
**EIGHTH SUPPLEMENTAL LEASE AND AGREEMENT
DATED AS OF SEPTEMBER 24, 2003
AMENDING AND RESTATING IN ITS ENTIRETY THE
LEASE AND AGREEMENT**

between

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

and

STATE UNIVERSITY OF NEW YORK

Dated as of September 20, 1995

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**AMENDED AND RESTATED
LEASE AND AGREEMENT**

THIS LEASE AND AGREEMENT, dated as of September 20, 1995 (this "Agreement"), as amended and restated as of September 24, 2003, by and between the **DORMITORY AUTHORITY OF THE STATE OF NEW YORK**, a public benefit corporation of the State of New York, and the **STATE UNIVERSITY OF NEW YORK**, a corporation created in the Education Department of the State of New York and within the University of the State of New York.

WITNESSETH

WHEREAS, the Authority is authorized by the Act, to acquire, design, construct, reconstruct, rehabilitate or improve, or provide for the design, construction, reconstruction, rehabilitation or improvement of facilities for use by the State University; and

WHEREAS, the Authority is authorized by the Act to lease such facilities to the State University and to establish the rents or other charges therefor; and

WHEREAS, the State University is authorized by the Act and the Education Law of the State to enter into agreements with the Authority providing for the acquisition, design, construction, reconstruction, rehabilitation or improvement of facilities for use by the State University; and

WHEREAS, the Authority has determined pursuant to the Act to provide for the design, acquisition, construction, reconstruction, rehabilitation and improvement of certain facilities which will be leased to the State University pursuant to the terms and conditions set forth herein; and

WHEREAS, the Authority will, pursuant to the Act, provide for the payment of the cost of the design, acquisition, construction, reconstruction, rehabilitation and improvement of such facilities by the issuance of its revenue bonds payable from rentals to be received from the State University pursuant hereto; and

WHEREAS, all events, conditions and actions necessary and required by the laws of the State, including the Act, in connection with or which are conditions precedent to the due authorization, execution and delivery hereof have happened, occurred and been taken by the Authority and the State University; and

NOW, THEREFORE, the parties hereto mutually agree as follows:

ARTICLE I
DEFINITIONS AND GENERAL PROVISIONS

SECTION 1.01. Definitions. (a) All terms which are defined in the Resolution which are not defined herein shall have the same meanings, respectively, herein as such terms are given in the Resolution (as defined herein). References to Sections of, and defined terms in, the Resolution shall be to the Sections and defined terms as used in the applicable Resolution.

(b) In addition, as used herein, unless a different meaning clearly appears from the context:

"Administrative Expenses" means expenses incurred by the Authority in carrying out its duties hereunder and under the Resolution, including, without limitation, accounting, administrative, financial advisory and legal expenses incurred in connection with the financing and construction of the Project, the fees and expenses of the Trustee, any Paying Agents or any other fiduciaries acting under the Resolution, the fees and expenses of any Facility Provider, the cost of providing insurance with respect to a Facility, the portion of the State "cost recovery fee" imposed pursuant to Section 2975 of the Public Authorities Law of the State allocable to the Bonds and expenditures to compel full and punctual performance of the Agreement in accordance with its terms;

"Agreement" means this Amended and Restated Lease and Agreement, dated as of September 20, 1995, as amended and restated as of September 24, 2003, between the Authority and the State University, as from time to time amended or supplemented in accordance with the terms and provisions hereof and of the Resolution;

"Annual Administrative Fee" means, collectively, the fee payable during each Bond Year for (i) a portion of the general administrative and overhead expenses of the Authority allocated in accordance with a formula established by the Authority to the services performed by the Authority in the financing and refinancing of or the design, construction, acquisition, reconstruction, rehabilitation, improvement or equipping of Facilities and matters related thereto; and (ii) the costs, expenses and charges incurred by the Authority pursuant to law or otherwise in carrying out its duties hereunder and under the Agreement, or in enforcing the Agreement or as a consequence of Bonds remaining Outstanding, including, without limitation, accounting, auditing, financial advisory and legal expenses incurred by the Authority, and the fees and expenses of any Facility Provider, the Trustee, any Paying Agent or other fiduciary acting under the Resolution;

"Authority Facility" means a Facility to be acquired, designed, constructed, reconstructed, rehabilitated, improved, furnished or equipped by the Authority pursuant to Section 3.01 hereof;

"Basic Rent" means that portion of the Rentals payable pursuant to Section 4.01(a) hereof;

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

"Bonds" means any of the bonds of the Authority authorized and issued pursuant to a Resolution as such term is defined herein;

"Capital Plan" means a written plan, in a form and containing such information as is acceptable to the Authority and the Director of the Division of Budget, setting forth among other things: (1) a schedule of all capital improvements planned to be undertaken for each Facility during each of the next succeeding five Fiscal Years; (2) the source of funds anticipated to be used to finance each such capital improvement; and (3) the amount, in each such Fiscal Year, that is anticipated to be expended from the Dormitory Income Account on account of such improvements;

"Defeased Facility" means a building or improvement previously acquired, constructed, reconstructed, rehabilitated or improved for use by the State University, other than dining hall facilities and "State University educational facilities," as such term is defined in the Act, for which there are no Bonds Outstanding and for which the revenues of such facility are deposited in the Dormitory Income Account; provided, however, it shall not include any facility the State University and Authority have agreed in writing shall be excluded as a Facility for purposes of this Agreement;

"Dormitory Income Account Requirement" means the amount which is sufficient to provide for: (1) the payment of Rentals during the current Fiscal Year; plus (2) the cost of operating, maintaining, repairing and renovating the Project for the current Fiscal Year; plus (3) the Dormitory Income Account Reserve Requirement;

"Dormitory Income Account Reserve" means the amount within the Dormitory Income Account that is allocable to the Dormitory Income Account Reserve Requirement;

"Dormitory Income Account Reserve Requirement" means the sum of: (i) the ~~Operation and Maintenance Reserve Requirement and (ii) the Repair and Rehabilitation Reserve Requirement;~~

"Facility" means a dormitory acquired or to be acquired, constructed, reconstructed, rehabilitated or improved for use by the State University, as such term is defined in section 1676(2)(a) of the Act, including any dining, parking, recreational or other facility that is necessary, usually attendant and related to a housing unit, for which Bonds are Outstanding and any Defeased Facility; provided, however, that it shall not include any dormitory or ancillary facility as to which this Agreement is terminated in accordance with Section 11.02 hereof shown on the records maintained by the State University and the Authority;

"Fiscal Year" means the fiscal year of the State University in effect from time to time, which as of the date hereof and until changed shall be the period of twelve (12) consecutive months beginning July 1 in any calendar year and ending on June 30 of the succeeding calendar year;

"Hazardous Substance" means a hazardous substance as defined or referred to in any federal, State or local environmental protection law, rule or regulation applicable to the Leased Property or any part thereof;

"Lease Term" means the duration of the leasehold estate created hereby as specified in Section 2.02 hereof unless sooner terminated in accordance with the provisions hereof;

"Leased Property" means the Facilities, including the land, if any, owned by the Authority on which such Facilities are located and the rights of the Authority with respect thereto;

"Operation and Maintenance Reserve Requirement" means as of the last day of each Fiscal Year, an amount equal to five (5) percent of the amount disbursed from the Dormitory Income Account for operation and maintenance of the Project during the Fiscal Year prior to the Fiscal Year of calculation;

"Permitted Encumbrances" means and includes:

(i) undetermined liens and charges incident to construction or maintenance, and liens and charges incident to construction or maintenance now or hereafter filed on record which are being contested in good faith and have not proceeded to judgment;

(ii) the lien of taxes and assessments which are not delinquent;

(iii) the lien of taxes and assessments which are delinquent but the validity of which is being contested in good faith unless thereby any of the Leased Property or the interest of the Authority may be in danger of being lost or forfeited;

(iv) minor defects and irregularities in the title to the Leased Property which do not in the aggregate materially impair the use of the Leased Property for the purposes for which it is or may reasonably be expected to be held;

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

(vi) rights reserved to or vested in any municipality or governmental or other public authority to control or regulate or use in any manner any portion of the Leased Property which do not materially impair the use of the Leased Property for the purposes for which it is or may reasonably be expected to be held;

(vii) any obligations or duties affecting any portion of the Leased Property of any municipality or governmental or other public authority with respect to any right, power, franchise, grant, license or permit;

(viii) present or future valid zoning laws and ordinances;

(ix) the Agreement and the Resolution; and

(x) with respect to a particular Facility, such other encumbrances or items affecting title set forth in Schedule A hereto;

"Plans and Specifications" means, when used with respect to a Facility, the plans and specifications therefor prepared pursuant to Article III hereof, including site plans showing the location of the Facility upon the land constituting or to constitute a portion of the Leased Property, schematic drawings of the interior of the buildings and improvements included in the Facility, and the design of such buildings and improvements;

"Project" means all of the Facilities;

"Repair and Rehabilitation Reserve Requirement" means as of the last day of each Fiscal Year, an amount equal to the greater of: (i) twenty (20) percent of the amount set forth in the Capital Plan to be funded from monies in the Dormitory Income Account for repair and rehabilitation of the Project during the next succeeding five Fiscal Years; or (ii) one hundred (100) percent of the amount to be funded from moneys in the Dormitory Income Account for repair and rehabilitation of the Project during the next succeeding Fiscal Year in accordance with the Capital Plan; provided, however, that such amount shall be reduced by the amount of any moneys withdrawn for the purpose of repairing, renovating or improving the Project in accordance with Section 4.06 (c)(ii) hereof until the last day of the Fiscal Year following the Fiscal Year during which such amount was withdrawn;

"Rentals" means the rent payable hereunder pursuant to Section 4.01 hereof;

"Resolution" means the "LEASE REVENUE BOND RESOLUTION (STATE UNIVERSITY DORMITORY FACILITIES ISSUE)" of the Authority, adopted September 20, 1995, as amended and restated as of September 24, 2003, as from time to time amended or supplemented by Supplemental Resolutions or Series Resolutions in accordance with the terms and provisions thereof, or such other and separate resolution adopted by the Authority, the bonds issued pursuant to which are secured by amounts payable pursuant to this Agreement, including from moneys held in the Dormitory Income Account;

"State University" means the State University of New York, a corporation created in the Education Department of the State of New York and within the University of the State of New York by Article 8 of Title 1 of the Education Law of the State; and

"University Facility" means a Facility to be acquired, designed, constructed, reconstructed, rehabilitated, improved, furnished or equipped by the State University or for which the State University is to cause the acquisition, design, construction, reconstruction,

rehabilitation, improvement, furnishment or equipment in accordance with an agreement by and between the Authority and the State University pursuant to Section 3.01 hereof.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in the Agreement, refer to the Agreement.

**ARTICLE II
LEASE OF FACILITIES; TERM OF LEASE;
ACQUISITION OF LEASED PROPERTY;
AND TITLE INSURANCE**

SECTION 2.01. Lease of Facilities. The Authority hereby agrees to lease to the State University, and the State University hereby agrees to take and hire from the Authority, the Leased Property on the terms and conditions set forth herein.

SUBJECT TO the Permitted Encumbrances and such other conditions affecting the title to a Facility as are set forth in Schedule A annexed hereto and made a part hereof.

TO HAVE AND TO HOLD the Leased Property for the Lease Term.

SECTION 2.02. Term of Lease. The Lease Term shall commence on the date on which Bonds of any Series are first issued and delivered by the Authority, and shall terminate on the date on which no Bonds are Outstanding and the State University has satisfied its obligations hereunder, unless sooner terminated in accordance with the provisions hereof.

SECTION 2.03. Acquisition of Facility Sites. Unless otherwise agreed by the State University and the Authority, the State University shall obtain as soon as practicable good and marketable title to the land on which each Facility is to be located and the building and improvements thereon, free and clear of all liens, charges and encumbrances except for Permitted Encumbrances.

