged the assets held with one of its fixed asset managers valued in excess of the swap liability.

On June 12, 2012, UBFFSH entered into an additional interest rate swap agreement for the purpose of hedging the interest rate exposure of the Series 2012A Bonds (Flint Village and Creekside Village



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Refunding.) This swap agreement matures on June 1, 2022. The swap agreement requires that UBFFSH pay to the counterparty monthly payments based on a fixed interest equal to 2.634% and that the counterparty pay UBFFSH monthly payments based on a floating rate equal to 65% of LIBOR plus 140.4 basis points. The notional amortization of the swap matches the principal amortization of the bonds.

Amounts required by the bond documents to be set aside for debt service and included in investments were \$5,487,047 at June 30, 2016, and \$5,601,683 at June 30, 2015. No interest costs were capitalized in 2016 or 2015.

Aggregate annual maturities of long-term debt at June 30, 2016 are as follows:

2017	\$	3,853,647
2018		4,015,424
2019		4,158,063
2020		4,306,090
2021		4,516,079
Thereafter		<u>109,089,450</u>
Aggregate annual maturities		129,938,753
Less: Unamortized debt issuance costs		<u>(4,901,447)</u>
	\$	<u><u>125,037,306</u></u>

**(7) Endowment Net Assets**

At June 30, 2016 and 2015, UBF's endowment consists of 1213 and 1185 individual funds, respectively, established for a variety of purposes, including both donor-restricted endowment funds and funds designated by the UBF board of trustees to function as endowments. At June 30, 2016, the fair values of 82 donor-restricted endowment account was less than its original donated value by a total of approximately \$299,000. At June 30, 2015, the fair values of twelve donor-restricted endowment account was less than its original donated value by a total of approximately \$75,000. The deficit between the original donated value and the fair value reduced by the prudent spending provisions of UBF's spending policy, are reported in unrestricted net assets. These deficiencies resulted from unfavorable market fluctuations that occurred shortly after the investment of new permanently restricted contributions and continued legally permitted appropriation for certain programs that was deemed prudent by UBF. The deficiency in unrestricted net assets will be restored with future market gains before any net appreciation above historical cost value increases temporarily restricted net assets.

UBF adopted the provisions of NYPMIFA, which requires prudent spending regarding the original gift of the donor-restricted endowment fund absent explicit donor stipulations to the contrary. As a result, UBF classifies as permanently restricted net assets (a) the original value of gifts donated to the permanent endowment, (b) the original value of subsequent gifts donated to the permanent endowment, and (c) accumulations to the permanent endowment made in accordance with the direction of the applicable donor gift instrument at the time the accumulation is added to the fund. Appreciation, net of the underwater amount of endowment funds, is reported as either temporarily restricted or unrestricted net assets.

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The following is a summary of UBF's endowment and net asset composition by type of fund as of June 30, 2016 and 2015:

	<b>2016</b>			<b>Total</b>
	<b>Unrestricted</b>	<b>Temporarily restricted</b>	<b>Permanently restricted</b>	
Donor-restricted endowment funds	\$ (299,000)	131,834,205	156,135,019	287,670,224
Board-designated endowment funds	83,291,999	229,998,602	—	313,290,601
Total endowment net assets	82,992,999	361,832,807	156,135,019	600,960,825
Contributions receivable, discounted	19,707	44,276,626	3,565,284	47,861,617
Split interest agreements	—	2,418,991	11,736,127	14,155,118
Other non-endowed funds	159,827,142	32,618,652	—	192,445,794
Total net assets	<u>\$ 242,839,848</u>	<u>441,147,076</u>	<u>171,436,430</u>	<u>855,423,354</u>
	<b>2015</b>			<b>Total</b>
	<b>Unrestricted</b>	<b>Temporarily restricted</b>	<b>Permanently restricted</b>	
Donor-restricted endowment funds	\$ (75,000)	145,258,145	146,423,020	291,606,165
Board-designated endowment funds	88,327,203	239,362,306	—	327,689,509
Total endowment net assets	88,252,203	384,620,451	146,423,020	619,295,674
Contributions receivable, discounted	10,164	21,648,385	4,841,294	26,499,843
Split interest agreements	—	2,547,549	12,419,109	14,966,658
Other non-endowed funds	165,832,927	28,404,535	—	194,237,462
Total net assets	<u>\$ 254,095,294</u>	<u>437,220,920</u>	<u>163,683,423</u>	<u>854,999,637</u>

