

Draft Date 01/25/10

THE FAU FINANCE CORPORATION

Issuer

and

U.S. BANK NATIONAL ASSOCIATION

Trustee

TRUST INDENTURE

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Capital Improvement Revenue Bonds  
(Innovation Village Project),  
Series 2010A and Subordinate Series 2010B

Dated as of February 1, 2010

This instrument also constitutes a security agreement under the laws of the State of Florida.

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE I. DEFINITIONS.....	2
ARTICLE II. THE BONDS .....	16
SECTION 2.01. AUTHORIZATION OF THE SERIES 2010 BONDS AND SERIES 2010 PROJECT.....	16
SECTION 2.02. TERMS OF SERIES 2010 BONDS.....	17
SECTION 2.03. EXECUTION; LIMITED OBLIGATIONS .....	19
SECTION 2.04. AUTHENTICATION.....	19
SECTION 2.05. FORM OF BONDS .....	19
SECTION 2.06. DELIVERY OF BONDS .....	20
SECTION 2.07. MUTILATED, LOST, STOLEN OR DESTROYED BONDS .....	21
SECTION 2.08. REGISTRATION AND EXCHANGE OF BONDS; PERSONS TREATED AS OWNERS.....	21
SECTION 2.09. DESTRUCTION OF BONDS .....	23
SECTION 2.10. APPLICATION OF SERIES 2010 BOND PROCEEDS .....	23
SECTION 2.11. TEMPORARY BONDS .....	23
SECTION 2.12. BOOK-ENTRY ONLY SYSTEM.....	23
SECTION 2.13. ISSUANCE OF ADDITIONAL SENIOR BONDS .....	25
SECTION 2.14. REFUNDING OUTSTANDING BONDS.....	28
SECTION 2.15. SUBORDINATE BONDS. ....	28
SECTION 2.16. ISSUANCE OF ADDITIONAL SUBORDINATE BONDS .....	29
ARTICLE III. REDEMPTION OF SERIES 2010 BONDS BEFORE MATURITY .....	30
SECTION 3.01. REDEMPTION PROVISIONS .....	30
SECTION 3.02. RESERVED .....	32
SECTION 3.03. NOTICE OF REDEMPTION.....	32
SECTION 3.04. REDEMPTION PAYMENTS .....	33
SECTION 3.05. CANCELLATION.....	33
SECTION 3.06. PARTIAL REDEMPTION OF BONDS.....	34
ARTICLE IV. GENERAL COVENANTS.....	34
SECTION 4.01. PAYMENT OF PRINCIPAL AND INTEREST.....	34
SECTION 4.02. PERFORMANCE OF COVENANTS BY ISSUER.....	34
SECTION 4.03. INSTRUMENTS OF FURTHER ASSURANCE.....	34
SECTION 4.04. RECORDING AND FILING.....	35
SECTION 4.05. LIST OF BONDHOLDERS.....	35
SECTION 4.06. FINANCIAL STATEMENTS.....	35
SECTION 4.07. TAX COVENANTS.....	35
SECTION 4.08. COVENANT TO COMPLY WITH REQUIREMENTS OF THE ACT .....	37

SECTION 4.09.	CONTINUING DISCLOSURE COVENANTS.....	37
SECTION 4.10.	RATE COVENANT .....	37
SECTION 4.11.	RESERVED.....	38
SECTION 4.12.	INDEMNIFICATION OF TRUSTEE .....	38
ARTICLE V.	REVENUES AND FUNDS.....	38
SECTION 5.01.	SOURCE OF PAYMENT OF BONDS; COLLECTION OF PLEDGED REVENUES.....	38
SECTION 5.02.	CREATION OF FUNDS AND ACCOUNTS.....	39
SECTION 5.03.	APPLICATION OF SERIES 2010 BOND PROCEEDS .....	40
SECTION 5.04.	DISPOSITION OF SYSTEM REVENUES.....	42
SECTION 5.05.	USE OF MONEYS IN THE DEBT SERVICE FUND .....	44
SECTION 5.06.	DESIGNATION OF RESERVE REQUIREMENTS; APPLICATION OF MONEYS IN THE RESERVE FUND; APPROVAL OF RESERVE PRODUCT .....	46
SECTION 5.07.	USE OF MONEYS IN THE 2010 REBATE ACCOUNT .....	50
SECTION 5.08.	USE OF MONEYS IN THE REPAIR AND REPLACEMENT FUND .....	51
SECTION 5.09.	USE OF MONEYS IN THE SURPLUS FUND.....	51
SECTION 5.10.	NONPRESENTMENT OF BONDS.....	52
SECTION 5.11.	MONEY TO BE HELD IN TRUST .....	52
SECTION 5.12.	REQUIREMENT TO DELIVER ANNUAL BUDGET .....	52
SECTION 5.13.	AMOUNTS REMAINING IN FUNDS AND ACCOUNTS.....	52
ARTICLE VI.	INVESTMENT OF MONEY.....	53
ARTICLE VII.	DISCHARGE OF INDENTURE; DEFEASANCE OF BONDS.....	55
ARTICLE VIII.	DEFAULT PROVISIONS AND REMEDIES OF THE TRUSTEE AND BONDHOLDERS .....	57
SECTION 8.01.	DEFAULTS; EVENTS OF DEFAULT.....	57
SECTION 8.02.	ACCELERATION .....	57
SECTION 8.03.	REMEDIES; RIGHTS OF BONDHOLDERS.....	58
SECTION 8.04.	RIGHT OF BONDHOLDERS TO DIRECT PROCEEDINGS.....	59
SECTION 8.05.	APPLICATION OF MONEY .....	59
SECTION 8.06.	REMEDIES VESTED IN THE TRUSTEE .....	61
SECTION 8.07.	RIGHTS AND REMEDIES OF BONDHOLDERS .....	61
SECTION 8.08.	TERMINATION OF PROCEEDINGS .....	62
SECTION 8.09.	WAIVERS OF EVENTS OF DEFAULT.....	62
SECTION 8.10.	NOTICE OF DEFAULTS UNDER SECTION 8.01(C); OPPORTUNITY OF THE ISSUER TO CURE SUCH DEFAULTS .....	62
ARTICLE IX.	TRUSTEE.....	63

SECTION 9.01.	ACCEPTANCE OF THE TRUSTS .....	63
SECTION 9.02.	FEEs, CHARGES AND EXPENSES OF THE TRUSTEE AND PAYING AGENTS.....	65
SECTION 9.03.	NOTICE TO BONDHOLDERS IF DEFAULT OCCURS .....	66
SECTION 9.04.	INTERVENTION BY TRUSTEE.....	66
SECTION 9.05.	SUCCESSOR TRUSTEE.....	66
SECTION 9.06.	RESIGNATION BY TRUSTEE.....	66
SECTION 9.07.	REMOVAL OF TRUSTEE .....	67
SECTION 9.08.	APPOINTMENT OF SUCCESSOR TRUSTEE BY THE BONDHOLDERS; TEMPORARY TRUSTEE .....	67
SECTION 9.09.	CONCERNING ANY SUCCESSOR TRUSTEE .....	67
SECTION 9.10.	DESIGNATION AND SUCCESSION OF PAYING AGENT .....	68
SECTION 9.11.	APPOINTMENT OF CO-TRUSTEE .....	68
SECTION 9.12.	TRUSTEE NOT LIABLE FOR FAILURE OF OTHERS TO ACT .....	69
SECTION 9.13.	WAIVER OF CONFLICT OF INTEREST OF TRUSTEE.....	70
ARTICLE X.	SUPPLEMENTAL INDENTURES.....	70
SECTION 10.01.	SUPPLEMENTAL INDENTURES NOT REQUIRING CONSENT OF BONDHOLDERS .....	70
SECTION 10.02.	SUPPLEMENTAL INDENTURES REQUIRING CONSENT OF BONDHOLDERS .....	71
SECTION 10.03.	DISCRETION OF ISSUER AND TRUSTEE TO EXECUTE SUPPLEMENTAL INDENTURE.....	72
SECTION 10.04.	NOTICE OF AMENDMENTS.....	73
ARTICLE XI.	MISCELLANEOUS.....	73
SECTION 11.01.	CONSENTS, ETC., OF BONDHOLDERS.....	73
SECTION 11.02.	PROVIDING INFORMATION TO RATING AGENCIES AND BOND INSURER.....	73
SECTION 11.03.	LIMITATION OF RIGHTS.....	74
SECTION 11.04.	SEVERABILITY .....	74
SECTION 11.05.	NOTICES.....	74
SECTION 11.06.	PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS .....	74
SECTION 11.07.	COUNTERPARTS.....	74
SECTION 11.08.	APPLICABLE PROVISIONS OF LAW; MEMBERS OF ISSUER NOT LIABLE.....	75
SECTION 11.09.	CAPTIONS OR HEADINGS IN THIS INDENTURE .....	75
SECTION 11.10.	THIRD PARTY BENEFICIARIES .....	75
EXHIBIT A - FORM OF REQUISITION FOR CONSTRUCTION FUND		
EXHIBIT B - FORM OF BONDS		
EXHIBIT C - FORM OF INVESTOR LETTER		

EXHIBIT D – FORM OF REQUISITION FOR REPAIR AND REPLACEMENT FUND

## TRUST INDENTURE

**THIS TRUST INDENTURE** is made and entered into as of February 1, 2010 by and between **THE FAU FINANCE CORPORATION** (the "Issuer") a not-for-profit corporation organized and existing under the laws of the State of Florida, a direct support organization of the Florida Atlantic University (the "University") pursuant to Section 1004.28, Florida Statutes and an instrumentality of the University and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, authorized to accept and execute trusts of the character herein set out under and by virtue of the laws of the United States and the State of Florida, with a corporate trust office located in Orlando, Florida, as trustee (together with any successor trustee hereunder, the "Trustee").

### WITNESSETH:

**WHEREAS**, the Issuer is authorized and empowered by the Act (as hereinafter defined) to issue its Capital Improvement Revenue Bonds (Innovation Village Project), Series 2010A (the "Series 2010A Bonds") and its Capital Improvement Subordinate Revenue Bonds (Innovation Village Project), Series 2010B (the "Series 2010B Bonds") and use the proceeds thereof to pay the costs of the Series 2010 Project, as defined herein; and

**WHEREAS**, the parties hereto now wish to enter into this Trust Indenture dated as of February 1, 2010, as amended and supplemented from time to time (the "Indenture") to set forth the terms by which Bonds shall be issued and secured, the proceeds of Bonds shall be applied and certain other terms regarding the Trustee's obligations, the Issuer's obligations and other matters; and

### NOW, THEREFORE, THIS TRUST INDENTURE

### WITNESSETH:

### GRANTING CLAUSE FIRST

The Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the owners thereof, and of the sum of One Dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure (i) the payment of the principal of and interest on the Bonds according to their tenor and effect, (ii) the payment of all amounts due a Credit Provider under or pursuant to a Credit Facility, (iii) the payment of all amounts due a Bond Insurer under or pursuant to a Bond Insurance Policy, (iv) the payments of all amounts due under any Hedging Agreement, and (v) the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby grant a security interest in all right, title and interest of the Issuer in, to and under the Management Agreement, including the Issuer's right to receive System

Revenues collected thereunder, the Ground Sublease Agreement, the Development Agreement and the Pledged Revenues (as hereinafter defined) to the Trustee, and its successors in trust and assigns forever (collectively, the "Trust Estate"), for the securing of the performance of the obligations of the Issuer hereinafter set forth.

**IN TRUST NEVERTHELESS**, upon the terms and trusts herein set forth for the benefit, security and protection of all present and future owners of the Bonds issued under and secured by this Indenture (as hereinafter defined) with the privileges, priorities and distinctions as to the lien and otherwise herein set forth.

## **ARTICLE I. DEFINITIONS**

The following words and phrases shall have the following meanings:

**"Act"** means Chapter 617, Section 1004.28 and Section 1010.62, Florida Statutes, and other applicable provisions of law.

**"Additional Bonds"** means Additional Senior Bonds and Additional Subordinate Bonds issued under this Indenture in compliance with the terms, conditions and limitations contained herein.

**"Additional Senior Bonds"** means additional obligations issued under this Indenture which will have a lien on the Pledged Revenues on parity with the lien of the Series 2010A Bonds thereon.

**"Additional Subordinate Bonds"** means additional obligations issued under this Indenture which will have a lien on the Pledged Revenues on parity with the lien of the Series 2010B Bonds thereon.

**"Amortization Installment"** means the funds to be deposited in the Debt Service Fund in a given Bond Year for the payment at maturity or redemption of a portion of Term Bonds of a designated Series, as established herein or by supplemental indenture entered into upon the delivery of that Series of Term Bonds.

**"Authorized Denominations"** means, unless otherwise provided by supplemental indenture with respect to a Series of Bonds, \$5,000 or any integral multiple thereof with respect to the Senior Bonds and \$100,000 and any integral multiple of \$5,000 in excess thereof with respect to Subordinate Bonds.

**"Authorized Depository"** means any bank, trust company, national banking association, savings and loan association, savings bank or other banking association selected by the Issuer as a depository, which is authorized under Florida law to be a depository of public

funds of the Issuer and which has qualified with all applicable state and federal requirements concerning the receipt of Issuer funds.

**"Authorized Officer,"** when used with respect to the Issuer, means the Chairperson or any other officer of the Issuer who is designated by the board of directors of the Issuer as an Authorized Officer for purposes of the Trust Indenture in a written certificate signed by the Chairperson of the Corporation and filed with the Trustee. The term "Authorized Officer," when used with respect to B-C Management LLC, means the President, or Vice President or any other officer or employee of B-C Management LLC designated by B-C Management LLC as an Authorized Officer for purposes of the Trust Indenture in a written certificate signed by the President of B-C Management, LLC and filed with the Trustee. The term "Authorized Officer," when used with respect to the University, means the Executive Vice President and Chief Authorized Officer or any other officer or employee of the University designated by the President of the University as an Authorized Officer for purposes of the Trust Indenture in a written certificate signed by the President of the University and filed with the Trustee.

**"Beneficial Owner"** means each actual purchaser of the Bonds as recorded by Participants.

**"Bond Counsel"** means a firm of attorneys of nationally recognized standing in matters pertaining to the issuance of bonds by states and their political subdivisions.

**"Bond Insurance Policy"** means the municipal bond new issue insurance policy issued by the Bond Insurer that guarantees the timely payment of principal of and interest on a Series of Senior Bonds, it shall have the meaning, if any, set forth in the supplemental indenture executed in connection with the issuance thereof.

**"Bond Insurer"** means, with respect to any Series of Bonds, the issuer of a Bond Insurance Policy that guarantees payment of principal of and interest on such Series of Bonds, if any.

**"Bond Obligation"** means, as of the date of computation, the sum of: (i) the principal amount of all Current Interest Bonds then Outstanding and (ii) the Compounded Amount on all Capital Appreciation Bonds then Outstanding, if any.

**"Bond Service Requirement"** means for a given Bond Year the remainder, after subtracting any accrued and capitalized interest for that year that has been deposited into the Debt Service Fund or a separate account in the Construction Fund for that purpose from the sum of:

(A) The amount required to pay the interest coming due on Outstanding Bonds during that Bond Year, including the accreted interest component of the Compounded Amount of Capital Appreciation Bonds coming due during that Bond Year;



(B) The amount required to pay the principal of Outstanding Serial Bonds and the principal of Outstanding Term Bonds, including the principal component of the Compounded Amounts of Capital Appreciation Bonds maturing in that Bond Year that are not included in the Amortization Installments for such Term Bonds; and

(C) The Amortization Installment for all Series of Outstanding Term Bonds for that Bond Year.

Notwithstanding the foregoing, interest on any Series of Bonds issued as Direct Subsidy Bonds shall be included in the Bond Service Requirement only on a net basis, after taking into account Direct Pay Subsidies expected to be received on such Direct Subsidy Bonds on each respective Interest Payment Date.

**“Bond Year”** means the annual period beginning on the first day of July of each year and ending on the last day of June of the following year.

**“Bondholder”** or **“Holder”** or **“Owner of Bonds”** or **“Owner”** or **“owner”** means the registered owner of any Outstanding Bond.

**“Bonds”** means the Senior Bonds, the Subordinate Bonds and any Additional Bonds issued hereunder.

**“Book-Entry System”** means the system maintained by the Securities Depository described in Section 2.12 herein.

**“Business Day”** means, unless otherwise provided by supplemental indenture with respect to a Series of Bonds, a day on which banking business is transacted in the city or cities in which the Trustee has its principal corporate trust offices and on which the New York Stock Exchange is open.

**“Capital Appreciation Bonds”** means Bonds that bear interest, compounded periodically, that is payable only at maturity or upon redemption prior to maturity in amounts determined by reference to the Compounded Amounts.

**“Chairperson”** means the Chairperson or in the absence of the Chairperson, **[the Vice Chairperson]** of the Issuer.

**“Code”** means the Internal Revenue Code of 1986, as amended, or any applicable corresponding provisions of any future laws of the United States of America relating to federal income taxation, and except as otherwise provided herein or required by the context hereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of the Treasury (including applicable final regulations and temporary regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

**“Compounded Amounts”** means, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond (the principal amount at its initial offering) plus the interest accrued on such Capital Appreciation Bond, compounded periodically, to the date of calculation, determined by reference to the accretion tables contained in such Capital Appreciation Bond or contained or referred to in this Indenture or the supplemental indenture providing for the issuance of such Capital Appreciation Bonds, such interest to accrue at a rate not exceeding the legal rate as set forth in this Indenture or the supplemental indenture of the Issuer providing for the issuance of such Capital Appreciation Bonds. The Compounded Amount of such Capital Appreciation Bonds as of any date not stated in such tables shall be calculated by adding to the Compounded Amount for such Capital Appreciation Bonds as of the last date stated in such tables immediately preceding the date of calculation, a portion of the difference between the Compounded Amount as of such preceding date and the Compounded Amount as of the date shown on the tables immediately succeeding the date of computation, calculated based on the assumption that the Compounded Amount accrues in equal daily amounts on the basis of a year of twelve 30-day months.

**“Construction Fund”** means the account by that name created pursuant to Section 5.02 hereof.

**“Continuing Disclosure Undertaking”** means the Continuing Disclosure Undertaking dated as of \_\_\_\_\_, 2010 entered into by the Issuer with respect to the Series 2010 Bonds.

**“Costs of Issuance Fund”** means the account by that name created pursuant to Section 5.02 hereof.

**“Current Interest Bonds”** means Bonds that bear interest which is payable annually, semiannually or monthly, or such more frequent interval as the Issuer may determine.

**“Debt Service Fund”** means the account by that name created pursuant to Section 5.02 hereof.

**“Default” or “Event of Default”** means any occurrence or event specified in Section 8.01 hereof.

**“Development Agreement”** means the Development Agreement by and between the Issuer and B-C Development, LLC.

**“Direct Subsidy Bonds”** means any Series of Bonds designated by the Issuer as “Build America Bonds” under and pursuant to the authority provided for in the American Recovery and Reinvestment Act of 2009, enacted on February 17, 2009, and in accordance with the guidance included in the Internal Revenue Service’s Notice 2009-26, published on April 3, 2009, as that act and implementing regulations may be extended and expanded from time to time; provided, however, that under no circumstances shall any Direct Subsidy Bonds constitute Qualified School Construction Bonds, as such term is defined in Section 54F of the Code.

**“Direct Pay Subsidies”** means payments received by the Issuer from the United States Treasury or the Internal Revenue Service with respect to Direct Subsidy Bonds pursuant to Section 54AA or 6431 of the Code (as such Sections were added by Section 1531 of the American Recovery and Reinvestment Act of 2009), as such Sections may be expanded or modified from time to time.

**“Dormitory Facilities”** means the Existing Facilities and the Proposed Facilities and shall include any project financed with proceeds of Additional Bonds issued hereunder.

**“DTC”** means The Depository Trust Company, New York, New York.

**“Existing Facilities”** means the six existing on-campus buildings commonly referred to as Algonquin Hall, Business & Professional Women’s Scholarship House, Glades Park Towers, Heritage Park Towers, Indian River Towers, and University Village Apartments containing in the aggregate 2,446 beds.

**“Extraordinary Event”** will have occurred if a change has occurred to Section 54AA or 6431 of the Code (as such Sections were added by Section 1531 of the Recovery Act, pertaining to “Build America Bonds”) pursuant to which the Issuer’s 35% Direct Pay Subsidies from the United States Treasury with respect to the Series of Bonds issued as Direct Subsidy Bonds is reduced or eliminated.

**“Fiscal Year”** means the period commencing on July 1 of each year and ending on the succeeding June 30, or such other consecutive 12-month period as may be hereafter designated as the fiscal year of the Issuer pursuant to general law.

**“Fitch”** means Fitch Ratings and its successors and assigns.

**“Governing Body”** means the board of directors of the Issuer.

**“Governmental Obligations”** means direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which the direct obligation of or the guarantee of the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated AAA by S&P or Aaa by Moody’s (or any combination of the foregoing) and such other obligations as may be approved by the Bond Insurer, if any.

**“Ground Sublease Agreement”** means the Ground Sublease Agreement by and between the Issuer, as ground sublessee and the University, as ground sublessor.

**“Hedging Agreement”** means any interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, commodity agreements and other similar agreements or arrangements designed to protect

against fluctuations in interest rates, currency values or commodity values, in each case to which the Issuer is a party.

**"Housing Consultant"** shall mean a person or firm of engineers, architects, accountants or financial consultants of recognized regional standing in connection with matters relating to the financial condition of multi-family or student housing projects included within the Housing System, selected by the Issuer.

**"Housing System"** means the Existing Facilities and the Proposed Facilities.

**"Indenture"** means this Trust Indenture between the Issuer and the Trustee, and all amendments or supplements hereto.

**"Interest Payment Date"** means any date upon which interest on the Bonds is due and payable in accordance with their terms.

**"Interest Requirement"** means for a given Bond Year the remainder, after subtracting any accrued and capitalized interest for that year that has been deposited into the Debt Service Fund or a separate account in the Construction Fund for that purpose, from the amount required to pay the interest coming due on Bonds during that Bond Year, including the accreted interest component of the Compounded Amount of Capital Appreciation Bonds coming due during that Bond Year; provided, however, interest on any Series of Bonds issued as Direct Subsidy Bonds shall be calculated net of any Direct Pay Subsidies expected to be received during that Bond Year.