SECTION 2.04. Availability of Land from State University. (a) The State University hereby ratifies and confirms to the Authority all the Authority's right, title and interest in and to the Leased Property heretofore made available to the Authority as the sites of Facilities, together with such rights in and over other lands adjacent thereto to which the State University may have title, as may be required for temporary use during the period of construction, for ingress and egress to such Facilities and necessary attendant facilities and for the location of utilities and for such other purposes as may be required for the proper and efficient operation and maintenance of such Facilities and necessary attendant facilities.

the Authority letting any contract for the construction, reconstruction, rehabilitation or improvement of an Authority Facility or part thereof. Each material modification of the Plans and Specifications for an Authority Facility shall also be approved in writing by an Authorized Officer of the State University. The Authority agrees that it will use its best efforts to cause such acquisition, construction, reconstruction, rehabilitation and improvement to be completed as soon as may be practicable, delays incident to strikes, riots, acts of God, the public enemy or any delay beyond its reasonable control only excepted; but if for any reason such acquisition, construction and installation is delayed there shall be no resulting liability on the part of the Authority and no diminution in or postponement of the amounts payable hereunder by the State University.

(b) The State University agrees that it will prepare or cause to be prepared the Plans and Specifications for each University Facility and it will acquire, construct, reconstruct, rehabilitate and improve or cause to be acquired, constructed, reconstructed, rehabilitated and improved each Facility substantially in accordance with the Plans and Specifications therefor.

The Plans and Specifications and the cost estimates for a University Facility shall be approved in writing by an Authorized Officer of the Authority prior to any contract for the construction, reconstruction, rehabilitation or improvement of such University Facility or part thereof. Each material modification of the Plans and Specifications for a University Facility shall also be approved in writing by an Authorized Officer of the Authority. The State University agrees that it will use its best efforts to cause such acquisition, construction, reconstruction, rehabilitation and improvement to be completed as soon as may be practicable, delays incident to strikes, riots, acts of God, the public enemy or any delay beyond its reasonable control only excepted; but if for any reason such acquisition, construction and installation is delayed there shall be no resulting liability on the part of the State University and no diminution in or postponement of the amounts payable hereunder by the State University.

(c) As used in this Section 3.02, a modification of the Plans and Specifications shall not be material unless such modification (i) increases the cost estimate for the Facility by more than three per centum (3%) or one hundred thousand dollars (\$100,000.00), whichever is less, or (ii) increases or decreases the square footage of the interior of the Facility.

SECTION 3.03. Letting of Contracts and Bonding. Contracts in connection with the acquisition, construction, reconstruction, rehabilitation or improvement of a Facility shall be let in accordance with applicable law. The Authority with respect to Authority Facilities and the State University with respect to University Facilities shall require each contractor engaged in the acquisition, construction, reconstruction, rehabilitation or improvement of a Facility to provide a performance bond in an amount equal to its contract price as security for the faithful performance of its contract and also a payment bond in an amount which is not less than one hundred per centum (100%) of its contract price as security for the payment of all persons performing labor or furnishing materials in connection with such contract.

SECTION 3.04. Adequacy, Sufficiency or Suitability. The Authority makes no warranties or representations and accepts no liabilities or responsibilities with respect to or for the adequacy, sufficiency or suitability of or defects in the Plans and Specifications or any

contracts or agreements with respect to the acquisition, construction, reconstruction, rehabilitation or improvement of the Facilities.

SECTION 3.05. Construction Fund. (a) The Resolution authorizes the Authority to make payments from the Construction Fund to pay the Cost of the Project upon the filing in the offices of the Authority of a requisition signed by an Authorized Officer of the Authority stating with respect to each payment to be made (i) the Facility in connection with which payment is to be made, (ii) the names of the payees, (iii) the purpose for which such payment is to be made in terms sufficient for identification, (iv) the respective amount of each such payment and (v) that such purpose constitutes a proper purpose for which moneys in the Construction Fund may be applied and has not been the basis of any previous withdrawal from the Construction Fund.

(b) Prior to executing the requisition required by the Resolution as a condition to payments to be made from the Construction Fund in connection with Costs of a Facility paid or to be paid by it, the State University shall deliver to the Authority: (i) a list of invoices, whether paid or unpaid, including, with respect to each invoice, the name of the vendor, a brief description of the goods or services, the amount of the invoice, a description of the building or buildings to which such payment relates, and, if such invoice has been paid, the date paid, the check number and the amount of the payment; and (ii) a certificate executed by an Authorized Officer of the State University certifying that expenses or moneys for which payment is requisitioned have been incurred or expended for items which constitute Costs of the Project, as that term is defined in the Resolution, and each amount contained therein has not been the basis of any prior disbursement from the Construction Fund.

(c) The Authority covenants to reimburse the State University, from the proceeds of Bonds, for amounts advanced or expenses incurred by the State University if reimbursement thereof will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation. The State University agrees to submit to the Authority the documents required by paragraph (b) of this Section and such other documents as may be reasonably required by the Authority to establish the amount and purposes of such advances or expenses and to enable the Authority to execute a requisition for payment thereof in accordance with the provisions of the Resolution relating to the application of moneys in the Construction Fund.

SECTION 3.06. Completion Dates. A Facility shall be deemed to be complete upon the filing in the offices of the Authority of a certificate or certificates of an Authorized Officer of the Authority which, with respect to a University Facility, shall be substantiated by a certificate or certificates of an Authorized Officer of the State University, stating (i) that the Facility has been completed substantially in accordance with the Plans and Specifications as evidenced by the issuance of a temporary or permanent certificate of occupancy pursuant to the New York State Building Construction Code, (ii) that the Facility is ready for occupancy, (iii) the date of such completion and (iv) the amount, if any, required, in the opinion of such Authorized Officer, for the payment of any Costs relating to the Facility and Costs of Issuance then unpaid. Notwithstanding the foregoing, such certificate shall be given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. If, upon the completion of the Project, there shall be any moneys

remaining in the Construction Fund not required to provide for the payment of the Costs of the Project, such moneys shall be deposited and applied as provided in the Resolution.

SECTION 3.07. Default in Contractors' Performance. In the event of default of any contractor or subcontractor under any contract made in connection with the Facility, the Authority with respect to an Authority Facility and the State University with respect to a University Facility will promptly proceed, either separately or in conjunction with others, to exhaust its remedies or the remedies of the other party hereto in its own behalf and as agent of the other party hereto, against the contractor or subcontractor so in default and against each surety for the performance of such contractor. The Authority and the State University each agrees to notify the other of the steps it intends to take in connection with any such default. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with a Facility, other than a Defeased Facility, shall be paid into the Construction Fund or the Debt Service Fund, as shall be determined by an Authorized Officer of the Authority. Any such amounts received in connection with a Defeased Facility shall be paid into the fund or account from which the moneys used to pay such contractor had originated.

SECTION 3.08. Reports; Preservation and Inspection. The Authority shall, promptly upon request, provide the State University with a copy of each report regarding the status of the construction of the Authority Facilities as may be prepared from time to time by the Authority. The State University shall, promptly upon request, provide the Authority with a copy of each report regarding the status of the construction of the University Facilities as may be prepared from time to time. All documents and reports received or prepared by either by the Authority or the State University relating to the construction of a Facility shall be retained in its possession for at least one (1) year after the Facility is completed and shall be subject at all reasonable times to the inspection of the other party hereto and its agents and representatives.

SECTION 3.09. Issuance of Bonds; Additional Bonds. In order to provide moneys for payment of the Cost of the Project, the Authority will use its best efforts to issue, sell and deliver Bonds; provided, however, that the Authority shall not be obligated to issue Bonds and the failure of the Authority to issue Bonds shall not release the State University from any of the provisions hereof. The proceeds of the Bonds shall be applied as provided for in the Resolution.

SECTION 3.10. Conditions of Bond Closings. Prior to or concurrently with the issuance and delivery of Bonds of a Series to the underwriters or purchasers thereof (the "Closing"), the State University shall deliver to the Authority the following documents, in each case reasonably satisfactory in form and substance to the Authority and its counsel:

(a) A certificate, dated the date of Closing, of an appropriate officer of the State University to the effect that (i) attached thereto is a true and correct copy of the resolutions of the governing body of the State University authorizing the execution and delivery of the Agreement and approving, or delegating to an Authorized Officer the approval of, inclusion in the official statement, prospectus, placement memorandum or other similar offering document relating to such Bond (the "Official Statement") of the information contained therein relating to the State University, the Project and the estimated sources and uses of funds, which resolutions have not been amended, supplemented, modified or repealed and are in full force and effect on

the date of Closing, (ii) the representations and warranties of the State University contained in the Agreement are true and correct in all material respects on and as of the date of Closing as if such representations and warranties had been made on and as of such date; (iii) the State University has complied with all of the terms of the Agreement to be complied with prior to or concurrently with the Closing; (iv) as of the date of Closing, the information relating to the State University, the Project and the estimated sources and uses of funds contained in the Official Statement is not untrue or incorrect in any material respect and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading; and (v) since the date of the Official Statement or the date of the most recent financial statements of the State University included or incorporated in the Official Statement, there has been no material adverse change, or development involving a prospective material change, in the condition (financial or otherwise), revenues, income or properties of the State University, whether or not arising in the ordinary course of business, except as set forth or contemplated in the Official Statement; provided, however, that the statement contained in clause (iv) of this Section 3.10(a) may be qualified as to information relating to the Project or the sources and use of funds contained in the Official Statement which was obtained from sources other than the State University, as to which the accuracy, completeness or fairness of which need not be certified, provided that the Authorized Officer of the State University executing such certificate states that such Authorized Officer has no reason to believe, and does not believe, that such information is inaccurate or misleading in any material respect;

(b) The opinion of the chief legal officer of the State University or other counsel for the State University, dated the date of Closing, to the effect that (i) the State University is a corporation of the State of New York, created in the Education Department of the State of New York and within the University of the State of New York; (ii) the State University has the good right and lawful authority and power to execute and deliver the Agreement, to perform the obligations and covenants contained therein and to consummate the transactions contemplated thereby; (iii) the State University has duly authorized by all necessary actions the execution and delivery of the Agreement and the performance of its obligations and covenants thereunder, and the consummation of the transactions contemplated thereby; (iv) the Agreement constitutes a legal, valid and binding obligation of the State University enforceable against the State University in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to the enforcement of creditors' rights generally or the availability of any particular remedy; (v) the Agreement, the execution and delivery thereof and the consummation of the transactions contemplated thereby (A) do not and will not in any material respect conflict with, or constitute on the part of the State University a breach of or default under any existing law, administrative regulation, judgment, order, decree or ruling by or to which it or its revenues, properties or operations are bound or subject, or any agreement or other instrument to which the State University is a party or by which it or any of its revenues, properties or operations are bound or subject and (B) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, other than those permitted hereby, upon any of the State University's revenues, properties or operations; (vi) all consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the State University of its

obligations under the Agreement or the consummation of the transactions contemplated thereby have been duly obtained and are in full force and effect; (vii) to the best knowledge of such counsel, after reasonable investigation, the State University is not in breach of or default under any agreement or other instrument to which the State University is a party or by or to which it or its revenues, properties or operations are bound or subject, or any existing administrative regulation, judgment, order, decree, ruling or other law by or to which it or its revenues, properties or operations are bound or subject, which breach or default is material to the transactions contemplated by the Agreement, and no event has occurred and is continuing that with the passage of time or the giving of notice, or both, would constitute, under any such agreement or instrument, such a breach or default material to such transactions; (viii) except as disclosed in the Official Statement, no action, suit, proceeding or investigation, in equity or at law, before or by any court or governmental agency or body, is pending or, to the best knowledge of such counsel, after reasonable inquiry of responsible officials of the State University, threatened wherein an adverse decision, ruling or finding might adversely affect the transactions contemplated by the Agreement or the validity or enforceability of the Agreement or any agreement or instrument to which the State University is a party or any revenues or properties and which is used or is contemplated for use in the consummation of the transactions contemplated by the Agreement; and (ix) the State University has duly authorized inclusion in the Official Statement of the information contained therein relating to the State University, the Project and the estimated sources and uses of funds, and, after reasonable investigation, no information has come to such counsel's attention which would lead such counsel to believe that such information (except for financial and statistical information included therein, as to which no opinion is expressed) is untrue or incorrect or contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading; and

(c) Such additional legal opinions, certificates, instruments and other documents as the Authority or counsel for the Authority reasonably may request, satisfactory in the reasonable judgment of the Authority or counsel for the Authority, as the case may be, to evidence (i) compliance by the State University with legal requirements reasonably relating to the transactions contemplated by the Agreement and the Official Statement, (ii) the truth and completeness, as of the date of Closing, of the representations and warranties of the State University contained in the Agreement and the certificates or other documents referred to therein and of the statements and information contained in the Official Statement relating to the State University, the Project and the estimated sources and uses of funds, and (iii) the due performance or satisfaction by the State University prior to or concurrently with the Closing of all agreements then to be satisfied relating to the transactions contemplated by the Agreement and the Official Statement.

