

In the opinion of Harris Beach PLLC, Bond Counsel to the Issuer, interest on the 2020 Bonds is not excluded from gross income for federal income tax purposes and is not exempt from personal income taxes imposed by the State of New York and any political subdivision thereof. See “TAX MATTERS” herein regarding certain other tax considerations.

**ONONDAGA CIVIC DEVELOPMENT CORPORATION**  
**(State of New York)**  
**\$30,875,000 TAXABLE REVENUE REFUNDING BONDS**  
**(UPSTATE PROPERTIES DEVELOPMENT, INC. PROJECT), SERIES 2020**

**Dated: Date of Delivery**

**Interest Payable: June 1 and December 1**

**Due: December 1, as shown on inside front cover**

**First Interest Payment Date: December 1, 2020**

The Taxable Revenue Refunding Bonds (Upstate Properties Development, Inc. Project), Series 2020 (the “Series 2020 Bonds”) of Onondaga Civic Development Corporation (the “Issuer”) are to be issued under the Indenture of Trust, dated as of August 1, 2020 (the “Indenture”), between the Issuer and Manufacturers and Traders Trust Company, as trustee (“Trustee”), as fully registered bonds without coupons in denominations of \$5,000 and integral multiples thereof.

All payments of principal of the Series 2020 Bonds are payable at the trust office of the Trustee described herein, in Buffalo, New York, and interest, payable each June 1 and December 1, commencing December 1, 2020, and the redemption price of the Series 2020 Bonds upon mandatory sinking fund redemption, shall be paid by check of the Trustee mailed to the registered owners of the Series 2020 Bonds at their registered addresses, or in lieu of a check and (i) if so requested before a Record Date by an Owner of at least \$1,000,000 in principal amount of the Series 2020 Bonds as determined under the terms of the Indenture, by wire transfer of funds pursuant to written instructions delivered to the Trustee at least five (5) Business Days prior to the date of such payment, or (ii) for the Series 2020 Bonds registered in the name of Cede & Co., as described below.

The Series 2020 Bonds and interest thereon are special limited obligations of the Issuer, payable solely from loan payments to be made by, and certain collateral security to be furnished by,

**UPSTATE PROPERTIES DEVELOPMENT, INC.**

a supporting corporation to



SUNY Upstate Medical University

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

The Series 2020 Bonds are being issued to (i) advance refund the Issuer’s Revenue Bonds (Upstate Properties Development, Inc. Project), Series 2011; and (ii) the payment of the costs of issuance of the Series 2020 Bonds.

**The Series 2020 Bonds will be subject to redemption prior to maturity, as described under the caption “THE SERIES 2020 BONDS — Redemption Prior to Maturity” herein.**

**THE SERIES 2020 BONDS SHALL NEVER BE A DEBT OF THE STATE OF NEW YORK, THE COUNTY OF ONONDAGA, OR ANY POLITICAL SUBDIVISION THEREOF, THE STATE UNIVERSITY OF NEW YORK, OR UPSTATE MEDICAL UNIVERSITY AND NEITHER THE STATE OF NEW YORK, THE COUNTY OF ONONDAGA, NOR ANY POLITICAL SUBDIVISION THEREOF, THE STATE UNIVERSITY OF NEW YORK OR UPSTATE MEDICAL UNIVERSITY SHALL BE LIABLE THEREON. NONE OF THE STATE OF NEW YORK, THE COUNTY OF ONONDAGA, THE STATE UNIVERSITY OF NEW YORK, UPSTATE MEDICAL UNIVERSITY OR ANY POLITICAL SUBDIVISION THEREOF IS OBLIGATED TO PAY, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK, THE COUNTY OF ONONDAGA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF, THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2020 BONDS. THE SERIES 2020 BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES, RECEIPTS, FUNDS OR MONEYS OF THE ISSUER PLEDGED UNDER THE INDENTURE AND FROM ANY AMOUNTS OTHERWISE AVAILABLE UNDER THE INDENTURE FOR THE PAYMENT OF THE SERIES 2020 BONDS. THE SERIES 2020 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.**

**The purchase of the Series 2020 Bonds involves certain risks. See the caption “CERTAIN BONDHOLDERS, RISKS” herein.**

The Series 2020 Bonds will be issued only as fully-registered bonds in book-entry-only form, and when delivered, will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York (“DTC”). Individual purchases of beneficial interests in the Series 2020 Bonds will be made in book-entry only form (without certificates). So long as DTC or its nominee is the registered owner of the Series 2020 Bonds, payments of principal, redemption price, and interest on the Series 2020 Bonds will be made directly to DTC or its nominee. Disbursement of such payments to DTC participants is the responsibility of DTC and disbursements of such payments to the beneficial owners in the responsibility of DTC participants.

The scheduled payment of principal of and interest on the Series 2020 Bonds when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Bonds by **Build America Mutual Assurance Company (“BAM”)**.



The Series 2020 Bonds are offered, subject to prior sale, when, as and if issued and accepted by the Underwriter, subject to the approving opinion of Harris Beach, PLLC, Rochester, New York, Bond Counsel, and certain other conditions. In connection with the issuance of the Series 2020 Bonds, certain legal matters for the Company will be passed on by its counsel, Hancock Estabrook, LLP, Syracuse, New York, certain legal matters for the Issuer will be passed on by its counsel, Harris Beach, PLLC, Syracuse, New York, and certain legal matters for the Underwriter will be passed on by its counsel, Stevens & Lee, P.C., Reading, Pennsylvania. Delivery and payment in full for the Series 2020 Bonds are anticipated to occur on or about August 27, 2020.

**STIFEL**

ONONDAGA CIVIC DEVELOPMENT CORPORATION

\$30,875,000 TAXABLE REVENUE REFUNDING BONDS  
(UPSTATE PROPERTIES DEVELOPMENT, INC. PROJECT),  
SERIES 2020

Maturity Schedule and Interest Rates

<u>Maturity</u> <u>December 1</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Price</u>	<u>CUSIP<sup>†</sup></u>
2020	\$500,000	0.765%	100.000%	682832GE4
2021	1,190,000	0.915	100.000	682832GF1
2022	1,205,000	1.015	100.000	682832GG9
2023	1,215,000	1.078	100.000	682832GH7
2024	1,230,000	1.167	100.000	682832GJ3
2025	1,250,000	1.367	100.000	682832GK0
2026	1,265,000	1.639	100.000	682832GL8
2027	1,290,000	1.789	100.000	682832GM6
2028	1,315,000	1.991	100.000	682832GN4
2029	1,340,000	2.091	100.000	682832GP9
2030	1,365,000	2.191	100.000	682832GQ7
2031	1,395,000	2.291	100.000	682832GR5
2032	1,435,000	2.441	100.000	682832GS3
2033	1,470,000	2.541	100.000	682832GT1
2034	1,510,000	2.641	100.000	682832GU8
2035	1,545,000	2.691	100.000	682832GV6

\$10,355,000 3.158% Term Bonds due December 1, 2041, Priced at 100.000%, CUSIP 682832GW4

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<sup>†</sup>The CUSIP (Committee on Uniform Securities Identification Procedures) numbers have been assigned by an organization not affiliated with the Issuer, the Company or the Underwriter, and such parties are not responsible for the selection or use of the CUSIP numbers. The CUSIP numbers are included solely for the convenience of bondholders and no representation is made as to the correctness of such CUSIP numbers. CUSIP numbers assigned to securities may be changed during the term of such securities based on a number of factors including, but not limited to, the refunding or defeasance of such issue or the use of secondary market financial products. Neither the Issuer, the Company nor the Underwriter has agreed to, and there is no duty or obligation to, update this Official Statement to reflect any change or correction in the CUSIP numbers set forth above.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2020 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME WITHOUT PRIOR NOTICE.

No dealer, broker, salesperson or other person has been authorized by the Issuer, the Company or the Underwriter to give any information or to make any representations, other than those contained in this Official Statement, and if given or made, such information or representations must not be relied upon as having been authorized by any of the foregoing. All information contained herein has been obtained from the Issuer, the Company and other sources which are believed to be accurate and reliable, but no representation, warranty, or guarantee is made as to the accuracy or completeness of any information in this Official Statement. Nothing contained in this Official Statement constitutes an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Series 2020 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information and expressions of opinion herein are subject to completion and amendment. All summaries contained in this Official Statement are subject in all respects to the complete constitutional provision, statute, regulation, rule, court decision, document or report referred to. The information and expressions of opinion contained herein are subject to change without notice. Neither the delivery of this Official Statement nor any statement nor any sale made hereunder will under any circumstances create any implication that there has been no change in the affairs of the Company since the date hereof.