**"Investment Obligations"** means, to the extent permitted by law and the Issuer's written investment policy:

- (1) Governmental Obligations;
- (2) Bonds, debentures, notes and other evidence of indebtedness issued or guaranteed by any of the following federal agencies; provided that such obligations are secured by the full faith and credit of the United States of America:
  - U.S. Export - Import Bank (direct obligations or fully guaranteed certificates of beneficial ownership)
  - Farmers Home Administration (certificates of beneficial ownership)
  - Federal Financing Bank
  - Federal Housing Administration Debentures
  - General Services Administration (participation certificates)
  - U.S. Maritime Administration (guaranteed Title XI financing)

- Government National Mortgage Association (GNMA-guaranteed mortgage-backed bonds and GNMA-guaranteed pass-through obligations)
  - U.S. Department of Housing & Urban Development (Project Notes; Local Authority Bonds; New Communities Debentures - U.S. Government guaranteed debentures; U.S. Housing Notes and Bonds - U.S. Government guaranteed public housing notes and bonds);
- (3) Bonds, debentures notes or other evidences of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies:
- (a) Federal Home Loan Bank System
    - Mortgage backed securities and Senior debt obligations
  - (b) Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”)
    - Participation Certificates
    - Mortgage backed securities and Senior debt obligations
  - (c) Federal National Mortgage Association (FNMA or “Fannie Mae”)
    - Mortgage-backed securities and senior debt obligations
    - Senior debt obligations
  - (d) Resolution Funding Corp. (REFCORP) obligations.
  - (e) Farm Credit System
    - Consolidated system-wide bonds and notes;
- (4) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least Am-G; Am or Am and are rated A by Moody’s;
- (5) Interest bearing deposits secured at all times by collateral described in clause (1) and/or (2) above. Such deposits must be issued by commercial banks, savings and loan associations or mutual savings banks; provided that the collateral must be held by a third party and the Bondholders must have a perfected first security interest in the collateral;
- (6) Certificates of deposit, savings accounts, deposit account or money market deposits which are fully insured by FDIC, including BIF and SAIF;
- (7) Guaranteed investment agreements;

(8) Commercial paper which is rated at the time of purchase, "A-1" or better by S&P and "Prime-1" by Moody's;

(9) Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest long-term rating categories assigned by such agencies;

(10) Any state administered investment fund in which the Issuer is statutorily permitted or required to invest;

(11) Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime-1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P;

(12) Repurchase agreements which provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the municipal entity in exchange for the securities at a specified date. Repurchase Agreements ("REPOS") must satisfy the following criteria:

(a) REPOS must be between the municipal entity and a dealer bank or securities firm

(i) Primary dealers on the Federal Reserve reporting dealer list which are rated "A" or better by S&P and Moody's, or

(ii) Banks rated "A" or above by S&P and Moody's.

(b) The written REPO contract must include the following:

(i) Securities which are acceptable for transfer are:

(A) Direct U.S. governments, or

(B) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)

(ii) The term of the REPO may be up to 30 days

(iii) The collateral must be delivered to the Issuer, Trustee (if Trustee is not supplying the collateral) or third party acting as agent for the Trustee (if the Trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

(iv) Valuation of Collateral

(A) The securities must be valued weekly, marked-to market at current market price plus accrued interest

(B) The value of collateral must be equal to 104% of the amount in cash transferred by the Issuer to the dealer bank or security firm under the REPO plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by Issuer, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

**“Issuer”** means The FAU Finance Corporation.

**“Management Agreement”** means the Management Agreement among the Issuer, the University and B-C Management, LLC pursuant to which the University and B-C Management, LLC will manage the Housing System.

**“Management Fee”** means the management fee to be paid by the Issuer to B-C Management, LLC pursuant to the Management Agreement.

**“Managers”** means collectively, the University and B-C Management, LLC

**“Maximum Bond Service Requirement”** means, as of any particular date of calculation, the largest Bond Service Requirement for any remaining Bond Year net of any funded capitalized interest allocable to such Bond Year and on deposit in the Capitalized Interest Account established hereunder, except that with respect to any Bonds for which Amortization Installments have been established, the amount of principal coming due on the final maturity date with respect to such Bonds shall be reduced by the aggregate principal amount or Compounded Amounts, as the case may be, of such Bonds that are to be redeemed or paid from Amortization Installments to be made in prior Bond Years.

**“Moody’s”** means Moody’s Investors Service, Inc. and its successors and assigns.

**“Net Revenues Available for Debt Service”** shall mean System Revenues less Operating Expenses.

**“Notice Address”** means:

(a)

If to the Issuer:	The FAU Finance Corporation 777 Glades Road Administration Building – 345 Boca Raton, FL 33431
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With a copy to:	Florida Atlantic University 777 Glades Road Administration Building – 367 Boca Raton, FL 33431
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(b) As to the Trustee: U.S. Bank National Association  
 Corporate Trust Services  
 500 W. Cypress Creek Road  
 Suite 560  
 Fort Lauderdale, FL 333309

(c) As to the Rating Agency:

**"Operating Budget"** means the operating budget for the Project as proposed by the Managers under the Management Agreement and as approved by the Issuer in accordance with the Management Agreement.

**"Operating Expenses"** means with respect to a Project, actual, reasonable and customary costs, fees and expenses directly attributable to the Project, including without limitation painting, cleaning, repairs and alterations, landscaping and utilities; rubbish removal, certificates, permits and licenses, sewer charges, real and personal property taxes and assessments, if any, payments in lieu of taxes or assessments pursuant to agreements entered into between applicable taxing authorities and the Issuer, insurance premiums; security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, repair and servicing of appliances, equipment, Management Fees due under the Management Agreement, fixtures and furnishing, fees and expenses incurred by the Issuer and the Managers such as accountants, attorneys, consultants and other professionals; fees and expenses of the Trustee; administration expenses of the Issuer; improvements that are not considered capital expenses; excluding any of such amounts which are payable from the Repair and Replacement Fund.

**"Original State Resolution"** means the resolution of the Governing Board of the Division of Bond Finance of the State Board of Administration adopted on July 21, 1993, as amended and supplemented.

**"Outstanding"** or **"Bonds Outstanding"** or **"Outstanding Bonds"** means all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

(A) Bonds canceled after purchase in the open market or because of payment at, or redemption prior to, maturity;



(B) Bonds for the payment or redemption of which cash funds or Governmental Obligations or any combination thereof shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds) in accordance with Article VII hereof; provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements shall have been made therefor, or waiver of such notice shall have been filed with the Trustee; and

(C) Bonds in lieu of which other Bonds have been authenticated under Section 2.07 or 2.08 hereof.

**“Participant”** means one of the entities which is a member of the Securities Depository and deposits securities, directly or indirectly, in the Book-Entry System.

**“Paying Agent”** means any bank or trust company, including the Trustee, designated pursuant to this Indenture to serve as a paying agency or place of payment for the Bonds, and any successors designated pursuant to this Indenture.

**“Pledged Revenues”** means (i) the System Revenues, (ii) moneys on deposit in the funds and accounts established hereunder and investment earnings thereon, but excluding moneys on deposit in the 2010 Rebate Account and the Cost of Issuance Fund, and (iii) with respect to any Series of Bonds designated as Direct Subsidy Bonds, the Direct Pay Subsidies received with respect to that particular Series of Bonds.

**“Project”** means the Series 2010 Project and any qualified projects pursuant to the Act as may be identified by supplemental indenture.

**“Proposed Facilities”** means a 1,218-bed student housing facility comprised of two buildings located on the University’s campus in Boca Raton, Florida.

**“Qualified Independent Consultant”** means one or more such qualified and recognized independent consultants, having favorable repute, skill and experience with respect to the acts and duties required of a Qualified Independent Consultant by a particular section or sections hereof, as shall from time to time be retained by the Issuer for the purposes hereof.

**“Rating Agencies”** means Moody’s, S&P and Fitch and any other nationally recognized rating agency, only to the extent then maintaining a rating on any of the Bonds outstanding hereunder.

**“Rebate Analyst”** means, a qualified rebate analyst engaged by the Issuer.

**“Rebate Year”** means, with respect to a particular Series of Bonds issued hereunder, a one-year period or shorter period from the date of issuance that ends at the close of business on the day in the calendar year selected by the Issuer as the last day of a Rebate Year. The final Rebate Year with respect to a particular Series of Bonds issued hereunder, however, shall end on the date of final maturity of that Series of Bonds.

**“Record Date”** means the fifteenth day of the month preceding any Interest Payment Date (or the date of selection of Bonds for redemption, in the event Bonds are to be redeemed on other than an Interest Payment Date), provided that with respect to overdue interest or interest due on any overdue amount or on other than a regular Interest Payment Date, the Trustee may establish a special record date of not more than 20 days before the date set for payment.

**“Registrar”** means the Trustee or any person designated from time to time by the Issuer, by supplemental indenture, to maintain the registration books for the Bonds issued hereunder or to perform other duties with respect to registering the transfer of Bonds.

**“Repair and Replacement Fund”** shall mean the fund by that name created pursuant to Section 5.02 hereof.

**“Repair and Replacement Fund Requirement”** means an amount to be deposited annually into the Repair and Replacement Fund in an amount equal to \$175 per bed per year, for the Proposed Facilities, increased each year by 3 percent, which amount shall be further adjusted, as necessary, in accordance with a certificate signed by the Authorized Officer of the Issuer filed with the Trustee not less frequently than every five (5) years, commencing on or before October 1, 2015, and which certificate shall be accompanied by a written report of a Housing Consultant describing, in the opinion of such Housing Consultant, the appropriate amount that should be on deposit in the Repair and Replacement Fund in light of (a) the financial condition and the physical condition of the Proposed Facilities, and (b) similar provisions for repair and replacement reserves made with respect to the other housing projects that are comparable to the Proposed Facilities.

**“Requisition for Payment”** means the form by that name described in Section 5.03(C)(i) hereof.

**“Reserve Fund”** means the fund by that name created pursuant to Section 5.02 hereof.

**“Reserve Product”** means bond insurance, a surety bond or a letter of credit or other credit facility used in lieu of a cash deposit in the Reserve Fund and meeting the terms and conditions of Section 5.06 of this Indenture.

**“Reserve Product Provider”** means a nationally recognized bond insurance provider or a bank or other financial institution providing a Reserve Product, who at the time of issuing such Reserve Product satisfies the criteria set forth under Sections 5.06(H) and 5.06(I) hereof.

**“Reserve Requirement”** means with respect to each Series of Bonds issued hereunder, the amount of money, if any, or available amount of Reserve Product, if any, or a combination thereof required by supplemental indenture executed prior to the issuance of such Series of Bonds to be maintained in the account in the Reserve Fund with respect to such Series of Bonds, which will not cause any existing rating on the Bonds or any Series thereof to be lowered, suspended or withdrawn, and which amount shall be available for use only with respect to such

Series of Bonds. With respect to the Series 2010A Bonds, "Reserve Requirement" shall mean with respect to the Series 2010A Bonds, \$\_\_\_\_\_ upon the issuance of the Series 2010A Bonds for the current and all subsequent Bond Years.

**"Responsible Officer"** when used with respect to the Trustee, means any officer within the corporate trust administrative department of the Trustee, including any vice president any assistant vice president, any trust officer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

**"S&P"** means Standard & Poor's, a Division of The McGraw-Hill Companies, and its successors.

**"Secretary"** means the Secretary or any Assistant Secretary of the Issuer.

**"Securities Act"** means the Securities Act of 1933, as amended.

**"Senior Bonds"** mean the Series 2010A Bonds and any Additional Senior Bonds issued hereunder.

**"Serial Bonds"** means all Bonds of a Series other than Term Bonds.

**"Series"** means the Bonds and any portion of the Bonds of an issue authenticated and delivered in a single transaction, payable from an identical source of revenue and identified pursuant to the supplemental indenture authorizing such Bonds as a separate Series of Bonds, regardless of variations in maturity, interest rate, Amortization Installments or other provisions, and any Bonds thereafter authenticated and delivered in lieu of or in substitution of a Series of Bonds issued pursuant to this Indenture.

**"Series 2010 Bonds"** mean the Series 2010A Bonds and the Series 2010B Bonds.

**"Series 2010A Bonds"** means the Issuer's \$\_\_\_\_\_ Capital Improvement Revenue Bonds (Innovation Village Project), Series 2010A, and, in the event all or a portion of the Series 2010A Bonds are issued as Direct Subsidy Bonds, the Issuer's \$\_\_\_\_\_ Capital Improvement Revenue Bonds (Innovation Village Project), Series 2010A-BAB.

**"Series 2010B Bonds"** means the Issuer's \$\_\_\_\_\_ Capital Improvement Subordinate Revenue Bonds (Innovation Village Project), Series 2010B.

**"Series 2010 Project"** means the costs to acquire a leasehold interest in the Existing Facilities Site and the Proposed Facilities Site pursuant to the Ground Sublease Agreement and the costs to finance the acquisition, construction and installation of the Proposed Facilities.

**“Sophisticated Investor”** means a “qualified institutional buyer” as that term is defined in Rule 144A under the Securities Act or an “accredited investor” as that term is defined in Regulation D under the Securities Act.

**“State”** means the State of Florida.

**“Subordinate Bonds”** mean the Series 2010B Bonds and any Additional Subordinate Bonds issued hereunder.

**“Surplus Fund”** means the fund by that name created pursuant to Section 5.02 hereof.

**“System Revenues”** shall mean all gross income and revenues including fees, rentals or other charges received by the Issuer or the University on behalf of the Issuer derived from the ownership and/or operation of Housing System from students, faculty members, the Issuer and others using or being served by or having the right to use, or having the right to be served by, the Housing System, and all parts thereof including parking facilities and the retail and commercial uses comprising a part of the Housing System, without any deductions whatsoever, and specifically including, without limiting the generality of the foregoing, room rental income, any special rental fees or charges for services or space provided, and any income paid to the Issuer related to use of the retail and commercial areas of the Housing System. Notwithstanding the foregoing, "System Revenues" shall not include (i) Direct Pay Subsidies, (ii) any other subsidy, incentives or rebate payments from the United States Treasury or (iii) gross income and revenue including rates, fees and other charges received by the University with respect to the Existing Facilities prior the University's receipt of sums sufficient to pay 100% of the University Bond Expenses.

**“Taxable Bonds”** means Bonds of a Series, the interest on which is not intended at the time of issuance thereof to be excluded from the gross income of the holders thereof for federal income tax purposes under the Code. The term “Taxable Bonds” shall include Direct Subsidy Bonds.

**“Term Bonds”** means Bonds of a Series for which Amortization Installments are established, and such other Bonds of a Series so designated by supplemental indenture of the Issuer executed on or before the date of delivery of such Bonds.

**“Treasury Rate”** means, with respect to any redemption date for a particular Series of Bond issued as Direct Subsidy Bond, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity excluding inflation indexed securities (as compiled and published in the most recent Federal Reserve Statistical Release H. 15 (519) that has become publicly available at least two Business Days prior to the redemption date or, if such Statistical Release is no longer published, any publicly available source of similar market data) most nearly equal to the period from the redemption date to the maturity date of the particular Direct Subsidy Bond to be redeemed; provided, however, that if the period from the redemption date to such maturity date is less than one year, the weekly average yield on

actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

**"Trustee"** means U.S. Bank National Association, a national banking association, or any successor trustee appointed pursuant to this Indenture.

**"University Bonds"** means the State of Florida, Florida Education System, Florida Atlantic University Housing Revenue Bonds, Series 2003, the State of Florida, Board of Governors, Florida Atlantic University Dormitory Revenue Bonds, Series 2006A, and the State of Florida, Board of Governors, Florida Atlantic University Dormitory Revenue Refunding Bonds, Series 2006B issued pursuant to the terms and provisions of the Original State Resolution.

**"University Bond Expenses"** means the annual debt service requirements for the University Bonds, the Administrative Expenses, as defined in and payable pursuant to the Original State Resolution and the required deposits to the Building Maintenance and Equipment Reserve Fund, as defined in the Original State Resolution, with respect to the Existing Facilities.

**"2010 Rebate Account"** means the account by that name created pursuant to Section 5.02 hereof.

**"2010 Rebate Amount"** means, relating to the Bonds which are not Taxable Bonds, the excess of the future value, as of the computation date, of all receipts on all nonpurpose investments (as defined in Section 1.148-1(b) of the Income Tax Regulations) over the future value, as of that date, of all payments on nonpurpose investments, all as provided by the Income Tax Regulations under the Code implementing Section 148 thereof.

## **ARTICLE II. THE BONDS**

### **SECTION 2.01. AUTHORIZATION OF THE SERIES 2010 BONDS AND SERIES 2010 PROJECT**

(A) The Series 2010A Bonds are hereby authorized to be issued, in one or more Series, in an aggregate principal amount of \_\_\_\_\_ dollars and No/100 cents (\$\_\_\_\_\_), for the purpose of (i) financing a portion of the costs of the Series 2010 Project, (ii) funding a deposit to the Series 2010A Account of the Reserve Fund; (iii) paying capitalized interest, if any, and (iv) paying the costs associated with the issuance of the Series 2010 Bonds. Additional Senior Bonds in excess of the principal amount of the Series 2010A Bonds may be issued from time to time pursuant to the terms hereof and the Act. The Series 2010A Bonds are also authorized to be issued, in whole or in part, as Direct Subsidy Bonds, such Series 2010A Bonds if issued in part to be designated "Series 2010A-BAB Bonds." The Chairperson is hereby authorized to make the irrevocable election to designate all or a portion of the Series 2010A Bonds

as Direct Subsidy Bonds and have the provisions of Section 54AA(g)(2) of the Code apply to such Series 2010A Bonds so long as the net (after the Direct Pay Subsidies are taken into account) true interest cost rate to issue such Series 2010A Bonds as Direct Subsidy Bonds would be lower than issuing the Series 2010A Bonds as a tax exempt bonds; provided, however, that the Chairperson shall not make any such election to the extent any Direct Subsidy Bonds constitute Qualified School Construction Bonds, as such term is defined in Section 54F of the Code.

(B) The Series 2010B Bonds are hereby authorized to be issued, in one or more Series, in an aggregate principal amount of \_\_\_\_\_ dollars and No/100 cents (\$\_\_\_\_\_), for the purpose of financing a portion of the costs of the Series 2010 Project. Additional Subordinate Bonds in excess of the principal amount of the Series 2010B Bonds may be issued from time to time pursuant to the terms hereof and the Act.

(C) The financing of the Series 2010 Project is hereby authorized by the Issuer in accordance with the provisions hereof.

**SECTION 2.02. TERMS OF SERIES 2010 BONDS**

(A) The Series 2010A Bonds shall be designated “The FAU Finance Corporation Capital Improvement Revenue Bonds (Innovation Village Project), Series 2010A,” and in the event that all or some portion of the Series 2010A Bonds are issued as Direct Subsidy Bonds, “The FAU Finance Corporation Capital Improvement Revenue Bonds (Innovation Village Project), Series 2010A-BAB,” and shall be issued as fully registered Bonds, without coupons. The Series 2010A Bonds shall be dated as of the date of their delivery, numbered consecutively from RA-1 upward and issued in the Authorized Denominations. The Series 2010B Bonds shall be designated “The FAU Finance Corporation Capital Improvement Subordinate Revenue Bonds (Innovation Village Project), Series 2010B,” and shall be issued as fully registered Bonds, without coupons. The Series 2010B Bonds shall be dated as of the date of their delivery, numbered consecutively from RB-1 upward and issued in the Authorized Denominations.

(B) The Series 2010A Bonds shall mature on the following dates and in the stated principal amounts, and shall bear interest payable semiannually commencing July 1, 2010 and on each January 1 and July 1 thereafter to maturity at the rates per annum, all as set forth below:

**Series 2010A Bonds**

<u>Maturity</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2012	\$	%
2013		
2014		
2015		
2016		
2017		
2018		

2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2032		
2037		
2038		
2039		
2040		

(C) The Series 2010B Bonds shall mature on July 1, 2036 and bear interest at the rate of \_\_\_% per annum payable semiannually, commencing July 1, 2010 and on each January 1 and July 1 thereafter to maturity.

(D) The Bonds shall bear interest from the Interest Payment Date next preceding their date of registration and authentication unless any such Bond is registered and authenticated as of an Interest Payment Date, in which case it shall bear interest from said Interest Payment Date; or unless a Bond is registered and authenticated prior to February 1, 2010, in which event such Bond shall bear interest from the date of their delivery; or unless a Bond registered and authenticated on a date which is after the applicable Record Date and before the next ensuing Interest Payment Date, in which case it shall bear interest from such next ensuing Interest Payment Date; or unless, as shown by the records of the Trustee, interest on the Bonds shall be in Default in which event such Bond shall bear interest from the date to which interest was last paid on such Bond.

The principal of, redemption premium, if any, and interest on any of the Bonds shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. The principal of, and redemption premium, if any, on the Bonds are payable upon presentation and surrender at the designated corporate trust office of the Trustee or any successor thereto or at such other place as may be provided for by the appointment of any other Paying Agent appointed under this Indenture. Payment of interest on the Bonds shall be made to the registered owner thereof by check or draft mailed to the owner at his address as it appears on the registration books maintained by or on behalf of the Issuer as of the close of business on the applicable Record Date, pursuant to Section 2.08 hereof. Payment of interest on the Bonds may, at the option of any owner of Series 2010 Bonds in an aggregate principal amount of at least \$1,000,000, be transmitted by wire transfer to such owner to the bank account number on file with the Paying Agent as of the

Record Date upon written request therefor by the holder thereof for the appropriate Interest Payment Date.

### **SECTION 2.03. EXECUTION; LIMITED OBLIGATIONS**

Except as otherwise provided in a supplemental indenture in connection with a Series of Bonds, Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of its Chairperson and shall have impressed or imprinted thereon, by facsimile or otherwise, the official seal of the Issuer, and be attested with the manual or facsimile signature of the Secretary. The Bonds, together with interest thereon, are not general or moral obligations of the Issuer and do not constitute an obligation, either general or special, of the State, the University or any political subdivision thereof, but are limited obligations payable solely and only from the Pledged Revenues. Such moneys are hereby pledged and assigned as security for the equal and ratable payment of the Bonds and shall be used for no other purpose than to pay the principal of, redemption premium, if any, and interest on the Bonds. The Bonds shall in no event be payable from the general revenues of the Issuer and shall not constitute a debt, liability, general or moral obligation or a pledge of the faith or loan of credit of the University, the State or any political subdivision of the State within the meaning of any constitutional or statutory provisions; the University, the State nor any political subdivision thereof shall be liable thereon; nor in any event shall such Bonds or obligations be payable out of any funds or properties other than those of the Issuer, and then only to the extent herein provided. Neither the faith and credit nor the revenues or taxing power of the University, the State or any political subdivision thereof, is pledged to the payment of the principal of the Bonds or the interest thereon or other costs incident thereto. The Issuer has no taxing power.