**UNIVERSITY AT BUFFALO FOUNDATION, INC.  
AND AFFILIATES**

Notes to Consolidated Financial Statements

June 30, 2016 and 2015

Changes in UBF's endowment net assets for the years ended June 30, 2016 and 2015 are as follows:

	2016			
	Unrestricted	Temporarily restricted	Permanently restricted	Total
Endowment net assets, beginning of year	\$ 88,252,203	384,620,451	146,423,020	619,295,674
Investment return:				
Investment income	474,804	2,301,305	—	2,776,109
Net realized and unrealized losses on endowment funds	(886,089)	(2,852,064)	—	(3,738,153)
Total investment loss	(411,285)	(550,759)	—	(962,044)
Contributions	120,307	1,171,598	9,043,815	10,335,720
Appropriation of endowment assets for expenditure	(4,968,226)	(23,022,710)	—	(27,990,936)
Other additions/(distributions)	—	(385,773)	668,184	282,411
Endowment net assets, end of year	<u>\$ 82,992,999</u>	<u>361,832,807</u>	<u>156,135,019</u>	<u>600,960,825</u>
	2015			
	Unrestricted	Temporarily restricted	Permanently restricted	Total
Endowment net assets, beginning of year	\$ 90,315,757	393,518,107	140,956,811	624,790,675
Investment return:				
Investment income	1,396,486	6,524,874	—	7,921,360
Net realized and unrealized gains on endowment funds	1,352,258	5,705,457	—	7,057,715
Total investment return	2,748,744	12,230,331	—	14,979,075
Contributions	7,891	1,032,771	4,376,021	5,416,683
Appropriation of endowment assets for expenditure	(4,820,189)	(22,107,403)	—	(26,927,592)
Other additions/(distributions)	—	(53,355)	1,090,188	1,036,833
Endowment net assets, end of year	<u>\$ 88,252,203</u>	<u>384,620,451</u>	<u>146,423,020</u>	<u>619,295,674</u>

Appropriation of endowment assets for expenditure includes administrative expenses incurred in connection with the support and management of the endowment funds.

**UNIVERSITY AT BUFFALO FOUNDATION, INC.  
AND AFFILIATES**

Notes to Consolidated Financial Statements

June 30, 2016 and 2015

**(8) Temporarily Restricted and Permanently Restricted Net Assets**

Temporarily restricted net assets at June 30, 2016 and 2015 were restricted for the following:

	<u>2016</u>	<u>2015</u>
General university support	\$ 204,862,081	186,527,156
Student financial aid	53,786,973	58,859,592
Chairs and professorships	45,362,351	48,562,460
Capital and capital improvements	20,790,710	20,421,865
Research	106,938,013	112,407,305
Lectures	4,239,670	4,883,042
Libraries	2,748,287	3,011,951
Remainder interest in trusts	2,418,991	2,547,549
	<u>\$ 441,147,076</u>	<u>437,220,920</u>

Permanently restricted (endowed) net assets at June 30, 2016 and 2015 were restricted for the following:

	<u>2016</u>	<u>2015</u>
General university support	58,185,865	54,463,294
Student financial aid	59,046,576	55,910,611
Chairs and professorships	30,045,733	28,575,495
Research	7,199,951	7,162,851
Lectures	3,441,501	3,403,802
Libraries	1,780,676	1,748,261
Remainder interest in trusts	11,736,128	12,419,109
	<u>\$ 171,436,430</u>	<u>163,683,423</u>

Included in general university support is contributions receivable of \$3,504,722 and \$4,841,294 at June 30, 2016, and 2015, respectively.

**UNIVERSITY AT BUFFALO FOUNDATION, INC.  
AND AFFILIATES**

Notes to Consolidated Financial Statements

June 30, 2016 and 2015

**(9) Funds Held for Others**

The Foundation manages certain funds for various purposes, including privately funded sponsored programs as agent for the SUNY Research Foundation, endowment administration for other SUNY and University affiliated campuses, tenant security deposits and other charities or University related programs. Funds held at June 30, 2016 and 2015 were as follows:

	<b>2016</b>	<b>2015</b>
Sponsored programs	\$ 4,326,459	5,694,599
Other SUNY campuses	7,232,420	7,461,272
University affiliated campuses	1,910,677	2,001,555
Tenant security deposits	49,979	123,400
Other charities and University related programs	1,163,769	1,338,556
	\$ 14,683,304	16,619,382

**(10) Guarantees**

UBF has guaranteed the payment of certain employee mortgages under the University Home Loan Guaranty Program in support of the efforts of the State University of New York at Buffalo to encourage the ownership and renovation of single-family and two-family homes within the City of Buffalo neighborhood known as University Heights. The maximum guarantee under the agreement is \$5,000,000. The guarantee is for the entire amount. UBF is discharged from the guarantee upon the occurrence of certain qualifying events. If the employee defaults on the mortgage, UBF would have to perform under the guarantee. The maximum amount of undiscounted payments UBF would have to make in the event of default is \$1,183,198 at June 30, 2016 and \$1,479,147 at June 30, 2015, based upon aggregate outstanding loan balances. No financial obligations were recorded at June 30, 2016, and 2015.