The Underwriter has provided the following for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under, the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The Series 2020 Bonds have not been registered under the Securities Act of 1933 nor has the Indenture been qualified under the Trust Indenture Act of 1939, as amended, in reliance upon exemptions contained in such acts. The registration or qualification of the Series 2020 Bonds in accordance with applicable provisions of securities laws of the states in which the Series 2020 Bonds have been registered or qualified and the exemption from registration or qualification in the other states cannot be regarded as a recommendation thereof. Neither these states nor any of their agencies have passed upon the merits of the Series 2020 Bonds or the accuracy or completeness of this Official Statement. Any representation to the contrary may be a criminal offense.

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

Build America Mutual Assurance Company ("BAM") makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, BAM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding BAM, supplied by BAM and presented under the heading "Bond Insurance" and "Appendix F - Specimen Municipal Bond Insurance Policy".

This Official Statement contains summaries of certain documents believed to be accurate, but reference is hereby made to the actual documents, copies of which are available at the offices of the

Trustee, and all such summaries are qualified in their entirety by this reference. During the initial offering period with respect to the Series 2020 Bonds, copies of all such documents in draft or executed form may be obtained by contacting the underwriting firm, Stifel, Nicolaus & Company, Incorporated, 651 Holiday Drive, Suite 110, Pittsburgh, Pennsylvania 15220.

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

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

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

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## **OFFICIAL STATEMENT**

**relating to**

**\$30,875,000**

**ONONDAGA CIVIC DEVELOPMENT CORPORATION  
(State of New York)  
TAXABLE REVENUE REFUNDING BONDS  
(UPSTATE PROPERTIES DEVELOPMENT, INC. PROJECT),  
SERIES 2020**

### **INTRODUCTORY STATEMENT**

This Official Statement, including the cover page and appendices, provides certain information with respect to Onondaga Civic Development Corporation (the “Issuer”) and its \$30,875,000 aggregate principal amount of Taxable Revenue Refunding Bonds (Upstate Properties Development, Inc. Project), Series 2020 (the “Series 2020 Bonds”). The Series 2020 Bonds are being issued under and pursuant to an Indenture of Trust, dated as of August 1, 2020 (the “Indenture”), between the Issuer and Manufacturers and Traders Trust Company, as trustee (the “Trustee”). The Series 2020 Bonds shall be dated the date of their delivery and shall mature on the dates and bear interest at the rates set forth on the inside front cover hereof. The Series 2020 Bonds are subject to redemption prior to maturity as set forth more fully herein under “THE SERIES 2020 BONDS - Redemption Prior to Maturity.”

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

The Series 2020 Bonds are to be issued pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the “State”), as amended, and the Resolution of the Onondaga County Legislature, New York (the “County”), No. 192 as amended by Resolution No. 472, adopted by the Onondaga County Legislature on October 6, 2009 and September 6, 2011, respectively (collectively, the “Act”), and the certificate of incorporation, bylaws and proceedings of the Issuer. The Series 2020 Bonds will be special, limited obligations of the Issuer payable solely from the moneys received under the Loan Agreement described herein, from the moneys held by the Trustee under the Indenture described herein, and from the other collateral security furnished by the Company as described herein.

The Series 2020 Bonds are being issued at the request of Upstate Properties Development, Inc. (the “Company”), a New York not-for-profit corporation and an organization determined by the Internal Revenue Service to be exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the applicable regulations of the United States Treasury Department promulgated thereunder (the “Code”). See the section captioned “THE COMPANY” herein.

The Series 2020 Bonds are being issued to finance a project on behalf of the Company consisting of, among other things, (i) the advance refunding of the Issuer’s Revenue Bonds (Upstate Properties Development, Inc. Project), Series 2011 (the “2011 Bonds”); and (ii) the payment of the costs of issuance of the Series 2020 Bonds.

The 2011 Bonds were issued on November 30, 2011 to pay or reimburse certain costs of, a project consisting of the acquisition, construction, substantial renovation and equipping to be undertaken on certain parcels of land containing in the aggregate approximately 4 acres and situated at 507-23 Adams

St. East and Townsend Street, Syracuse, New York, (Tax Map No. 095.-05-02.0, the “Land”) consisting of (A) the renovation and reconstruction of an existing twenty-one (21) story, 137,200 square foot building on the Land by the Company to be used as a student housing complex consisting of approximately two-hundred seventy-six (276) beds, student lounges, fitness facilities, laundry facilities, an ADA compliant elevator, the retrofitting of two (2) existing elevators and asbestos abatement, together with related infrastructure improvements, including, without limitation, roadway, parking for approximately 100 vehicles, sewer, water and related improvements (collectively, the “Improvements”); (B) the acquisition and installation in and around the Improvements of certain items of furniture, furnishings, equipment, machinery and other tangible personal property (collectively, the “Equipment”; and, together with the Land and the Improvements, the “Project Facility” or “Student Housing Facility”), and (C) paying capitalized interest, if any, and certain other costs incidental to the issuance of the 2011 Bonds, which Project Facility is used for student housing serving students and medical residents associated with the State University of New York Upstate Medical University (the “University”), a part of the State University of New York (“SUNY”) system of higher education. See the sections captioned “THE PROJECT FACILITY,” “THE UNIVERSITY” and “STATE UNIVERSITY OF NEW YORK” herein and APPENDIX A hereto.

The Company and SUNY (for and on behalf of the University), as Manager (the “Manager”), have entered into a Facility Management Agreement, dated as of August 1, 2020 (the “Facility Management Agreement”). Under the Facility Management Agreement, the Company has appointed the Manager to be the manager of the Student Housing Facility for a term coincident with the term of the Loan Agreement. Under the Facility Management Agreement, the Manager agrees, among other things, to cause the University to actively promote and market the Student Housing Facility as the only housing project of the University which currently exists; to cause the University to establish a schedule of lease rates to be charged at the Student Housing Facility sufficient to generate revenues in an amount each year equal to 110% of debt service plus amounts for capital reserves, operating expenses, and certain other expenses and payments; and to cause to be leased units in the Student Housing Facility to students, medical residents and fellows, on a first-priority basis until the Student Housing Facility has attained an occupancy level sufficient to generate revenues sufficient to pay debt service, operating expenses, capital reserves and certain other expenses and payments. See “THE MANAGEMENT AGREEMENT” herein.

**In addition, the Company and SUNY (for and on behalf of the University) have entered into an Agreement, dated as of August 1, 2020 (the “SUNY Agreement”), for a term coincident with the term of the Loan Agreement, pursuant to which, among other things, SUNY will agree that if at the beginning of the fall or spring semester in any academic year the occupancy of the Student Housing Facility falls below the level that is projected to be necessary to achieve the level of revenues required under the Facility Management Agreement as described above, SUNY will promptly lease in its own name those of the unoccupied units in the Student Housing Facility, and pay at such time the then established lease rates for the Student Housing Facility, as shall be necessary to achieve the required level of Project Revenues. See “THE SUNY AGREEMENT” herein.**

The Issuer and the Company will enter into a Loan Agreement, dated as of August 1, 2020 (the “Loan Agreement”), under which the Company will be obligated to make loan payments in amounts sufficient to pay the principal of, premium, if any, and interest on the Series 2020 Bonds when due. Pursuant to the Indenture and a certain Pledge and Assignment, dated as of August 1, 2020, from the Issuer to the Trustee (the “Pledge and Assignment”), the Issuer will assign and pledge to the Trustee, as security for the payment of the Series 2020 Bonds and all Additional Bonds issued under the Indenture, all right, title and interest of the Issuer in and to the Loan Agreement, including payments to be made by the Company pursuant to the Loan Agreement and all right, title and interest of the Issuer in and to all money and securities held by the Trustee in any fund or account under the Indenture (excluding certain Unassigned Rights).