In case any officer of the Issuer whose signature or whose facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or the facsimile signature thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

### **SECTION 2.04. AUTHENTICATION**

No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless and until a certificate of authentication on such Bond substantially in the form set forth in Exhibit B attached hereto shall have been duly executed by the manual signature of the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds issued hereunder.

### **SECTION 2.05. FORM OF BONDS**



The Bonds issued under this Indenture shall be substantially in the form set forth in Exhibit B attached hereto with such variations, omissions and insertions as are permitted or required by this Indenture.

## **SECTION 2.06. DELIVERY OF BONDS**

Upon the execution and delivery of this Indenture, or a respective supplement hereto, the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate, the respective Series of Bonds and deliver them to the purchasers thereof as directed by the Issuer as hereinafter in this Section provided.

Prior to the delivery by the Trustee of any Series of Bonds there shall be filed or deposited with the Trustee at closing:

(A) A copy, duly certified of the resolution adopted by the Issuer approving the issuance of such Series of Bonds.

(B) Executed counterparts of this Indenture, any supplement thereto and the Continuing Disclosure Undertaking.

(C) A request and authorization to the Trustee on behalf of the Issuer and signed by the Chairperson of the Issuer to authenticate and deliver the Series of Bonds in accordance with the resolution awarding such Series of Bonds.

(D) An opinion of general counsel for the Issuer stating that this Indenture and the other agreements to which the Issuer is a party related to the issuance of the Series of Bonds have been duly authorized by the Issuer and this Indenture and the other agreements to which the Issuer is a party related to the issuance of the Series of Bonds have been duly executed and delivered by the Issuer and, assuming proper authorization and execution by the other parties thereto, this Indenture and the other agreements to which the Issuer is a party related to the issuance of the Series of Bonds are valid and binding agreements, enforceable against the Issuer in accordance with their terms (subject to any applicable bankruptcy, reorganization, insolvency, moratorium or similar law affecting the enforcement of creditors' rights generally).

(E) An opinion of Bond Counsel stating that the Series of Bonds and the Indenture or supplemental indenture, as applicable, are valid and binding obligations, enforceable against the Issuer in accordance with their terms (subject to any applicable bankruptcy, reorganization, insolvency, moratorium or similar law affecting the enforcement of creditors' rights generally) and that (unless such Series of Bonds is issued as Taxable Bonds) interest on such Series of Bonds is not included in the gross income of the Owners of that Series of Bonds for federal income tax purposes.

In addition, with respect to delivery of the Series 2010 Bonds there shall be filed or deposited with the Trustee at closing:

- (A) A copy of the fully executed Management Agreement;
- (B) A copy of the fully executed Ground Sublease Agreement; and
- (C) A copy of the fully executed Development Agreement.

Upon receipt of these documents and amounts, the Trustee shall authenticate and deliver the Series of Bonds to, or upon the order of, the purchasers thereof, but only upon payment to the Trustee of the purchase price of such Series of Bonds. The proceeds received by the Trustee from the sale of such Series of Bonds, if any, shall be deposited in the various funds and accounts specified in, and pursuant to, Section 2.10 below.

#### **SECTION 2.07. MUTILATED, LOST, STOLEN OR DESTROYED BONDS**

In the event any Bond is mutilated, lost, stolen or destroyed, at the request of the owner of any such Bond, the Issuer shall execute (if the Trustee does not have executed Bonds in its possession) and the Trustee shall authenticate and deliver a new Bond of like date, interest rate, maturity and denomination as that Bond which was mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and, in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it. In the event any such Bond shall be about to mature or have matured or been called for redemption, instead of issuing a duplicate Bond, the Trustee may pay the same without surrender thereof. The Issuer and the Trustee may charge the owner of such Bond reasonable fees and expenses in this connection.

#### **SECTION 2.08. REGISTRATION AND EXCHANGE OF BONDS; PERSONS TREATED AS OWNERS**

The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in Section 4.05 of this Indenture to be kept by the Trustee, which is hereby constituted and appointed the Registrar.

Upon surrender for transfer of any Bond at its designated corporate trust office, the Registrar shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of Authorized Denominations of the same Series, interest rate and maturity for the aggregate principal amount which the registered owner is entitled to receive. Bonds may, at the option of the registered owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same Series, maturity and interest rate of the same or any other authorized denomination.

All Bonds presented for transfer or exchange (if so required by the Issuer or the Trustee), shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee, duly executed by the registered owner or by his duly authorized attorney. The Trustee shall require payment of a

sum sufficient to cover any expenses incurred in making such transfer or exchange, any tax or other governmental charge that may be imposed in relation thereto but may not impose any other service charge or fee. Except as otherwise provided by supplemental indenture, the Issuer and the Trustee shall not be required (a) to issue, transfer or exchange any Bonds during a period beginning at the Record Date or the date which is fifteen (15) days prior to the day on which the applicable notice of redemption is given or (b) to transfer or exchange any Bonds selected, called or being called for redemption in whole or in part. If the Trustee establishes a special record date, it shall provide notice by first class mail to registered owners of all Bonds Outstanding at least 10 days before such special record date or at such other time and manner as the Trustee may deem appropriate.

New Bonds delivered upon any transfer or exchange shall be valid limited obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The person in whose name any Bond is registered shall be deemed the owner thereof by the Issuer, the Trustee, the Paying Agent and the Registrar for all purposes under this Indenture, and any notice to the contrary shall not be binding upon the Issuer, the Trustee, the Paying Agent or the Registrar. All payments of principal of, redemption premium, if any, and interest on the Bonds shall be made only to or upon the order of the owner thereof or such Owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bonds to the extent of the sums so paid.

Until such time as the Management Agreement has expired by its terms or has been terminated by the parties thereto the initial Owners of the Series 2010B Bonds may not transfer such Series 2010B Bonds. Thereafter until such time as the Trustee has received a ratings letter indicating that the Subordinate Bonds to be transferred have been rated investment grade by one or more Rating Agencies, the Subordinate Bonds may be transferred in whole or in part by any Owner only as follows:

- (1) to any subsidiary of the initial, any Affiliate of the Owner, any entity arising out of any merger or consolidation of the Owner, or a trustee in bankruptcy of the Owner;
- (2) to any Sophisticated Investor; or
- (3) to any trust or custodial arrangement each of the beneficial owners of which is required to be a Sophisticated Investor.

Any transfer of Bonds described in clauses (2) or (3) of this Section 2.08 shall be conditioned upon delivery by the proposed transferee to the Trustee of an investor letter in substantially the form set forth in Exhibit C.

**SECTION 2.09. DESTRUCTION OF BONDS**

Whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount thereof represented thereby or for replacement pursuant to Section 2.07 hereof or transfer or exchange pursuant to Section 2.08 hereof, such Bond shall be canceled and destroyed by the Trustee. Counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer no less frequently than annually.

**SECTION 2.10. APPLICATION OF SERIES 2010 BOND PROCEEDS**

Unless otherwise provided to the contrary by supplemental indenture entered into coincident with or prior to the sale of the Series 2010 Bonds, the proceeds, including net original issue premium, if any, received from the sale of the Series 2010 Bonds, together with other legally available moneys of the Issuer, if any, shall be deposited by the Issuer and the Trustee, simultaneously with the delivery of the Series 2010 Bonds, as provided in Section 5.03 hereof.

**SECTION 2.11. TEMPORARY BONDS**

Until definitive Bonds are ready for delivery, there may be executed, and upon request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds and subject to the same limitations and conditions, temporary typewritten, printed, engraved or lithographed Bonds, substantially in the form of the definitive Bonds with appropriate omissions, variations and insertions and in authorized denominations.

If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its designated corporate trust office, of any temporary Bond, shall cancel the same and authenticate and deliver in exchange therefor at the place designated by the owner, without charge to the owner thereof, a definitive Bond or Bonds of an equal aggregate principal amount, of the same Series, maturity and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive bonds issued and authenticated hereunder.

**SECTION 2.12. BOOK-ENTRY ONLY SYSTEM.**

Upon the initial issuance and delivery of the Series 2010 Bonds, the Series 2010 Bonds shall be issued in the name of the Securities Depository or its nominee, as registered owner of the Series 2010 Bonds, and held in the custody of the Securities Depository or its designee. A single certificate (or such number of certificates required by the procedures of the Securities Depository) will be issued and delivered to the Securities Depository (or its designee) for each maturity of the Series 2010 Bonds, and the Beneficial Owners will not receive physical delivery of Series 2010 Bond certificates except as provided herein. For so long as the Securities Depository shall continue to serve as securities depository for the Series 2010 Bonds as provided

herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Series 2010 Bonds is to receive, hold or deliver any Series 2010 Bond certificate. The Issuer and the Trustee will recognize the Securities Depository or its nominee as the Owner for all purposes, including notices.

The Issuer and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Participants in the Book-Entry System with respect to the Series 2010 Bonds and (ii) a certificate of any such Participant as to the identity of, and the respective principal amount of Series 2010 Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Series 2010 Bonds, the beneficial ownership thereof is determined by a Book-Entry System at the Securities Depository, the requirements in this Indenture of holding, delivering or transferring Series 2010 Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Securities Depository as to registering or transferring the book-entry Series 2010 Bonds to produce the same effect. Any provision hereof permitting or requiring delivery of Series 2010 Bonds shall, while the Series 2010 Bonds are in the Book-Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law.

Except as otherwise specifically provided in this Indenture and the Series 2010 Bonds with respect to the rights of Participants and Beneficial Owners, when a Book-Entry System is in effect, the Issuer and the Trustee may treat the Securities Depository (or its nominee) as the sole and exclusive owner of the Series 2010 Bonds registered in its name for the purposes of (i) payment of the principal of, premium, if any, and interest on the Series 2010 Bonds or portion thereof to be redeemed or purchased, (ii) giving any notice permitted or required to be given to Owners under this Indenture, and (iii) the giving of any direction or consent or the making of any request by the Owners hereunder, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. Neither the Issuer nor the Trustee will have any responsibility or obligations to the Securities Depository, any Participant, any Beneficial Owner or any other person which is not shown on the Series 2010 Bond Register, with respect to (i) the accuracy of any records maintained by the Securities Depository or any Participant; (ii) the payment by the Securities Depository or by any Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption of, or interest on, any Series 2010 Bonds; (iii) the delivery of any notice by the Securities Depository or any Participant; (iv) the selection of the Participants or the Beneficial Owners to receive payment in the event of any partial redemption of the Series 2010 Bonds; or (v) any consent given or any other action taken by the Securities Depository or any Participant. The Trustee shall pay all principal of, premium, if any, and interest on the Series 2010 Bonds registered in the name of a nominee of the Securities Depository only to or "upon the order of" the Securities Depository (as that term is used in the Uniform Commercial Code as adopted in Florida), and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of, premium, if any, and interest on such Series 2010 Bonds to the extent of the sum or sums so paid.

The Book-Entry System may be discontinued by the Trustee and the Issuer, and the Issuer and the Trustee will cause the delivery of Series 2010 Bond certificates to such Beneficial Owners of the Series 2010 Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under the following circumstances:

The Securities Depository determines to discontinue providing its service with respect to the Series 2010 Bonds and no successor Securities Depository is appointed. Such a determination may be made at any time by giving 30 days' notice to the Issuer and the Trustee and discharging its responsibilities with respect thereto under applicable law.

The Issuer determines not to continue the Book-Entry System through a Securities Depository.

In the event the Book-Entry System is discontinued, the Trustee shall mail a notice to the Securities Depository for distribution to the Beneficial Owners stating that the Securities Depository will no longer serve as securities depository, the procedures for obtaining Series 2010 Bonds and the provisions of this Indenture which govern the Series 2010 Bonds, including, but not limited to, provisions regarding authorized denominations, transfer and exchange, principal and interest payment and other related matters.

When the Book-Entry System is not in effect, all references herein to the Securities Depository shall be of no further force or effect and the Trustee shall, at the expense of the Issuer, issue Series 2010 Bonds directly to the Beneficial Owners.

### **SECTION 2.13. ISSUANCE OF ADDITIONAL SENIOR BONDS**

No Additional Senior Bonds shall be issued unless the Issuer shall have complied with the conditions set forth below.

(A) No Default. The Authorized Officer of the Issuer shall certify that (i) the Issuer is not in Default in the performance of any of the covenants and obligations assumed by it hereunder and (ii) all payments herein required to have been made into the funds and accounts provided by this Indenture shall have been made in full to the extent required.

(B) Due Authorization. Legal counsel to the Issuer shall submit an opinion to the Governing Body of the Issuer to the effect that the issuance of such Additional Senior Bonds has been duly authorized and that all conditions precedent to the delivery of such Additional Senior Bonds have been fulfilled.

(C) Covenants Applicable.

(i) Each supplemental indenture authorizing the issuance of Additional Senior Bonds issued pursuant to this Section 2.13 and, unless all Bonds Outstanding shall be refunded, Section 2.14 hereof, will contain a provision to the effect that all of the covenants herein contained (except as to details expressly applicable to the Series 2010 Bonds) will be fully applicable to such Bonds as if originally issued hereunder.

(ii) The Senior Bonds and all Additional Senior Bonds issued pursuant to this Article II regardless of time or times of their issuance shall rank equally without preference of any Senior or Additional Senior Bonds over any other; provided however, that any such Series of Bonds issued hereunder shall, with respect to the Reserve Fund, have rights only to moneys therein in the subaccount therein created with respect to such Series of Bonds. Such subaccounts, if any, in the Reserve Fund may be funded as determined by the Issuer. Provided, however, that only any Series of Bonds issued pursuant to this Article II as Direct Subsidy Bonds shall have the additional security of the Direct Pay Subsidies received by the Issuer with respect to that particular Series.

(D) Opinion of Bond Counsel. An opinion of Bond Counsel shall be delivered to the Governing Body to the effect that the issuance of Additional Senior Bonds will not impair the exclusion from gross income for federal income tax purposes of interest paid on any Bonds issued hereunder and then Outstanding that are not Taxable Bonds.

(E) Issuance of Additional Senior Bonds. Additional Senior Bonds payable from the Pledged Revenues on a parity with the Senior 2010 Bonds, as provided herein, can be issued and delivered to finance Projects or to refund Outstanding Bonds only if there shall have been obtained and filed with the Governing Body of the Issuer and the Trustee a certificate of the Authorized Officer of the Issuer:

(i) setting out the Maximum Bond Service Requirement with respect to the Senior Bonds proposed to be Outstanding hereunder following the issuance of the Additional Senior Bonds proposed to be issued for each Bond Year through the final maturity of such Bonds;

(ii) setting out the amount of Net Revenues Available for Debt Service of the Issuer from the immediately preceding Fiscal Year available for payment of the principal of, redemption premium, if any, and interest on Senior Bonds, in each such year;

(iii) certifying that (a) the Net Revenues Available for Debt Service collected by the Issuer during the Fiscal Year immediately preceding the date of issuance of such Additional Senior Bonds were not less than one hundred and twenty-five percent (125%) of the Maximum Bond Service Requirement with respect to the then outstanding Senior Bonds and the Additional Senior Bonds proposed to be to be issued and (b) the projected Net Revenues Available for Debt Service for the two Fiscal Years following the Fiscal Year in which the project financed with the proceeds of the Additional Senior Bonds is scheduled to be placed in

service will not be less than one hundred and twenty-five percent (125%) of the Maximum Bond Service Requirement with respect to the then outstanding Senior Bonds and the Additional Senior Bonds proposed to be to be issued.

In determining the Net Revenues Available for Debt Service for the purposes of this clause (iii), System Revenues may be adjusted by adding thereto, in the event the Issuer shall have made or put in effect any increase in the rates, fees or charges constituting System Revenues and such increase shall not have been in effect during all of the previous Fiscal Year immediately preceding the date of delivery of the proposed Additional Senior Bonds, the estimated amount of additional System Revenues which would have resulted from the increase in the rates, fees and charges constituting System Revenues during such prior Fiscal Year had such rate, fee or charge increase been in effect for the entire period.

(F) Proceeds of Additional Senior Bonds. The proceeds of Additional Senior Bonds shall be used to finance Projects and improvements thereto or expansion thereof or to refund Outstanding Bonds as described in the supplemental indenture authorizing such Additional Senior Bonds.

(G) Other Conditions. Notwithstanding satisfaction of the other conditions to the issuance of Additional Senior Bonds set forth in this Indenture, no such issuance may occur (1) if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance and (2) unless the applicable account in the Reserve Fund is fully funded at the applicable Reserve Requirement upon the issuance of such Additional Senior Bonds, in either case unless otherwise permitted by the Bond Insurer, if any.



#### **SECTION 2.14. REFUNDING OUTSTANDING BONDS**

Notwithstanding the foregoing, the Issuer may issue at any time and from time to time Additional Senior Bonds for the purpose of refunding Outstanding Senior Bonds, or any maturity or portion of a maturity of Senior Bonds within a Series, without having to comply with the requirements of Section 2.13 above, provided that prior to the issuance of such Additional Senior Bonds there shall be filed with the Governing Body of the Issuer a certificate from a Qualified Independent Consultant to the effect that (i) the net proceeds from such Additional Senior Bonds will be sufficient to cause the lien created by this Indenture with respect to the Outstanding Senior Bonds to be refunded to be defeased pursuant to Article VII below and, the Bond Service Requirement with respect to such Additional Senior Bonds in each Bond Year following the issuance thereof through the Bond Year in which the latest maturing Senior Bond then outstanding matures shall be equal to or less than the Bond Service Requirement for such Bond Year with respect to the Senior Bonds which would have been Outstanding in that Bond Year had the same not been refunded pursuant to this Section 2.14. Prior to or concurrently with the issuance of such Senior Bonds, there shall be filed with a representative of the Issuer, an opinion of Bond Counsel to the effect that (i) the net proceeds from the sale of such Additional Senior Bonds have been set aside in irrevocable escrow for the payment of the Outstanding Senior Bonds to be refunded in the manner described in Article VII below and (ii) the issuance of such Additional Senior Bonds and the use of the proceeds thereof as described above will not have the effect of causing the interest on any Outstanding Senior Bond under this Indenture (other than any Taxable Bond) including the Outstanding Senior Bonds to be refunded, to become includable in gross income of the Owners thereof for federal income tax purposes.

#### **SECTION 2.15. SUBORDINATE BONDS.**

The principal, redemption premium, if any, and interest on the Series 2010B Bonds and any Additional Subordinate Bonds will be junior in lien priority will be subordinated in right of payment to principal, redemption premium, if any, and interest payments on the Senior and other Additional Senior Bonds and the payments of Operating Expenses. The Holders of the Subordinate Bonds, by acceptance thereof, expressly agree and acknowledge that no payment shall be payable on the Subordinate Bonds if the Trustee does not hold sufficient funds correctly allocated for such purpose in the accounts in the Subordinated Debt Service Fund which benefit the Subordinate Bonds. Moneys held for the credit of the accounts in the Subordinate Debt Service Fund which benefit the Subordinate Bonds may be transferred in certain events to cure shortfalls in the accounts in the Debt Service Fund which benefit the Senior Bonds.

In the event of any bankruptcy, insolvency, reorganization or similar proceeding with respect to the Issuer or upon the maturity of any Senior Bonds (whether by lapse of time, acceleration or otherwise), Holders of Senior Bonds will be entitled to receive payment thereof in full before the Holders of the Subordinate Bonds are entitled to receive payment thereof. In the event of bankruptcy or similar proceedings, any payment or distribution of assets otherwise payable to Holders of the Subordinate Bonds will be paid to Holders of Senior Bonds until all

Senior Bonds have been paid in full, and the Holders of the Subordinate Bonds will become subrogated to the rights of such Holders of Senior Bonds to receive payments distributions of assets with respect thereto. If the Trustee has declared an Event of Default or receives written notice that an Event of Default has occurred with respect to any Senior Bonds and such event permits the Holders of such Senior Bonds to accelerate the maturity thereof, no payment may be made by the Issuer with respect to the Subordinate Bonds until such Event of Default has been cured or waived or until the Senior Bonds have been paid in full as provided in Article VIII hereof. If the Trustee has declared an Event of Default or receives written notice that an Event of Default has occurred with respect to any Subordinate Bonds, and such event permits the Holders of such Subordinate Bonds to accelerate the maturity thereof, the remedies available to the Trustee on behalf of such Holders and to such Holders shall be limited as described under Article VIII hereof. Section 9.13 hereof provides that the Holders of the Bonds waive any actual or implied conflict of interest on the part of the Trustee relating to its acting in a fiduciary capacity for both the Senior Bonds and the Subordinate Bonds, and Section 9.11 hereof provides for appointment of a Co-Trustee to represent the interests of the Holders of the Subordinate Bonds in certain events.

#### **SECTION 2.16. ISSUANCE OF ADDITIONAL SUBORDINATE BONDS**

No Additional Subordinate Bonds shall be issued unless the Issuer shall have complied with the conditions set forth below.

(A) No Default. The Authorized Officer of the Issuer shall certify that (i) the Issuer is not in Default in the performance of any of the covenants and obligations assumed by it hereunder and (ii) all payments herein required to have been made into the funds and accounts provided by this Indenture shall have been made in full to the extent required.

(B) Due Authorization. Legal counsel to the Issuer shall submit an opinion to the Governing Body of the Issuer to the effect that the issuance of such Additional Subordinate Bonds has been duly authorized and that all conditions precedent to the delivery of such Additional Subordinate Bonds have been fulfilled.

(C) Covenants Applicable.

(i) Each supplemental indenture authorizing the issuance of Additional Subordinate Bonds issued pursuant to this Section 2.16 and, unless all Bonds Outstanding shall be refunded, Section 2.14 hereof, will contain a provision to the effect that all of the covenants herein contained (except as to details expressly applicable to the Series 2010 Bonds) will be fully applicable to such Bonds as if originally issued hereunder.

(ii) The Subordinate Bonds and all Additional Subordinate Bonds issued pursuant to this Article II regardless of time or times of their issuance shall rank equally without preference of any Subordinate or Additional Subordinate Bonds over any other. Provided, however, that only any Series of Bonds issued pursuant to this Article II as Direct

Subsidy Bonds shall have the additional security of the Direct Pay Subsidies received by the Issuer with respect to that particular Series.