ARTICLE IV PAYMENT OF AND SECURITY FOR RENTALS

SECTION 4.01. Payment of Rentals. (a) The State University shall pay to the Authority from any moneys legally available to it, including, without limitation, moneys from time to time on deposit in the Dormitory Income Account established by the State University pursuant to the Agreement, State funds appropriated to the State University in the State of New

York and unrestricted fund balances of the State University, the following Basic Rent in the amounts and on the dates as follows:

(i) On December 10 of each Bond Year, (A) the interest payable on or prior to the immediately succeeding January 1 on Outstanding Bonds on which interest is payable semiannually on each January 1 and July 1 and (B) the principal and Sinking Fund Installments of Outstanding Bonds payable prior to the immediately succeeding July 1;

(ii) On June 10 of each Bond Year, (A) the interest payable on or prior to the immediately succeeding July 1, on Outstanding Bonds on which interest is payable semiannually on each January 1 and July 1 and (B) the principal and Sinking Fund Installments of Outstanding Bonds payable prior to the immediately succeeding January 1;

(iii) On the 10th day of each month the interest estimated by an Authorized Officer of the Authority to be payable during the next succeeding calendar month on Outstanding Variable Interest Rate Bonds on which interest is payable more frequently than semiannually; and

(iv) Not less than five (5) Business Days prior to the date the principal or a Sinking Fund Installment of or interest on Outstanding Bonds is payable, the amount by which the money available in the Debt Service Fund is insufficient to make such payment, as set forth in a written notice from the Authority given not less than ten days prior to such date.

The State University shall receive a credit against the payments required to be made pursuant to subparagraphs (i) and (ii) of this Section 4.01(a) equal to the amount by which the amount in the Debt Service Fund on the date any such payment is to be made exceeds the amount required pursuant to the Resolution to be on deposit therein.

The State University shall have the option to make from time to time prepayments in part of payments due as aforesaid of Basic Rent, together with interest accrued and to accrue and premium, if any, to be paid on the Bonds, if such prepayment is to be used for the purchase or redemption of such Bonds. The Trustee shall apply such prepayments in such manner consistent with the provisions of the Resolution as may be specified in writing by an Authorized Officer of the State University at the time of making such prepayment.

Subject to the provisions hereof and of the Resolution, the State University shall receive a credit against the amount required to be paid by the State University during a Bond Year pursuant to subparagraph (i) and (ii) of this Section 4.01(a) on account of any Sinking Fund Installments if, subsequent to July 1 of any Bond Year, but in no event less than forty-five (45) days prior to the immediately succeeding July 1 on which a Sinking Fund Installment is scheduled to be due, the State University delivers to the Trustee for cancellation one or more Bonds of the Series and maturity to be so redeemed on such July 1. The amount of the credit shall be equal to the principal amount of Bonds so delivered and cancelled.

(b) The State University shall pay to the Authority, as additional rent for the Facilities, the amounts, and on the dates, as follows:

(i) On the date of delivery of Bonds of a Series, the Administrative Expenses, as estimated by an Authorized Officer of the Authority, incurred in connection with the issuance of Bonds of such Series;

(ii) On each December 10, the Annual Administrative Fee;

(iii) The Administrative Expenses of the Authority, the Trustee and each Paying Agent for the Bonds, within thirty (30) days after notice of the amount thereof is given to the State University; provided, however, that the estimated Administrative Expenses paid pursuant to subparagraph (i) of this paragraph (b) shall be applied in reduction of the amount payable pursuant to this subparagraph;

(iv) The amount determined by an Authorized Officer of the Authority as required to be rebated to the Department of the Treasury of the United States of America in excess of the amount available therefor in the Arbitrage Rebate Fund, within five (5) days after notice of the amount thereof is given to the State University;

(v) On the 10th day of each calendar month, the amount certified by the Authority as the estimated amount payable by the Authority (1) in connection with the purchase and remarketing of Option Bonds, (2) the adjustment of the rate at which a Variable Interest Rate Bonds bear interest, and (3) to the Providers of Credit Facilities and Liquidity Facilities, in each case that are payable during the next succeeding calendar month; and

(vi) On the 10th day of each calendar month, the amount certified by the Authority as the estimated amount payable by the Authority to the Counterparty to an Interest Rate Exchange Agreement during the next succeeding calendar month, respectively, including but not limited to any fees or charges in connection therewith;

(c) The Authority, for the convenience of the State University, shall furnish the State University not less than thirty (30) days prior to the date on which a payment is due pursuant to this Section, a statement of the amount, purpose and payment date of each payment required to be made pursuant to this Section. The failure to furnish such statement shall not excuse the State University's failure to pay, when due, the amounts payable pursuant to this Section.

(d) Any Rentals which are not paid by the State University within seven (7) days after the due date thereof shall, from and after said due date, bear interest (to the extent permitted by law) at the highest rate per annum borne by any of the Bonds until paid, time being of the absolute essence of this obligation.

SECTION 4.02. Direction as to Payment of Rentals. The Basic Rent shall be paid by the State University, when due, to the Trustee for deposit in accordance with the provisions of the Resolution relating to the deposit of Revenues and the allocation thereof. The additional rent payable pursuant to Section 4.01(b) hereof and interest on the Rentals payable pursuant to Section 4.01(d) hereof shall be paid by the State University, when due, to the Authority or as otherwise directed by the Authority in writing.

SECTION 4.03. Indemnification of Authority; Limitation on Liability. (a) Both during the term of the Agreement and thereafter, the State University, to the extent, authorized by the New York State Court of Claims Act and to the extent not otherwise prohibited by State law and decisions thereunder, shall hold the Authority and any member, officer and employee of the Authority harmless from and against any and all liability, loss, cost, damage, claim, suit or judgment and any and all costs and expenses including, but not limited to, reasonable counsel fees and disbursements, if assessed by a court of competent jurisdiction, of any and all kinds or nature and however arising, imposed by law, which it or any of them may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, or upon or arising out of the financing, design, construction, reconstruction, acquisition, rehabilitation, improvement, occupancy, or use of the facilities, pursuant hereto, or upon or arising out of the allegation that an official statement, prospectus, placement memorandum or other offering document prepared in connection with the sale and issuance of obligations contained an untrue or misleading statement of a material fact relating to the State University, the project or the estimated sources and uses of funds, or omitted to state a material fact relating to the State University, the project or the estimated sources and uses of funds necessary in order to make the statements made therein in light of the circumstances under which they were made not misleading; provided, however, that such liability, loss, cost, damage, claim, suit or judgment resulted from the negligence of State University or its employees while acting within the scope of such employees University employment duties, and is not contributed to, caused by or resulted from the intentional wrong doing of the Authority, its members, officers or employees.

(b) The provisions of this Section 4.03 shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided herein from its obligation to defend or indemnify the State University, the Authority and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy.

It is the intention of the parties hereto that any such insurance shall be primary, and shall take precedence over the obligations provided by the State University hereunder.

(c) The Authority agrees to give the State University and the Attorney General notice in writing of the institution of each such claim, action, or proceeding covered by the provisions of subdivision (a) of this Section 4.03 and to consult with the State University and the Attorney General and to obtain the written approval of the State University and the Attorney General, as their respective interest may exist, prior to adjusting, settling or compromising any such claim, action or proceeding.

(d) The Authority and each member, officer or employee shall be entitled to employ separate counsel in any action or proceeding and to participate in the defense thereof; provided, however, that the State University shall be liable for attorneys' fees of separate counsel so retained or any other expenses incurred in connection with its participation in the defense of such action or proceeding, other than the reasonable costs of investigation thereof, unless the State University shall have consented thereto or unless, (i) in the reasonable judgment of the Authority (A) it or any member, officer or employee's interests and the interests of the State University therein are adverse or (B) it or any member, officer or employee may have a defense available to it which is not available to the State University or (ii) the State University does not provide for legal representation.

(e) The State University shall not be liable for the payments pursuant to its obligations provided for in this Section 4.03 to the Authority, its members, officers and employees, including attorneys' fees of separate counsel retained by the Authority, its members, officers and employees, beyond funds appropriated by the State and available for these purposes and such payments shall not be made from appropriations for the operations of the State University.

(f) The provisions of this Section shall become inoperative with respect to the parties to be held harmless hereunder, upon the enactment into law of indemnification protection for said parties equivalent to or pursuant to section 17 of the Public Officers Law.

SECTION 4.04. The Dormitory Income Account. The State University shall cause the Dormitory Income Account to be established and held by the Comptroller of the State. Such account and the moneys therein shall be held for the State University separate and apart from all other funds, moneys and accounts of the State University. If the Comptroller of the State for any reason shall cease to hold such account, the State University shall cause such account and the moneys therein to be held separate and apart from all other funds, moneys and accounts of the State University.

SECTION 4.05. Payments to the Dormitory Income Account. ~~The State University covenants that, from the date on which Bonds are first issued, the State University~~ shall pay to the Dormitory Income Account all rents, fees and charges, as received by the State University, from students or other persons for the use and occupancy of the Project.

The State University shall keep its books and records in such manner that the rents, fees and charges required to be paid to the Dormitory Income Account pursuant to this Section can be ascertained and identified. The State University agrees that such rents, fees and charges: (i) shall be stated separately in billing or shall be allocated by the State University from any other rents, fees or charges imposed; (ii) shall be identified as such rents, fees and charges; and (iii) shall be kept and accounted for separate and apart from any other rents, fees and charges imposed by the State University.

SECTION 4.06. Pledge of the Dormitory Income Account; Payments from the Dormitory Income Account. (a) Subject only to the provisions of paragraph (b), (c) and (d) of this Section, the rents, fees and charges required to be paid to the Dormitory Income Account and the moneys and assets of such account shall be used only to pay the Rentals required to be

paid by the State University to the Authority in accordance with this Agreement. The provisions relating to the Dormitory Income Account shall constitute a pledge of and a lien on such rents, fees and charges required to be paid to the Dormitory Income Account as received by the State University and upon the Dormitory Income Account and its assets to the extent of the Agreement.

(b) If, at any time, the amount then on deposit in the Dormitory Income Account shall exceed the amount of Rentals that remain payable during such Bond Year, then in such event the excess may be used to pay the cost of operating, maintaining, repairing and renovating the Project pursuant to Section 5.01 of this Agreement.

For purposes of determining the amount of Rentals payable pursuant to subparagraphs (iii) and (iv) of paragraph (a) of Section 4.01 hereof and subparagraphs (iii), (iv) (v) and (vi) of paragraph (b) of Section 4.01, the Authority shall estimate the amount of Rentals that are required to be paid pursuant to such paragraphs if the amount cannot be determined at the time of computation.