In order to secure the Series 2020 Bonds and its obligations under the Loan Agreement, the Company and the Issuer shall enter into a Mortgage and Security Agreement, dated as of August 1, 2020 (the “Mortgage”) pursuant to which the Company shall grant to the Issuer (which the Issuer shall assign to the Trustee) a mortgage lien on and security interest in its interest in the real and personal property comprising the Student Housing Facility. The Company will enter also into an Assignment of Rents and Leases, dated as of August 1, 2020 (the “Assignment of Rents”), pursuant to which the Company shall assign to the Trustee all rents, residency agreements, leases, subleases, licenses or occupancy agreements with regard to the Student Housing Facility.

As additional security for the Series 2020 Bonds, the Company will enter into an Assignment of Agreements dated as of August 1, 2020 (the “Assignment of Agreements”) pursuant to which the Company will assign to the Trustee all of its right, title and interest in and to the SUNY Agreement and the Facility Management Agreement.

There follows in this Official Statement and in the Appendices hereto descriptions of the Series 2020 Bonds and the security for the Series 2020 Bonds; summaries of certain Financing Documents; descriptions of the Company, the Issuer, the Student Housing Facility, the University and SUNY; a summary of certain Bondholders’ risks; and certain other information. These summaries and descriptions do not purport to be complete and are expressly made subject to the further provisions of this Official Statement (including the Appendices hereto) as well as to the exact provisions of the complete documents, which may be obtained from the Trustee or, during the offering period for the Series 2020 Bonds, from the Underwriter.

## **THE ISSUER**

The Issuer was established as a not-for-profit local development corporation of the State pursuant to the purposes and powers contained within the Act, and pursuant to its certificate of incorporation filed on August 10, 2009, as amended on October 5, 2009, and Resolution No. 192 as amended by Resolution No. 472, adopted by the Onondaga County Legislature on October 6, 2009 and September 6, 2011, respectively (collectively, the “County Resolution”). The Issuer was established as a not-for-profit local development corporation of the State with the authority and power to own, lease and sell personal and real property for the purposes of, among other things, acquiring, constructing and equipping certain projects exclusively in furtherance of the charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest.

The Act further authorizes the Issuer to issue its bonds and to loan the proceeds thereof for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to pledge certain revenues and receipts to secure the payment of such bonds and interest thereon.

The sole member of the Issuer is the County Executive of Onondaga County, New York, ex-officio. The Issuer is managed by its Board of Directors. The Board of Directors of the Issuer is presently composed of three (3) voting directors appointed by the Chairman of the Onondaga County Legislature, three (3) voting directors appointed by the County Executive and one (1) voting director jointly appointed by a majority of the Onondaga County Legislature and the County Executive, all subject to confirmation by the Onondaga County Legislature. The persons currently serving as directors of the Issuer are as follows:

<u>Name</u>	<u>Position</u>
Matthew Marko	Chairperson
Gerald Albrigo	Director
Michael LaFlair	Director
Kimberly Townsend	Director
Alison Miller	Director
James Jordan	Director
Mitchell Latimer	Director

The President/CEO, Secretary and Treasurer of the Issuer are appointed by the Board of Directors of the Issuer. The President/CEO of the Issuer is Robert M. Petrovich, the Secretary of the Issuer is Carolyn Evans-Dean and the Treasurer of the Issuer is Nathaniel Stevens.

**THE SERIES 2020 BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE PAYMENTS MADE BY THE COMPANY UNDER THE LOAN AGREEMENT, FROM THE MONIES HELD BY THE TRUSTEE UNDER THE INDENTURE (EXCEPTING THEREFROM, PAYMENTS AND MONEYS DERIVED FROM THE UNASSIGNED RIGHTS), AND THE OTHER COLLATERAL SECURITY FURNISHED BY THE COMPANY. THE ISSUER, ITS MEMBER, DIRECTORS AND OFFICERS ARE NOT PERSONALLY LIABLE WITH RESPECT TO THE SERIES 2020 BONDS. ACCORDINGLY, NO FINANCIAL INFORMATION WITH RESPECT TO THE ISSUER OR ITS MEMBER, DIRECTORS OR OFFICERS HAS BEEN INCLUDED IN THIS OFFICIAL STATEMENT.**

**THE ISSUER HAS NO TAXING POWER. THE SERIES 2020 BONDS SHALL NEVER CONSTITUTE A DEBT OF THE STATE OR THE COUNTY OF ONONDAGA, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, THE COUNTY OF ONONDAGA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2020 BONDS, AND NEITHER THE STATE NOR THE COUNTY OF ONONDAGA SHALL BE LIABLE THEREON NOR SHALL THE SERIES 2020 BONDS BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE DULY PLEDGED THEREFOR PURSUANT TO THE INDENTURE.**

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

#### **THE COMPANY**

The Company is a not-for-profit corporation organized in 2008 under the laws of the State of New York for the purpose of, among other things, supporting the University by, among other things, providing and supporting campus facilities for the use by the University. The Internal Revenue Service has determined that the Company is an organization described in Section 501(c)(3) of the Code and is exempt from federal income taxation under Section 501(a) of the Code.

The Company is governed by a three member board of directors which includes Eric J. Smith, Senior Vice President for Finance and Administration, SUNY Upstate Medical University, Mantosh J. Dewan, MD, Interim President, SUNY Upstate Medical University, and Thomas E. Taylor, Esquire, Bousquet Holstein PLLC.

The Student Housing Facility and the contract rights of the Company relating thereto constitute the primary assets of the Company, and the revenues from the Student Housing Facility are expected to

constitute the primary source of income of the Company. In addition to the Student Housing Facility, the Company owns certain parcels of land for future development. This land is reflected on the Company's balance sheet and in the footnote disclosures in the audited financial statements. See APPENDIX B attached hereto.

### **Pending Litigation**

Cor Loguen Crossing Company, LLC (the "Plaintiff") has commenced a derivative action on behalf of Upstate-Cor Company, LLC ("Upstate-Cor"), an indirect for-profit subsidiary of the Company. Upstate-Cor is a New York limited liability company in which both Loguen Crossing Corporation, ("Loguen Crossing") a wholly owned, direct, for-profit subsidiary of the Company, and the Plaintiff are the sole members. The action seeks unspecified money damages and specific performance directing Loguen Crossing to transfer certain real property intended for potential future development (the "Kennedy Square Property") to Upstate-Cor pursuant to the terms of the September 2012 Upstate-Cor operating agreement. Because Loguen Crossing is a wholly owned, direct, for-profit subsidiary of the Company, the action also seeks damages and specific performance against the Company under the "alter ego" theory and by piercing Loguen Crossing's corporate veil.

The action commenced in June 2019. The Company and Loguen Crossing have moved to dismiss the Plaintiff's complaint based upon the applicable six-year statute of limitations. The motion to dismiss was originally scheduled to be heard on October 23, 2019, but before it was heard, Plaintiffs filed an amended complaint. A motion was made to dismiss the amended complaint, again based on the applicable statute of limitations. The motion was denied by the court. The parties have commenced documentary discovery relating to the litigation. It is too early in the proceedings to assess the likelihood of an unfavorable outcome, or the range of any potential loss.

The Kennedy Square Property, which is the subject of the above litigation, is unrelated to the Student Housing Facility, and the ultimate outcome of the litigation is not expected to affect title to the Student Housing Facility or the Project Revenues. See "THE MANAGEMENT AGREEMENT" herein for a discussion of the Manager's duties regarding the collection of Project Revenues and the transfer of such Project Revenues to the Trustee. See also "SECURITY FOR THE SERIES 2020 BONDS – Mortgage; Assignment of Rents" for a discussion of the mortgage lien on and security interest being provided to the Trustee in the real and personal property comprising the Student Housing Facility.

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

### **THE STUDENT HOUSING FACILITY**

The Student Housing Facility consists of an approximately 137,200 square foot student housing complex consisting of approximately 276 beds, located on certain parcels of land containing in the aggregate 4 acres and situated at 507-23 Adams Street East and Townsend Street, Syracuse, New York. The Student Housing Facility consists of a single twenty-one story building. Construction of the Student Housing Facility was completed in August, 2012.

During the 2020-21 academic year, housing rates per occupant per year for the Student Housing Facility are \$12,000 for a two bedroom suite and \$13,800 for a four bedroom suite. The Student Housing Facility (known as Geneva Tower) is offered to University students, medical residents and fellows. For the current 2020-21 academic year, the vast majority of Geneva Tower leases are held by graduate health education students, medical students, medical residents and fellows, who depend upon in-person laboratories, inpatient and outpatient rotations, and on-site clinical medical and surgical training. As a

result, the proximity of the Student Housing Facility's to such in-person training is a positive factor in the recruitment and retention of Geneva Tower residents.