(D) Opinion of Bond Counsel. An opinion of Bond Counsel shall be delivered to the Governing Body to the effect that the issuance of Additional Subordinate Bonds will not impair the exclusion from gross income for federal income tax purposes of interest paid on any Bonds issued hereunder and then Outstanding that are not Taxable Bonds.

(E) Proceeds of Additional Subordinate Bonds. The proceeds of Additional Subordinate Bonds shall be used to finance Projects and improvements thereto or expansion thereof or to refund Outstanding Bonds as described in the supplemental indenture authorizing such Additional Subordinate Bonds.

(F) Other Conditions. Notwithstanding satisfaction of the other conditions to the issuance of Additional Subordinate Bonds set forth in this Indenture, no such issuance may occur (1) without the prior written consent of the Owners of the Series 2010B Bonds; and (2) if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance.

The Issuer need not comply with the provisions of this Section 2.16 and may at any time and from time to time issue evidences of indebtedness payable in whole or in part out of System Revenues and which may be secured by a pledge of System Revenues, however, that such pledge shall be, and shall be expressed to be subordinate in all respects to the pledge of System Revenues to the Holders of the Subordinate Bonds.

### ARTICLE III.

#### REDEMPTION OF SERIES 2010 BONDS BEFORE MATURITY

##### SECTION 3.01. REDEMPTION PROVISIONS

(A) Except with respect to the Series 2010 Bonds, each Series of Bonds shall be subject to redemption prior to maturity at such times and in such manner as shall be established by supplemental indenture entered into upon issuance of such Series of Bonds.

(B) The Series 2010 Bonds maturing on or before July 1, \_\_\_\_ are not subject to optional redemption prior to maturity.

(C) The Series 2010 Bonds maturing on or after July 1, 20\_\_ are subject to redemption prior to maturity at the option of the Issuer, in whole or in part on any date on or after July 1, 20\_\_, and if in part, in such manner as determined by the Trustee, at the redemption price of 100% of the principal amount of the Series 2010 Bonds to be redeemed, without redemption premium, plus accrued interest to the redemption date.

(D) The Term Series 2010 Bonds maturing on July 1, 20\_\_ are subject to mandatory redemption in part (including portions of Term Series 2010 Bonds), by lot, at a redemption price equal to 100% of the principal amount thereof plus accrued interest thereon, without redemption premium, on the dates and in the Amortization Installments set forth below:

<u>Dates</u> <u>(July 1)</u>	<u>Amortization Installments</u>
	\$
*	

\_\_\_\_\_  
\*Final Maturity

The Term Series 2010 Bonds maturing on July 1, 20\_\_ are subject to mandatory redemption in part (including portions of Term Series 2010 Bonds), by lot, at a redemption price equal to 100% of the principal amount thereof plus accrued interest thereon, without redemption premium, on the dates and in the Amortization Installments set forth below:

<u>Dates</u> <u>(July 1)</u>	<u>Amortization Installments</u>
	\$
*	

\_\_\_\_\_  
\*Final Maturity

The Term Series 2010B Bonds maturing on July 1, 20\_\_ are subject to mandatory redemption in part (including portions of Term Series 2010 Bonds), by lot, at a redemption price equal to 100% of the principal amount thereof plus accrued interest thereon, without redemption premium, on the dates and in the Amortization Installments set forth below:

<u>Dates (July 1)</u>	<u>Amortization Installments</u>	<u>Dates (July 1)</u>	<u>Amortization Installments</u>
2013		2025	\$
2014		2026	
2015		2027	
2016		2028	
2017		2029	
2018		2030	
2019		2031	
2020		2032	
2021		2033	
2022		2034	
2023		2035	
2024		2036*	

\*Final Maturity

(E) The Series 2010B Bonds may be redeemed in whole or in part, at the option of the Issuer, on any date at a redemption price equal to the par amount of such Series 2010B Bonds to be redeemed plus accrued interest to the date set for redemption, without redemption premium.

(F) Any Series of Bonds issued as Direct Subsidy Bonds shall be subject to redemption on any date prior to their maturity at the option of the Issuer, in whole or in part upon the occurrence of an Extraordinary Event, at a redemption price equal to the greater of:

- (1) 100% of the principal amount of the Direct Subsidy Bonds to be redeemed; or
- (2) the sum of the present value of the remaining scheduled payments of principal and interest to the maturity date of the Direct Subsidy Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which the Direct Subsidy Bonds are to be redeemed, discounted to the date on which the Direct Subsidy Bonds are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate, plus 100 basis points;

plus, in each case, accrued interest on the particular Direct Subsidy Bond to be redeemed to the redemption date.

**SECTION 3.02. RESERVED**

**SECTION 3.03. NOTICE OF REDEMPTION**

Notice of the call for redemption, identifying the Bonds or portions thereof to be redeemed, shall be given by the Trustee by mailing a copy of the redemption notice by first class mail at least 20 days but not more than 60 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed in whole or in part at the address shown on the registration books. Each notice of redemption given hereunder shall contain (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the maturity date of each Bond being redeemed; and (v) any other descriptive information needed to identify accurately the Bonds being redeemed. Any notice mailed as provided in this Section 3.03 shall be conclusively presumed to have been duly given, whether or not the Owner receives the notice. Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Failure to mail any such notice, or the mailing of defective notice, to any Owner, shall not affect the proceeding for redemption as to any Owner to whom proper notice is mailed. Notwithstanding the foregoing provisions of this Section 3.03, delivery by the Trustee of a copy of a redemption notice to a transferee of a Bond which has been called for redemption, pursuant to the requirements of Section 2.08 hereof, shall be deemed to satisfy the requirements of the first sentence of this Section 3.03 with respect to any such transferee.

Notice of any redemption of Bonds shall either (i) explicitly state that the proposed redemption is conditioned on there being on deposit in the applicable fund or account on the redemption date sufficient money to pay the full redemption price of the Bonds to be redeemed, or (ii) be sent only if sufficient money to pay the full redemption price of the Bonds to be redeemed is on deposit in the applicable fund or account.

#### **SECTION 3.04. REDEMPTION PAYMENTS**

Not later than the Business Day prior to the date fixed for redemption, funds shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such funds to the payment of the Bonds or portions thereof called, together with accrued interest thereon to the redemption date and expenses in connection with such redemption. Upon the giving of notice and the deposit of funds for redemption, interest on the Bonds or portions thereof thus called shall no longer accrue after the date fixed for redemption. No payment shall be made by the Trustee upon any Bond or portion thereof called for redemption until such Bond or portions thereof shall have been delivered for payment or cancellation or the Trustee shall have received the items required by Section 2.07 hereof with respect to any mutilated, lost, stolen or destroyed Bond.

#### **SECTION 3.05. CANCELLATION**

All Bonds which have been redeemed, paid or retired, or received by the Trustee for exchange, shall not be reissued but shall be canceled and destroyed by the Trustee in accordance with Section 2.09 hereof.

**SECTION 3.06. PARTIAL REDEMPTION OF BONDS**

Upon surrender of any Bond for redemption in part only, the Trustee shall authenticate and deliver to the owner thereof, a new Bond or Bonds of Authorized Denominations in aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

**ARTICLE IV.  
GENERAL COVENANTS**

**SECTION 4.01. PAYMENT OF PRINCIPAL AND INTEREST**

The Issuer covenants that it will promptly pay the principal of, redemption premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner and to the extent provided herein and in the Bonds according to the true intent and meaning thereof, provided that the principal, redemption premium, if any, and interest are payable by the Issuer solely from funds derived from the Pledged Revenues in the manner and to the extent provided herein, and nothing in the Bonds or this Indenture shall be considered as assigning or pledging any other funds or assets of the Issuer other than the Pledged Revenues as provided herein.

**SECTION 4.02. PERFORMANCE OF COVENANTS BY ISSUER**

The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto and the Management Agreement. The Issuer covenants that it is duly authorized under the Constitution and laws of the State, including particularly the Act, to issue the Bonds authorized hereby and to execute this Indenture, the Management Agreement, Ground Sublease Agreement, Development Agreement, if any, and the Continuing Disclosure Undertaking, if applicable, and to pledge the amounts hereby pledged in the manner and to the extent set forth herein. The Issuer further covenants that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds held by the owners thereof are and will be valid and enforceable limited obligations of the Issuer according to the terms thereof and hereof.

**SECTION 4.03. INSTRUMENTS OF FURTHER ASSURANCE**

The Issuer agrees that the Trustee may defend its rights to the payments and other amounts due hereunder for the benefit of the owners of the Bonds against the claims and demands of all persons whomsoever. The Issuer covenants that it will do, execute,

acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such supplemental indentures and such further acts, instruments and transfers as may reasonably be required for the better assuring, transferring, pledging, assigning and confirming to the Trustee all and singular the rights assigned hereby and the amounts pledged hereby to the payment of the principal of, redemption premium, if any, and interest on the Bonds.

#### **SECTION 4.04. RECORDING AND FILING**

The Issuer will cause to be filed all necessary financing statements related to this Indenture and all supplements hereto and such other documents as may be, in the opinion of counsel acceptable to the Issuer, necessary to be kept and filed in such manner and in such places as may be required by law in order to preserve and protect fully the security of the owners of the Bonds and the rights of the Trustee hereunder. The Issuer shall provide to the Trustee copies of any documents so filed or recorded.

#### **SECTION 4.05. LIST OF BONDHOLDERS**

The Trustee will keep on file a list of names and addresses of the Owners of all Bonds as from time to time registered on the registration books maintained by the Trustee, together with the principal amount and numbers of such Bonds owned by each such Owner. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied for any purpose by the Issuer or by the Owners (or a designated representative thereof) of fifteen percent (15%) or more in aggregate principal amount of Outstanding Bonds, such possession or ownership and the authority of such designated representative to be evidenced to the satisfaction of the Trustee.

#### **SECTION 4.06. FINANCIAL STATEMENTS**

The Issuer shall deliver to the Trustee audited annual financial reports of the Issuer, including the funds and accounts established under this Indenture, prepared by an independent firm of certified public accountants of nationally recognized ability and standing selected by the Issuer. Such reports shall be prepared in accordance with generally accepted auditing standards and on an accrual basis and shall be filed with the Trustee no later than 120 days after the close of the Issuer's Fiscal Year.

#### **SECTION 4.07. TAX COVENANTS**

(A) It is the intention of the Issuer and all parties under its control that the interest on each Series of Bonds issued hereunder that are not Taxable Bonds be and remain excluded from gross income of the Owners thereof for federal income tax purposes and to this end the Issuer certifies and covenants that it will not take any action, the result of which would cause or be likely to cause the interest payable with respect to any Bonds issued hereunder that are not Taxable Bonds not to be excluded from gross income of the Owners thereof for federal income tax purposes. Further to that end, and notwithstanding anything to the contrary provided herein, the Issuer hereby represents to and covenants with each of the Holders from time to



time of the Bonds issued hereunder that are not Taxable Bonds, that it will comply with the requirements applicable to it contained in Section 103 and Part IV of Subchapter B of Chapter 1 of Subtitle A of the Code to the extent necessary to preserve the exclusion of interest on the Bonds issued hereunder that are not Taxable Bonds from gross income of the Owners thereof for federal income tax purposes. Specifically, without intending to limit in any way the generality of the foregoing, the Issuer covenants and agrees:

(i) to make or cause to be made all necessary determinations and calculations of the 2010 Rebate Amount and required payments of the 2010 Rebate Amount;

(ii) subject to first satisfying the requirements of Section 5.04 hereof, to set aside sufficient moneys in the 2010 Rebate Account or elsewhere, from the Pledged Revenues or other legally available funds of the Issuer, to timely pay the 2010 Rebate Amount to the United States of America;

(iii) to pay the 2010 Rebate Amount to the United States of America from the Pledged Revenues or from any other legally available funds, at the times and to the extent required pursuant to Section 148(f) of the Code;

(iv) to maintain and retain all records pertaining to the 2010 Rebate Amount with respect to the Bonds issued hereunder that are not Taxable Bonds, and required payments of the 2010 Rebate Amount with respect to the Bonds that are not Taxable Bonds for at least six years after the final maturity of the Bonds that are not Taxable Bonds or such other period as shall be necessary to comply with the Code;

(v) to refrain from taking any action that would cause any Bonds issued hereunder that are not Taxable Bonds and are not issued with the intent that such Bonds shall be private activity bonds (within the meaning of Section 141(a) of the Code), to be classified as private activity bonds under Section 141(a) of the Code; and

(vi) to refrain from taking any action that would cause the Bonds issued hereunder that are not Taxable Bonds to become arbitrage bonds under Section 148 of the Code.

(B) The Issuer understands that the foregoing covenants impose continuing obligations on the Issuer that will exist as long as the requirements of Section 103 and Part IV of Subchapter B of Chapter 1 of Subtitle A of the Code are applicable to the Bonds.

(C) Notwithstanding any other provision of this Indenture, including, in particular, Article VII hereof, the obligation of the Issuer to pay the 2010 Rebate Amount to the United States of America and to comply with the other requirements of this Section shall survive the defeasance or payment in full of the Bonds that are not Taxable Bonds.

(D) The Issuer may, if it so elects, issue one or more Series of Taxable Bonds the interest on which is (or may be) includable in the gross income of the Owners thereof for federal

income tax purposes, so long as each Bond of such Series states in the body thereof that interest payable thereon is (or may be) subject to federal income taxation and provided that the issuance thereof will not cause the interest on any other Bonds theretofore issued hereunder to be or become includable in the gross income of the Owners thereof for federal income tax purposes. The covenants set forth in clause (A) above and in Section 5.07(B) hereof shall not apply to any Taxable Bonds.

(E) The Issuer covenants and agrees, except as permitted in the immediately following sentence, to comply with all provisions of the Code necessary to maintain the qualification of any Series of Bonds issued hereunder as Direct Subsidy Bonds as such. Notwithstanding anything herein to the contrary, the Issuer shall retain the right to redeem any Series of Bonds issued as Direct Subsidy Bonds pursuant to the provisions of Section 3.01(F) hereof.

#### **SECTION 4.08. COVENANT TO COMPLY WITH REQUIREMENTS OF THE ACT**

The Issuer hereby covenants and agrees to apply the proceeds of the Bonds and Pledged Revenues in compliance with the requirements of the Act. The Issuer hereby covenants and agrees not to take any action or omit to take any action that would impair its right to receive or would result in a reduction of payments of the System Revenues.

#### **SECTION 4.09. CONTINUING DISCLOSURE COVENANTS**

The Issuer hereby agrees, in accordance with the provisions of Rule 15c2-12 in effect from time to time and applicable to the Series 2010 Bonds (the "Rule"), promulgated by the Securities and Exchange Commission (the "Commission") pursuant to the Securities Exchange Act of 1934, to comply with the provisions of the Continuing Disclosure Undertaking; provided, however, that failure to comply shall not constitute an Event of Default under this Indenture.

#### **SECTION 4.10. RATE COVENANT**

The Issuer covenants that it will fix, establish and collect such fees, rentals and other charges from students, faculty members and others using or being served by the Housing System, and revise them from time to time whenever necessary, so that the Net Revenues Available for Debt Service shall be sufficient in each Fiscal Year to pay at least one hundred twenty five percent (125%) of an amount equal to the Bond Service Requirement for all Senior Bonds coming due in such Fiscal Year. For purposes of calculating compliance with the rate covenant set forth above, System Revenues may be adjusted by including (i) investment earnings on the amounts on deposit in the Series 2010 Account of the Reserve Fund and (ii) proceeds received by the Trustee from any business interruption policy. The Issuer shall annually, but in no event later than January 25<sup>th</sup> of each year, deliver a certificate to the Trustee certifying compliance with the rate covenant set forth above based on the audited financial statements of the Issuer for the previous Fiscal Year.

If in any Fiscal Year the Issuer shall fail to comply with the requirement in the immediately preceding paragraph, it shall immediately cause the Housing Consultant to review its rates, fees and charges, income, System Revenues, Operating Expenses and methods of operation and to, within 60 days of such request by the Issuer, make written recommendations to the Issuer and the Managers as to the methods by which the Issuer and the Managers may promptly seek to comply with such provisions set forth in the immediately preceding paragraph. The Issuer shall or shall cause the Managers within 30 days of receipt of the recommendations commence to implement such recommendations to the extent required so as to cause it to thereafter comply with such requirements. The Issuer shall withhold the payment of Management Fees following the failure to comply with the requirements of the immediately preceding paragraph until such time as the Issuer is again in compliance with such provisions. The unpaid Management Fees shall continue to accrue until paid without interest. Failure to comply with the requirements of the immediately preceding paragraph shall not be considered an Event of Default hereunder so long as the Issuer is implementing the recommendations of the Housing Consultant; provided Net Revenues Available for Debt Service in each Fiscal Year shall equal at least one hundred percent (100%) of an amount equal to the Bond Service Requirement for all Senior Bonds coming due in such Fiscal Year.

**SECTION 4.11. RESERVED**

**SECTION 4.12. INDEMNIFICATION OF TRUSTEE**

To the extent permitted by law, the Issuer will and hereby agrees to indemnify the Trustee for, and hold the Trustee harmless against, any claim, loss, liability damage or expense (including the costs and expenses of defending against any of the foregoing) incurred without negligence or willful misconduct by the Trustee and arising out of or in connection with the issuance of the Bonds or this Indenture. The indemnification contained in this Section 4.12 shall survive the termination of this Indenture.

The Issuer agrees to cause the Proposed Facilities to be constructed in a manner which meets all environmental and regulatory requirements as of the date hereof and the Series 2010 Project shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Series 2010 Project.

**ARTICLE V.  
REVENUES AND FUNDS**

**SECTION 5.01. SOURCE OF PAYMENT OF BONDS; COLLECTION OF PLEDGED REVENUES**

(A) The Bonds, together with interest thereon, are not general or moral obligations of the Issuer, the University or the State, but are limited obligations payable solely and only from the Pledged Revenues in the manner and to the extent provided herein, including investments thereof and the proceeds of such investments, if any, but not including moneys in the 2010

Rebate Account and in the Cost of Issuance Fund. The Pledged Revenues, including investments thereof and the proceeds of such investments, if any, but not including moneys on deposit in the 2010 Rebate Account and in the Cost of Issuance Fund, are hereby pledged and assigned as security for the payment of the Bonds and shall be used for no other purposes than to pay the principal of, redemption premium, if any, and interest on the Bonds, in the order and priority expressly authorized in this Indenture or to pay the Rebate Amount. Notwithstanding anything herein to the contrary, nothing herein provided shall be deemed to grant or create a lien on any subaccount in the Reserve Fund created with respect to a particular Series of Bonds in favor of the Bondholders of any other Series and each account in the Reserve Fund shall secure only the Series of Bonds with respect to which it was created. With respect to any Bonds issued as Direct Subsidy Bonds, Pledged Revenues shall also include Direct Pay Subsidies received by the Issuer with respect to that particular Series of Direct Subsidy Bonds. Notwithstanding anything herein to the contrary, nothing herein shall be deemed to grant or create a lien on any Direct Pay Subsidies received by the Issuer with respect to a particular Series of Direct Subsidy Bonds in favor of the Bondholders of any other Series of Bonds.

(B) The Issuer covenants that, so long as any of the Bonds are outstanding, it will diligently take all actions necessary to collect and receive System Revenues pursuant to the Management Agreement and deposit the System Revenues as provided in Section 5.04 hereof, and it will refrain from taking any action which would cause or result in not collecting, receiving, depositing, appropriating or transferring the System Revenues as provided in Section 5.04 hereof.

## **SECTION 5.02. CREATION OF FUNDS AND ACCOUNTS**

(A) There are hereby created and established the Revenue Fund, the Construction Fund within which there are created a Series 2010 BABs Bonds Account and a Series 2010 Bond Account, the Costs of Issuance Fund, the Debt Service Fund, within which there is hereby created and established a Senior Bonds Principal Account and a Senior Bonds Interest Account, the Reserve Fund, the Subordinate Debt Service Fund within which there is hereby created and established a Subordinate Bonds Principal Account and a Subordinate Bonds Interest Account, the Repair and Replacement Fund, the Rebate Fund, within which there is hereby created and established the 2010 Rebate Account the Surplus Fund, and the accounts therein hereinafter authorized. The Issuer shall create and establish a separate subaccount within the Construction Fund for each Series of Bonds as Direct Subsidy Bonds.

(B) The Debt Service Fund, the Costs of Issuance Fund, the Construction Fund, the Reserve Fund, the Subordinate Debt Service Fund and the Repair and Replacement Fund created hereunder, and all accounts therein hereafter created shall constitute trust funds for the purposes herein provided, shall be held by the Trustee and shall at all times be kept separate and distinct from all other funds of the Issuer and used only as herein provided. Moneys held in the Construction Fund, the Debt Service Fund, the Reserve Fund, the Subordinate Debt Service Fund and the Repair and Replacement Fund and the accounts therein shall be subject to a lien and charge in favor of the Bondholders in the manner and to the extent provided herein;

provided, however, that the Bondholders shall have no lien on or right to payment from amounts on deposit in the 2010 Rebate Account and the Cost of Issuance Fund.

### **SECTION 5.03. APPLICATION OF SERIES 2010 BOND PROCEEDS**

(A) Unless otherwise provided to the contrary by certificate of the Authorized Officer of the Issuer, the proceeds of the Series 2010 Bonds, including net original issue premium, if any, received from the sale of the Series 2010 Bonds, together with other legally available funds of the Issuer, if any, shall, be deposited by the Issuer and upon receipt by the Trustee simultaneously with the delivery of the Series 2010 Bonds, be applied by the Trustee in the following order and priority:

(i) With respect to the Series 2010 Bonds:

(a) Capitalized Interest. There is hereby established a Capitalized Interest Account within the Debt Service Fund. Capitalized interest, if any, shall be deposited in the Capitalized Interest Account and used to pay the interest on the Series 2010 Bonds as provided in Section 5.05 hereof.

(b) Reserve Fund. There is hereby established a separate account in the Reserve Fund designated the "Series 2010 Account." An amount equal to the Reserve Requirement for the Series 2010 Bonds shall be deposited into the Series 2010 Account of the Reserve Fund.

(c) Costs of Issuance. An amount equal to the costs of issuance of the Series 2010 Bonds as described in Section 5.03(C) hereof shall be held by the Trustee in the Costs of Issuance Fund, and shall be used to pay when due and/or reimburse the costs of issuance of the Series 2010 Bonds.