(c) The Dormitory Income Account Reserve shall be applied to the cost of (i) operating and maintaining and (ii) repairing, renovating and improving, the Project; provided, however, no payment shall be made from the Dormitory Income Account Reserve pursuant to this paragraph (c) unless, at the time of such payment, the amount then on deposit in the Dormitory Income Account, shall exceed the amount of Rentals that remain payable during the then current Bond Year. Any payment from the Dormitory Income Account Reserve shall be made upon the joint direction of the Authority and the State University.

(d) So long as no Event of Default on the part of the State University is occurring under this Agreement, any moneys in the Dormitory Income Account in excess of the Dormitory Income Account Reserve Requirement as of the last day of each Fiscal Year may, upon submission of the Annual Report required by Section 4.08 hereof, be paid to the State University for any lawful purpose of the State University free of the lien and pledge created pursuant to this Section 4.06; provided, however, no payment shall be made from the Dormitory Income Account pursuant to this paragraph (d) unless at the time of, and after giving effect to, such payment, the amount then on deposit in the Dormitory Income Account shall exceed the amount of Rentals that remain payable during the then current Bond Year.

SECTION 4.07. Investment of Dormitory Income Account. Any moneys held by or for the State University in the Dormitory Income Account shall be held in cash or may be invested only in obligations for which the Comptroller of the State is authorized to invest funds held in her custody under the State Finance Law. Interest earned, profits realized and losses suffered by reason of any such investment of such moneys shall be credited or charged, as the case may be, to the Dormitory Income Account.

SECTION 4.08. Records and Accounts; Annual Report. The State University shall keep proper books of records and accounts (separate from all other records and accounts) in which complete and correct entry shall be made of its transactions relating to the Dormitory Income Account, which books and accounts at reasonable hours and subject to the reasonable rules and regulations of the State University shall be subject to the inspection of the Trustee, the Authority or any Holder of Bonds or such Holder's representative duly authorized in

writing. Within ninety (90) days after the end of each Fiscal Year of the State University, the State University shall submit to the Authority, the Division of the Budget and the Trustee a report in writing concerning the Dormitory Income Account, which report shall include at least the following: (i) the amount in the Dormitory Income Account at the beginning of such Fiscal Year; (ii) the rents, fees and charges received by the State University from students or other persons for the use and occupancy of the Project and paid to such account; (iii) the income from investment of moneys in such account; (iv) the amount of the Rentals and any other moneys paid during such Fiscal Year to the Authority relating to the Project; (v) the amount, if any, withdrawn by the State University as permitted by Sections 4.06(b), 4.06(c) and 4.06(d); and (vi) the balance remaining in such account at the close of such Fiscal Year and whether such balance exceeds or is less than the Dormitory Income Account Reserve Requirement and if an excess exists, the amount to be withdrawn pursuant to Section 4.06(d) hereof subject to the limitation therein. In addition, such report shall contain a statement, in terms sufficient for identification, of the amounts and purposes for which the moneys withdrawn by the State University as permitted by Section 4.06(b) and 4.06(c) hereof have been expended, and the unexpended balance, if any, of such withdrawal. In addition, such report shall contain a statement that the State University has no knowledge of any default in the fulfillment of any of the terms, covenants or provisions of the Agreement or, if the State University has knowledge of any such default, a statement thereof. Such report shall also set forth the Defeased Facilities which are subject to this Agreement.

SECTION 4.09. Nature of Obligations of the State University. Except as hereinafter provided in this Section, the obligation of the State University to pay Rentals and to pay all other amounts provided for herein and to perform its obligations hereunder shall be general, legal, valid and binding obligations of the State University, and such Rentals and other amounts shall be payable from any moneys legally available to the State University for such purpose without any rights of set-off, recoupment or counterclaim it might have against the Authority, the Trustee or any other person and whether or not the Facilities are used or occupied by the State University or available for use or occupancy by the State University; provided, however, that the State University shall receive a credit against the Rentals to the extent of the proceeds of any use and occupancy insurance received by the Authority and available for application to the payment of the Rentals. If the State University shall have paid all amounts required hereby and continues to pay the same when due, it shall not be precluded from bringing any action it may otherwise have against the Authority; provided, however, that the State University shall not, as a result of its failure to pay any Administrative Expenses or Annual Administrative Fee, be precluded from bringing any such action if the amount thereof is disputed or is being contested by the State University in good faith.

The State University covenants that, so long as the State University shall be in possession of the Project under the Agreement, rents, fees and charges charged and collected from students and other persons for use and occupancy of the Project shall be sufficient at all times to maintain the Dormitory Income Account at the Dormitory Income Account Requirement and to pay all other expenses required to be paid by the State University pursuant to the Agreement.

Notwithstanding anything herein to the contrary, the cost and expense of the performance by the State University of its obligations hereunder and the incurrence of any

liabilities of the State University hereunder, including, without limitation, the payment of all Rentals and all other amounts required to be paid by the State University hereunder, shall be deemed executory to the extent of moneys legally available to the State University for such purpose.

The State University will not terminate the Agreement (other than such termination as is provided for hereunder) or be excused from performing its obligations hereunder for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Project, or the taking by eminent domain of title to or the right of temporary use of all or any part of the Project, or the failure of the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with the Agreement.

SECTION 4.10. Nature of Obligations of the Authority. The cost and expense of the performance by the Authority of any of its obligations hereunder shall be limited to the availability of the proceeds of Bonds issued for such purposes or from other funds received by the Authority hereunder and available for such purposes.

SECTION 4.11. Assignment of Payments by Authority. It is understood that all payments by the State University hereunder (except payments pursuant to Sections 4.01(b), 4.01(d) and 4.03 hereof) are to be pledged by the Authority to the Trustee pursuant to the Resolution.

Except as provided in this Section, the Authority shall not assign the Agreement or any payments hereunder without the prior written consent of the State University. Except as provided in Section 8.02 hereof, the Authority shall not sell or otherwise encumber its interest in the Facilities.

SECTION 4.12. Additional Resolutions; Apportionment of Payments. In the event that there is more than one Resolution and the moneys legally available to the State University, including moneys held in the Dormitory Income Account, are insufficient to make payments to satisfy the State University's obligations to pay the Basic Rent payable on account of Bonds issued pursuant to the Resolutions, the State University shall apportion the available moneys, pro rata, based upon the Basic Rent payable on account of Bonds issued pursuant to each Resolution. Payments of all other Rentals shall also be made, in the event of insufficiencies, on a pro rata basis based on the amount of Rentals payable on account of Bonds issued pursuant to each Resolution, but only after all Basic Rent is paid.

ARTICLE V OPERATION AND MAINTENANCE; INSURANCE; DAMAGE; DESTRUCTION AND CONDEMNATION

SECTION 5.01. Operation, Maintenance and Repair. During the Lease Term, the State University shall be responsible for, and pay all costs of, operating the Facilities,

maintaining the same in good condition, and making all necessary repairs and replacements, interior and exterior, structural and non-structural; provided, however, that the State University shall not be obligated to pay the costs thereof paid by any person (other than the Authority) to whom a Facility has been sublet in accordance with Section 8.02(a) hereof.

The State University covenants that, so long as the State University shall be in possession of the Project that: (i) it will prepare and implement a budget for each Fiscal Year, which provides adequate funds for the operation and maintenance of the Project in good condition and for the making of all necessary repairs and replacements; (ii) it will prepare and implement a Capital Plan that will provide adequate resources for all necessary repairs and replacements of the Facilities; and (iii) prior to the commencement of each Fiscal Year, it shall provide the Authority with copies of the aforementioned budget and Capital Plan, together with its certification that they are in compliance with the requirements of this Agreement, including, but not limited to, the requirements imposed by clauses (i) and (ii) of this paragraph, and that they have provided adequate resources to maintain the Dormitory Income Account at the Dormitory Income Account Requirement during the Fiscal Year to which the certification relates.

SECTION 5.02. Utilities, Taxes and Governmental Charges. The State University will pay or cause to be paid all charges for water, electricity, light, heat or power, sewage, telephone and other utility service, rendered or supplied upon or in connection with the Facilities during the Lease Term; provided, however, that the State University shall not be obligated to pay the costs thereof paid by any person (other than the Authority) to whom a Facility has been sublet in accordance with Section 8.02(a) hereof.

In addition, the State University shall (i) pay, or make provision for payment of, all applicable lawful taxes and assessments, including income, profits, property or excise taxes, if any, or other municipal or governmental charges, levied or assessed by any federal, state or any municipal government upon the Authority or the State University with respect to or upon a Facility or any part thereof or upon any payments hereunder when the same shall become due; provided, however, that the State University shall not be obligated to pay the costs thereof paid by any person (other than the Authority) to whom a Facility has been sublet in accordance with Section 8.02(a) hereof; (ii) duly observe and comply with all valid requirements of any governmental authority relative to the Facilities; (iii) not create or suffer to be created any lien or charge upon a Facility or any part thereof, except Permitted Encumbrances, or upon the payments in respect thereof pursuant hereto; and (iv) pay or cause to be discharged or make adequate provision to satisfy and discharge, within sixty (60) days after the same shall come into force, any lien or charge upon the Project or any part thereof, except Permitted Encumbrances, or upon any payments hereunder and all lawful claims or demands for labor, materials, supplies or other charges which, if unpaid, might be or become a lien upon any payments hereunder; provided, however, that the State University shall not be obligated to pay the costs thereof paid by any person (other than the Authority) to whom a Facility has been sublet in accordance with Section 8.02(a) hereof.

The Authority shall cooperate fully with the State University in the payment of taxes or assessments and in the handling and conduct of any prospective or pending litigation with respect to the levying of taxes or assessments on a Facility and will, to the extent it may

lawfully do so, permit the State University to litigate in any such proceeding in the name and behalf of the Authority.

SECTION 5.03. Additions, Enlargements and Improvements. The State University shall have the right at any time and from time to time during the Lease Term, at its own cost and expense, to make such additions, enlargements, improvements and expansions to, or repairs, reconstruction and restorations of, a Facility, as the State University shall deem necessary or desirable in connection with the use thereof; **provided, however,** that no addition to or enlargement, improvement, expansion, repair, reconstruction or restoration of, a Facility which requires structural change of the Facility, or which modifies or changes any aspect or feature thereof designed or intended to protect the life or provide for the safety of the occupants of the Facility, shall be made by the State University without the prior written consent of an Authorized Officer of the Authority. All such additions, enlargements, improvements, expansions, repairs, reconstruction and restorations when completed shall be of such character as not to reduce or otherwise adversely affect the value of the Facility or the rental value thereof. The cost of any such additions, enlargements, improvements, expansions, repairs, reconstruction or restorations shall be promptly paid or discharged so that the Facility shall at all times be free of liens for labor and materials supplied thereto other than Permitted Encumbrances. All additions, enlargements, improvements and expansions to, or repairs, reconstruction and restorations of, a Leased Property shall be and become a part of the Leased Property and be the property of the Authority.

SECTION 5.04. Additional Rights of the State University. The Authority agrees that the State University shall have the right, option and privilege of erecting, installing and maintaining at its own cost and expense such standard office partitions, railings, doors, gates, counters, lighting fixtures, towers (together with all necessary guy wires and anchors), gasoline or natural gas storage tanks and pumps, signs and such other equipment in or upon a Facility as may in State University's judgment be necessary for its purposes. It is further understood and agreed that anything erected or installed under the provisions of this Section shall be and remain the personal property of the State University and shall not become part of the Leased Property, and may be removed, altered or otherwise changed, upon or before the termination hereof.