## **THE UNIVERSITY**

The University is a public, coeducational, residential university located on a 30-acre campus in the City of Syracuse, New York. The University was founded in 1834 as the "Geneva Medical College" for the purpose of training medical doctors. The University was transferred to Syracuse University in 1871 and then later ceased to be associated with Syracuse University, when the University became part of the SUNY system in 1950. The University's overall enrollment for the 2019-2020 academic year was 2,244 students. The University offers 21 different degree programs. Total student enrollment and residents at the University over the past five years and number of medical residents is shown in the table below.

Academic Year:	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>
Overall					
University Students:	1,483	1,527	1,547	1,588	1,594
Medical Residents:	<u>523</u>	<u>554</u>	<u>587</u>	<u>612</u>	<u>650</u>
Total Students & Residents	2,006	2,081	2,134	2,200	2,244

Note: Although certain health sciences programs offered by the University follow a two-semester schedule, both medical students and residents follow a 10 to 12 month schedule.

The Student Housing Facility is situated on a beneficial location on the campus for medical students and medical residents of the University, who benefit from close proximity to University clinical/hospital facilities also located on the campus. Although not currently a policy, the University is able to elect first year medical students to live in Geneva Tower.

## **COVID-19 and the Student Housing Facility**

The vast majority of residents who reside in Geneva Tower are medical students, medical residents, fellows and others enrolled in graduate level health profession programs. As a result, during the spring of 2020 when most higher education institutions had converted to online remote learning, this was not the case related to the individuals with leases in Geneva Tower. The very nature of medical training requires on-site learning throughout the academic year. Medical and most other health profession students can only meet certain requirements such as cadaver laboratory and clinical rotations, in-person, as is the case for medical residents and fellows who are constantly interfacing with patients in the hospital setting with supervision by attending physicians. As a result, only two residents of Geneva Tower departed early during the spring of 2020, prior to the conclusion of their lease period, and no related refunds were provided by the Company.

The University, as both a teaching hospital and Manager of Geneva Tower, is able to provide a safe environment, access to testing, and both inpatient and outpatient support related to the current pandemic. In fact, the University believes that these factors have positively influenced the full subscription of all available beds during the 2020-21 academic year. The well-being of the entire Upstate Medical community is a top priority. See APPENDIX A for additional information relating to the Student Housing Facility and expected enrollment during the 2020-21 academic year. See also "CERTAIN BONDHOLDERS' RISKS - Public Health Epidemics or Outbreaks" herein.

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

**THE UNIVERSITY SHALL NOT BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE SERIES 2020 BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON.**

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

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

**SUNY SHALL NOT BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE SERIES 2020 BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON.**

#### **THE MANAGEMENT AGREEMENT**

Under the Facility Management Agreement, the Company has appointed SUNY as the Manager of the Student Housing Facility for a term of 30 years. Under the Facility Management Agreement, the Manager agrees to cause to be leased on behalf of the Company units in the Student Housing Facility to students associated with the University's campus until the occupancy is at a level sufficient to generate aggregate rents and other charges paid by occupants ("Project Revenues") in an amount that will allow the Company to fund all necessary reserves for the capital repair, replacement, alteration or improvement of the Student Housing Facility ("Capital Reserves"), to pay all operating expenses with respect to the Student Housing Facility ("Operating Expenses"), to make all principal and interest payments on the Series 2020 Bonds ("Debt Service Payments"), to pay all expenses of the University for utilities and non-capital maintenance and repairs at the Student Housing Facility ("University Expenses"), and to make all other payments required under the Indenture and the Loan Agreement (the "Principal Agreements").

Under the Facility Management Agreement, a management committee (the "Management Committee") is created comprised of one member appointed by the Company and two appointed by the Manager acting on behalf of the University. The Management Committee oversees the financial aspects of the Project Facility and sets general operating policies. The Manager will cause the University, through its housing office, to operate the Student Housing Facility under annual budgets submitted by the University to the Management Committee not later than 60 days prior to the beginning of each academic year.

No later than 60 days prior to the commencement of each academic year, the Manager shall cause the University to establish and submit to the Management Committee a schedule setting forth the rents to be charged at the facility for such academic year, which rates shall be sufficient at historic occupancy levels to generate aggregate Project Revenues in an amount equal to: (a) 110% of all Debt Service Payments scheduled to become due during such year and (b) the total sum needed by the Company in such year to: (i) fund all Capital Reserves, (ii) pay all Operating Expenses, (iii) pay all non-deferred

University Expenses or University Expenses which are not supported by the University, and (iv) make all other payments required under the Principal Agreements.

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

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

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

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

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

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

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

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

(c) Prepare and submit to the Management Committee an annual budget, which shall describe in detail all of the revenue and expenses entailed in the operation and maintenance of the Project Facility (including capital repairs, replacements and refurbishments) and the provision of all payments required by or in connection with the Series 2020 Bonds, the Principal Agreements and the Facility Management Agreement.

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

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

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

(g) Collect all Project Revenues, which shall, upon receipt by the University, be promptly deposited into the University’s cash receivables account, and thereafter promptly remitted without set-off or deduction (in any event no later than one week after receipt by the University) directly to the Trustee.

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

(i) Pay when due all University Expenses not supported by the University, defined to include: (i) all payroll costs for on-site staff of the University including wages, salary, incentive bonuses, holiday and vacation pay, insurance benefits, workers’ compensation premiums or allocable costs for self insurance of such matters, pension and health and welfare payments, payroll taxes and other governmental assessments so long as such salary and wage costs and benefits conform to the approved Annual Budget or are otherwise approved in writing by the Company; (ii) any back-charge by the University for or with respect to any utilities supplied by the University to the Project Facility; and (iii) costs of non-capital maintenance and repairs at the Project Facility.

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

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

The Facility Management Agreement provides that each month during the term thereof, the Manager shall cause the University to submit an invoice to the Company for all University Expenses

incurred during the preceding month for any expenses not supported by the University. The Company will cause such invoice to be paid on or before the thirtieth day following receipt to the extent of available Project Revenues after making provisions for the funding of all outstanding Capital Reserves, and the payment of all Operating Expenses, Debt Service Payments and other monetary obligations under the Principal Agreements then due and owing. To the extent that available Project Revenues, after making provisions for the payments referenced in this paragraph, are sufficient to pay any portion of the University Expenses, the Company shall pay such portions of such expenses and damages. If at the time of any such invoice, available Project Revenues, after making provisions for the payments referenced in the preceding sentence, are insufficient to pay all invoiced University Expenses, the amount of such insufficiency shall be deferred on a non-interest bearing basis until such time as the Company accumulates sufficient Project Revenues to pay such outstanding expenses.

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

### **THE SUNY AGREEMENT**

The SUNY Agreement provides that if at the beginning of the fall or spring semester in any academic year during the term thereof occupancy of the Project Facility falls below the level necessary to achieve the level of Project Revenues required under the Facility Management Agreement, including, but not limited to 110% of all Debt Service Payments scheduled to become due and payable during that academic year, measured as of the last day of the calendar month preceding the beginning of the fall or spring semester, as the case may be, SUNY will promptly lease in its own name those of the unoccupied units in the Project Facility, and pay at such time the then established rental rates for the Project Facility, as shall be necessary to achieve the required level of Project Revenues.

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



## **PLAN OF FINANCE**

The proceeds of the Series 2020 Bonds will be applied to advance refund the 2011 Bonds and to pay the costs of issuance of the Series 2020 Bonds.

A portion of the proceeds of the Series 2020 Bonds will be applied to advance refund the 2011 Bonds. Such portion of the proceeds of the Series 2020 Bonds will be irrevocably deposited with Manufacturers and Traders Trust Company (the “Escrow Agent”) for deposit in an escrow fund (the “Escrow Fund”) to be held under the terms of an Escrow Agreement dated as of August 1, 2020 (the “Escrow Agreement”) among the Escrow Agent, the Company and the Issuer. The proceeds of the Series 2020 Bonds deposited in the Escrow Fund are expected to be sufficient to pay principal and interest on the 2011 Bonds when due and the redemption price of the 2011 Bonds on December 1, 2021 (the “Redemption Date”). The accuracy of arithmetic computations supporting the conclusion that the Series 2020 Bonds proceeds to be deposited in the Escrow Fund will be sufficient to pay principal and interest on the 2011 Bonds when due and the redemption price of the 2011 Bonds on the Redemption Date will be independently verified by Causey Demgen & Moore, P.C., certified public accountants. See “VERIFICATION OF MATHEMATICAL CALCULATIONS” herein.