(d) Construction Fund. The remaining funds allocable to the Series 2010 Bonds issued as Direct Subsidy Bonds shall be deposited in the Series 2010-BABs Bond Account of the Construction Fund and shall be disbursed to pay costs of the Series 2010 Project in accordance with Section 5.03 hereof. The remaining funds allocable to the Series 2010 Bonds shall be deposited to the Series 2010 Account of the Construction Fund and shall be disbursed to pay costs of the Series 2010 Project in accordance with Section 5.03(C) hereof.

(ii) The proceeds from the sale of the Series 2010B Bonds shall be deposited to the Series 2010 Bond Account of the Construction Fund and shall be disbursed to pay costs of the Series 2010 Project in accordance with Section 5.03(C) hereof.

(B) In determining such amounts to be deposited to such funds and accounts, as hereinafter described, the Trustee may conclusively rely upon written instructions provided to it by, or approved by, the Issuer, the Issuer's financial advisor, or the underwriters for the Series 2010 Bonds.

(C) Costs of Issuance Fund and Construction Fund.

(i) Moneys in the Costs of Issuance Fund shall be kept separate and apart from all other funds and accounts of the Issuer, and proceeds of the Bonds on deposit in the Costs of Issuance Fund, shall be disbursed by the Trustee from the Costs of Issuance Fund and applied by the Issuer to pay costs of issuance upon the delivery to the Trustee of a Requisition For Payment substantially in the form attached as Exhibit A hereto, executed by the Authorized Officer of the Issuer and containing the information required to complete Schedule A to such Requisition For Payment. In making any such disbursement from the Costs of Issuance Fund, the Trustee may rely conclusively on such Requisition for Payment and the Trustee shall be relieved of all liability with respect to making such disbursement in accordance with such Requisition for Payment without any investigation. At the written direction of the Authorized Officer of the Issuer, any amounts deposited to the Costs of Issuance Fund which are not needed to pay costs within six months of the date of issuance of the related Series of Bonds shall be transferred to the Construction Fund and used for purposes permitted therefore. Thereafter the Costs of Issuance Fund shall be closed.

(ii) Moneys in the Construction Fund and in each account thereof shall be kept separate and apart from all other funds and accounts of the Issuer, and proceeds of the appropriate Series of Bonds on deposit in the Construction Fund, shall be disbursed by the Trustee from the Construction Fund and applied by the Issuer to pay the cost of any Project upon the delivery to the Trustee of a Requisition For Payment substantially in the form attached as Exhibit A hereto, executed by the Authorized Officer of the Issuer and containing the information required to complete Schedule A to such Requisition For Payment. In making any such disbursement from the Construction Fund, the Trustee may rely conclusively on such Requisition for Payment and the Trustee shall be relieved of all liability with respect to making such disbursement in accordance with such Requisition for Payment without any investigation.

(iii) Any funds on deposit in the Costs of Issuance Fund or the Construction Fund that, in the opinion of the Issuer, are not immediately necessary for expenditure, as hereinabove provided, may be invested in Investment Obligations, provided that such investments mature or are redeemable at not less than par on or before the date such funds are estimated to be needed for the purposes hereof. The Trustee may rely conclusively upon the written instructions of the Issuer or its designee as to the dates when Costs of Issuance Fund or Construction Fund moneys are needed, and shall not be liable or responsible for determining such dates in the absence of such written instructions.

(iv) Any liquidated damages or settlement payments received by the Issuer as a result of the breach by any contractor, subcontractor or supplier working or supplying goods for any Project of any representation, warranty or performance guaranty, and all insurance and condemnation proceeds received with respect to damages to or the taking of any Project during construction or any moneys received by the Issuer as contributions towards or reimbursements of Cost of any Project shall, at the discretion of the Issuer, be deposited into

the appropriate account or accounts in the Construction Fund to insure completion of such Project or shall be deposited into the Debt Service Fund for the redemption of Bonds.

(v) Upon completion of any Project, as certified by the Authorized Officer of the Issuer, any amounts then remaining in the Construction Fund, and not reserved by the Issuer for the payment of eligible costs shall be transferred to the Debt Service Fund and used to pay principal next coming due on the Bonds maturing or subject to mandatory redemption in the manner described in Section 3.01 hereof. With respect to the Series 2010 Project amounts transferred to the Construction Fund as provided above shall be used to pay principal next coming due on the Series 2010 Bonds maturing or subject to mandatory redemption in the manner described in Section 3.01 hereof.

Upon an Event of Default hereunder and upon the written direction of the Holders of at least a majority of Bond Obligation of the Series 2010A Bonds, any amounts remaining on deposit in a related account of the Construction Fund shall be transferred by the Trustee to the Debt Service Fund to pay principal of or interest on the related Series of Bonds. With respect to the Series 2010 Project, amounts transferred to the Construction Fund as provided above shall be used to pay principal on the Series 2010 Bonds.

#### **SECTION 5.04. DISPOSITION OF SYSTEM REVENUES**

(A) Commencing in July, 2011 the Issuer shall or cause the University, in its capacity as a Manager under the Management Agreement to transfer to the Trustee no later than the 20<sup>th</sup> day of each month for deposit into the Revenue Fund all System Revenues collected with respect to the Proposed Facilities. Commencing in July 1, 2011 the Issuer shall or cause the University, in its capacity as a Manager under the Management Agreement to transfer to the Trustee no later than the 20<sup>th</sup> day of the month for deposit into the Revenue Fund all System Revenues collected with respect to the Existing Facilities; provided, however, the obligation to transfer System Revenues shall commence in the month of each Fiscal Year following the month in which the University has collected sufficient rates fees and charges with respect to the Existing Facilities sufficient to allow the University to pay 100% of the University Bond Expenses. The Issuer covenants that so long as the Bonds are Outstanding, it will cause to be paid by the University directly to the Trustee for deposit, as herein provided, to the Revenue Fund all System Revenues collected by the University under the Management Agreement. The Trustee shall promptly upon the receipt of System Revenues and Direct Pay Subsidies deposit such money in the Revenue Fund. The Trustee shall disburse the amounts deposited in the Revenue Fund at the times and in the order of priority as follows:

On the date specified by the Rebate Agent in accordance with the provisions of the Tax Agreement, an amount or amounts shall be transferred to the Rebate Fund in order to timely pay the rebate installment (if any) coming due;

Beginning July 25, 2011 and on the 25<sup>th</sup> day of each month thereafter, an amount equal to the Operating Expenses for the next ensuing month as set forth in the Operating Budget shall

be paid to the operating account established by the Managers pursuant to the Management Agreement;

Beginning July 25, 2011 and on the 25th day of each month thereafter, an amount equal to one-sixth (1/6) of the interest payable on the Senior Bonds on the next succeeding Interest Payment Date (or in the case of the first Interest Payment Date, equal accruals of such interest payable and less accrued interest on deposit) shall be transferred to the Senior Bonds Interest Account of the Debt Service Fund;

Beginning July 25, 2012 and on the 25th day of each month thereafter, a transfer shall be made into the Senior Bonds Principal Account of the Bond Fund in an amount equal to one-twelfth (1/12) of the principal amount payable on the Senior Bonds on the next ensuing July 1, whether by maturity or mandatory sinking fund redemption;

Beginning July 25, 2011 and on each July 25<sup>th</sup> of each year thereafter the Trustee shall withdraw from the Revenue Fund an amount sufficient to pay the Trustees annual fees and expenses;

On the 25th day of each month following any draw has been made on a sub account in the in the Reserve Fund to pay debt service on the applicable series of the Senior Bonds, a transfer shall be made into such subaccount in the Reserve Fund in an amount necessary to maintain on deposit therein the Reserve Requirement for the applicable series of Senior Bonds;

Beginning July 25, 2011 and on the 25th day of each month, a transfer shall be made to the Repair and Replacement Fund equal to one-twelfth (1/12th) of the Repair and Replacement Fund Deposit Requirement for such Fiscal Year, plus an amount equal to any prior withdrawals from such fund which were applied to cure shortfalls and which have not been previously replenished;

Beginning July 25, 2011 and on the 25th day of each month thereafter, an amount equal to one-sixth (1/6) of the interest payable on the Subordinate Bonds on the next succeeding Interest Payment Date (or in the case of the first Interest Payment Date, equal accruals of such interest payable and less accrued interest on deposit) shall be transferred to the Series 2010B Bonds Subaccount of the Subordinate Bonds Interest Account of the Subordinate Debt Service Fund, plus an amount equal to any prior withdrawals from such fund which were applied to cure shortfalls and which have not been previously replenished;

Beginning July 25, 2011 and on the 25th day of each month thereafter, a transfer shall be made into the Subordinate Bonds Principal Account of the Subordinate Debt Service Fund in an amount equal to one-twelfth (1/12) of the principal amount payable on the Subordinate Bonds on the next ensuing July 1, whether by maturity or mandatory sinking fund redemption, plus an amount equal to any prior withdrawals from such fund which were applied to cure shortfalls and which have not been previously replenished; and



On the 25th day of each month, all remaining Pledged Revenues shall be deposited into the Surplus Fund.

Deficiencies in the Revenue Fund on any date specified for application of Pledged Revenues shall be satisfied in the reverse order of priority described above, such that, such deficiencies shall be cured from the following sources and in the following order: (1) from deposits in the Surplus Fund, (2) from deposits in the Subordinate Bonds Principal Account of the Subordinate Debt Service Fund, (3) from deposits in the Subordinate Bonds Interest Account of the Subordinate Debt Service Fund, and (4) from deposits in the Repair and Replacement Fund (except that the Repair and Replacement Fund shall not be applied to funds and accounts securing the Subordinate Bonds). The Trustee is hereby authorized and directed to withdraw funds from the Revenue Fund as described in this Section automatically without any requisition from the Issuer.

(B) The Issuer shall not be required to make any further payments into the Debt Service Fund, including the accounts therein, and the Reserve Fund when the aggregate amount of funds in the Debt Service Fund, including the accounts therein, are at least equal to the aggregate principal amount of Bonds issued pursuant to this Indenture and then Outstanding, plus the amount of interest then due or thereafter to become due on said Bonds then Outstanding, or if all Bonds then Outstanding have otherwise been defeased pursuant to Article VII herein.

(C) For purposes of the preceding clause (B), in determining that moneys held in the Debt Service Fund and Reserve Fund are at least equal to the principal of and interest on a particular Series of Bonds, the Issuer shall take into account moneys in the Reserve Fund only to the extent that such moneys are held in an account therein related to such Series of Bonds.

#### **SECTION 5.05. USE OF MONEYS IN THE DEBT SERVICE FUND**

(A) Moneys on deposit in the respective subaccounts of the Debt Service Fund shall be used solely for the payment of the principal of, redemption premium, if any, and interest with respect to the respective Series of Bonds; provided, however, that if such principal and interest payments, or a portion thereof, have been made on behalf of the Issuer by a Bond Insurer, Reserve Product Provider or other entity insuring or guaranteeing or providing a Reserve Product for the payment of the Bonds, or any Series or maturity thereof, moneys on deposit in the respective subaccount of the Debt Service Fund and allocable to such Series or maturity shall be paid to such entity having theretofore made a corresponding payment on the related Bonds. Capitalized interest, if any, for each Series of the Bonds deposited in the Capitalized Interest Account of the Debt Service Fund and any income and profits derived therefrom shall be used, to the extent necessary, to pay interest on each of the Bonds of such Series. With respect to the Series 2010 Bonds, the Trustee shall withdraw from the Capitalized Interest Account \$\_\_\_\_\_ on July 1, 2010, \$\_\_\_\_\_ on January 1, 2011, July 1, 2011, and January 1, 2012 and the remaining balance on July 1, 2012 to pay a portion of the interest on the Series 2010 Bonds coming due on such dates. In the event of a deficiency in the Debt Service

Fund on any Interest Payment Date, Trustee may withdraw capitalized interest to make up such deficiency. Any moneys on deposit in the Debt Service Fund for capitalized interest with respect to the Bonds of a Series not needed to pay interest on the Bonds of such Series pursuant to the preceding sentence may be used in the same manner as any other moneys on deposit in the Debt Service Fund. Investment earnings posted to the Capitalized Interest Account of the Debt Service Fund after July 1, 2012 shall be transferred to the Debt Service Fund and thereafter the Capitalized Interest Account shall be closed.

(B) At the maturity date or redemption date of each Bond and at the due date of an Amortization Installment and installment of interest on the Bonds, the Trustee shall transfer from the Debt Service Fund to the Paying Agent for such Bonds sufficient moneys to pay all principal of, redemption premium, if any, and interest then due and payable with respect to such Bonds. If on the Business Day prior to any payment date on which principal of, redemption premium, if any, or interest is due on the Bonds the amount then on deposit in the Debt Service Fund shall not be at least equal to the sum of the interest, principal and redemption payments due on such payment date, the Trustee shall deposit amounts from the applicable account or accounts in the Reserve Fund in accordance with Section 5.06(A) hereof to the Debt Service Fund in an amount necessary to cure such deficiency. If an account in the Reserve Fund is funded with a Reserve Product the Trustee shall give all notices and take all actions as shall be required of the Trustee by the terms of the Reserve Product, by the times required thereby, to cause proceeds of the Reserve Product to be delivered to the Paying Agent on or before the applicable payment date with respect to the Bonds.

(C) Moneys on deposit in the Debt Service Fund for the redemption of Bonds shall be applied to the retirement of Bonds issued under the provisions of this Indenture and then Outstanding in the following manner:

(i) The Issuer may purchase Outstanding Term Bonds redeemable from Amortization Installments during such Bond Year, and pro rata (based on the principal amount of the Amortization Installments due in such Bond Year for each such Series of Term Bonds) among all such Bonds if more than one Series of such Term Bonds are Outstanding, or if no such Term Bonds are then Outstanding, the Issuer may purchase Serial Bonds whether or not such Bonds shall then be subject to redemption, but only to the extent moneys are available therefor, at the most advantageous price obtainable, such price not to exceed the principal of such Bonds plus accrued interest (or with respect to Capital Appreciation Bonds, the Compounded Amount) but no such purchase shall be made by the Issuer within a period of thirty (30) days next preceding any Interest Payment Date on which such Bonds are subject to call for redemption under the provisions of this Indenture;

(ii) Then, to the extent moneys remain on deposit in the Debt Service Fund that are held for the redemption of Bonds, the Issuer may call for redemption on each Interest Payment Date on which Bonds are subject to redemption, with or without redemption premium, from such moneys, such amount of Term Bonds subject to the Amortization Installments for such Bond Year that have not been purchased pursuant to subparagraph (i)

above as will nearly as may be practicable exhaust the remainder of the Amortization Installment for such Bond Year; and

(iii) Then, to the extent moneys remain on deposit in the Debt Service Fund that were deposited therein pursuant to this Indenture for the purpose of redeeming Bonds, the Issuer may call any remaining Bonds then subject to redemption, in such order and by such selection method as the Trustee, in its discretion, may determine, from such funds as will exhaust the money then held for the redemption of such Bonds as nearly as may be possible.

(iv) Then, to the extent moneys remain on deposit in the Debt Service Fund that were deposited therein pursuant to this Indenture for the purpose of redeeming Bonds, the Issuer may, in its discretion from time to time (a) use such moneys to make capital improvements to the Dormitory Facilities; or (b) keep such moneys on deposit in the Debt Service Fund for future use pursuant to this Section 5.05; provided, however, that such moneys shall be used for any purpose or purposes allowed pursuant to clause (a) above only if the Issuer shall obtain an opinion of Bond Counsel to the effect that such use will not, in and of itself, cause the interest on any Bond (other than any Taxable Bond) to become included in the gross income of the Owners thereof for federal income tax purposes.

(D) If Term Bonds are purchased or redeemed pursuant to clause (C) above in excess of the Amortization Installments for such Bond Year, such excess principal amount of such Term Bonds so purchased or redeemed shall be credited against subsequent Amortization Installments for such Term Bonds in such Bond Year or Bond Years as the Issuer may determine and as may be reflected in the Issuer's permanent accounting records.

(E) Notwithstanding the foregoing, to the extent that moneys are deposited into the Debt Service Fund in a given Bond Year in an amount equal to the Amortization Installment for such Bond Year and are applied to purchase or redeem Term Bonds to which such Amortization Installment applies, then all moneys thereafter deposited to the Debt Service Fund in such Bond Year may be applied as provided in clause (C) above.

(F) If Bonds are purchased pursuant to clause (C) above and are not cancelled upon purchase, the prior written approval of the affected Bond Insurer is required.

**SECTION 5.06. DESIGNATION OF RESERVE REQUIREMENTS; APPLICATION OF MONEYS IN THE RESERVE FUND; APPROVAL OF RESERVE PRODUCT**

(A) Prior to the issuance of each Series of Bonds, the Issuer shall designate the Reserve Requirement, if any, that it may determine be required with respect to such Series of Bonds. The Issuer shall establish one or more accounts within the Reserve Fund which accounts shall secure only those Series of Bonds as shall be designated by the Issuer. Each Series of Bonds shall be secured only by the account in the Reserve Fund created and established with respect to such Series of Bonds and shall have no lien on or right to payment from any other account in the Reserve Fund. Funds on deposit in the separate accounts in the Reserve Fund, if

any, shall be used solely to cure deficiencies in the Debt Service Fund with respect to the Series of Bonds to which such account pertains. If funds on deposit in any account within the Reserve Fund exceed the Reserve Requirement with respect to the Series of Bonds secured thereby, such excess shall be applied as provided in Article VI hereof.

(B) If the Issuer shall have determined, or be required, to fund an account in the Reserve Fund with respect to a Series of Bonds, notwithstanding the foregoing, the Issuer shall not be required to fully fund such account in the Reserve Fund with cash at the time of issuance of such Series of Bonds hereunder if it provides at any time with respect to such Series of Bonds in lieu of all or a portion of such funds, a Reserve Product issued by a Reserve Product Provider in an amount following the provision of such Reserve Product which, together with other amounts that will remain on deposit in the applicable account in the Reserve Fund, will equal the Reserve Requirement with respect to such Series of Bonds. Such Reserve Product as provided above must provide for payment on any interest or principal payment date (provided adequate notice is given) on which a deficiency exists (or is expected to exist) in moneys held thereunder for a payment with respect to such Series of Bonds secured thereby which cannot be cured by funds in any other account held pursuant to this Indenture and available for such purpose, and which shall name the Paying Agent or the Issuer as the beneficiary thereof for the benefit of the Bondholders of such Series of Bonds.

(C) In no event shall the use of a Reserve Product be permitted if it would cause any existing rating on any Series of Bonds Outstanding to be lowered, suspended or withdrawn.

(D) If a disbursement is made from a Reserve Product as provided pursuant to clause (B) above, the Issuer shall be obligated to reinstate the maximum limits of such Reserve Product immediately following such disbursement from the first Pledged Revenues available pursuant to Section 5.04(B) above or to replace such Reserve Product by depositing into the applicable account in the Reserve Fund from the first Pledged Revenues available for deposit pursuant to Section 5.04(B) above, an amount equal to the Reserve Requirement with respect to such account plus amounts necessary to reimburse the Reserve Product Provider for previous disbursements made pursuant to such Reserve Product, or a combination of such alternatives, provided that the Reserve Product Provider shall be reimbursed for amounts drawn under the Reserve Product prior to cash funding the Reserve Fund, and for purposes of Section 5.04(B) above, amounts necessary to satisfy such reimbursement obligation and other obligations of the Issuer to such a Reserve Product Provider shall be deemed required deposits into the applicable Reserve Fund account, but shall be used by the Issuer to satisfy its obligations to the Reserve Product Provider.

(E) Notwithstanding the foregoing, if one or more accounts in the Reserve Fund have been funded with cash or Investment Obligations and no Event of Default shall have occurred and be continuing hereunder, the Issuer may, at any time in its discretion, substitute a Reserve Product meeting the requirements of this Indenture for the cash and Investment Obligations in any such account, and the Issuer may then withdraw such cash and Investment Obligations from such account and apply it to make capital improvements to the Project, to

defeasance Bonds or to pay principal and interest on the Bonds, provided, such withdrawal may only occur so long as (i) the same does not adversely affect any rating by a Rating Agency then in effect for the applicable Series of Bonds Outstanding, (ii) the Issuer obtains an opinion of Bond Counsel that any such action will not, in and of itself, adversely affect the exclusion of interest on the applicable Series of Bonds (other than Taxable Bonds) from the gross income of the Owners thereof for federal income tax purposes, and (iii) the prior written approval of the affected Bond Insurer has been delivered to the Trustee.

With respect to the Series 2010 Bonds, no Reserve Product other than an unconditional irrevocable letter of credit issued to the Trustee by a bank rated at least "AA" by S&P at the time of deposit may be deposited in the Series 2010 Subaccount of the Reserve Fund to meet the Reserve Requirement for the Series 2010 Bonds.

(F) It shall be the responsibility of the Trustee to maintain adequate records, verified with the Reserve Product Provider, as to the amount available to be drawn at any given time under the Reserve Product and as to amounts paid and owing to the Reserve Product Provider with respect to the Reserve Product.

(G) Anything provided in this Indenture to the contrary notwithstanding, there may be no optional redemption of Bonds or distribution of funds to the Issuer from amounts held hereunder and this Indenture shall not terminate until all amounts owed to the Reserve Product Provider have been paid in full.

(H) A Reserve Product issued to the Trustee by a company licensed to issue an insurance policy guaranteeing the timely payment of debt service on a Series of Bonds (a "municipal bond insurer") may be deposited in an account other than the Series 2010 Bonds subaccount, in the Reserve Fund to meet the Reserve Fund Requirement for a Series of Bonds if the claims paying ability of the issuer thereof shall be rated "AAA" or "Aaa" by S&P or Moody's, respectively at the time of deposit to such account of the Reserve Fund.

(I) An unconditional irrevocable letter of credit issued to the Trustee by a bank may be deposited in an account in the Reserve Fund to meet the Reserve Fund Requirement for a Series of Bonds if the issuer thereof is rated at least "AA" by S&P at the time of deposit to such account of the Reserve Fund. The letter of credit shall be payable in one or more draws upon presentation by the beneficiary of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal or interest on the Series of Bonds. The draws shall be payable within two days of presentation of the sight draft. The letter of credit shall be for a term of not less than three years. The issuer of the letter of credit shall be required to notify the Issuer and the Trustee, not later than 30 months prior to the stated expiration date of the letter of credit, as to whether such expiration date shall be extended, and if so, shall indicate the new expiration date.