**(11) Retirement Plan**

UBFA has a defined contribution retirement plan covering all individuals meeting certain requirements. Benefits are provided by purchase of retirement annuity contracts based upon a percentage of the participant's salary. Expense under the plan was \$2,121,293 and \$1,894,769 in 2016 and 2015, respectively.

**(12) Income Taxes**

The Internal Revenue Service has ruled that UBF, FNUB Inc., UBFI, UBFFSH, UBFA and UBFS are qualified under Section 501(c)(3) of the Internal Revenue Code and are therefore, generally not subject to tax on related income under present Federal income tax laws, and are also not private foundations within the meaning of Section 509(a)(1), (a)(2), or (a)(3) of the Internal Revenue Code. UBF Corporation is qualified under Section 501(c)(2) of the Internal Revenue Code, and is, therefore, generally not subject to tax on related income under present Federal income tax laws as well. These entities follow the provisions of ASC 740, *Accounting for Uncertainty in Income Taxes*, whereby they recognize income tax positions when it is more-likely than-not that the position will be sustainable based on the merits of the position. Management has concluded that there are no material uncertain tax positions that need to be recorded at June 30, 2016 or 2015. UBF, UBFA, and UBF Corp. have generated unrelated business income for the year ended June 30, 2016, but it is not material to the audited financial statements.

**UNIVERSITY AT BUFFALO FOUNDATION, INC.  
AND AFFILIATES**

Notes to Consolidated Financial Statements

June 30, 2016 and 2015

**(13) Related-Party Transactions**

UBFA provides certain accounting services to nonconsolidated affiliated entities. UBFA receives a fee for these services, which is included in other activities and services in the consolidated statements of activities. These fees amounted to \$199,542 and \$195,258 in 2016 and 2015, respectively.

The Foundation holds funds for certain research projects of the University and manages investments for certain other SUNY campuses. These funds are reflected as funds held in custody for others in the consolidated statements of financial position, which amounted to \$11,558,879 and \$13,155,871 at June 30, 2016 and 2015, respectively.

**(14) Subsequent Events**

The Foundation has evaluated subsequent events from the balance sheet date through October 14, 2016, the date that the consolidated financial statements were issued.

## APPENDIX E

### FORM OF APPROVING OPINION OF BOND COUNSEL

On the date of issuance of the Initial Bonds, Hodgson Russ LLP, Albany, New York, Bond Counsel, proposes to issue its approving opinion as to the Initial Bonds, in substantially the following form:

October \_\_, 2017

Town of Amherst Development Corporation  
4287 Main Street  
Amherst, New York 14226

Re: Town of Amherst Development Corporation  
Tax-Exempt Student Housing Facility Revenue Refunding Bonds (UBF  
Faculty - Student Housing Corp. - Greiner and Hadley Refunding Projects  
at SUNY Buffalo), Series 2017A in the aggregate principal amount of  
\$65,305,000

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance on the date hereof of the Tax-Exempt Student Housing Facility Revenue Refunding Bonds (UBF Faculty - Student Housing Corp. - Greiner and Hadley Refunding Projects at SUNY Buffalo), Series 2017A in the aggregate principal amount of \$65,305,000 (the "Initial Bonds") by Town of Amherst Development Corporation (the "Issuer") (a public instrumentality of Town of Amherst, New York), a New York not-for-profit corporation, created pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the "Enabling Act").