## **ESTIMATED SOURCES AND APPLICATION OF FUNDS**

The estimated sources and application of funds in connection with the issuance of the Series 2020 Bonds are anticipated to be as follows:

### **SOURCES OF FUNDS**

Par Amount of Series 2020 Bonds	<u>\$30,875,000.00</u>
TOTAL SOURCES.....	\$30,875,000.00

### **USES OF FUNDS**

Refunding of 2011 Bonds	\$30,074,174.40
Costs of Issuance*	<u>800,825.60</u>
TOTAL USES.....	\$30,875,000.00

\* Includes Issuer fee, Underwriter’s discount, bond insurance premium, legal fees, trustee fees, printing costs, rating fees and miscellaneous expenses.

## **THE SERIES 2020 BONDS**

### **General**

The Series 2020 Bonds are to be dated the date of issuance and are to bear interest payable semiannually on June 1 and December 1 of each year, commencing December 1, 2020, at the rates per annum, according to years of maturity, as set forth on the inside front cover hereof. The Series 2020 Bonds are to mature on December 1 of the years and in the principal amounts set forth on the inside front cover hereof, and will be subject to redemption prior to maturity, including optional redemption, extraordinary redemption and mandatory redemption, as applicable, as set forth below under “Redemption Prior to Maturity.”

Interest payable on each Interest Payment Date for the Series 2020 Bonds is to be paid to the persons in whose names the Series 2020 Bonds are registered on the bond register maintained by the Trustee (sometimes referred to herein as the “Holders”) on the 15th calendar day of the month (regardless of whether such day is a Business Day) immediately preceding the relevant Interest Payment Date, or, if payment of the Series 2020 Bonds is not deposited with the Trustee on or before any such Interest Payment Date, to the Holders at the close of business on a Special Record Date established by the Trustee, notice of which shall have been mailed to all Owners not less than 15 days prior to such date.

The Series 2020 Bonds are to be issued in the form of fully registered Series 2020 Bonds, without coupons, each in minimum denominations of \$5,000 and integral multiples thereof. Each Series 2020 Bond shall be transferable only on the books of the Issuer as maintained by the Trustee in its capacity as bond registrar. Upon surrender thereof at the Office of the Trustee, duly endorsed for transfer or accompanied by an assignment in form satisfactory to the Trustee duly executed by the Owner or his attorney duly authorized in writing and in either case accompanied by a guaranty of signature satisfactory to the Trustee, the Issuer shall execute and the Trustee shall authenticate and deliver, in the name of the transferee or transferees, a new Series 2020 Bond or Series 2020 Bonds in authorized denominations for a like aggregate principal amount.

The Issuer, the Trustee and any Paying Agent may deem and treat the Person in whose name any Series 2020 Bond shall be registered upon the books of the Issuer on the Record Date as the absolute owner thereof, whether such Series 2020 Bond shall be overdue or not for the purpose of receiving payment of the principal of, premium, if any, Redemption Price of and interest on such Series 2020 Bond and for all other purposes. All such payments so made to any such Owner or upon such Owner’s order shall be valid and effectual to satisfy and discharge the liability of the Issuer upon such Series 2020 Bond to the extent of the sum or sums so paid. Neither the Issuer, the Trustee nor any Paying Agent shall be affected by any notice to the contrary. Any Holder may designate a nominee in whose name such Series 2020 Bond may be registered.

In all cases in which the privilege of exchanging or transferring Series 2020 Bonds is exercised, the Issuer shall execute and the Trustee shall authenticate and deliver Series 2020 Bonds in accordance with the provisions of the Indenture. For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for (i) any tax, fee or other governmental charge required to be paid with respect to such transfer, (ii) the cost of preparing each new Series 2020 Bond, and (iii) any other expenses of the Issuer or the Trustee incurred in connection therewith.

The Trustee shall not be required to exchange or register a transfer of (1) any Series 2020 Bonds during the fifteen (15) day period next preceding (i) a Bond Payment Date or (ii) the date of selection of Series 2020 Bonds to be redeemed and thereafter until the date of the mailing of a notice of redemption of

Series 2020 Bonds selected for redemption, or (2) any Series 2020 Bonds selected, called or being called for redemption in whole or in part except, in the case of any Series 2020 Bond to be redeemed in part, the portion thereof not so to be redeemed.

In the event any Series 2020 Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and, upon its request, the Trustee shall authenticate and deliver a new Series 2020 Bond in accordance with the provisions of the Indenture, and the Issuer and the Trustee may charge the owner of such Series 2020 Bond with its reasonable fees and expenses in connection therewith and require indemnity reasonably satisfactory to each of the Issuer and the Trustee.

### **Redemption Prior to Maturity**

Optional Redemption of Series 2020 Bonds. The Series 2020 Bonds maturing after December 1, 2031 are subject to redemption by the Issuer at the option of the Company on or after December 1, 2030, in whole or in part at any time, at a Redemption Price equal to 100% of the principal amount of the Series 2020 Bonds or portions thereof to be redeemed, plus accrued interest, if any, to the Redemption Date.

Mandatory Sinking Fund Redemption of Series 2020 Bonds. The Series 2020 Bonds maturing on December 1, 2041 shall be subject to mandatory redemption on the sinking fund Redemption Dates and in sinking fund redemption amounts set forth in the following table, at a Redemption Price equal to 100% of the principal amount thereof being redeemed plus accrued interest to the Redemption Date:

<u>Year</u>	<u>Sinking Fund Redemption Amount</u>
2036	\$1,595,000
2037	1,645,000
2038	1,695,000
2039	1,750,000
2040	1,805,000
2041*	1,865,000

\*Maturity

Special Redemption. The Series 2020 Bonds are subject to redemption prior to maturity at the option of the Issuer (exercised at the direction of the Company), in whole or in part on any Interest Payment Date, at a Redemption Price equal to 100% of the principal amount of Series 2020 Bonds or portions thereof to be redeemed, plus accrued interest to the Redemption Date (i) from proceeds of a Condemnation or insurance award, which proceeds are not used to repair, restore or replace the Project Facility to which such proceeds relate, and (ii) from unexpended proceeds of the Series 2020 Bonds upon the abandonment of all or a portion of the Project Facility to which such unexpended proceeds relate due to a legal or regulatory impediment.

Purchase of Series 2020 Bonds in Lieu of Redemption. If the Series 2020 Bonds are called for redemption in whole or in part pursuant to the terms of this Indenture, the Series 2020 Bonds called for redemption may be purchased in lieu of redemption in accordance with the Indenture. Purchase in lieu of redemption shall be available for all of the Series 2020 Bonds called for redemption or for such lesser portion of such Series 2020 Bonds as constitute authorized denominations under the Indenture. The Company may direct the Trustee to purchase all or such lesser portion of the Series 2020 Bonds so called for redemption. Any such direction to the Trustee must:

- (i) be in writing;
- (ii) state either that all of the Series 2020 Bonds called for redemption are to be purchased or, if less than all of the Series 2020 Bonds called for redemption are to be purchased, identify those Series 2020 Bonds to be purchased in authorized denominations; and
- (iii) be received by the Trustee no later than 12:00 noon, New York City time, one (1) Business Day prior to the Redemption Date.

If so directed, the Trustee shall purchase such Series 2020 Bonds on the date which otherwise would be the Redemption Date of the Series 2020 Bonds. Any of the Series 2020 Bonds called for redemption that are not purchased in lieu of redemption shall be redeemed as otherwise required by the Indenture on the Redemption Date. On or prior to the scheduled Redemption Date, any direction given to the Trustee pursuant to the Indenture may be withdrawn by notice to the Trustee. The purchase shall be made for the account of the Company or its designee. The purchase price of the Series 2020 Bonds shall be equal to the Outstanding principal of, the redemption premium, if any, and accrued and unpaid interest which would have been payable on such Series 2020 Bonds on the applicable Redemption Date for such redemption. To pay the purchase price of such Series 2020 Bonds, the Trustee shall use such moneys (including, to the extent applicable, moneys on deposit in the various funds and accounts established under the Indenture) that the Trustee would have used to pay the Outstanding principal of, the redemption premium, if any, and accrued and unpaid interest on the Series 2020 Bonds that would have been payable on the Redemption Date. The Trustee shall not purchase the Series 2020 Bonds pursuant to the Indenture if, by no later than the Redemption Date, sufficient moneys have not been deposited with the Trustee, or such moneys are deposited, but are not available. No notice of the purchase in lieu of redemption shall be required to be given to the Holders (other than the notice of redemption otherwise required under the Indenture).