SECTION 5.05. Insurance. (a) At the times specified herein the Authority shall, to the extent reasonably obtainable, maintain or caused to be maintained with responsible insurers, approved by an Authorized Officer of the Authority, for the benefit of the Authority and the State University, the following kinds and the following amounts of insurance with respect to each Facility, with such variations as shall reasonably be required to conform to customary insurance practice and approved by an Authorized Officer of the Authority:

(i) Builder's Risk Insurance which will protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, and vandalism and malicious mischief. The limits of liability will on a one hundred per centum (100%) completed value basis be the insurable value for the Facility, including items of labor and materials connected therewith whether in or adjacent to the structure insured and materials in place or to be used as part of the permanent construction. Such insurance shall be maintained until the insurance required by subparagraph (iv) of this Section 5.05(a) has been obtained. All such

policies required by this subparagraph shall name the Authority and the State University as named insured, as their respective interests may appear, and shall contain standard clauses which provide for the net proceeds of any loss to be made payable directly to the Trustee for deposit to the credit of the Construction Fund with respect to a Facility (other than a Defeased Facility), and with respect to a Defeased Facility, to the credit of the fund or account from which construction of the Defeased Facility is financed;

(ii) Comprehensive Boiler and Machinery Insurance under the customary form of policy in use in the State providing coverage in an amount and with such deductibles, if any, as may be acceptable to an Authorized Officer of the Authority. Such insurance shall be maintained commencing on the date the Facility is occupied or any object insured thereunder is accepted. All such policies required by this subparagraph shall name the Authority and the State University, as their respective interests may appear, and shall contain standard clauses which provide for the net proceeds of any loss which is \$100,000 or less to be made payable directly to the State University and the net proceeds of any loss which is in excess of \$100,000 to be made payable directly to the Trustee for deposit to the credit of the Construction Fund with respect to a Facility (other than a Defeased Facility), and with respect to a Defeased Facility, to the credit of the fund or account from which construction of the Defeased Facility is financed;

(iii) Comprehensive General Liability Insurance as broad as the standard coverage form in use in the State which shall not be circumscribed by any endorsements limiting the breadth of coverage which is not approved in writing by an Authorized Officer of the Authority. The policy shall include an endorsement (broad form) for contractual liability and shall name the Authority and the State University as named insureds, as their respective interests may appear. Limits of liability shall not be less than a combined limit of \$2,000,000 per occurrence for bodily injury liability and property damage liability with such deductible amounts per person and in the aggregate as shall be acceptable to an Authorized Officer of the Authority. Such insurance shall be maintained at all times during the Lease Term;

(iv) Property Insurance in an amount not less than eighty per centum (80%) of the full replacement cost of the Facility (meaning replacement cost without allowance for depreciation), exclusive of excavations, foundations and similar property customarily excluded under the standard coverage form in use in the State and providing for protection against loss resulting from fire, lightning, the standard extended coverage insurance perils, vandalism and malicious mischief. All such policies required by this subparagraph shall name the Authority and the State University as named insured, as their respective interest may appear and shall contain standard clauses which provide for the net proceeds of any loss which is \$100,000 or less to be made payable directly to the State University and the net proceeds of any loss which is in excess of \$100,000 to be made payable directly to the Trustee for deposit to the credit of the Construction Fund or the Debt Service Fund in accordance herewith with respect to a Facility (other than a

Defeased Facility), and with respect to a Defeased Facility, to the credit of the fund or account from which construction of the Defeased Facility is financed. Such insurance with respect to any building or improvement shall be maintained at all times after completion of construction thereof;

(v) Use and Occupancy Insurance in an amount agreed to by the parties hereto during such time or times as the use of all or any of the Facilities or any part thereof may be totally or partially interrupted as a result of damage or destruction resulting from perils insured against pursuant to subparagraph (iii) of this Section 5.05(a). All such insurance shall be carried for the benefit of the Authority and shall name the Authority as the named insured. Each policy therefor, or contract thereof, shall contain a loss payable clause providing for the proceeds thereof to be payable to the Trustee, and the Rentals due from the State University with respect to the Facilities pursuant to Section 4.01(a) hereof shall be reduced by the amount of the payments made to the Trustee from the proceeds of insurance carried pursuant to the foregoing provisions. Such insurance shall be maintained in connection with a Facility at all times during the Lease Term after the Authority shall have re-entered such Facility in accordance with Section 8.02 or 9.01 hereof; and

(vi) Worker's Compensation and Employers Liability Insurance and each other form of insurance from injuries, sickness, disability or death of employees as the State University may be required by law to provide. All such policies shall name the Authority and the State University as named insured, as their respective interests may appear.

(b) All insurance policies obtained by the Authority hereunder shall be open to inspection by the State University and the Trustee at all reasonable times. A complete description of all such policies shall be furnished annually by the Authority to the State University and the Trustee, and if any change shall be made in any such insurance, a description and notice of such change shall be furnished by the Authority to the State University and the Trustee at the time of such change. ~~If, after consultation with the State University, a loss deductible for insured property perils or liability is selected and incorporated into the Authority's property or liability coverages, the State University shall then be responsible for the amount of the deductible that the Authority shall incur from each loss for insured perils or liability.~~

(c) Notwithstanding any of the foregoing provisions of this Section, the Authority shall not be required to obtain or maintain any class or type of insurance required hereby for which it is authorized and able to provide and maintain an appropriate substitute self-insurance arrangement under which the State University and the Authority would be fully protected from loss or general public liability arising from its ownership or interest in the Facilities, or under which assurance will be provided that funds will be available to repair, restore, rebuild or replace the Facilities upon damage, loss or destruction thereof. No such arrangement or arrangements shall be substituted for the insurance required to be obtained and maintained pursuant to the foregoing provisions of this Section, unless and until each such arrangement shall have been recommended by an insurance consultant selected by an Authorized Officer of the Authority.

(d) In lieu of separate policies, the Authority may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event it shall deposit with the State University a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Facilities.

(e) The State University hereby assumes all risks that the proceeds of any insurance may be inadequate to repair, reconstruct or restore the Facilities or fully to indemnify the State University or Authority against or to reimburse the State University or the Authority for any loss, liability, claim or judgment arising out of any risk, peril or insurable loss under the insurance required hereby.

SECTION 5.06. Damage or Destruction. The State University agrees to notify the Authority and the Trustee immediately in the case of damage to or destruction of a Facility or any portion thereof in an amount exceeding \$100,000 resulting from fire or other casualty. In the event that the amount of any such damage or destruction does not exceed \$100,000, the State University will forthwith repair, reconstruct and restore the Facility to substantially the same condition as it existed prior to the event causing such damage or destruction and will apply the net proceeds of any insurance relating such damage received by the State University to the payment or reimbursement of the costs of such repair, reconstruction and restoration. The Authority agrees that the net proceeds of any insurance relating to such damage or destruction, not exceeding \$100,000, may be paid directly to the State University.

In the event a Facility or any portion thereof is damaged or destroyed by fire or other casualty and the damage or destruction is estimated to exceed \$100,000, then the State University shall within ninety (90) days after such damage or destruction elect one of the following options by written notice of such election to the Authority and the Trustee:

(a) **Repair and Restoration.** The State University may elect to repair, reconstruct, restore and improve the Facility. In such event the State University shall proceed forthwith to repair, reconstruct and restore the Facility to substantially the same condition as it existed prior to the event causing such damage or destruction. So long as the State University is not in default under Section 8.01(a) hereof, any net proceeds of insurance relating to such damage or destruction received by the Trustee shall be deposited to the credit of the Construction Fund and be applied to finance the Cost of such repair, reconstruction and restoration, to complete the payment of the Cost of such repair, reconstruction and restoration, in the same manner and upon the same conditions as set forth in the Resolution for the payment of the Cost of the Project from the Construction Fund.

It is further understood and agreed that in the event the State University shall elect to repair, reconstruct and restore the Facility, the State University shall complete the repair, reconstruction and restoration of the Facility, whether or not the net proceeds of insurance received by the State University for such purposes and any moneys permitted to be withdrawn from the Dormitory Income Account therefor are sufficient to pay for the same.

(b) **Prepayment of Rent.** The State University may elect to have the net proceeds of insurance payable as a result of such damage or destruction applied to the prepayment of Rentals hereunder. In such event the State University shall, in its notice of

election to the Authority and the Trustee, direct that such net proceeds, when and as received, be deposited to the credit of the Debt Service Fund and applied to the redemption of Outstanding Bonds or be held in trust by the Trustee pursuant to the defeasance provisions of the Resolution for the payment of Bonds.

SECTION 5.07. Condemnation. The Agreement and the interest of the State University shall terminate as to a Facility or portion thereof and the Leased Property appertaining thereto condemned or taken by eminent domain when title thereto vests in the party condemning or taking the same (hereinafter referred to as the "termination date"). The State University hereby irrevocably assigns to the Authority all right, title and interest of the State University in and to any net proceeds of any award, compensation or damages (hereinafter referred to as an "award"), payable in connection with any such condemnation or taking during the Lease Term for any Facility other than a Defeased Facility. Such net proceeds shall be initially paid to the Trustee for deposit and application as hereinafter provided.

In the event of any such condemnation or taking the State University shall within ninety (90) days after the termination date therefor elect one of the following options by written notice of such election to the Authority and the Trustee:

(a) **Repairs and Improvements.** The State University may elect to use the net proceeds of the award made in connection with such condemnation or taking for the repair, reconstruction, restoration and improvement of the Facility. In such event, so long as the State University is not in default under Section 8.01(a) hereof, any such net proceeds received by the Trustee shall be deposited to the credit of the Construction Fund and be applied to finance the Cost of such repairs and improvements, to complete the payment of the Cost of such repairs and improvements, in the same manner and upon the same conditions set forth in the Resolution for the payment of the Cost of the Project from the Construction Fund.

(b) **Prepayment of Rent.** The State University may elect to have the net proceeds payable as a result of condemnation applied to the prepayment of Rentals hereunder. In such event the State University shall, in its notice of election to the Authority and the Trustee, direct that such net proceeds, when and as received, be deposited to the credit of the Debt Service Fund and applied to the redemption of Outstanding Bonds or be held in trust by the Trustee pursuant to the defeasance provisions of the Resolution for the payment of Bonds.

The Authority shall cooperate with the State University in the handling and conduct of any prospective or pending condemnation proceedings with respect to a Facility or any part thereof and will, to the extent it may lawfully do so, permit the State University to litigate in any such proceeding in the name and behalf of the Authority. In no event will the Authority voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceedings with respect to a Facility or any part thereof without the written consent of the State University.

SECTION 5.08. Reserved.

**ARTICLE VI
REPRESENTATIONS AND WARRANTIES**

The State University hereby represents and warrants as follows:

SECTION 6.01. Legal Entity. The State University is a corporation created in the Education Department of the State and within the University of the State of New York, duly created and validly existing under the Constitution and laws of the State.

SECTION 6.02. Legal Authority. The State University has the good right and lawful authority and power to execute and deliver the Agreement, to perform the obligations and covenants contained herein, to consummate the transactions contemplated hereby and to make the pledge and create the lien created hereby.

SECTION 6.03. Due Authorization. The State University has duly authorized by all necessary actions the execution and delivery hereof, the performance of its obligations and covenants hereunder, the consummation of the transactions contemplated hereby and the creation of the pledge and lien created hereby. The execution and delivery hereof is indication of the State University's approval hereof.

SECTION 6.04. Validity and Enforceability. The Agreement constitutes a legal, valid and binding obligation of the State University, enforceable against the State University in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws relating to the enforcement of creditors' rights generally or the availability of any particular remedy.

SECTION 6.05. No Conflict. The Agreement, the execution and delivery hereof and the consummation of the transactions contemplated hereby (i) do not and will not in any material respect conflict with, or constitute on the part of the State University a breach of or default under (a) any existing law, administrative regulation, judgment, order, decree or ruling by or to which it or its revenues, properties or operations are bound or subject or (b) any agreement or other instrument to which the State University is a party or by which it or any of its revenues, properties or operations are bound or subject and (ii) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the State University's revenues, properties or operations.

SECTION 6.06. Consents and Approvals. All consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the State University of its obligations hereunder or the consummation of the transactions contemplated hereby have been duly obtained and are in full force and effect.