The Initial Bonds are being issued under and pursuant to a bond resolution adopted by the members of the Issuer on November 18, 2016, a certificate of determination dated October \_\_, 2017 (the "Certificate of Determination") executed by the Chairman, Vice Chairman or Chief Executive Officer of the Issuer and a trust indenture dated as of October 1, 2017 (the "Indenture") by and between the Issuer and Manufacturers and Traders Trust Company, as trustee (the "Trustee"), in connection with a project (the "Project") to be undertaken by the Issuer for the benefit of UBF Faculty-Student Housing Corp. (the "Company"), said Project consisting of the following: (A) the refunding, in whole or in part, of the Issuer's Tax-Exempt Student Housing Facility Revenue Bonds (UBF Faculty - Student Housing Corp. - Greiner and Hadley Projects at SUNY Buffalo), Series 2010A in the original aggregate principal amount of \$82,865,000 (the "Prior Bonds"), which Prior Bonds were issued on May 25, 2010 to finance the following project (the "Series 2010 Project"): (1) the acquisition by the Issuer of a subleasehold interest in an approximately 13.47 acre parcel of land located on the North Campus (the "Campus") of the State University of New York at Buffalo (the "University") in the Town of Amherst, Erie County, New York (the "William R. Greiner Hall Ground Lease Land"), (2) the construction on the William R. Greiner Hall Ground Lease Land of a new student housing facility to contain approximately 198,500 square feet of space (the "William R. Greiner Hall Facility"), (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "William R. Greiner Hall Equipment") (the William R. Greiner Hall Ground Lease Land, the William R. Greiner Hall Facility and the William R. Greiner Hall Equipment hereinafter collectively referred to as the "William R. Greiner Hall Project Facility"), and (4) the refinancing, in whole or in part, of the outstanding Tax Exempt Housing Revenue Bonds (State University of New York at Buffalo Student Apartment Project), Series 1999A issued by the Village of Kenmore Housing Authority, in the original

aggregate principal amount of \$21,835,000 (the "Series 1999A Bonds"), the proceeds of which Series 1999A Bonds provided financing for a previously completed student housing capital project (the "Hadley Village Project"), all of the foregoing to constitute the refinancing of apartment style dormitory facilities and other directly and indirectly related activities for the Company; (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Initial Bonds; (C) the payment of all or a portion of the costs incidental to the issuance of the Initial Bonds, including issuance costs of the Initial Bonds and any reserve funds as may be necessary to secure the Initial Bonds; and (D) the making of a loan (the "Loan") for the purpose of assisting in financing the Project, and document the Loan by entering into a loan agreement dated as of October 1, 2017 (the "Loan Agreement") between the Issuer, as lender, and the Company, as borrower.

The Initial Bonds are dated the date hereof, are issued as fully registered bonds without coupons and mature and bear interest at the rates set forth therein. The Initial Bonds are subject to (A) optional, special and mandatory redemption prior to maturity, and (B) acceleration prior to maturity, all as set forth in the Indenture and in the Initial Bonds.

The principal of, redemption premium, if any, and interest on the Initial Bonds are payable from loan payments to be made by the Company under the Loan Agreement. As security for the Initial Bonds, the Issuer has executed and delivered to the Trustee a pledge and assignment dated as of October 1, 2017 (the "Pledge and Assignment") which assigns to the Trustee certain of the Issuer's rights under the Loan Agreement.

As additional security for the Initial Bonds, (A) the Company will execute and deliver to the Issuer a mortgage and security agreement dated as of October 1, 2017 (the "Mortgage") from the Company to the Issuer, which Mortgage among other things, (1) grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Project Facility and (2) assigns to the Issuer the rents, issues and profits of the Project Facility, (B) the Issuer will execute and deliver to the Trustee an assignment of mortgage dated as of October 1, 2017 (the "Mortgage Assignment") from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee, (C) the Company will execute an assignment of leases and rents dated as of October 1, 2017 (the "Assignment of Rents") from the Company to the Issuer which conditionally assigns to the Issuer all leases, subleases, licenses and rentals affecting the Project Facility and the rents and license fees payable thereunder, and (D) the Issuer will execute and deliver to the Trustee an assignment of assignment of rents dated as of October 1, 2017 (the "Assignment of Rents Assignment") from the Issuer to the Trustee pursuant to which the Issuer will assign the Assignment of Rents to the Trustee.

We have examined a specimen Initial Bond and executed counterparts of the Indenture, the Loan Agreement, the Pledge and Assignment, the Mortgage Assignment and the Assignment of Rents Assignment (collectively, the "Issuer Documents") and a certain tax regulatory agreement dated the date hereof from the Company to the Trustee and the Issuer (the "Tax Regulatory Agreement") and such certified proceedings and such other documents as we deemed necessary to render this opinion.