*Notice of and Procedures for Redemption.* If less than all the Series 2020 Bonds of a series are to be redeemed, the Series 2020 Bonds of such series to be called for redemption shall be selected by lot. When Series 2020 Bonds are to be redeemed pursuant to the Indenture, the Trustee shall give notice of the redemption of the Series 2020 Bonds in the name of the Issuer and at the expense of the Company stating: (1) the Series 2020 Bonds to be redeemed; (2) the Redemption Date; (3) that such Series 2020 Bonds will be redeemed at the Office of the Trustee; (4) that on the Redemption Date there shall become due and payable upon each Series 2020 Bond to be redeemed the Redemption Price thereof (except in the case of a mandatory sinking fund redemption, in which case the principal will be due and payable on the Redemption Date and the interest will be paid on such date as provided in the Indenture); and (5) that from and after the Redemption Date interest thereon shall cease to accrue.

The Trustee shall mail a copy of the notice required by the Indenture, postage prepaid, not less than thirty (30) days nor more than sixty (60) days prior to the Redemption Date, to each Holder at the address of such Holder appearing on the registration books of the Issuer, maintained by the Trustee, as Bond Registrar. Such mailing shall not be a condition precedent to such redemption, and failure to so mail any such notice to any of such Holders shall not affect the validity of the proceedings for the redemption of the Series 2020 Bonds.

### **Book-Entry Only System**

*Unless otherwise noted, the following description of the procedures and record keeping with respect to beneficial ownership interests in the Series 2020 Bonds, payment of interest and other payments on the Series 2020 Bonds to Participants or Beneficial Owners (as such terms are defined below) of the Series 2020 Bonds, confirmation and transfer of beneficial ownership interests in the Series*

*2020 Bonds and by and between DTC, Participants and Beneficial Owners of the Series 2020 Bonds is based solely on information furnished by DTC. Accordingly, the Issuer, the Company, and the Underwriter do not and cannot make any independent representations concerning these matters.*

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Series 2020 Bonds. The Series 2020 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity (and, if appropriate, each fixed interest rate within a maturity) of each separate series of the Series 2020 Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

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

Purchases of Series 2020 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2020 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2020 Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2020 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Series 2020 Bonds, except in the event that use of the book-entry system for the Series 2020 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2020 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2020 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2020 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series

2020 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2020 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2020 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Indenture. For example, Beneficial Owners of 2020 Bonds may wish to ascertain that the nominee holding the Series 2020 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2020 Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Series 2020 Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Company as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Series 2020 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and principal and interest payments on the Series 2020 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

So long as Cede & Co. is the registered owner of the Series 2020 Bonds, as nominee of DTC, references herein to the bondholders or registered owners of the Series 2020 Bonds means Cede & Co., not the Beneficial Owners of the Series 2020 Bonds.

THE ISSUER, THE COMPANY, THE TRUSTEE AND THE UNDERWRITER CANNOT AND DO NOT GIVE ANY ASSURANCES THAT DTC WILL DISTRIBUTE TO ITS PARTICIPANTS OR THAT DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS WILL DISTRIBUTE TO BENEFICIAL OWNERS OF THE SERIES 2020 BONDS (I) PAYMENTS OF THE PRINCIPAL OF, OR PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2020 BONDS, OR (II) CONFIRMATION OF OWNERSHIP INTERESTS IN THE SERIES 2020 BONDS, OR (III) REDEMPTION OR OTHER NOTICES, OR THAT THEY WILL DO SO ON A TIMELY BASIS, OR THAT DTC, DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS WILL SERVE AND

ACT IN THE MANNER DESCRIBED IN THIS OFFICIAL STATEMENT. THE CURRENT “RULES” APPLICABLE TO DTC ARE ON FILE WITH THE SEC AND THE CURRENT “PROCEDURES” OF DTC TO BE FOLLOWED IN DEALING WITH ITS PARTICIPANTS ARE ON FILE WITH DTC.

NONE OF THE ISSUER, THE COMPANY, THE TRUSTEE OR THE UNDERWRITER WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DTC, DIRECT PARTICIPANTS, INDIRECT PARTICIPANTS OR BENEFICIAL OWNERS OF THE SERIES 2020 BONDS WITH RESPECT TO (I) THE SERIES 2020 BONDS, (II) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT, (III) THE PAYMENT BY DTC TO ANY DIRECT PARTICIPANT OR BY ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT OR REDEMPTION PRICE OF, OR INTEREST ON, ANY SERIES 2020 BONDS, (IV) THE DELIVERY OF ANY NOTICE BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT, (V) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE SERIES 2020 BONDS, OR (VI) ANY OTHER ACTION TAKEN BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT.

The book-entry system described above may be discontinued at any time if either: (a) DTC resigns as securities depository for the Series 2020 Bonds and a qualified successor securities depository is not obtained; or (b) the Company determines that DTC is unable to discharge its responsibilities or is no longer qualified to act as securities depository for the Series 2020 Bonds, or the continuation of the system of book-entry transfers through DTC (or through a successor securities depository) is not in the best interests of the Bondholders. In either of such events, the Series 2020 Bonds will be delivered in registered certificate form to such persons and in such maturities and principal amounts as may be designated in writing by DTC, without any liability on the part of the Issuer or the Trustee for the accuracy of such designation.

In the event the system of book-entry transfers through DTC (or a successor securities depository) is discontinued, Series 2020 Bonds may be exchanged for an equal aggregate principal amount of Series 2020 Bonds in other authorized denominations and of the same maturity, upon surrender thereof at the designated corporate trust or corporate trust agency office of the Trustee. The transfer of any Series 2020 Bond may be registered on the books maintained by the Trustee for such purpose only upon the surrender thereof to the Trustee with a duly executed assignment in form satisfactory to the Trustee. For every exchange or transfer of Series 2020 Bonds the Issuer and the Trustee may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge may be made to the Bondholder for any transfer or exchange of the Series 2020 Bonds. The Trustee will not be required to transfer or exchange any Series 2020 Bond during the 15 days immediately preceding the date of mailing of any notice of redemption or at any time following the mailing of any such notice, if such Series 2020 Bond or portion thereof to be transferred or exchanged has been called for such redemption.

Use of Certain Terms in Other Sections of the Official Statement. In reviewing this Official Statement, it should be understood that while the Series 2020 Bonds are in the Book-Entry System, references in other sections of this Official Statement to Owners of the Series 2020 Bonds or Bondholders shall refer to Cede & Co., as nominee of DTC, and should be read with the understanding that (a) all rights of the Beneficial Owners must be exercised through DTC and the Book-Entry System and (b) notices that are to be given to Holders by the Trustee will be given only to DTC. DTC will forward (or cause to be forwarded) the notices to the Direct Participants by its usual procedures so that the Direct Participants may forward (or cause to be forwarded) such notices to the Beneficial Owners.