(J) If such notice indicates that the expiration date shall not be extended, the Issuer shall deposit in the Reserve Fund an amount sufficient to cause the cash or permitted

investments on deposit in the related account of the Reserve Fund together with any other qualifying credit instruments, to equal the Reserve Fund Requirement on the related Series of Bonds, such deposit to be paid in equal installments on at least a semi-annual basis over the remaining term of the letter of credit, unless the Reserve Product is replaced by a Reserve Product meeting the requirements in any of H or I above. The letter of credit shall permit a draw in full not less than two weeks prior to the expiration or termination of such letter of credit if the letter of credit has not been replaced or renewed. The Trustee shall draw upon the letter of credit prior to its expiration or termination unless an acceptable replacement is in place or the respective account of the Reserve Fund is fully funded in its required amount.

(K) The use of any Reserve Product shall be subject to receipt of an opinion of counsel of the Reserve Product Provider as to the due authorization, execution, delivery and enforceability of such instrument in accordance with its terms, subject to applicable laws affecting creditors' rights generally, and, in the event the issuer of such credit instrument is not a domestic entity, an opinion of foreign counsel. In addition, the use of an irrevocable letter of credit shall be subject to receipt of an opinion of counsel to the effect that payments under such letter of credit would not constitute avoidable preferences under Section 547 of the U.S. Bankruptcy Code or similar state laws with avoidable preference provisions in the event of the filing of a petition for relief under the U.S. Bankruptcy Code or similar state laws by or against the issuer of the bonds (or any other account party under the letter of credit).

(L) The obligation to reimburse the Reserve Product Provider for any fees, expenses, claims or draws upon such Reserve Product is subordinate to the payment of debt service on the respective Series of Bonds. The right of the Reserve Product Provider to payment or reimbursement of its fees and expenses shall be subordinated to cash replenishment of the Reserve Fund, and, subject to the second succeeding sentence, its right to reimbursement for claims or draws shall be on a parity with the cash replenishment of the Reserve Fund. The Reserve Product shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the Reserve Product Provider to reimbursement will be further subordinated to cash replenishment of the Reserve Fund to an amount equal to the difference between the full original amount available under the Reserve Product and the amount then available for further draws or claims. If (a) the Reserve Product Provider becomes insolvent or (b) the Reserve Product Provider defaults in its payment obligations thereunder, the obligation to reimburse the Reserve Product Provider shall be subordinate to the cash replenishment of the respective account in the Reserve Fund.

(M) If the revolving reinstatement feature described in the preceding paragraph is suspended or terminated, the Issuer shall either (i) deposit into the respective account in the Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the respective account in the Reserve Fund to equal the Reserve Requirement on the related Series of Bonds, such amount to be paid over the ensuing twelve months in equal installments deposited at least monthly or (ii) replace such instrument with a Reserve Product meeting the requirements of this Section 5.06 within six months of such occurrence.

(N) Where applicable, the amount available for draws or claims under the Reserve Product may be reduced by the amount of cash or Investment Obligations deposited in the respective account in the Reserve Fund pursuant to clause (i) of the preceding subparagraph M.

(O) If the Issuer chooses the above described alternatives to a cash-funded Reserve Fund, any amounts owed by the Issuer to the issuer a Reserve Product Provider as a result of a draw thereon or a claim thereunder, as appropriate, shall be included in any calculation of debt service requirements required to be made pursuant to the Indenture for any purpose, e.g., rate covenant or additional bonds test.

(P) The Trustee shall ascertain the necessity for a claim or draw upon the Reserve Product and to provide notice to Reserve Product Provider in accordance with its terms not later than three days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Reserve Product) prior to each Interest Payment Date.

(Q) Cash on deposit in an account of the Reserve Fund shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Reserve Product on deposit therein. If and to the extent that more than one Reserve Product is deposited in the account in the Reserve Fund with respect to one Series of Bonds, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

#### **SECTION 5.07. USE OF MONEYS IN THE 2010 REBATE ACCOUNT**

The Issuer shall deposit into the 2010 Rebate Account, from investment earnings on moneys deposited in the other funds and accounts created hereunder, or from any other legally available funds of the Issuer, an amount equal to the 2010 Rebate Amount for such Rebate Year. The Issuer shall engage a qualified rebate analyst (the "2010 Rebate Analyst") to calculate the 2010 Rebate Amount. Such moneys deposited in the Rebate Account shall be used only for the payment of the 2010 Rebate Amount to the United States as required by this Section 5.07 as directed in writing by the Issuer. In complying with the foregoing, the Issuer may rely upon any written instructions or opinions from Bond Counsel.

If any amount shall remain in the 2010 Rebate Account after payment in full of all Series 2010 Bonds issued hereunder that are not Taxable Bonds and after payment in full of the 2010 Rebate Amount to the United States in accordance with the terms hereof at the written direction of the Issuer, such amounts shall be paid to the Issuer and used to make capital improvements to the Dormitory Facilities, to defease Taxable Bonds or to pay principal and interest on Taxable Bonds.

The 2010 Rebate Account shall be held separate and apart from all other funds and accounts of the Issuer, shall not be impressed with a lien in favor of the Bondholders and the moneys therein shall be available for use only as provided herein.

Notwithstanding any other provision of this Indenture, including in particular Section 4.07 hereof, the obligation to pay over the 2010 Rebate Amount to the United States and to comply with all other requirements of Section 4.07 hereof and this Section 5.07 shall survive the defeasance or payment in full of the Series 2010 Bonds.

**SECTION 5.08. USE OF MONEYS IN THE REPAIR AND REPLACEMENT FUND**

All amounts on deposit in the Repair and Replacement Fund may be withdrawn by the Issuer or the Managers, from time to time, (i) for the payment of the costs of acquisition of equipment, fixtures or furnishings and construction, rehabilitation, repair, replacement or improvement of the Project, or (ii) to satisfy deficiencies in certain events in the application of Pledged Revenues from the Revenue Fund under Section 5.04 hereof and as described therein. The Repair and Replacement Fund shall not be applied to funds and accounts securing the Subordinate Bonds. Withdrawals for repairs and replacements under clause (i) above shall be made upon the delivery to the Trustee of a Requisition For Payment substantially in the form attached as Exhibit D hereto, executed by the Authorized Officer of the Issuer or the Manager and containing the information required to complete Schedule A to such Requisition For Payment including a certification that such costs have a capitalizable useful life greater than one year under generally accepted accounting principles. In making any such disbursement from the repair and Replacement Fund, the Trustee may rely conclusively on such Requisition for Payment and the Trustee shall be relieved of all liability with respect to making such disbursement in accordance with such Requisition for Payment without any investigation. The Issuer shall deliver a certificate to the Trustee signed by the Authorized Officer of the Issuer prior to each July 1<sup>st</sup> commencing July 1, 2011 setting forth the Repair and Replacement Fund Requirement for the ensuing Fiscal Year. The Trustee may conclusively rely on such certificate in determining the amounts required to be deposited into the Repair and Replacement Fund for the respective Fiscal Year.

**SECTION 5.09. USE OF MONEYS IN THE SURPLUS FUND**

Amounts on deposit in the Surplus Fund shall be applied by the Trustee in the following order of priority: (1) to satisfy any deficiency in any application of Pledged Revenues from the Revenue Fund, such deficiency shall be transferred, from time to time, to the Revenue Fund in accordance with Section 5.04 hereof, provided, however, that no amount shall be transferred for the benefit of the Subordinate Bonds during the pendency of an Event of Default hereunder (2) to deposit in the operating account established pursuant to the Management Agreement an amount equal to the Operating Expenses for the then current Fiscal Year (3) to deposit in the interest accounts in the Senior Bonds Interest Account of the Debt Service Fund an amount sufficient to pay the interest payments coming due on all Senior Bonds during the current Fiscal Year, (4) to deposit in the Senior Bonds Principal Accounts of the Debt Service Fund an amount sufficient to pay the principal payments to be paid during the current Fiscal Year on all Senior Bonds (5) to deposit an amount sufficient to restore any deficiency in the Reserve Fund, (6) to deposit in the interest accounts in the Subordinate Bonds Interest Account of the Subordinate



Debt Service Fund an amount sufficient to pay the interest payments coming due on all Subordinate Bonds during the current Fiscal Year, (7) to deposit in the Subordinate Bonds Principal Accounts of the Subordinate Debt Service Fund an amount sufficient to pay the principal payments to be paid on all Subordinate Bonds during the current Fiscal year, and (8) used by the Issuer for any lawful purpose at the written direction of the University.

**SECTION 5.10. NONPRESENTMENT OF BONDS**

In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof, or otherwise, or in the event that a check or draft for interest is uncashed, if funds sufficient for the payment of a respective principal, premium, if any, or interest payment on the Bonds shall have been made available to the Trustee for the benefit of the owner thereof, all liability of the Issuer to the owner thereof for the payment of such amounts shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund, without liability to the Issuer, any Bondholder or any other person for interest thereon, for the benefit of the owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, such principal of, premium, if any, or interest payment for a maximum of six years from the date that such principal, premium or interest is due, at which point all liability of the Issuer, the Trustee and any Paying Agent to the owner of such Bond with respect to such moneys shall cease and terminate. After the sixth anniversary of the date upon which such moneys shall have become due, at the written direction of the Issuer, such moneys to the extent permitted by applicable law shall be deposited in the Debt Service Fund, unless this Indenture is then discharged, in which case such moneys shall be paid to the Issuer and used for any lawful purpose.

**SECTION 5.11. MONEY TO BE HELD IN TRUST**

All money required to be deposited with or paid to the Trustee for account of any fund or account established under any provisions of this Indenture shall be held by the Trustee in trust, and, except for money deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, and moneys held in the 2010 Rebate Account and the Costs of Issuance Fund, shall, while held by the Trustee, constitute part of the Pledged Revenues and be subject to the security interest created hereby.

**SECTION 5.12. REQUIREMENT TO DELIVER ANNUAL BUDGET**

The Issuer shall deliver a copy of the approved annual Operating Budget to the Trustee prior to July 1<sup>st</sup> of each Fiscal Year, or within 10 days following approval by the Issuer.

**SECTION 5.13. AMOUNTS REMAINING IN FUNDS AND ACCOUNTS**

After full payment (or provision for payment) of the Bonds, the 2010 Rebate Amount and discharge of the Indenture, payment of all fees and expenses of the Trustee and the charges, expenses and attorneys fees of the Trustee, the Issuer and any Paying Agent, and all other

amounts required to be paid hereunder, all amounts thereafter remaining in any fund or account shall be paid to the Issuer to be used to make capital improvements to the Project or any other lawful purpose.

## **ARTICLE VI. INVESTMENT OF MONEY**

(A) Moneys held for the credit of the funds and accounts established hereunder shall be invested and reinvested at the written instruction of the Issuer in Investment Obligations. Such investments or reinvestments shall mature or become available not later than the respective dates, as estimated by the Issuer, that the moneys held for the credit of said funds and accounts will be needed for the purposes of such funds or accounts.

(B) Obligations so purchased as an investment of moneys in any such fund or account shall be deemed at all times to be a part of such fund or account, and shall at all times, for the purposes of this Indenture, be valued by the Issuer annually on June 30 of each year at the market value thereof, exclusive of accrued interest as determined by the Issuer.

(C) Except as otherwise expressly provided herein, including specifically the obligations of the Issuer with respect to paying the Rebate Amount as set forth in Section 4.07 hereof, all income and profits derived from the investment of moneys in the Debt Service Fund shall remain in such Fund. All income and profits derived from the investment of funds in the Reserve Fund, if any, shall be retained in the applicable subaccount therein until amounts on deposit in such subaccount equal the applicable Reserve Requirement, and thereafter shall be paid to the Issuer to be used to make capital improvements to the related Project, to defease Senior Bonds or to pay principal and interest on the Senior Bonds. All income and profits derived from the investment of funds in the Construction Fund shall be retained in the applicable account therein until the completion of the Project being funded from such account. All income and profits derived from the investment of funds in the Costs of Issuance Fund shall be retained therein until all costs of issuance of the related Series of Bonds have been paid. All income and profits derived from the investment of funds in the Repair and Replacement Fund, if any, shall be retained in the applicable subaccount therein until amounts on deposit in such subaccount equal the applicable Repair and Replacement Fund Requirement, and thereafter all shall be transferred to the Debt Service Fund to pay principal and interest on the Senior Bonds. The Trustee shall have no responsibility to assure that the Issuer so deposits any funds transferred in accordance with the preceding two sentences. Notwithstanding the foregoing, income and profits derived from the investment of moneys in the funds and accounts created hereunder may, at the option of the Issuer, be transferred to the Issuer in order to pay the 2010 Rebate Amount.

(D) All such investments shall be made in compliance with Section 4.07 hereof.

(E) The Issuer may at any time give to the Trustee written directions respecting the investment of any moneys required to be invested by the Trustee hereunder, subject, however,

to the provisions of this Article VI, and the Trustee shall then invest such moneys under this Article VI as so directed by the Issuer. The Trustee shall not be responsible for determining if any Investment Obligations are legal investments under the laws of the State, nor shall the Trustee be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Indenture, nor shall it be responsible for paying interest on any funds held by it hereunder for which it has received no written investment instructions.

(F) The Trustee may rely conclusively upon the written instructions of the Issuer as to the dates when moneys are needed (other than for payments of principal of, premium, if any, and interest on any of the Bonds) for payments to be made from funds or accounts established hereunder, and shall not be liable or responsible for determining such dates in the absence of such written instructions.

(G) In computing the amount in any fund created under this Indenture for any purpose provided herein, obligations purchased as an investment of moneys therein shall initially be valued at the market value thereof, exclusive of accrued interest other than accrued interest paid in connection with the purchase of any such obligations and not yet recovered. All subsequent valuations shall be performed on the same basis as the initial valuation. Any profit realized from the liquidation of such investments shall be credited to such fund and any loss resulting from the liquidation of such investments shall be charged to the respective fund.

(H) Investment Obligations may be purchased by the Trustee through its own investment division or affiliate.

(I) The Issuer certifies and covenants with the purchasers and owners of the Bonds from time to time Outstanding, that so long as any of the Bonds remain Outstanding, it will not use, direct or consent to the use of moneys on deposit in any fund or account in connection with the Bonds, whether or not such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, in any manner which will cause the interest on the Bonds which are not Taxable Bonds to become includable in gross income of the Owners thereof for federal income tax purposes. The Issuer reserves the right, however, to direct any investment of such moneys permitted by the laws of the State if, when, and to the extent that the Code or Treasury regulations promulgated thereunder shall be repealed or interpreted to permit such investment or shall be held void by final judgment of a court of competent jurisdiction, but only if such investment made by virtue of such repeal, interpretation or decision would not, in the opinion of Bond Counsel, result in the interest on the Bonds which are not Taxable Bonds includable in gross income of the Owners thereof for federal income tax purposes. Notwithstanding the foregoing, the Trustee shall have no liability for adverse tax consequences resulting from its investment of moneys held by it pursuant to this Indenture, if such investments are made in accordance with directions given by the Issuer, or in accordance with written instructions from Bond Counsel.

(J) As used in this Article, all terms shall have the same meanings as such words are given for the purposes of Section 148 of the Code and the Treasury regulations promulgated thereunder.

**ARTICLE VII.  
DISCHARGE OF INDENTURE; DEFEASANCE OF BONDS**

(A) If the Issuer shall pay or cause to be paid, or there shall be otherwise paid or provision for payment made, to or for the owners of the Bonds the principal of, redemption premium, if any, and interest due or to become due thereon at the times and in the manner stipulated herein, and shall pay or cause to be paid to the Trustee all sums of money due or to become due according to the provisions hereof (including any fees of the Trustee and expenses in connection therewith), then this Indenture and all rights hereby granted shall cease, determine and be void, whereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the Issuer such instruments in writing provided by the Issuer as determined by the Issuer to be requisite to cancel and discharge the lien hereof, and release, assign and deliver to the Issuer any and all the estate, right, title and interest herein, or otherwise subject to the lien of this Indenture, except money or securities held by the Trustee for the payment of the principal of redemption premium, if any, and interest on the Bonds and the 2010 Rebate Amount and shall notify the Rating Agencies and the Bond Insurer of such cancellation and discharge.

To accomplish defeasance, pursuant to this Article VII, the Issuer shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Bond Insurer, if any, ("Accountant") verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date ("Verification"), (ii) an escrow deposit agreement (which shall be acceptable in form and substance to the Bond Insurer, if any), (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under this Indenture and (iv) a certificate of discharge of the Trustee with respect to the Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Issuer, Trustee and Bond Insurer, if any. The Bond Insurer, if any, shall be provided with final drafts of the above-referenced documentation not less than five business days prior to the funding of the escrow.

Bonds shall be deemed "Outstanding" under this Indenture unless and until they are in fact paid and retired or the above criteria met.

(B) Any Bond shall be deemed to be paid within the meaning of this Indenture when payment of the principal of such Bond, redemption premium, if any, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (i) shall have been made or caused to have been made in accordance with the terms thereof, or (ii) shall have been provided by irrevocably

depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment (a) moneys in an amount sufficient (as determined by an independent certified public accounting firm) to make such payment; or (b) Governmental Obligations maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee and the Issuer pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee. At such times as a Bond shall be deemed to be paid hereunder, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Governmental Obligations.

(C) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed prior to their stated maturity, no deposit pursuant to clause (B) above shall be deemed a payment of such Bonds until the Issuer shall have given the Trustee irrevocable written instructions:

(i) stating the date when the principal of each such Bond is to be paid, whether at maturity or on a redemption date (which shall be any redemption date permitted by this Indenture);

(ii) requiring the Trustee to call for redemption pursuant to this Indenture any Bonds to be redeemed prior to maturity pursuant to subparagraph (i) hereof; and

(iii) requiring the Trustee to mail, as soon as practicable, in the manner prescribed by Article III hereof, a notice to the owners of such Bonds that the deposit described in clause (B) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this Article and stating the maturity or redemption date upon which money is to be available for the payment of the principal or redemption price, if applicable, on such Bonds as specified in subparagraph (i) hereof. In giving such notice, with respect to the deposit described in clause (B) above, the Trustee shall be entitled to rely on an independent certified public accountant's report as to the sufficiency of such deposit to discharge the lien of this Indenture.

(D) All income from investment of funds deposited as provided in this Article VII which is not required for the payment of the Bonds, redemption premium, if any, and interest thereon shall be deposited in the Debt Service Fund as and when realized and collected for use and application as is other money deposited in that Fund, or, if the Bonds have been paid in full or provision has been made for paying all amounts due with respect thereto, such extra investment earnings shall be paid to the Issuer to be used for any lawful purposes; provided that prior to making any withdrawals of moneys held under this Indenture after defeasance of the Bonds, the Issuer shall provide to the Bond Insurer (with a copy to the Trustee) a report of an independent certified public accounting firm demonstrating the amounts remaining after such withdrawals, together with the investment earnings thereon, will be sufficient to pay all amounts due thereafter with respect to the Bonds.

(E) No such deposit under this Article VII shall be made or accepted hereunder and no use made of any such deposit unless the Trustee shall have received an opinion of Bond Counsel to the effect that such deposit and use, each in and of itself, will not cause the Bonds which are not Taxable Bonds to be treated as arbitrage bonds within the meaning of Section 148 of the Code.

(F) Anything in Article X hereof to the contrary notwithstanding, if moneys or Governmental Obligations have been deposited or set aside with the Trustee pursuant to this Article VII for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article VII shall be made without the consent of each Bondholder affected thereby.

(G) This Indenture shall not be discharged unless all amounts due or to be come due to the Bond Insurer have been paid in full or duly provided for.

**ARTICLE VIII.  
DEFAULT PROVISIONS AND REMEDIES  
OF THE TRUSTEE AND BONDHOLDERS**

**SECTION 8.01.        DEFAULTS; EVENTS OF DEFAULT**

If any of the following events occur, subject to the provisions of Section 8.09 hereof, it is hereby defined as and declared to be and to constitute a "Default" or an "Event of Default:"

(A) Default by the Issuer in the due and punctual payment of any interest on any Bond;

(B) Default by the Issuer in the due and punctual payment of the principal of any Bond, whether at the stated maturity thereof or when the same is scheduled to be called for redemption;

(C) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in this Indenture, in the Bonds, or in the Management Agreement and failure to remedy the same after notice thereof pursuant to Section 8.09 hereof.

**SECTION 8.02.        ACCELERATION**

(A) Upon the occurrence of an Event of Default as specified in Section 8.01 hereof, the Trustee may, and upon the written request of the Holders of the majority of the Bond Obligation related to the Senior Bonds the Trustee shall, declare, by written notice delivered to the Issuer and the Managers, the principal of all Senior Bonds then Outstanding (if not then due and payable), together with interest accrued thereon, to be immediately due and payable.

(B) Any such declaration shall be by notice in writing to the Issuer, and, upon said declaration, principal and interest on all Senior Bonds shall become due and payable. The Trustee immediately upon such declaration shall give notice thereof in the same manner as provided in Section 3.03 hereof with respect to the redemption of the Senior Bonds. Such notice shall specify the date on which payment of principal and interest shall be tendered to the Holders of the Senior Bonds. Interest shall accrue to the payment date determined by the Trustee pursuant to such declaration or the actual payment date, if later.

(C) If and only if, the Senior Bonds are no longer Outstanding hereunder or the Senior Bonds have been accelerated in accordance with Section 8.02 (A) hereof, then upon receipt of the requisite written request from the Holders of the Subordinate Bonds the Trustee shall apply paragraphs (A) and (B) above to the acceleration of the Subordinate Bonds.

### **SECTION 8.03. REMEDIES; RIGHTS OF BONDHOLDERS**

(A) If an Event of Default (other than a breach under Section 4.09 hereof) shall have occurred, the Trustee may, and if requested so to do by the Holders of not less than 25% of the Bond Obligation related to the Senior Bonds, the Trustee shall be obligated to exercise one or more of the rights and powers conferred by Sections 8.02 and 8.03 hereof, as the Trustee, being advised by counsel, shall deem most expedient in the interest of the Bondholders; provided, however, that in the case of the occurrence of an Event of Default with respect to the Subordinate Bonds, the Trustee shall not be obligated to exercise any of such rights or powers, in such capacity, until the earlier to occur of (i) any portion of the Bond Obligation with respect to the Senior Bonds then Outstanding has been accelerated in accordance with Section 8.02(A) or otherwise or (ii) the date on which the Senior Bonds are no longer Outstanding hereunder.