SECTION 6.07. No Defaults. The State University is not in breach of or default under any agreement or other instrument to which the State University is a party or by or to which it or its revenues, properties or operations are bound or subject, or any existing administrative regulation, judgment, order, decree, ruling or other law by or to which it or its

revenues, properties or operations are bound or subject, which breach or default is material to the transactions contemplated hereby; and no event has occurred and is continuing that with the passage of time or the giving of notice, or both, would constitute, under any such agreement or instrument, such a breach or default material to such transactions.

SECTION 6.08. No Litigation. Except as set forth in an official statement, prospectus, placement memorandum or other similar offering document prepared in connection with the issuance and sale of Bonds, no action, suit, proceeding or investigation, in equity or at law, before or by any court or governmental agency or body, is pending or, to the best knowledge of the State University, threatened wherein an adverse decision, ruling or finding might adversely affect in any material respect the transactions contemplated hereby or the validity or enforceability hereof or of any agreement or instrument to which the State University is a part or any revenues or properties and which is used or is contemplated for use in the consummation of the transactions contemplated hereby.

SECTION 6.09. Essentiality of Project. The Project is essential to the proper administration of the State University and to meet the essential needs of the State University and the State, and it is contemplated that the Facilities shall be essential to such administration and to meet such needs through the Lease Term.

SECTION 6.10. Hazardous Substances. (a) During the State University's ownership of any of the Leased Property of the land on which a Facility is located, and to the best knowledge of the State University as to periods prior to its ownership thereof, no portion of the Leased Property has ever been used by the State University or previous owners or operators to refine, produce, store, handle, transfer, process or transport Hazardous Substances, and the State University does not intend in the future to use any of the Leased Property for the purpose of refining, producing, storing, handling, transferring, processing or transporting Hazardous Substances (other than products customarily found and used in households and offices, e.g., aerosol cans, insecticides, chemicals used by professional cleaning services, toner for duplicating machines and the like, unless possession of such items is prohibited by law).

(b) No lien has been attached to any revenues or any real or personal property owned by the State University and located in the State, including, but not limited to, the Leased Property, as a result of a violation of any federal, State or local law or regulation governing hazardous waste removal and clean-up or arising from an intentional or unintentional action or omission of the State University or any previous owner or operator of said property.

(c) The State University has not received a summons, citation, directive, letter or other communication, written or oral, from any federal, State or local agency charged with the enforcement of any environmental protection law or regulation concerning any intentional or unintentional action or omission on the State University's part resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances.

(d) During the State University's ownership of any of the Leased Property and to the best knowledge of the State University as to periods prior thereto, none of the real property owned or occupied by the State University and located in the State, including, but not limited to, the Leased Property, has ever been used by it or the present or a previous owner or operator to

generate, manufacture, refine, transport, treat, store, handle or dispose of Hazardous Substances and the State University does not intend in the future to use any of its real property for such purposes.

(e) To the best of the State University's knowledge, after due inquiry and investigation, the Leased Property is in full compliance with all other provisions of federal, State and local environmental laws and regulations.

ARTICLE VII SPECIAL COVENANTS

The State University and the Authority each covenant with the other party hereto as follows:

SECTION 7.01. State University's Right to Possession. Except as otherwise provided herein, the State University shall be entitled to sole possession of the Facilities during the Lease Term.

SECTION 7.02. Quiet Enjoyment. The State University, upon payment of the Rentals and the other payments required hereunder and observing and performing all the terms, covenants, and conditions on the State University's part to be observed and performed, may peaceably and quietly have, hold and enjoy the Facilities.

SECTION 7.03. Compliance with Laws and Regulations. The State University will, at its own cost and expense, promptly comply with, or cause to be complied with, all laws, rules, regulations and other governmental requirements, whether or not the same require structural repairs or alterations, which may be applicable to the Project or a Facility or the use or manner of use of a Facility, including but not limited to the provisions of the Act, the Education Law of the State and the rules and regulations promulgated thereunder; ~~provided, however, that the State University's obligation to comply with any such law, rule, regulation or governmental requirement shall be suspended during any contest thereof in good faith by the State University, which contest is being diligently prosecuted.~~ The State University will also observe and comply with the requirements of all policies and arrangements of insurance at any time in force with respect to a Facility.

SECTION 7.04. Covenant Against Waste. The State University will not do or suffer or permit to exist any waste, damage, disfigurement or injury to, or public or private nuisance upon, any Facility.

SECTION 7.05. Right of Inspection. The State University will, upon prior written notice from the Authority, permit the Authority and the authorized agents and representatives of the Authority to enter the Facilities at all times during usual business hours for the purpose of inspecting the same; ~~provided, however, that no notice need be given prior to an inspection incident to any casualty or calamity affecting a Facility or to inspect any condition which the Authority reasonably believes creates an imminent threat to the life or safety of the occupants of a Facility.~~

SECTION 7.06. Condition of Premises. Immediately upon the availability of any part of a Facility for use by the State University, the State University shall become thoroughly familiar with the physical condition of such part of the Facility. The Authority makes no representations whatever in connection with the condition of the Facilities, and the Authority shall not be liable for any defects therein.

SECTION 7.07. Assignment and Sale of Facilities. The State University will not sell, sublease or otherwise dispose of or encumber its interest in a Facility except as provided in Section 7.09 hereof. The Agreement may be assigned in whole or in part by the State University upon written consent of the Authority (which consent shall not be unreasonably withheld) but no assignment shall relieve the State University from primary liability for any of its obligations hereunder, and in the event of any such assignment the State University shall continue to remain primarily liable for the payments specified herein and for performance and observance of the other agreements on its part herein provided.

SECTION 7.08. Use of the Facilities. Except as provided in Section 7.09 hereof, the Facilities will be occupied by the State, the State University or any other governmental agency, department, division, commission or board.

SECTION 7.09. Subletting. The State University will not use, rent or sublease space in a Facility, in excess of the space required for its purposes or related purposes, as determined by an Authorized Officer of the State University, if such use, rental or sublease is not authorized or permitted by law, including the Act, or would, in the opinion of Bond Counsel, adversely affect the exclusion of interest on any of the Bonds from gross income for purposes of federal income taxation. No such use, lease or sublease shall have any adverse effect upon the Agreement or affect or reduce the State University's obligations hereunder.

The State University will not rent, sublease or otherwise dispose of all or any portion of a Facility if such rental, sublease or disposition would cause the interest on any of the Bonds to be includable in gross income for purposes of federal income taxation.

~~**SECTION 7.10. Cooperation by the State University.** The State University, whenever requested by the Authority, will provide and certify, or cause to be provided and certified, in form satisfactory to the Authority, such information concerning the State University and the Project, the operations and finances of the State University and such other matters that the Authority considers necessary to enable it to complete and publish an official statement, prospectus, placement memorandum, or other similar document relating to the sale of Bonds, or to enable the Authority to make any reports required by law or regulations of any governmental authority or by the Resolution.~~

SECTION 7.11. Covenant not to Affect the Tax Exempt Status of the Bonds. The State University, so long as it leases a Facility hereunder, will take no action, or permit any action to be taken, with respect to the Project or any Facility which will impair the exclusion of interest on any Bonds from gross income for purposes of federal income taxation; it will not invest or otherwise use the proceeds of the Bonds in a manner which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code, and any proposed or final regulations thereunder as are applicable to any Bond; and neither it nor any

"related person," as defined in Section 147(a) (2) of the Code, will, pursuant to an arrangement, formal or informal, purchase Bonds in an amount related to the amount of any obligation to be acquired by the Authority from the State University.

SECTION 7.12. Environmental Quality Review and Historic Preservation.

The State University will comply with the provisions of Article 8 of the Environmental Conservation Law and the provisions of the Historic Preservation Act of 1980 of the State applicable to the Project, the alteration or expansion of the Facilities or additions thereto. Unless otherwise agreed by the State University and the Authority, the Authority shall assume primary responsibility or lead agency status under such laws and shall take such actions as may be required to be taken by the lead agency or agency with primary responsibility thereunder. The State University and the Authority each agree to cooperate with and provide assistance to the lead agency or the agency with primary responsibility under such laws, including the preparation and provision of such documents as may be reasonably requested of the State University or the Authority as are necessary to enable the lead agency or the agency with primary responsibility to comply with such laws. Except for paying the costs of studies, plans or designs, no money in the Construction Fund shall be spent on a Facility until the provisions of this Section have been complied with.

SECTION 7.13. Hazardous Substances. (a) The State University will not cause or permit to exist, as a result of an intentional or unintentional action or omission on its part, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of a Hazardous Substance where damage may result to the lands, waters, fish, shellfish, wildlife, biota, air and other resources owned, managed, held in trust or otherwise controlled by the State unless said release, spill, leak, etc., is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, State or local governmental authorities.

(b) In the event that a lien is filed against the Leased Property or any part thereof by any federal, State or local authority charged with the enforcement of an environmental protection law or regulation, then the State University will immediately notify the Authority and, within thirty (30) days after the date that the State University is given notice that the lien has been placed against the Leased Property or a part thereof, or sooner if the lienor has commenced steps to cause the Leased Property or part thereof to be sold pursuant to such lien, shall pay the claim and remove the lien from the Leased Property or part thereof or commence and diligently prosecute an action or proceeding contesting such lien or the claim out of which the lien arose; provided, however, that during the pendency of such action or proceeding the State University will furnish a bond satisfactory to the Authority in the amount of the claim out of which the lien arose or furnish other reasonable security satisfactory to the Authority in an amount which, in the reasonable judgment of the Authority, is sufficient to discharge the claim out of which the lien arose; provided, further, that, if at any time during the pendency of such action or proceeding, failure to have removed said lien or to have paid the claim out of which such lien arose in order to prevent the foreclosure of such lien or loss of title to the Leased Property subject thereto, the State University will promptly pay said claim.

(c) In the event that any federal, State or local agency charged with the enforcement of an environmental protection law or regulation serves upon the State University a directive to remove or arrange for the removal of discharge of any Hazardous Substances on the

Leased Property or part thereof, the State University will comply with the directive within thirty (30) days from its date or such shorter period prescribed therein to the satisfaction of such agency or (i) if such directive can not be complied with within such period, the State University promptly commence and diligently prosecute all actions necessary to comply with said directive or (ii) within such period, commence and thereafter diligently prosecute an action or proceeding contesting such directive; provided that so long as such directive is not complied with or during the pendency of such action, the State University shall furnish a bond, cash or other reasonable security satisfactory to the Authority in an amount which, in the reasonable judgment of the Authority, is sufficient to pay the costs of taking the actions required by said directive.

(d) Except as otherwise provided in this Section, the State University promptly will comply with all applicable laws, rules, regulations, orders and directives relating to Hazardous Waste or otherwise concerning environmental conditions upon or applicable to the Leased Property and shall immediately notify the Authority in writing of the discovery, discharge or release of any Hazardous Substance at the Leased Property for which the State University is in any way responsible under any federal, State or local environmental protection law or regulation.

(e) If the Authority, in its reasonable judgment, believes a condition exists with respect to the Leased Property or any part thereof which may be a violation, or with the passage of time may become a violation of any federal, State or local environmental protection law or regulation, the State University, upon the written request of the Authority, will obtain and forward to an engineering or environmental consulting firm selected by the State University with the approval of the Authority (the "Consultant") for testing, on such periodic basis reasonably required by the Authority, representative soil samples of the affected portions of the Leased Property and such other soil samples as the Authority or the Consultant may require. If the Authority or the Consultant determines that, based upon such soil samples, there exists a violation under any federal, State or local environmental protection law, rule or regulation, the State University, promptly after receipt of notice from the Authority that such violation exists, will commence and diligently prosecute all actions necessary to cure such violation.

SECTION 7.14. Parietal Rules. The State University will adopt, and thereafter amend, such rules and regulations relating to student use and occupancy of the Facilities as may be necessary to insure the maximum use and occupancy of the Project at all times.