## **SECURITY FOR THE SERIES 2020 BONDS**

### **Limited Obligations**

THE SERIES 2020 BONDS SHALL NEVER BE A DEBT OF THE STATE OF NEW YORK, COUNTY OF ONONDAGA OR ANY POLITICAL SUBDIVISION THEREOF, THE STATE UNIVERSITY OF NEW YORK OR UPSTATE MEDICAL UNIVERSITY, AND NEITHER THE STATE OF NEW YORK, COUNTY OF ONONDAGA NOR ANY POLITICAL SUBDIVISION THEREOF, THE STATE UNIVERSITY OF NEW YORK, UPSTATE MEDICAL UNIVERSITY SHALL BE LIABLE THEREON. NONE OF THE STATE OF NEW YORK, COUNTY OF ONONDAGA OR ANY POLITICAL SUBDIVISION HEREOF IS OBLIGATED TO PAY, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK, COUNTY OF ONONDAGA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF, THE PRINCIPAL OR REDEMPTION PRICE, IF ANY, OF OR INTEREST ON, THE SERIES 2020 BONDS. THE SERIES 2020 BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES OR OTHER RECEIPTS, FUNDS OR MONEYS OF THE ISSUER PLEDGED UNDER THE INDENTURE AND FROM ANY AMOUNTS OTHERWISE AVAILABLE UNDER THE INDENTURE FOR THE PAYMENT OF THE SERIES 2020 BONDS. THE SERIES 2020 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

### **Trust Estate**

Under the Indenture, the Issuer assigns and pledges to the Trustee, and grants to the Trustee a security interest in, for the benefit of the owners and future owners of the Series 2020 Bonds issued under the Indenture, (A) all right, title and interest of the Issuer in and to the moneys in all funds and accounts established by or pursuant to the Indenture or the Loan Agreement or any and all amendments or supplements thereto and held by the Trustee (except moneys deposited with, paid to, or received by the Trustee (i) for the redemption of the Series 2020 Bonds, notice of the redemption of which has been given or (ii) from income derived from the investment of either of the foregoing), and the income thereon, subject to the provisions of the Indenture and the Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture; (B) all right, title and interest of the Issuer in and to the Loan Agreement, including all payments, revenues and receipts payable or receivable thereunder and all liens and security interest granted thereunder; and (C) any and all other Property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security under the Indenture by the Issuer, the Company or by anyone in their behalf or with their written consent in favor of the Trustee, which is authorized to receive any and all such Property at any and all times and to hold and apply the same subject to the terms of the Indenture.

### **Loan Agreement**

Under the Loan Agreement, the Company shall agree to pay to the Trustee, on each Bond Payment Date principal or interest payment date for the Series 2020 Bonds, an amount sufficient to pay the principal of and interest on the Series 2020 Bonds on such payment date. The obligations of the Company to make payments under the Loan Agreement are absolute and unconditional. See APPENDIX C hereto.



## **Security Interest in Gross Revenues**

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

## **Mortgage; Assignment of Rents**

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

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

## **Indenture Funds**

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

Except as otherwise provided in the Indenture, moneys in the Pledged Revenue Fund will be used as provided below (or for payment of Debt Service Payments, when the other moneys in the Bond Fund are insufficient therefore). The Trustee will withdraw moneys from the Pledged Revenue Fund on May 15 and November 15 of each year (or in the case of the Repair and Replacement Fund, the 15th day of each month) (or, if such day is not a Business Day, then the Business Day immediately preceding such date), commencing November 15, 2020 (or, in the case of the Repair and Replacement Fund, September 15, 2020), and transfer them to the following funds in the following order of priority:

FIRST, amounts on deposit in the Pledged Revenue Fund shall be transferred the Bond Fund, until there shall be on deposit therein amounts sufficient to fund the next succeeding Debt Service Payment attributable to principal and interest on the Series 2020 Bonds;

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

THIRD, amounts on deposit in the Pledged Revenue Fund shall next be applied to make the required deposit to the Repair and Replacement Fund in an amount equal to the Repair and Replacement Fund Requirement.

On the thirtieth (30th) day following the end of each Fiscal Year, the Trustee shall transfer all remaining amounts on deposit in the Pledged Revenue Fund to the Surplus Fund. See “APPENDIX C – CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES”.

### **Assignment of Agreements**

As additional security for the Series 2020 Bonds, the Company will enter into an Assignment of Agreements dated as of August 1, 2020 (the “Assignment of Agreements”) pursuant to which the Company will assign to the Trustee all of its right, title and interest in and to the SUNY Agreement and the Facility Management Agreement.

### **Financial Covenants**

Under the Loan Agreement, the Company agrees that it shall cause the Project Facility to maintain at all times while the Series 2020 Bonds remain Outstanding a Debt Service Coverage Ratio of 1.00 to 1.00. In addition, the Company agrees in the Loan Agreement that so long as any of the Series 2020 Bonds shall remain Outstanding, the Company shall not, nor shall it permit any subsidiary to, directly or indirectly, create, assume, incur or in any manner become or remain liable in respect to, any Indebtedness secured by the Project Facility or the Gross Revenues except Additional Bonds, or create, assume, incur or suffer to exist or allow to be created, assumed or incurred or suffered to exist any Lien upon any of the Project Facility or the Gross Revenues, now owned or hereafter acquired, excepting, however, Permitted Encumbrances. See APPENDIX C hereto.

### **No Debt Service Reserve Account**

No debt service reserve fund or account will be established to secure the 2020 Bonds.

### **Limitations on Liens**

The Loan Agreement provides that the Company shall not, without the prior written consent of the Trustee, other than as contemplated by the Loan Agreement, the other Bond Documents or Permitted Encumbrances (i) dispose of, pledge, grant, assign, or undertake or not take any action that would result in the creation of any Lien on the Project Facility or the Company’s Gross Revenues, (ii) grant a negative pledge in favor of any third party covering the Project Facility or the Company’s Gross Revenues, or (iii) sell, assign, transfer, lease, mortgage, charge, encumber or otherwise dispose of the Project Facility or the Company’s Gross Revenues whether in a single transaction or series of transactions. See the definition of “Permitted Encumbrances” set forth in APPENDIX C hereto.

## **BOND INSURANCE**

### **Bond Insurance Policy**

Concurrently with the issuance of the Bonds, Build America Mutual Assurance Company (“BAM”) will issue its Municipal Bond Insurance Policy for the Bonds (the “Policy”). The Policy guarantees the scheduled payment of principal of and interest on the Bonds when due as set forth in the form of the Policy included as an exhibit to this Official Statement.

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

### **Build America Mutual Assurance Company**

BAM is a New York domiciled mutual insurance corporation and is licensed to conduct financial guaranty insurance business in all fifty states of the United States and the District of Columbia. BAM provides credit enhancement products solely to issuers in the U.S. public finance markets. BAM will only insure obligations of states, political subdivisions, integral parts of states or political subdivisions or entities otherwise eligible for the exclusion of income under section 115 of the U.S. Internal Revenue Code of 1986, as amended. No member of BAM is liable for the obligations of BAM.

The address of the principal executive offices of BAM is: 200 Liberty Street, 27th Floor, New York, New York 10281, its telephone number is: 212-235-2500, and its website is located at: [www.buildamerica.com](http://www.buildamerica.com).

BAM is licensed and subject to regulation as a financial guaranty insurance corporation under the laws of the State of New York and in particular Articles 41 and 69 of the New York Insurance Law.

BAM's financial strength is rated "AA/Stable" by S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("S&P"). An explanation of the significance of the rating and current reports may be obtained from S&P at [www.standardandpoors.com](http://www.standardandpoors.com). The rating of BAM should be evaluated independently. The rating reflects the S&P's current assessment of the creditworthiness of BAM and its ability to pay claims on its policies of insurance. The above rating is not a recommendation to buy, sell or hold the Bonds, and such rating is subject to revision or withdrawal at any time by S&P, including withdrawal initiated at the request of BAM in its sole discretion. Any downward revision or withdrawal of the above rating may have an adverse effect on the market price of the Bonds. BAM only guarantees scheduled principal and scheduled interest payments payable by the issuer of the Bonds on the date(s) when such amounts were initially scheduled to become due and payable (subject to and in accordance with the terms of the Policy), and BAM does not guarantee the market price or liquidity of the Bonds, nor does it guarantee that the rating on the Bonds will not be revised or withdrawn.

### **Capitalization of BAM**

BAM's total admitted assets, total liabilities, and total capital and surplus, as of March 31, 2020 and as prepared in accordance with statutory accounting practices prescribed or permitted by the New York State Department of Financial Services were \$459.6 million, \$126.1 million and \$333.5 million, respectively.

BAM is party to a first loss reinsurance treaty that provides first loss protection up to a maximum of 15% of the par amount outstanding for each policy issued by BAM, subject to certain limitations and restrictions.

BAM's most recent Statutory Annual Statement, which has been filed with the New York State Insurance Department and posted on BAM's website at [www.buildamerica.com](http://www.buildamerica.com), is incorporated herein by reference and may be obtained, without charge, upon request to BAM at its address provided above (Attention: Finance Department). Future financial statements will similarly be made available when published.

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

### **Additional Information Available from BAM**

**Credit Insights Videos.** For certain BAM-insured issues, BAM produces and posts a brief Credit Insights video that provides a discussion of the obligor and some of the key factors BAM's analysts and credit committee considered when approving the credit for insurance. The Credit Insights videos are easily accessible on BAM's website at [www.buildamerica.com/videos](http://www.buildamerica.com/videos). (The preceding website address is provided for convenience of reference only. Information available at such address is not incorporated herein by reference.)