(B) Mandamus is expressly included as a remedy granted to the Bondholders, including enforcement of the provisions of Section 4.09 hereof. Notwithstanding anything herein to the contrary, no remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity.

(C) No delay or omission to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or Event of Default or acquiescence thereof; and every such right and power may be exercised from time to time as often as may be deemed expedient.

(D) No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

(E) Holders of a majority of the Bond Obligation related to the Subordinate Bonds may appoint a Co-Trustee under Section 9.11 hereof to represent their interests upon written request and upon providing for the payment of Co-Trustee fees and expenses.

(F) In determining whether a payment default has occurred or whether a payment on a Series of Bonds has been made hereunder, no effect shall be given to payments made under the related Bond Insurance Policy.

#### **SECTION 8.04. RIGHT OF BONDHOLDERS TO DIRECT PROCEEDINGS**

The Owners of a majority of the Bond Obligation have the right, at any time, subject to the provisions of Sections 8.03 and 9.01(L) hereof, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken by the Trustee in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder.

Anything in this Indenture to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Bond Insurers of the respective Series of Bonds in default shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bondholders of such Series of Bonds that are insured by the Bond Insurer under this Indenture, and the Bond Insurers of Series of Bonds in default shall also be entitled to approve all waivers of Events of Default. For all purposes hereunder, provisions governing Events of Default and remedies, except the giving of notice of default to Bondholders, the Bond Insurer shall be deemed to be the sole Holder of the related Series of Bonds it has insured for so long as it has not failed to comply with its payment obligations under the Bond Insurance Policy.

#### **SECTION 8.05. APPLICATION OF MONEY**

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article VIII shall, after payment of the costs and expenses of the proceedings resulting in the collection of such money (including attorneys' and legal assistants' fees and expenses), liabilities (including fees and expenses of the Trustee) and advances incurred or made by the Trustee, be deposited in the Debt Service Fund, and all money in the Debt Service Fund (other than money held for redemption of Senior Bonds duly called for redemption) shall be applied as follows:

(A) Unless the principal of all the Senior Bonds shall have become due and payable, all such moneys shall be applied:

**FIRST** - To the payment to the persons entitled thereto of all interest then due on the Senior Bonds, and, if the amount available shall not be sufficient to pay in full such amount, then to the payment ratably, according to the amounts due to the persons entitled thereto, without any discrimination or privilege;

**SECOND** - To the payment to the persons entitled thereto as the same shall become due of the unpaid principal or redemption price of the Senior Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to the



provisions of this Indenture), in the order of their due dates, with interest on such Senior Bonds from the respective dates upon which they became due at the rate borne by the Senior Bonds and, if the amount available shall not be sufficient to pay in full Senior Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege;

**THIRD** - To be held for the payment to the persons entitled thereto as the same shall become due of the principal of, redemption premium, if any, and interest on the Senior Bonds which may thereafter become due, either at maturity or upon call for redemption prior to maturity and, if the amount available shall not be sufficient to pay in full Senior Bonds due on any particular date, together with interest then due and owing thereon, payment shall be made ratably according to the amount of principal due on such date to the persons entitled thereto without any discrimination or privilege.

(B) If the principal of all the Senior Bonds shall have become due, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Senior Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any such Senior Bond over any other Senior Bond, ratably, according to the amounts due respectively for principal and interest, as applicable, to the persons entitled thereto without any discrimination or privilege.

(C) Whenever money is to be applied pursuant to the provisions of this Section 8.05, such money shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such money available for application and the likelihood of additional money becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date, interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such money and of the fixing of any such date, and shall not be required to make payment to the owner of any such Senior Bond until such Senior Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

(D) After payment of reasonable expenses of the Trustee, the application of funds realized upon default shall be applied to the payment of expenses of the Issuer or rebate pursuant to Section 4.07 hereof only after the payment of past due and current debt service on the Senior Bonds and amounts required to restore the accounts in the Reserve Fund to the applicable Reserve Requirements. Whenever all principal of redemption premium, if any, and interest on all Senior Bonds have been paid under the provisions of this Section and all fees and expenses and charges of the Trustee and any Paying Agent have been paid, and no amount is

owing to the United States pursuant to Section 4.07 hereof, then the Trustee or the Co-Trustee for the Holders of the Series 2010B Bonds shall apply the provisions of (A) and (B) of this Section 8.05 to the payment of the Series 2010B Bonds. Any balance remaining in the Debt Service Fund, and in any other fund or account hereunder, shall be paid to the Issuer as provided in Article V hereof or as a court of competent jurisdiction may direct upon satisfaction of all amounts due and owing the Holders of the Senior Bonds and the Subordinate Bonds.

#### **SECTION 8.06. REMEDIES VESTED IN THE TRUSTEE**

All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding related thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as the Trustee without the necessity of joining the Bondholders as plaintiffs or defendants and any recovery of judgment shall be for the equal and ratable benefit of the Holders of the Outstanding Bonds.

#### **SECTION 8.07. RIGHTS AND REMEDIES OF BONDHOLDERS**

No Bondholder shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (A) a Default has occurred of which the Trustee has been notified as provided in Section 9.01(H) hereof, or of which by such Section it is deemed to have notice, (B) such Default shall have become an Event of Default and the Holders of not less than 25% of the Bond Obligation shall have furnished written notice to the Trustee and shall have offered the Trustee reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in their own name or names, (C) the Trustee shall have been indemnified as provided in Section 9.01(L) hereof, and (D) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, as Trustee, for a period of sixty (60) days after receipt by it of such request and offer of indemnity; and such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trust of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Bondholders shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except by action of the Holders of at least 25% of the Bond Obligation, in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the Holders of all Bonds then Outstanding. However, nothing contained in this Indenture shall affect or impair the right of any Bondholder to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective Bondholders thereof at the time, place, from the source and in the manner in the Bonds expressed.

**SECTION 8.08. TERMINATION OF PROCEEDINGS**

In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former position and rights hereunder, respectively, with regard to the property herein subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**SECTION 8.09. WAIVERS OF EVENTS OF DEFAULT**

The Trustee may waive any Event of Default hereunder and its consequences and shall do so upon the written request of the Holders of more than 50% of the Bond Obligation related to the Senior Bonds until such time as the Senior Bonds are no longer Outstanding; provided, however, that there shall not be waived any Event of Default in the payment of the principal of any Outstanding Bonds at the date of maturity specified therein or any Default in the payment when due of the interest on any such Bonds unless, prior to such waiver or rescission, all arrears of interest or all arrears of payments of principal when due, with interest on overdue principal at the rate borne by such Bonds, and all expenses of the Trustee in connection with such Default, shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee on account of any such Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Default, or impair any right consequent thereon.

**SECTION 8.10. NOTICE OF DEFAULTS UNDER SECTION 8.01(C); OPPORTUNITY OF THE ISSUER TO CURE SUCH DEFAULTS**

The Trustee shall be presumed to have notice only of payment Defaults under Section 8.01(A) and (B) hereof. The Trustee shall be deemed to have notice of any other Default only in accordance with the provisions of Section 9.01(H) hereof. Anything herein to the contrary notwithstanding, no Default under Section 8.01(C) hereof shall constitute an Event of Default until actual notice of such Default by first class mail (postage prepaid) shall be given to the Issuer by the Trustee or by the Holders of not less than 25% of the Bond Obligation and the Issuer shall have had thirty (30) days after receipt of such notice to correct such Default or cause such Default to be corrected, and shall not have corrected such Default or caused such Default to be corrected within the applicable period; provided, however, if the Default is such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer within the applicable period and diligently pursued until the Default is corrected. No grace period for a covenant default shall exceed thirty (30) days or be extended for more than sixty (60) days, without the prior written consent of the Bond Insurer. The Trustee shall accept notice of an Event of Default from the Bond Insurer.

The Trustee shall, within thirty (30) days after the occurrence of any Event of Default hereunder to which it has knowledge as provided in 9.01 (H), give written notice thereof by first-class mail, to the Issuer, the Rating Agencies, the Bond Insurer, and the Holders of all Bonds then Outstanding as shown by the list of Bondholders required to be maintained pursuant to Section 2.08 hereof.

## **ARTICLE IX. TRUSTEE**

### **SECTION 9.01. ACCEPTANCE OF THE TRUSTS**

The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform such trusts, but only upon and subject to the following express terms and conditions:

(A) Subject to clause (H) below, the Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, shall undertake to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such rights and powers vested in it by this Indenture and use the same degree of care and skill in such exercise, as a prudent trustee would exercise or use under similar circumstances in the conduct of its own affairs.

(B) The Trustee may execute any of the trusts or powers hereof and perform any of its duties hereunder on behalf of the Issuer by or through attorneys, agents, receivers or employees, but shall be answerable for the conduct of the same in accordance with the standard specified in clauses (A) above and (G) below, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Issuer) approved by the Trustee in the exercise of reasonable care under the circumstances. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction in good faith in reliance upon such opinion or advice.

(C) The Trustee shall not be responsible for any recital herein, or in the Bonds, or for the recording or rerecording, filing or refiling of this Indenture, or any other instrument required by this Indenture to secure the Bonds, or for the validity of the execution by the Issuer of this Indenture or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or secured hereby.

(D) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become an owner of Bonds secured hereby with the same rights which it would have if not the Trustee.

(E) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons, if signed, in the case of the Issuer, by the Chairperson or by any other official or employee of the Issuer. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(F) In case at any time it shall be necessary or desirable for the Trustee to make any investigation respecting any fact preparatory to taking action or doing or not doing anything as such Trustee or as to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceedings, the Trustee shall be entitled to rely conclusively upon a certificate signed by an authorized officer of the Issuer, as sufficient evidence of the facts therein contained, and prior to the occurrence of a Default of which the Trustee has been notified as provided in clause (H) below, or of which by such Section it is deemed to have notice shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may, at its discretion, secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Chairperson or Secretary of the Issuer under its seal to the effect that a resolution in the form therein set forth has been adopted by the Issuer, as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(G) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct.

(H) The Trustee shall not be required to take notice or be deemed to have notice of any Default hereunder except failure by the Issuer to cause to be made any of the payments to the Trustee required to be made by Article V hereof, unless the Trustee shall be specifically notified in writing of such Default by the Issuer or by the Holders of at least five percent (5%) of the Bond Obligation and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered to a responsible corporate trust officer at the designated corporate trust office of the Trustee, and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no Default except as aforesaid.

(I) At any and all reasonable times, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property herein conveyed, including all books, papers and records of the Issuer pertaining to the Pledged Revenues and the Bonds, and to take such memoranda from and in regard thereto as may be reasonably desired.

(J) The Trustee shall not be required to give any bond or surety in respect of the execution of the such trusts and powers or otherwise in respect of the premises.

(K) Notwithstanding anything elsewhere in this Indenture contained, in respect of the authentication of any Bonds, the withdrawal of any cash, or the taking of any action whatsoever within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand the delivery of any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Trustee to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(L) The Trustee shall not be required to expend or risk its own funds other than in the normal course of performing its duties hereunder and the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(M) All money received by the Trustee or any Paying Agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which it was received, but need not be segregated from other funds except to the extent required by law.

(N) Any action required to be taken by the Trustee under this Indenture on a day that is not a Business Day shall be taken on the next succeeding Business Day.

(O) The duties and obligations of the Trustee shall be determined solely by the express provisions hereof.

(P) The Trustee, in its capacity as Trustee under this Indenture, shall have no duty or responsibility to independently verify any of the calculations required by the 2010 Rebate Analyst hereunder and shall be fully protected in relying solely upon the written instructions of the 2010 Rebate Analyst in this regard. Under no circumstances whatsoever shall the Trustee be liable to the Issuer, any Bondholder or any other person for any loss of tax exempt status of the Bonds which are not Taxable Bonds, or any claims, demands, damages, liabilities, losses, costs or expenses resulting therefrom or in any way connected therewith, so long as the Trustee acts only in accordance with the written instructions received by the Trustee pursuant to this Indenture or written instructions from Bond Counsel.

## **SECTION 9.02. FEES, CHARGES AND EXPENSES OF THE TRUSTEE AND PAYING AGENTS**

The Trustee and any Paying Agent shall be entitled to payment and reimbursement for fees and expenses solely from money available therefor as specified in Section 5.05 hereof. Upon an Event of Default described in Section 8.01(A) or (B) hereof, and only upon such an Event of Default, the Trustee and each Paying Agent shall have a first lien on the Pledged

Revenues with right of payment prior to payment on account of principal of, redemption premium, if any, and interest on any Bond for the foregoing fees, charges and expenses incurred by it, respectively.

**SECTION 9.03. NOTICE TO BONDHOLDERS IF DEFAULT OCCURS**

If a Default occurs of which the Trustee is by Section 9.01(H) hereof required to take notice, or if notice of Default be given as provided in Section 9.01(H) hereof, then the Trustee shall promptly give written notice thereof by first class mail to the last known Holders of all Bonds then Outstanding, shown by the list of Bondholders required by Section 4.05 hereof to be kept at the designated corporate trust office of the Trustee.

**SECTION 9.04. INTERVENTION BY TRUSTEE**

In any judicial proceeding concerning the issuance or the payment of the Bonds to which the Issuer is party, the Trustee may intervene on behalf of the Bondholders and shall do so, subject to the provisions of Section 9.01(L) hereof if requested in writing by the Holders of at least 25% of the Bond Obligation.

**SECTION 9.05. SUCCESSOR TRUSTEE**

Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, or any successor Trustee appointed in accordance with this Indenture, ipso facto shall be and become successor Trustee hereunder and vested with all of the title to all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 9.06. RESIGNATION BY TRUSTEE**

The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days written notice by registered or certified mail to the Issuer and by first class mail (postage prepaid) to the owners of each Bond, and such resignation shall take effect upon the appointment of a successor Trustee by the Issuer. If no successor Trustee has been appointed by the owners of Bonds or the Issuer (as provided in Section 9.08 herein) by the expiration of such 30-day period, the Trustee may, in its discretion, appoint a successor Trustee meeting the qualifications set forth in Section 9.08 herein, until a successor or temporary Trustee has been appointed pursuant thereto. The Trustee shall not be relieved of its duties hereunder until a successor has accepted such duties. The Trustee shall have the right to petition a court of competent jurisdiction for the appointment of a permanent successor trustee if none has been appointed within such 30-day period. The Issuer shall notify the Rating Agencies and the Bond Insurer of the appointment of any successor trustee for the Bonds.

**SECTION 9.07. REMOVAL OF TRUSTEE**

The Trustee may be removed at any time by the Issuer by an instrument in writing delivered to the Trustee and to the Bondholders. The Trustee shall not be relieved of its duties hereunder until a successor Trustee has accepted such duties.

**SECTION 9.08. APPOINTMENT OF SUCCESSOR TRUSTEE BY THE BONDHOLDERS; TEMPORARY TRUSTEE**

In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, become insolvent or bankrupt, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, and the Issuer shall not appoint a successor Trustee within thirty (30) days after such event, a successor, may be appointed by the Holders of a majority of the Bond Obligation related to the Senior Bonds until such time as the Senior Bonds are no longer Outstanding hereunder, by an instrument or concurrent instruments in writing signed by such Holders, or by their attorneys in fact, duly authorized and a copy of which shall be delivered personally or sent by registered mail to the Issuer. Nevertheless, in case of such vacancy, the Issuer by resolution shall appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Holders in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee so appointed by such Holders. Notice of the appointment of a successor Trustee shall be given in the same manner as provided in Section 9.06 hereof with respect to the resignation of the Trustee. Written notice of such appointment shall also be given to the Rating Agencies. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and subject to examination by a federal or State authority, having approximately \$75,000,000 in capital and undivided profits surplus.

**SECTION 9.09. CONCERNING ANY SUCCESSOR TRUSTEE**

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessors shall, nevertheless, on the written request of the Issuer, or of their successors, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and money held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee



and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed or recorded by the successor Trustee in each recording office where this Indenture or notice hereof shall have been filed or recorded.

#### **SECTION 9.10. DESIGNATION AND SUCCESSION OF PAYING AGENT**

(A) The Trustee is hereby appointed as Paying Agent. Any bank or trust company with which or into which any Paying Agent may be merged or consolidated, or to which the paying agent business of such Paying Agent, as a whole or substantially as a whole, may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Indenture. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within 30 days thereafter, appoint a bank or trust company, or other entity located in the same city as such Paying Agent to fill such vacancy. Other Paying Agents or fiscal agents may be appointed pursuant to Article IX hereof by the Issuer if in its discretion additional Paying Agents or fiscal agents are deemed advisable.

(B) The Paying Agent shall enjoy the same protection provisions in the performance of its duties hereunder as are specified in Section 9.01 hereof with respect to the Trustee insofar as such provisions may be applicable.

(C) Notice of the appointment of additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 9.08 hereof with respect to the appointment of a successor Trustee.

#### **SECTION 9.11. APPOINTMENT OF CO-TRUSTEE**

(A) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as the Trustee in such jurisdiction. It is recognized that, in case of litigation under this Indenture, in particular, in case of the enforcement thereof on Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction, it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or if the Trustee desires to avoid the appearance of a conflict of interest in enforcing the rights and remedies of the Holders of the Subordinate Bonds, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional institution as a separate or Co-Trustee; provided that any Co-Trustee must have capital, surplus and undivided profits of at least \$50,000,000. The following provisions of this Section 9.11 are adopted to these ends.

(B) In the event that the Trustee appoints an additional institution as a separate or Co-Trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or Co-Trustee but only to the extent necessary to enable such separate or

Co-Trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or Co-Trustee shall run to and be enforceable by either of them. The responsibilities of the Co-Trustee under this Indenture shall be limited to exercising remedies as provided herein, and providing such assistance to the Trustee as may be necessary to carry out the duties of the Trustee and Co-Trustee hereunder.

(C) Should any instrument in writing from the Issuer be required by a separate or Co-Trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any separate or Co-Trustee, or a successor to either, shall cease to exist, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or Co-Trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new Trustee or successor to such separate or Co-Trustee.

#### **SECTION 9.12. TRUSTEE NOT LIABLE FOR FAILURE OF OTHERS TO ACT**

The Trustee shall not be liable or responsible because of the failure of the Issuer, or any of its employees or agents, or any other party to make any collections or deposits or to perform any act herein required of the Issuer or such other parties hereunder or because of the loss of any moneys arising through the insolvency or the act or default or omission of any other depository in which such moneys shall have been deposited in accordance with this Indenture. The Trustee shall not be responsible for the application of any of the proceeds of the Bonds or any other moneys deposited with it and paid out, withdrawn or transferred hereunder if such application, payment, withdrawal or transfer shall be made in accordance with the provisions of this Indenture. The immunities and exemptions from liability of the Trustee hereunder shall extend to its directors, officers, employees and agents.

None of the provisions of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that (A) the Trustee shall not be liable for any error of judgment reasonably consistent with the prudent man standard set forth in Section 9.01(A) hereof made in good faith by any one of its officers, unless it shall be established that the Trustee was negligent in ascertaining the pertinent facts on which such judgment is based; and (B) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the Bond Obligation related to the Senior Bonds until such time as the Senior Bonds are no longer Outstanding hereunder, relating to the time, method and place of conducting any proceedings to be taken by the Trustee in connection with the enforcement of the terms and conditions of this Indenture or for the appointment of a receiver hereunder.

**SECTION 9.13. WAIVER OF CONFLICT OF INTEREST OF TRUSTEE.**

The Holders of the Bonds waive any actual or implied conflict of interest on the part of the Trustee relating to its acting in a fiduciary capacity for both the Senior Bonds and the Subordinate Bonds.

**ARTICLE X.  
SUPPLEMENTAL INDENTURES**

**SECTION 10.01. SUPPLEMENTAL INDENTURES NOT REQUIRING  
CONSENT OF BONDHOLDERS**

The Issuer and the Trustee may, without the consent of, or notice to any of the Bondholders, enter into an indenture or indentures supplemental to this Indenture as shall not be materially adverse to outstanding Bondholders with the terms and provisions hereof for any one or more of the following purposes:

(A) To cure any ambiguity or formal defect or omission in this Indenture or to insert provisions which clarify matters or questions arising under this Indenture as are necessary or desirable and are not contrary to or inconsistent with this Indenture, not to the material prejudice of the Holders of any Series of Bonds without the consent of the Holders of at least a majority of the Bond Obligation of such Series (the Trustee may rely conclusively on opinions of counsel as to such modifications);

(B) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional benefits, rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Bondholders or the Trustee including without limitation those that may be granted to or conferred upon the Holders of Bonds which are not Taxable Bonds or the Trustee as a result of changes to Section 143 of the Code and the Treasury regulations promulgated thereunder (including but not limited to rebate requirements), or to make any change which, in the judgment of the Issuer, is not to the material prejudice of the Bondholders (the Trustee may rely conclusively on opinions of counsel as to such modifications);

(C) To subject to this Indenture additional revenues, properties or collateral;

(D) To modify, amend or supplement this Indenture or any supplemental indenture hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities law of any of the states of the United States of America, and, if they so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by the Trust Indenture Act of 1939 or similar federal statute;

(E) To evidence the appointment of a separate Trustee or Co-Trustee or the succession of a new Trustee or Paying Agent hereunder;

(F) To make any modification required in order to maintain the rating on the Outstanding Bonds;

(G) To preserve the exclusion of interest on the Bonds which are not Taxable Bonds from the gross income of the Owners thereof for federal income tax purposes;

(H) To add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements thereafter to be observed by the Issuer, or to surrender any right or power herein reserved to or conferred upon the Issuer;

(I) To execute a supplemental indenture approving the issuance of Additional Bonds pursuant to Section 2.13 or Section 2.14 hereof;

(J) To set forth what information relating to the Bonds the Trustee is authorized to disseminate to the Bondholders and the investment community; or

(K) To make any other changes or modifications to or to otherwise amend or supplement this Indenture in any manner that, in the reasonable judgment of the Issuer in consultation with its financial advisors and Bond Counsel, do not materially adversely affect the interests or rights of any of the Holders of the Bonds issued pursuant to the terms hereof and then Outstanding.

In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under this Indenture would adversely affect the security for the Series 2010 Bonds or the rights of the Series 2010 Bondholders, the effect of any such amendment, consent, waiver, action or inaction shall be considered as if there were no Bond Insurance Policy.