With respect to the due authorization, execution and delivery by the Company of the agreements to which it is a party, we have relied on the opinion of Hodgson Russ LLP, counsel to the Company. With respect to the due authorization, execution and delivery by Manufacturers and Traders Trust Company (both in its corporate capacity as signatory of the Indenture and in its capacity as Trustee) of the agreements to which it is a party, we have relied on the opinion of Bond, Schoeneck & King PLLC, counsel to the Trustee.

In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with the original documents of all documents submitted to us as copies. Furthermore, in rendering the following opinions, we have assumed that all



documents executed by a person or persons other than the Issuer were duly executed and delivered by said other person or persons and that said documents constitute legal, valid and binding obligations of said person or persons enforceable against said person or persons in accordance with their terms.

In rendering the opinions expressed in paragraphs (D) and (E) below, we note that the exclusion of the interest on the Initial Bonds from gross income for federal income tax purposes may be dependent, among other things, on compliance with the applicable requirements of Sections 145, 147, 148 and 149 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder (collectively, the "Tax Requirements"). In our opinion, the Tax Regulatory Agreement and the other Financing Documents (as defined in the Indenture) establish requirements and procedures, compliance with which will satisfy the Tax Requirements. It should be noted, however, that compliance with certain Tax Requirements necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Initial Bonds may necessitate the taking of action, or refraining to take action, by persons not within the control of the Issuer or the Company.

Based upon our examination of the foregoing and in reliance upon the matters and subject to the limitations contained herein, we are of the opinion, as of the date hereof and under existing law, as follows:

(A) The Issuer was duly created and is validly existing as a not-for-profit corporation under the laws of the State of New York with the corporate power to enter into and perform its obligations under the Issuer Documents and to issue the Initial Bonds.

(B) The Issuer Documents have been duly authorized, executed and delivered by the Issuer and are valid and binding special obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as specified below.

(C) The Initial Bonds have been duly authorized, executed and delivered by the Issuer and, assuming due authentication thereof by the Trustee, are valid and binding special obligations of the Issuer payable with respect to the Issuer solely from the revenues derived by the Issuer from the revenues derived from the Loan Agreement.

(D) The interest on the Initial Bonds is excludable from gross income for federal income tax purposes and is not an "item of tax preference" for purposes of the individual and corporate alternative minimum taxes imposed by the Code; provided, however, that (a) the Company or another Person, by failing to comply with the Tax Requirements, may cause interest on the Initial Bonds to become subject to federal income taxation from the date of issuance thereof, and (b) interest on the Initial Bonds is included in determining (i) the tax base for purposes of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes) under Section 56 of the Code, and the branch profits tax imposed on foreign corporations doing business in the United States under Section 884 of the Code, (ii) passive investment income for purposes of computing the tax on net passive income imposed on certain subchapter S corporations under Section 1375 of the Code, and (iii) the modified adjusted gross income of a taxpayer for purposes of computing the portion of Social Security or Railroad Retirement benefits included in gross income under Section 86 of the Code.

(E) The Initial Bonds do not constitute "arbitrage bonds", within the meaning of Section 148 of the Code, except as specified below.

(F) So long as interest on the Initial Bonds is excluded from gross income for federal income tax purposes, the interest on the Initial Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York).

(G) The Initial Bonds do not constitute a debt of the State of New York or of Town of Amherst, New York, and neither the State of New York nor Town of Amherst, New York is liable thereon.

We call your attention to the fact that the Company or another person, by failing to comply with the Tax Requirements as set forth in the Code and the Tax Regulatory Agreement, may cause interest on the Initial Bonds to become subject to federal income taxation from the date hereof. We express no opinion regarding other federal tax consequences arising with respect to the Initial Bonds.

Any opinion concerning the validity, binding effect or enforceability of any document (A) means that (1) such document constitutes an effective contract under applicable law, (2) such document is not invalid in its entirety under applicable law because of a specific statutory prohibition or public policy, and is not subject in its entirety to a contractual defense under applicable law and (3) subject to the following sentence, some remedy is available under applicable law if the person concerning whom such opinion is given is in material default under such document, but (B) does not mean that (1) any particular remedy is available under applicable law upon such material default or (2) every provision of such document will be upheld or enforced in any or each circumstance by a court applying applicable law. Furthermore, the validity, binding effect or enforceability of any document may be limited to or otherwise affected by (A) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statute, rule, regulation or other law affecting the enforcement of creditors' rights and remedies generally or (B) the unavailability of, or any limitation on the availability of, any particular right or remedy (whether in a proceeding in equity or law) because of the discretion of a court or because of any equitable principle or requirement as to commercial reasonableness, conscionability or good faith.