SECTION 7.15. Compliance with Standards and Policies. The State University will take, through officers and employees subject to its jurisdiction, all appropriate actions to require compliance with any rules and regulations adopted by it relating to the Facilities and in force pursuant hereto.

SECTION 7.16. Consultation with the State University. The Authority will consult with an Authorized Officer of the State University on the terms and timing of proposed sales of Bonds and the contents of all resolutions, certificates, applications, contracts, official statements, prospectuses, placement memoranda or other similar document relating to the sale of Bonds, notices of sale, advertisements, and other documents relating to financing of the Project.

SECTION 7.17. Creation of Liens. Except as permitted hereby, the State University shall not create, cause to be created or suffer or permit the creation of any lien or charge prior or equal to that created hereby on the moneys and investments from time to time on deposit in the Dormitory Income Account.

SECTION 7.18. Further Assurances. The State University, at any and all times, shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights and pledges hereby created or made or intended to be created or made, or which the State University may hereafter become bound to pledge.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

SECTION 8.01. Events of Default. An "event of default" or a "default" shall mean, whenever they are used herein, any one or more of the following events:

(a) Failure by the State University to pay or cause to be paid when due the Rentals to be paid hereunder;

(b) Failure by the State University to pay or to cause to be paid when due any other payment required to be made hereunder, which failure shall continue for a period of thirty (30) days after payment thereof was due;

(c) Failure by the State University to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in paragraphs (a) and (b) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the State University by the Authority, unless by reason of the nature of such failure the same can not be remedied within such thirty (30) day period and the State University has within such period commenced to take appropriate actions to remedy such failure and is diligently prosecuting such actions;

(d) Any representation or warranty of the State University contained herein shall have been at the time it was made or is thereafter untrue in any material respect;

(e) The State University shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the State University seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it for any substantial part of its property; or the State University shall authorize any of the actions set forth above in this paragraph (e); or

(f) An order or decree appointing a receiver of one or more of the Facilities or any part thereof shall be entered with the consent or acquiescence of the State University or such order or decree shall be entered without the acquiescence or consent of the State University if it shall not be vacated, discharged or stayed within ninety (90) days after entry.

SECTION 8.02. Remedies. Whenever any event of default referred to in Section 8.01 hereof shall have happened and be continuing, any one or more of the following remedial steps may be taken:

(a) The Authority may re-enter and take possession of one or more of the Facilities without terminating the Agreement, and sublease the same for the account of the State University, holding the State University liable for the difference in the rent and other amounts paid by the sublessee in such subleasing and the rents and other amounts required to be paid by the State University hereunder;

(b) The Authority may terminate the Lease Term, exclude the State University from possession of one or more of the Facilities and use its best efforts to lease such Facilities for the account of the State University, holding the State University liable for all rent and other amounts due hereunder and not paid by such other lessee;

(c) To the extent the same may be permitted by law, the Authority may terminate the Lease Term, exclude the State University from possession of one or more of the Facilities and sell such Facilities, holding the State University liable for all rent and other amounts due hereunder and not paid for by such purchaser; or

(d) The Authority may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the State University hereunder.

Any amounts collected pursuant to action taken under this Section shall be applied in proportion to the total principal amount of Bonds then Outstanding in accordance with the provisions of the Resolution, or if the Bonds and all other amounts due hereunder have been fully paid (or provision for payment thereof has been made), such amounts shall be paid to the State University.

SECTION 8.03. Reinstatement. Notwithstanding any termination, except with respect to any Facility and Leased Property appertaining thereto for which in accordance with the provisions of Section 8.02 hereof the Authority shall have entered into an agreement providing for the reletting thereof for a period of at least one year, if all arrears of interest on Outstanding Bonds and interest on overdue installments of principal, premium, if any, and (to the extent permitted by law) interest on such Bonds, at a rate per annum equal to the highest rate per annum borne by any of the Outstanding Bonds, and the principal and premium (if any) on all Bonds then Outstanding which have become due and payable otherwise than by reason that the principal amount thereof shall have been declared by the Trustee to be immediately due and payable, and all other sums payable under the Resolution, except the principal of and the interest on such Bonds which by reason of such declaration shall have become due and payable, shall have been

paid, all other things shall have been performed in respect of which there was a default and there shall have been paid the reasonable fees and expenses, including Administrative Expenses, of the Trustee and such declaration under the Resolution is annulled, then the State University's default hereunder shall be waived without further action by the Trustee or the Authority. Upon such payment and waiver, the Agreement shall be fully reinstated, as if it had never been terminated, and the State University shall be restored to the use, occupancy and possession of the Facilities and Leased Property.

SECTION 8.04. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 8.05. Waiver and Non-Waiver. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE IX TERMINATION OF AGREEMENT

SECTION 9.01. Termination of Agreement by Authority. If, because moneys are not legally available to the State University for such purpose, the State University (i) fails to pay when due the payments to be paid hereunder or (ii) fails to observe and perform any covenant or agreement on its part to be observed or performed hereunder, the Authority shall have the right to terminate the Agreement.

In order to exercise such right to terminate the Agreement, the Authority shall, at least thirty (30) days prior to the exercise of such right, notify the State University in writing of the exercise of its rights pursuant to this Section, the basis therefor and the date fixed for such termination.

Upon such termination neither the State University nor the Authority shall have any further obligations hereunder, except that the State University's obligations under Section 4.03 hereof pertaining to indemnification and the State University's obligations to pay any amounts then due and owing under Section 4.01 hereof shall survive such termination.

SECTION 9.02. Right to Lease or Sell Project. Except as otherwise provided in Article X hereof, upon the exercise of its right to terminate the Agreement pursuant to Section 9.01 hereof, the Authority shall exclude the State University from possession of the Leased Property and the Facilities and use its best efforts to lease the Leased Property and the Facilities to another party or, to the extent permitted by law, sell the Leased Property and the Facilities.

Any amounts collected pursuant to action taken under this Section shall be applied in accordance with the Resolution.

SECTION 9.03. Reinstatement. Notwithstanding any termination hereof by the Authority in accordance with the provisions of this Article IX, except with respect to any Facility and Leased Property appertaining thereto which shall have been sold by the Authority or in connection with which the Authority shall have entered into an agreement providing for the lease of a Facility for a period of at least one year, if all arrears of interest on the then Outstanding Bonds and interest on overdue installments of principal, premium, if any, and (to the extent permitted by law) interest on such Bonds, at a rate per annum equal to the highest rate per annum borne by any of the Bonds, and the principal and premium (if any) on all Bonds then Outstanding which have become due and payable otherwise than by reason that the principal of the Outstanding Bonds shall have been declared by the Trustee to be immediately due and payable, and all other sums payable under the Resolution, except the principal of and the interest on such Bonds which by reason of such declaration shall have become due and payable, shall have been paid, and such declaration under the Resolution is annulled, and if the State University has agreed to pay or provide for the payment of the payments to be paid hereunder and if the State University observes or performs or agrees to observe or perform all covenants or agreements on its part to be observed or performed hereunder, the Agreement shall be fully reinstated, as if it had never been terminated, and the State University shall be restored to the use, occupancy and possession of the Leased Property and the Facilities.

ARTICLE X OPERATION OF PROJECT BY THE AUTHORITY

The State University and the Authority, upon exercise by the Authority of the remedy provided in Section 8.02 (a), (b) or (c) hereof or upon termination of the Agreement pursuant to Section 9.01 hereof, each agree as follows:

SECTION 10.01. State University as Agent. The Authority hereby appoints the State University as its agent to supervise and conduct the operation, maintenance, repair and replacement of the Project in accordance with the provisions, terms and conditions of the Agreement. The Authority shall pay all costs of operation, maintenance, repair and replacement of the Project. Necessary sub-agents and employees shall be appointed or hired by the Authority on the recommendation of the State University and their wages, salaries or other compensation shall be paid by the Authority. All other expenses of operation, maintenance, repair and replacement incurred by the State University, as agent, shall be paid by the Authority provided the same are in accordance with, and within the amounts set forth in the budget adopted by the Authority.

SECTION 10.02. Termination of Agency Relationship. In the event that the State University shall not operate, maintain, repair and replace the Project, as agent for the Authority, to the satisfaction of the Authority, the Authority may give written notice to the State University setting forth the conditions giving rise to such dissatisfaction and requiring the State University to correct such conditions. If such conditions are not corrected to the satisfaction of the Authority within sixty (60) days after the giving of such notice, the Authority thereafter, upon thirty (30) days' written notice to the State University, may terminate the power of the

State University to act as agent for the Authority in relation to the Project. Thereafter, the Project shall be directly operated, maintained, repaired and replaced by the Authority.

SECTION 10.03. Covenants as to Fees and Charges. (a) The amounts, time and manner of payment of all rents, charges and fees charged students and other persons relating to the Project, including rentals charged students and other persons for occupancy of rooms in the Project, shall be fixed by the Authority; provided, however, that the amounts, time and manner of payment thereof permit full compliance with the provisions of paragraph (c) of this Section. The State University hereby agrees to collect or cause to be collected such rents, charges and fees as agent of the Authority.

(b) The Authority, upon thirty (30) days notice in writing to the State University, may revise the amount of any rents, charges and fees charged students and other persons relating to the Project. The State University, at any time, shall have the right to consult with the Authority concerning the amounts fixed or to be fixed for such rents, charges and fees.

(c) The rents, charges and fees fixed by the Authority shall be at least sufficient at all times, together with any other moneys available to the Authority: (i) to pay the principal or Sinking Fund Installments of and interest on all Bonds as the same become due and payable; (ii) to pay the costs of operation, maintenance, repair and replacement of the Project; (iii) to maintain the Dormitory Income Account at the Dormitory Income Account Requirement; and (iv) to pay the fees and expenses of the Trustee and the reasonable and proper share of the administrative expenses of the Authority incurred by reason of its ownership, financing and operation of the Project.

(d) The State University shall adopt and amend from time to time, as may be necessary, rules and regulations requiring suspension of any student or other person who shall fail to make payment of any such rents, charges and fees on or before the date when due; provided, however, that the State University, with the written approval of the Authority in any case involving undue hardship, may extend the time within which payment thereof must be made. In the event that a student shall withdraw, be dismissed, or for any other reason cease to be enrolled prior to the expiration of a semester, he shall be entitled to a rebate of so much of the rents, charges and fees, which are due and owing or have been paid for such semester, as the Authority by rule or regulation shall have determined to be equitable under the circumstances.

(e) The State University covenants to adopt and amend from time to time, as may be necessary, reasonable and proper rules and regulations to preserve good order in the Project and to impose upon students and other persons charges for reimbursement for damage to, or destruction of the Project, which rules and regulations shall also require the appropriate authorities to take disciplinary action against any student or other person who shall violate any rules or regulations or who shall fail to pay any charge for such reimbursement imposed by the State University.

SECTION 10.04. Custody and Application of Rents, Fees and Charges. All moneys collected and received for rents, charges and fees for reimbursement by students and other persons for damage to or destruction of the Project shall be the property of the Authority. The chief fiscal officer of each college or institution, or such other officer or employee thereof as

the Authority with the written approval of the State University shall designate, shall act as agent of the Authority to collect and receive such moneys. The Authority may fix the times and method of accounting for and paying over such moneys. When required by the Authority, any such officer or employee who is designated as agent of the Authority pursuant hereto, shall annually execute and file with the Authority a bond conditioned that he will truly keep, pay over, and account for all moneys belonging to the Authority coming into his hands as such agent. Such bond shall be in such form and such amount and with such sureties as the Authority shall direct and approve. The Authority at any time may require such agent to file a new bond for such bond with such sureties as the Authority may approve. Any expense occasioned by the execution of a bond required pursuant to this Section shall be paid by the Authority.