## **SECTION 10.02. SUPPLEMENTAL INDENTURES REQUIRING CONSENT OF BONDHOLDERS**

(A) Exclusive of supplemental indentures covered by Section 10.01 hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Holders of at least a majority of the Bond Obligation of the Senior Bonds and the Subordinate Bonds shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee, of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing in this Section 10.02 shall permit, or be construed as permitting, without the consent of the owners of all Outstanding Bonds, (i) an extension of the maturity or mandatory sinking fund redemption date of the principal amount of or the interest

on any Bond issued hereunder, or (ii) a reduction in the principal amount of any Bond or the rate of interest, or sinking fund redemption requirements, thereon, or (iii) a privilege or priority of any Bond or Bonds over any other Bond or Bonds (other than those privileges or priorities granted herein), or (iv) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture, or (v) any modification of the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of the Trustee.

(B) If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section 10.02, the Trustee shall, upon being satisfactorily indemnified, cause notice of the proposed execution of such supplemental indenture to be mailed by registered or certified mail to each Bondholder as shown on the list of Bondholders required by Section 4.05 hereof. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the designated corporate office of the Trustee for inspection by all Bondholders. If within one hundred sixty (160) days or such longer period as shall be prescribed by the Issuer following the mailing of such notice, the Holders of at least 50% of the Bond Obligation at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Bondholder shall have any right to object to any of the terms and provisions contained herein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

(C) Upon the execution of any such supplemental indenture as in this Section 10.02 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

(D) Notwithstanding any provision herein to the contrary, so long as a Bond Insurer is not in Default under its Bond Insurance Policy, except for amendments described in clauses (i), (ii), (iii), (iv) and (v) of paragraph (A) above, such Bond Insurer shall be considered the Holder of all Bonds insured by its Bond Insurance Policy and shall be entitled to give its written consent to amendments in lieu of the Bondholder consent requirement above relating to such Bonds.

### **SECTION 10.03. DISCRETION OF ISSUER AND TRUSTEE TO EXECUTE SUPPLEMENTAL INDENTURE**

In each and every case provided for in this Article X, the Issuer and the Trustee shall be entitled to exercise their discretion in determining whether or not to execute any proposed supplemental indenture, if their respective rights, obligations and interests would be affected, and neither the Trustee nor the Issuer shall be under any liability to the other or to any Bondholder or anyone whomsoever for its good faith refusal to enter into any such supplemental indenture, if such supplemental indenture is deemed by either of them to be contrary to the provisions of this Article X. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, any counsel's opinion, which counsel may be counsel for the

Issuer, as conclusive evidence that any such proposed supplemental indenture does or does not comply with the provisions of this Indenture, and that it is or is not proper for it, under the provisions of this Article X, to join in the execution of such supplemental indenture.

#### **SECTION 10.04. NOTICE OF AMENDMENTS.**

Any Rating Agency rating a Series of Bonds, the subject of an amendment or a supplemental indenture must receive notice of each amendment and a copy thereof at least 15 days in advance of execution thereof. The related Bond Insurer shall be provided by the Issuer a full transcript of all proceeds related to such amendment.

### **ARTICLE XI. MISCELLANEOUS**

#### **SECTION 11.01. CONSENTS, ETC., OF BONDHOLDERS**

Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agents appointed in writing. Proof of the execution of any such consent, request, direction, approval objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee and any Paying Agent with regard to any action taken by it under such request or other instrument, namely:

(A) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution.

(B) The fact of ownership of the Bonds and the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee pursuant to Sections 2.08 and 4.05 hereof.

#### **SECTION 11.02. PROVIDING INFORMATION TO RATING AGENCIES AND BOND INSURER**

The Issuer and the Trustee (to the extent Trustee has knowledge thereof) covenant that each of them will provide to the Rating Agencies and the Bond Insurer notification of any supplemental indentures to be entered into pursuant to Sections 10.01 and 10.02 hereof, of the appointment of any successor Trustee or Co-Trustee pursuant to Article IX hereof, any redemption or defeasance of all Outstanding Bonds, and downgrade of the Issuer's underlying rating, if any, to "non-investment grade," any draws on any accounts in the Reserve Fund, any

“Material Events” pursuant to the Continuing Disclosure Undertaking, any default under Management Agreement, such other information as may reasonably be requested by the Rating Agency or Bond Insurers.

### **SECTION 11.03. LIMITATION OF RIGHTS**

With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person or company other than the parties hereto, the Bond Insurer and the Bondholders, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto the Bond Insurer and the Bondholders as herein provided.

### **SECTION 11.04. SEVERABILITY**

If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

### **SECTION 11.05. NOTICES**

Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by first class mail, postage prepaid, or sent by confirmed facsimile, addressed to the appropriate Notice Address. A duplicate copy of each notice required to be given hereunder by the Trustee to the Issuer shall also be given to the Bond Insurer. The Issuer and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

### **SECTION 11.06. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS**

In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bond shall be a Saturday, a Sunday or a legal holiday or a day on which banking institutions are authorized by law to close in the State, then payment of interest or principal may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption.

### **SECTION 11.07. COUNTERPARTS**

This Indenture 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 11.08. APPLICABLE PROVISIONS OF LAW; MEMBERS OF ISSUER NOT LIABLE**

This Indenture shall be governed by and construed in accordance with the laws of the State. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the Issuer in his individual capacity, and neither the members of the Issuer nor any official executing the Bonds shall be liable personally on the Bonds nor shall they be subject to any personal liability or accountability by reason of the issuance thereof.

**SECTION 11.09. CAPTIONS OR HEADINGS IN THIS INDENTURE**

The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Indenture.

**SECTION 11.10. THIRD PARTY BENEFICIARIES**

Each of the parties hereto agrees that, other than the Bondholders and the Bond Insurers, there are not intended to be any other third party beneficiaries to this Indenture.

[Remainder of page intentionally left blank]



**IN WITNESS WHEREOF**, the Issuer has caused this Indenture to be executed on its behalf by its Chairperson and attested by its Secretary, and the seal of the Issuer to be hereunto affixed and duly attested; and the Trustee, to evidence its acceptance of the trusts created hereunder, has caused this Indenture to be executed in its name by its duly authorized officer, all as of the day and year first above written.

**THE FAU FINANCE CORPORATION**

(SEAL)

By: \_\_\_\_\_  
Its: Chairperson

ATTEST:

By: \_\_\_\_\_  
Secretary

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

REQUISITION FOR PAYMENT FROM CONSTRUCTION FUND

\$ \_\_\_\_\_

**THE FAU FINANCE CORPORATION**  
Capital Improvement Revenue Bonds  
(Innovation Village Project), Series \_\_\_\_

Requisition Number: \_\_\_\_

Requisition Date: \_\_/\_\_/\_\_

Total Requisition Amount: \$ \_\_\_\_\_

To: U.S. Bank National Association (the "Trustee")

Re: Payment of the amounts on the attached schedule in connection with the above-captioned Bonds.

The FAU Finance Corporation (the "Issuer") does hereby make application to you for payment of [costs of issuance] [project costs] of the Series \_\_\_\_ Bonds issued pursuant to the Trust Indenture (the "Indenture"), dated as of \_\_\_\_\_ 1, 2010, as amended and supplemented, by and between the Issuer and the Trustee that have been billed to the Issuer or otherwise incurred by the Issuer in connection with the \_\_\_\_\_ (as defined in the Indenture). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Indenture.

You are hereby requested to make disbursements from the [Costs of Issuance Fund] [Construction Fund] of the amounts as set forth on Schedule A attached to this certificate, to the payees listed on Schedule A all as provided therein.

**THE FAU FINANCE CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Authorized Officer

**SCHEDULE A**

\$ \_\_\_\_\_

**THE FAU FINANCE CORPORATION**  
Capital Improvement Revenue Bonds  
(Innovation Village Project), Series 2010

**INVOICES**

<u>Item No.</u>	<u>Payee</u>	<u>Description of Work</u>	<u>Amount</u>	<u>Direct Pay or Reimbursement</u>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

**EXHIBIT B**

**FORM OF FULLY REGISTERED BOND**

The following legend shall appear on the Subordinate Bonds:

**THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, BASED UPON THE EXEMPTION FROM REGISTRATION AVAILABLE UNDER SECTION 3(a)(2) THEREOF, AND MAY BE SOLD OR OTHERWISE TRANSFERRED ONLY TO AN "SOPHISTICATED INVESTOR," AS SUCH TERM IS DEFINED IN AND IN ACCORDANCE WITH THE PROVISIONS OF THE INDENTURE REFERRED TO BELOW.**

REGISTERED

REGISTERED

No. R-\_\_\_\_

\$\_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF FLORIDA  
THE FAU FINANCE CORPORATION  
CAPITAL IMPROVEMENT [SUBORDINATED] REVENUE BOND,  
(INNOVATION VILLAGE PROJECT),  
SERIES \_\_\_\_\_**

CUSIP NO.

Maturity Date: \_\_\_\_\_ 1, \_\_\_\_

Dated Date: \_\_\_\_\_, \_\_\_\_\_

Interest Rate: \_\_\_\_\_%

Registered Owner:

Principal Amount:

DOLLARS

The FAU Finance Corporation (the "Issuer"), for value received, hereby promises to pay to the Registered Owner identified above, or his legal representatives or registered assigns, on the Maturity Date identified above (or earlier as hereinafter provided), but solely from the Pledged Revenues, as hereinafter defined, in the manner and to the extent set forth in the hereinafter defined Indenture, the Principal Amount identified above upon presentation and surrender hereof at the designated office of U.S. Bank National Association or its successors, as Trustee, Registrar and Paying Agent (the "Trustee"), and to pay, solely from the Pledged Revenues, in the manner and to the extent set forth in the Indenture, interest on the Principal Amount from the Dated Date, or from the most recent Interest Payment Date to which interest

has been paid, at the Interest Rate per annum set forth above until payment of the Principal Amount, or until provision for the payment thereof has been duly provided for, such interest being payable semiannually on the first day of January and the first day of July of each year, commencing on July 1, 2010. Interest will be paid by check or draft mailed to the Registered Owner hereof (or if requested by wire transfer to the Registered Owner of One Million Dollars (\$1,000,000) or more in Principal Amount of the Bonds at such Owner's address as it appears on the registration books of the Issuer maintained by the Registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the Interest Payment Date (the "Record Date"), irrespective of any transfer or exchange of this Bond subsequent to such Record Date and prior to such Interest Payment Date, unless the Issuer shall be in default in payment of interest due on such Interest Payment Date. In the event of any such default, such defaulted interest shall be payable to the person in whose name this Bond is registered at the close of business on a special record date on the special Interest Payment Date as established by the Registrar. The special record date shall be not more than fifteen (15) nor fewer than ten (10) days prior to the special interest date. The Registrar shall cause notice of the proposed payment, the special interest date and the special record date to be mailed not fewer than ten (10) days preceding the special record date to each person who was a Registered Owner of Bonds at the close of business on the fifteenth day preceding such mailing to such person's address as it appears on the register on such date. All terms used herein in capitalized form, unless otherwise defined herein, shall have the meanings ascribed thereto in the Indenture.

This Bond and the interest hereon are payable solely from and secured by a lien upon and pledge of the Pledged Revenues, as defined and in the manner and to the extent provided in the Trust Indenture, dated as of **[February 1, 2010]** between the Issuer and the Trustee, as amended and supplemented from time to time (the "Indenture"). Reference is hereby made to the Indenture for the provisions, among others, relating to the terms of, lien on and security for the Bonds of this issue, the custody and application of the proceeds of the Bonds and the Pledged Revenues, the rights and remedies of the holders of the Bonds and the extent of and limitations on the Issuer's rights, duties and obligations, and the provisions permitting the issuance of Additional Bonds, to all of which provisions the owner hereof assents by acceptance of this Bond.

This Bond is one of an authorized issue of bonds designated "The FAU Finance Corporation Capital Improvement **[Subordinated]** Revenue Bonds (Innovation Village Project), Series \_\_\_\_\_," in the original aggregate principal amount of \$\_\_\_\_\_, of like tenor and effect, except as to number, amount, date, maturity (unless all Bonds mature on the same date) and interest rate, issued to \_\_\_\_\_, pursuant to the authority of and in full compliance with the Act. This Bond is subject to all the terms and conditions of the Indenture.

[Insert Redemption Provisions]

Notice of such redemption shall be given in the manner required by the Indenture.

The registration of this Bond may be transferred upon the registration books upon delivery to the designated office of the Registrar, accompanied by a written instrument or instruments of transfer in form and with guaranty of signature satisfactory to the Registrar, duly executed by the Registered Owner of this Bond or by his attorney-in-fact or legal representative, containing written instructions as to the details of transfer of this Bond, along with the social security number, federal employer identification number or taxpayer identification number of such transferee. In all cases of a transfer of a Bond, the Registrar shall at the earliest practical time in accordance with the provisions of the Indenture enter the transfer of ownership in the registration books and (unless uncertificated registration shall be requested and the Issuer has a registration system that will accommodate uncertificated registration) shall deliver in the name of the new transferee or transferees a new fully registered Bond or Bonds of the same maturity and of authorized denomination or denominations, for the same aggregate principal amount and payable from the same sources of funds. Neither the Issuer nor the Registrar shall be required to register the transfer of any Bond during the fifteen (15) days next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, after such Bonds or any portion thereof has been selected for redemption. The Issuer and the Registrar may charge the Registered Owner of such Bond for the registration of every such transfer of a Bond sufficient to reimburse them for any tax, fee or any other governmental charge required (other than by the Issuer) to be paid with respect to the registration of such transfer, and may require that such amounts be paid before any such new Bond shall be delivered.

In any case where the date of maturity of, interest on or principal of the Bonds or the date fixed for redemption of any Bond shall be a Saturday, a Sunday or a legal holiday or a day on which banking institutions are authorized by law to close in the State, then payment of interest or principal may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen, and to be performed precedent to and in the issuance of this Bond exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable hereto, and that the issuance of the Bonds of this Series does not violate any constitutional, statutory or charter limitation or provision.

**The Bonds, together with interest thereon, are not general or moral obligations of the Issuer and do not constitute an obligation, either general or special, of the University, the State or any other political subdivision thereof, but are limited obligations payable solely and only from the Pledged Revenues. It is further agreed between the Issuer and the Registered Owner of this Bond that this Bond and the indebtedness evidenced hereby shall in no event be payable from the general revenues of the Issuer and shall not constitute a debt, liability, general or moral obligation or a pledge of the faith or loan of credit of the Issuer, the University, the State or any political subdivision of the State within the meaning of any constitutional or statutory provisions; the University, the State nor any other political subdivision thereof shall be liable thereon; nor in any event shall such Bonds or obligations**

**be payable out of any funds or properties other than those of the Issuer, and then only to the extent herein provided. Neither the faith and credit nor the revenues or taxing power of the University or the State or any other political subdivision thereof, is pledged to the payment of the principal of the Bonds or the interest thereon or other costs incident thereto. Neither the University nor the Issuer has taxing power.**

It is further agreed between the Issuer and the Registered Owner of this Bond that this Bond and the indebtedness evidenced hereby shall not constitute a lien upon any real or tangible personal property of the Issuer, or any part thereof, or any other tangible personal property of or in the Issuer, but shall constitute a lien only on the Pledged Revenues, moneys on deposit in certain funds and accounts created under the Indenture and investment earnings thereon, all in the manner and to the extent provided in the Indenture. Neither the members of the Governing Body nor any person executing the Bonds shall be liable personally on the Bonds by reason of their issuance.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication endorsed hereon shall have been signed by the Registrar.

**IN WITNESS WHEREOF**, The FAU Finance Corporation has issued this Bond and has caused the same to be signed by its Chairperson and attested to and countersigned by the Secretary of the Issuer either manually or with their facsimile signatures, and its corporate seal or a facsimile thereof to be affixed, impressed, imprinted, lithographed or reproduced hereon, all as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**THE FAU FINANCE CORPORATION**

(Seal)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Chairperson

Attested and Countersigned:

By: \_\_\_\_\_

Secretary

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds designated in and executed under the provisions of the within mentioned Indenture.

U.S. Bank National Association, as  
Trustee

(Date of Authentication)

By \_\_\_\_\_  
Authorized Signatory



**ABBREVIATIONS**

The following abbreviations, when used in inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws of regulations:

TEN ENT     --     as tenants by the entireties

JT TEN       --     as joint tenants with right of survivorship and not as tenants in common

UNIF TRANS MIN ACT     --     \_\_\_\_\_ (Cust.)

Custodian for \_\_\_\_\_

under Uniform Transfer to Minors Act of \_\_\_\_\_ (State)

Additional abbreviations may also be used though not in list above.

[Remainder of page intentionally left blank]

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ (the "Transferor"), hereby sells, assigns and transfers unto \_\_\_\_\_ (the "Transferee")

PLEASE INSERT SOCIAL SECURITY OR  
OTHER IDENTIFYING NUMBER OF TRANSFEREE

\_\_\_\_\_

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ as attorney to register the transfer of the within Bond on the books kept for registration and registration of transfer thereof, with full power of substitution in the premises.

Date: \_\_\_\_\_

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program

NOTICE: The signature to this assignment must correspond with the name of the Registered Holder as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever and the Social Security or other identifying number of such assignee must be supplied. Identification Number of the Transferee is supplied.

EXHIBIT C

FORM OF INVESTOR LETTER

\_\_\_\_\_, 20\_\_

The FAU Finance Corporation  
Boca Raton, Florida

[Trustee]

Re: Capital Improvement Subordinated Revenue Bonds (Innovation Village Project),  
Subordinate Series 2010B

Ladies and Gentlemen:

The undersigned (the “**Investor**”) [as [custodian] [trustee] pursuant to a [custody agreement] [trust agreement] between [an affiliate of] the transferor of the Bonds (as hereinafter defined), as [depositor] [trustor/grantor] and the Investor, as [custodian] [trustee] (the “**Custody Agreement**”)] hereby acknowledges receipt of \$\_\_\_\_\_ in aggregate principal amount of the above-referenced bonds (the “**Bonds**”).

The undersigned acknowledges its understanding that the Bonds were issued for the financing the acquisition and construction of certain student housing facilities located on the Boca Raton campus of Florida Atlantic University (the “**Project**”), as more particularly described in that certain Trust Indenture dated as of February 1, 2010 (the “**Indenture**”), between The FAU Finance Corporation (the “**Issuer**”) and U.S. Bank National Association (the “**Trustee**”). The undersigned further acknowledges its understanding that the Bonds are secured by the Indenture which creates a security interest in the trust estate described therein (the “**Trust Estate**”) for the benefit of the Owners of the Bonds.

In connection with the purchase of the Bonds by the Investor, the Investor hereby makes the following representations upon which you may rely:

1. The Investor has authority [as [custodian] [trustee] under the Custody Agreement] to execute this letter and any other instruments and documents required to be executed by the Investor in connection with the purchase of the Bonds.

2. [The Investor is the custodian/trustee under a custody agreement/trust agreement, which provides each person acquiring beneficial interests in the Bonds must be] [The Investor is] (i) an “accredited investor” (as defined in Regulation D promulgated under the Securities Act of 1933, as amended) or a “qualified institutional buyer” (as defined in Rule 144A promulgated under the Securities Act of 1933, as amended), or (ii) a trust or custodial arrangement each of the beneficial owners of which is required to be an accredited investor or

qualified institutional buyer.

3. The Bonds are being acquired [as custodian/trustee under the custody agreement/trust agreement described above] [by the Investor for investment] and not with a view to, or for resale in connection with, any distribution of the Bonds. The Investor understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible.

4. The Investor understands that the Bonds are not registered under the Securities Act of 1933 and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) will not be listed in any stock or other securities exchange, (b) will not carry a rating from any rating service.

5. The Investor understands that (a) the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the State of Florida or any political subdivision thereof, Florida Atlantic University Board of Trustees (the "University") and that neither the University nor the Issuer has no taxing power, (b) the Bonds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the University, the State of Florida or any political subdivision thereof; and (c) the liability of the Issuer with respect to the Bonds is limited to the Trust Estate as set forth in the Indenture.

6. The Investor acknowledges that the Issuer has not prepared an offering document with respect to the sale and offering of the Bonds.

7. [The Investor] has made its own inquiry and analysis with respect to the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds. [The Investor] is aware that the business of the Issuer involves certain economic variables and risks that could adversely affect the security for the Bonds.

8. Subject to the exceptions set forth in Section 2.08 of the Indenture, the Investor acknowledges that it has the right to sell and transfer the Bonds, in accordance with the terms of the Indenture, subject to the delivery to the Trustee of an investor's letter from the transferee in substantially the form attached to the Indenture as Exhibit C, with no revisions except as may be approved in writing by the Issuer.

Capitalized terms used herein and not otherwise defined have the respective meanings given to such terms in the Indenture.

Very truly yours,

[INVESTOR]

By: \_\_\_\_\_  
Signature

---

Printed Name

---

Title

EXHIBIT D

REQUISITION FOR PAYMENT FROM

REPAIR AND REPLACEMENT FUND

**THE FAU FINANCE CORPORATION**  
Capital Improvement Revenue Bonds  
(Innovation Village Project)

Requisition Number: \_\_\_\_

Requisition Date: \_\_/\_\_/\_\_

Total Requisition Amount: \$\_\_\_\_\_

To: U.S. Bank National Association (the "Trustee")

Re: Payment of the amounts on the attached schedule in connection with the above-captioned Bonds.

In my capacity as the Authorized Officer of [The FAU Finance Corporation (the "Issuer")] [B-C Management, LLC] or [the University] I hereby make application to you for payment of certain costs incurred by \_\_\_\_\_ related to the repair and replacement of the Housing System as provided in the Trust Indenture (the "Indenture"), dated as of \_\_\_\_\_ 1, 2010, as amended and supplemented, by and between the Issuer and the Trustee. The below described costs have been billed to the Issuer or otherwise incurred by or on behalf of the Issuer in connection with the Housing System, as defined in the Indenture. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Indenture.

You are hereby requested to make disbursements from the Repair and Replacement Fund of the amounts as set forth on Schedule A attached to this certificate, to the payees listed on Schedule A all as provided therein. I hereby certify each of the costs that are the subject of this requisition has a capitalized useful life greater than one year under generally accepted accounting principles.

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Authorized Officer

SCHEDULE A

\$ \_\_\_\_\_

**THE FAU FINANCE CORPORATION**  
Capital Improvement Revenue Bonds  
(Innovation Village Project)

INVOICES

<u>Item No.</u>	<u>Payee</u>	<u>Description of Work</u>	<u>Amount</u>	<u>Direct Pay or Reimbursement</u>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				