We express no opinion with respect to (A) title to all or any portion of the Project, (B) the priority of any liens, charges, security interests or encumbrances affecting the Project or any part thereof (or the effectiveness of any remedy which is dependent upon the existence of title to the Project or the priority of any such lien, charge, security interest or encumbrance), (C) any laws, regulations, judgments, permits or orders with respect to zoning, subdivision matters or requirements for the physical commencement and continuance of the construction, reconstruction, installation, occupancy or operation of the Project or with respect to the requirements of filing or recording of any of the Financing Documents, or (D) the laws of any jurisdiction other than the State of New York and other than the securities and the tax laws of the United States of America.

Certain agreements, requirements and procedures contained or referred to in the Indenture, the Loan Agreement, the Tax Regulatory Agreement and the other Financing Documents may be changed and certain actions may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. No opinion with respect to the exclusion of interest on the Initial Bonds from gross income for federal income tax purposes is expressed herein as to the Initial Bonds if any such change occurs or action is taken or omitted upon the advice or approval of counsel other than Hodgson Russ LLP.

The scope of our engagement has extended solely to the examination of the facts and law incident to rendering the opinions expressed herein. Attention is called to the fact that we have not been requested to examine and have not examined any documents or information relating to the Company or the Project Facility other than specifically hereinabove referred to, and no opinion is expressed as to any financial or other information, or the adequacy thereof, which has been or may be supplied to any purchaser of the Initial Bonds.

Our opinions set forth herein are based upon the facts in existence and the laws in effect on the date hereof and we expressly disclaim any obligation to update our opinions herein, regardless of whether changes in such facts or laws come to our attention after the delivery hereof

We have rendered this opinion solely for your benefit and this opinion may not be relied upon by, nor copies hereof delivered to, any other person without our prior written approval.

Very truly yours,

HODGSON RUSS LLP

By: \_\_\_\_\_

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**APPENDIX F**

**Specimen Municipal Bond Insurance Policy**

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## MUNICIPAL BOND INSURANCE POLICY

ISSUER:

Policy No: -N

BONDS: \$ in aggregate principal amount of

Effective Date:

Premium: \$

ASSURED GUARANTY MUNICIPAL CORP. ("AGM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") (as set forth in the documentation providing for the issuance of and securing the Bonds) for the Bonds, for the benefit of the Owners or, at the election of AGM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the Business Day next following the Business Day on which AGM shall have received Notice of Nonpayment, AGM will disburse to or for the benefit of each Owner of a Bond the face amount of principal of and interest on the Bond that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by AGM, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of the principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in AGM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by AGM is incomplete, it shall be deemed not to have been received by AGM for purposes of the preceding sentence and AGM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, who may submit an amended Notice of Nonpayment. Upon disbursement in respect of a Bond, AGM shall become the owner of the Bond, any appurtenant coupon to the Bond or right to receipt of payment of principal of or interest on the Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under the Bond, to the extent of any payment by AGM hereunder. Payment by AGM to the Trustee or Paying Agent for the benefit of the Owners shall, to the extent thereof, discharge the obligation of AGM under this Policy.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity unless AGM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment of principal or interest that is Due for Payment made to an Owner by or on behalf of the Issuer which has been recovered from such Owner pursuant to the

United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from an Owner, the Trustee or the Paying Agent to AGM which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount and (d) the date such claimed amount became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

AGM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee and the Paying Agent specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee and the Paying Agent, (a) copies of all notices required to be delivered to AGM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to AGM and shall not be deemed received until received by both and (b) all payments required to be made by AGM under this Policy may be made directly by AGM or by the Insurer's Fiscal Agent on behalf of AGM. The Insurer's Fiscal Agent is the agent of AGM only and the Insurer's Fiscal Agent shall in no event be liable to any Owner for any act of the Insurer's Fiscal Agent or any failure of AGM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, AGM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to AGM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy.

This Policy sets forth in full the undertaking of AGM, and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, (a) any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity and (b) this Policy may not be canceled or revoked. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW.

In witness whereof, ASSURED GUARANTY MUNICIPAL CORP. has caused this Policy to be executed on its behalf by its Authorized Officer.

ASSURED GUARANTY MUNICIPAL CORP.

By \_\_\_\_\_  
Authorized Officer

A subsidiary of Assured Guaranty Municipal Holdings Inc.  
1633 Broadway, New York, N.Y. 10019  
(212) 974-0100