ARTICLE XI CONVEYANCE OF PROJECT

SECTION 11.01. Conveyance upon Expiration of Lease Term. When the Lease Term has expired and all of the Bonds, including principal, interest and redemption premium, if any, and all other obligations incurred and to be incurred by the Authority in connection with the Project and the Facilities hereunder and under the Resolution have been paid in full or provision has been made for such payment in accordance with the Resolution, the Authority shall transfer, convey, release, assign and set over to the State all of the Authority's right, title and interest in and to the Leased Property and the Facilities by a good and sufficient quit claim deed or such other legal instruments as the Authority and the State University may determine to be necessary or appropriate therefor. The State University shall bear all costs and expenses in connection with the preparation of the documents of conveyance and the delivery thereof and all fees, assessments, taxes and charges payable in connection with the conveyance of title to the Leased Property and the Facilities. Upon conveyance of title and payment therefor as aforesaid, the Agreement shall cease and terminate and all obligations of the State University hereunder, except under Section 4.03 hereof pertaining to indemnification and the obligation of the State University to pay any amounts then due and owing under Sections 4.01(b) or 4.01(d) hereof, shall be terminated and extinguished.

SECTION 11.02. Abandonment, Withdrawal and Sale of Facilities. Notwithstanding any other provisions hereof and so long as no Event of Default on the part of the State University is occurring hereunder, the acquisition, design, construction, reconstruction, rehabilitation, improvement or otherwise providing, furnishing and equipping of any Facility or part thereof may be abandoned and any Facility or part thereof may be withdrawn from the Project, with the written consent of the Authority. Prior to any such abandonment or withdrawal, except in the case of a Defeased Facility, the State University shall first deliver to the Authority and the Trustee a certificate or certificates signed by an Authorized Officer of the State University stating that such Facility or part thereof is no longer useful or necessary in the operation of the dormitory program of the State University, and that such abandonment or withdrawal will not adversely affect the State University's ability to meet its obligations under this Agreement.

Any Facility withdrawn from the Project may be sold for such amount and upon such terms as the Authority and the State University may agree. Except in the case of a Defeased Facility, the proceeds of such sale, up to the principal amount of Outstanding Bonds

issued in connection with such Facility plus the accrued interest premium payable thereon, if any, on the first date thereafter on which such Bonds can be redeemed at the election of the Authority, remaining after deducting therefrom (i) the costs and expenses incurred in connection with such sale and (ii) the Costs of such Facility and any other expenses, liabilities of and moneys owed to the Authority by reason of its undertaking to provide such Facility, shall be paid to the Authority for deposit to the credit of the Construction Fund or applied to the redemption of Outstanding Bonds issued in connection with such Facility, in accordance with the written direction of an Authorized Officer of the Authority, except that such amount may, with the prior written consent of the Authority and the Director of the Division of Budget, which consents shall not be unreasonably withheld or delayed, be used by the State University for any other purpose unless in the opinion of Bond Counsel such use would adversely affect the exclusion of interest on any of the Bonds from gross income for purposes of federal income taxation. In lieu of paying such proceeds to the Authority for the redemption of Bonds, there may be paid to the Authority an amount sufficient to purchase Defeasance Securities the principal of and interest on which, when due, will provide moneys which, together with the moneys, if any, paid to the Authority at the same time, shall be sufficient to pay when due the principal, Sinking Fund Installments, if any, or Redemption Price and interest due and to become due on an aggregate principal amount of the Bonds issued in connection with such Facility equal to the amount required to be paid to the Authority pursuant to the immediately preceding sentence.

SECTION 11.03. Conveyance upon Withdrawal. Upon the withdrawal of a Facility from the Project, the Authority shall contemporaneously convey to or upon the order of the State University all of the Authority's right, title and interest in and to the Facility and the Leased Property appertaining thereto by a good and sufficient quit claim deed or such other legal instruments as the Authority and the State University may determine to be necessary or appropriate therefor. The State University shall bear all costs and expenses in connection with the preparation of the documents of conveyance and the delivery thereof and all fees, assessments, taxes and charges payable in connection with the conveyance of title to such Facility and Leased Property. Upon conveyance of title and payment therefor as aforesaid, the Agreement shall cease and terminate with respect to such Facility and Leased Property and all obligations of the State University hereunder relating thereto, ~~except under Section 4.03 hereof~~ pertaining to indemnification and the obligation of the State University to pay any amounts then due and owing under Sections 4.01(b) or 4.01(d) hereof, shall be terminated and extinguished.

ARTICLE XII MISCELLANEOUS

SECTION 12.01. Surrender of Possession. Except as otherwise expressly provided hereunder and except a Facility and the Leased Property appertaining thereto conveyed to the State, at the termination of the Lease Term prior to its expiration, the State University agrees to surrender possession of the Leased Property and Facilities peacefully and promptly to the Authority in good condition, loss by fire or other casualty covered by insurance, condemnation and ordinary wear, tear and obsolescence only excepted.

In the event of any surrender of possession of a Facility or any Leased Property by the State University upon the termination of the Lease Term prior to its expiration, the State University agrees to provide, upon reasonable terms, such electric, heat and other utilities to the

Authority for use at such Facility or Leased Property as the State University may have theretofore provided. It is the intent of the parties hereto that the covenant contained in the preceding sentence shall survive the expiration or sooner termination of the Lease Term upon any surrender of possession of such Facility or Leased Property by the State University.

SECTION 12.02. Successors and Assigns. The Agreement shall inure to the benefit of and shall be binding upon the State University, the Authority and their respective successors and assigns, subject, however, to the provisions of Sections 7.07, 7.08 and 7.09 hereof.

SECTION 12.03. Severability. In the event any one or more of the covenants, stipulations, promises, obligations and agreements herein on the part of the Authority or the State University to be performed should be contrary to law, then such covenant or covenants, stipulation or stipulations, promise or promises, obligation or obligations, or agreement or agreements shall be null and void, shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, obligations and agreements herein contained and shall in no way affect the validity or enforceability of the other provisions hereof.

SECTION 12.04. Amendments, Changes and Modifications. The Agreement may be amended, changed or modified in any respect or any provision hereof waived; provided, however, that no such amendment, change, modification or waiver shall be made other than pursuant to a written instrument signed by the Authority and the State University; provided, further, that no amendment, change or modification shall take effect unless and until (i) if the consent of Holders of Outstanding Bonds is required by the Resolution, there shall have been filed with the Trustee the written consents of the Holders of the percentages of Outstanding Bonds specified in the Resolution, (ii) if the consent of the Trustee is required by the Resolution, the Trustee shall have consented thereto and (iii) an executed copy of such amendment, change or modification, certified by an Authorized Officer of the Authority, shall have been filed with the Trustee.

SECTION 12.05. Amounts Remaining Under Bond Resolution. It is agreed by the parties hereto that any amounts remaining in any fund or account created under the Resolution, upon expiration or sooner termination of the Lease Term, as provided herein, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Resolution) and the fees, charges and expenses of the Trustee and paying agents and the Authority in accordance herewith and with the Resolution, shall belong to and be paid to the State University.

SECTION 12.06. Compliance with Resolution. The State University hereby approves of and agrees to the provisions of the Resolution. The State University agrees to do all things within its power in order to enable the Authority to comply with all requirements and to fulfill all covenants of the Resolution which require the State University to comply with requests or obligations so that the Authority will not be in default in the performance of any covenant, condition, agreement or provision of the Resolution.

SECTION 12.07. Investment of Moneys. The State University hereby acknowledges that the Authority may in its sole discretion invest or direct the investment of

certain moneys held under the Resolution as provided therein and that no representation or warranty has been made by the Authority with respect to interest rates on, or the amount to be earned as a result of, any such investment. Neither the Authority nor the Trustee shall have any liability arising out of or in connection with the making of any investment authorized by the provisions of Article VI of the Resolution in the manner provided therein, for any depreciation in value of any investment or for any loss, direct or indirect, resulting from any such investment.

SECTION 12.08. Disclaimer of Personal Liability. No recourse shall be had against or liability incurred by any member of the Authority or any officer or employee of the Authority or of the State University, or any person executing the Agreement for any covenants and provisions hereof or for any claims based thereon.

SECTION 12.09. Approvals Required. The Agreement shall not become effective until and unless it is approved by the Attorney General of the State, the Comptroller of the State and the Director of the Budget of the State. An approval by an authorized deputy of any such officers shall be deemed the approval of such officer.

SECTION 12.10. Counterparts. The Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

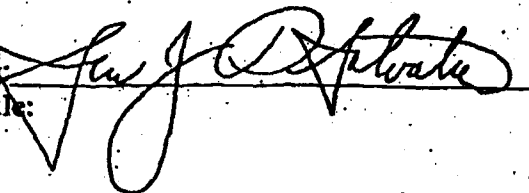
SECTION 12.11. Headings. The headings preceding the text of the several Articles and Sections hereof and exhibits appended hereto and any table of contents appended to copies hereof shall be solely for convenience of reference and shall not constitute a part hereof nor shall they affect its meaning, construction or effect.

SECTION 12.12. Notices. Any notices or other instruments required to be given or delivered pursuant hereto shall be in writing and shall be delivered by hand against the written receipt therefor or sent by registered or certified mail, in the case of the Authority, addressed to it to the attention of the Authority's Executive Director with a copy to the Authority's General Counsel, at 515 Broadway, Albany, New York 12207-2964; in the case of the State University, ~~addressed to it to the attention of the Chancellor of the State University,~~ with a copy to the State University's General Counsel and Controller, at State University Plaza, Albany, New York 12246; in the case of the Trustee, addressed to it at the principal corporate trust office of the Trustee at the addresses of such principal corporate trust office; or, in each case, to such other individual and at such other address as the person to be notified shall have specified by notice to the other persons.

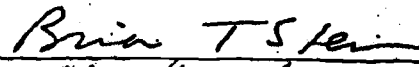
SECTION 12.13. Governing Laws. The Agreement shall be governed and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Authority has caused this instrument to be executed in its name by an Authorized Officer of the Authority, as its duly Authorized officer, and the State University has caused this instrument to be executed in its name by a duly authorized officer of the State University, as its duly authorized officer, all as of the day and year first above written.

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

By: 
Title:

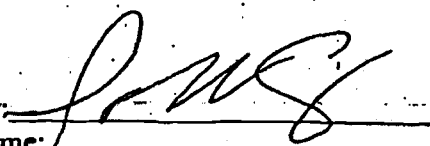
STATE UNIVERSITY OF NEW YORK

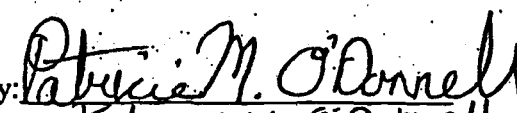
By: 
Title: *vice Chancellor for Finance and Business*

The foregoing Lease and Agreement, dated as of September 24, 2003, by and between the Dormitory Authority of the State of New York and the State University of New York is hereby approved:

**DIRECTOR OF THE BUDGET OF
THE STATE OF NEW YORK**

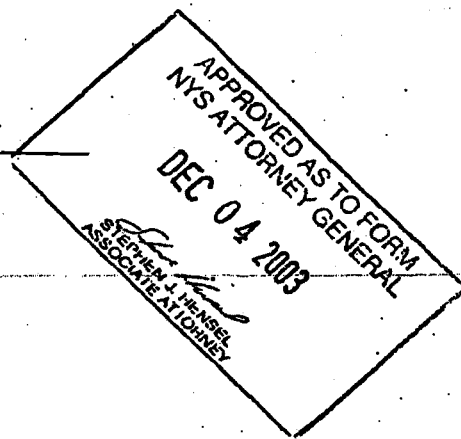
**COMPTROLLER OF THE
STATE OF NEW YORK**

By: 
Name: _____
Title: _____
Dated: _____

By: 
Name: Patricia M. O'Donnell
Title: CMS4
Dated: 12-5-03

**ATTORNEY GENERAL OF THE
STATE OF NEW YORK**

By: _____
Name: _____
Title: _____
Dated: _____



SCHEDULE A

**Conditions Affecting Title to
Particular Facilities**

NONE