**Credit Profiles.** Prior to the pricing of bonds that BAM has been selected to insure, BAM may prepare a pre-sale Credit Profile for those bonds. These pre-sale Credit Profiles provide information about the sector designation (e.g. general obligation, sales tax); a preliminary summary of financial information and key ratios; and demographic and economic data relevant to the obligor, if available. Subsequent to closing, for any offering that includes bonds insured by BAM, any pre-sale Credit Profile will be updated and superseded by a final Credit Profile to include information about the gross par insured by CUSIP, maturity and coupon. BAM pre-sale and final Credit Profiles are easily accessible on BAM's website at [www.buildamerica.com/credit-profiles](http://www.buildamerica.com/credit-profiles). BAM will produce a Credit Profile for all bonds insured by BAM, whether or not a pre-sale Credit Profile has been prepared for such bonds. (The preceding website address is provided for convenience of reference only. Information available at such address is not incorporated herein by reference.)

**Disclaimers.** The Credit Profiles and the Credit Insights videos and the information contained therein are not recommendations to purchase, hold or sell securities or to make any investment decisions. Credit-related and other analyses and statements in the Credit Profiles and the Credit Insights videos are statements of opinion as of the date expressed, and BAM assumes no responsibility to update the content of such material. The Credit Profiles and Credit Insight videos are prepared by BAM; they have not been reviewed or approved by the issuer of or the underwriter for the Bonds, and the issuer and underwriter assume no responsibility for their content.

BAM receives compensation (an insurance premium) for the insurance that it is providing with respect to the Bonds. Neither BAM nor any affiliate of BAM has purchased, or committed to purchase, any of the Bonds, whether at the initial offering or otherwise.

# **DEBT SERVICE REQUIREMENTS FOR THE SERIES 2020 BONDS**

<b><u>Twelve- Month Period</u></b> <b><u>Ending June 30</u></b>	<b><u>Principal</u></b>	<b><u>Interest</u></b>	<b><u>Total</u></b>
2021	\$500,000	\$540,158.18	\$1,040,158.18
2022	1,190,000	702,940.41	1,892,940.41
2023	1,205,000	691,380.78	1,896,380.78
2024	1,215,000	678,716.55	1,893,716.55
2025	1,230,000	664,990.65	1,894,990.65
2026	1,250,000	649,269.85	1,899,269.85
2027	1,265,000	630,359.43	1,895,359.43
2028	1,290,000	608,453.71	1,898,453.71
2029	1,315,000	583,823.83	1,898,823.83
2030	1,340,000	556,723.30	1,896,723.30
2031	1,365,000	527,760.03	1,892,760.03
2032	1,395,000	496,826.73	1,891,826.73
2033	1,435,000	463,332.83	1,898,332.83
2034	1,470,000	427,142.31	1,897,142.31
2035	1,510,000	388,526.41	1,898,526.41
2036	1,545,000	347,798.88	1,892,798.88
2037	1,595,000	301,825.85	1,896,825.85
2038	1,645,000	250,666.25	1,895,666.25
2039	1,695,000	197,927.65	1,892,927.65
2040	1,750,000	143,531.10	1,893,531.10
2041	1,805,000	87,397.65	1,892,397.65
2042	1,865,000	29,448.35	1,894,448.35
Total	<u>\$30,875,000</u>	<u>\$9,969,000.73</u>	<u>\$40,844,000.73</u>

## **CERTAIN BONDHOLDERS' RISKS**

### **General**

AN INVESTMENT IN THE SERIES 2020 BONDS INVOLVES CERTAIN RISKS AND EACH INVESTOR SHOULD CONSIDER THE RISKS INVOLVED TO DETERMINE THE SUITABILITY OF INVESTING IN THE SERIES 2020 BONDS. Each prospective investor should also carefully examine this Official Statement and his or her own financial condition (including the diversification of his or her investment portfolio) in order to make a judgment as to whether the Series 2020 Bonds are an appropriate investment.

The Company has identified and summarized below a number of “Bondholders’ Risks” that could adversely affect the operation of the Project Facility and/or the Series 2020 Bonds which should be considered by prospective investors. The following discussion is not intended to be exhaustive, but includes certain major factors which should be considered along with other factors set forth elsewhere in this Official Statement, including the Appendices hereto.

If the Company is unable to generate sufficient revenues from the operation of the Student Housing Facility to pay its operating expenses and principal of and interest on the Series 2020 Bonds, an event of default will occur under the Financing Documents. Upon such an event of default, the Series 2020 Bonds may be paid before maturity or applicable Redemption Dates. The Company’s ability to generate revenues and its overall financial condition may be adversely affected by a wide variety of future events and conditions including (i) a decline in the enrollment of the University, (ii) increased competition from other schools or housing facilities in the City of Syracuse, New York, (iii) loss of accreditation of the University’s programs, (iv) failure of the University to meet applicable federal guidelines or some other event which results in students of the University being ineligible for federal financial aid, and (v) the overall financial viability of SUNY and the ability and willingness of the State Legislature to continue making appropriations of State funds in the amounts required for the operation of SUNY. See APPENDIX A hereto for more information concerning SUNY.

### **Limited Obligations of the Issuer**

The Series 2020 Bonds constitute special limited obligations of the Issuer and have two potential sources of payment. The sources of payment are as follows:

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

The Issuer has no obligation to pay the Series 2020 Bonds except from the Trust Estate assigned and pledged under the Indenture, including loan payments derived from the Loan Agreement. The Series 2020 Bonds are special limited obligations of the Issuer, are not a debt of Onondaga County, the State of New York or any political subdivision thereof and are payable solely from the sources referred to in the Series 2020 Bonds as described herein. Neither the general credit of the Issuer nor the credit or taxing power of Onondaga County, the State of New York or any political subdivision thereof is pledged to the payment of the principal or Redemption Price of, or interest on, the Series 2020 Bonds. The Issuer has no taxing power. Under the Loan Agreement, the Company will be required to make loan payments to the Trustee, as the assignee of the Issuer, in amounts sufficient to enable the Trustee to pay the principal of, premium, if any, and interest on the Series 2020 Bonds. The loan payments are anticipated, however, to be derived solely from the operation of the Project Facility. Furthermore, the Company’s ability to meet its obligations under the Loan Agreement will depend upon achieving and maintaining certain occupancy levels at the Student Housing Facility throughout the term of the Series 2020 Bonds. However, no

assurance can be made that the Company will generate sufficient revenues from the Project Facility to pay maturing principal of, premium, if any, and interest on the Series 2020 Bonds when due after payment of operating expenses of the Student Housing Facility.

(2) Proceeds realized from the sale or lease of Company's interest in the Student Housing Facility to a third party by the Trustee at or following foreclosure by the Trustee of the Mortgage and proceeds realized from the liquidation of other security for the Series 2020 Bonds.

Debtors frequently employ defensive measures, such as protracted litigation and bankruptcy proceedings, in response to lenders' efforts to foreclose on real property or otherwise to realize upon collateral to satisfy indebtedness which is in default. Such defensive measures can prevent, or greatly increase the expense and time involved in achieving, such foreclosure or other realization. In addition, the Trustee could experience difficulty in selling or leasing the real and personal property portion of the Student Housing Facility upon foreclosure due to the special purpose nature of a student housing facility, and the proceeds of such sale may not be sufficient to pay fully the owners of the Series 2020 Bonds. See "CERTAIN BONDHOLDERS' RISKS - Liquidation of Security may not be Sufficient in the Event of a Default" herein. Accordingly, prospects for uninterrupted payment of principal and interest on the Series 2020 Bonds in accordance with their terms are largely dependent upon the Loan Payments described in paragraph (1) above, which are wholly dependent upon the success of the Project Facility. Even if the Project Facility is operating in an efficient manner, other factors could affect the Company's ability to make Loan Payments under the Loan Agreement.

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

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

Other than its ownership of the Student Housing Facility, the Company has no substantial revenues or assets other than certain land holdings for future development. Therefore, timely payment of principal of, premium, if any, and interest on the Series 2020 Bonds will be dependent upon the Company's ability to generate revenues from the Project Facility sufficient to pay its operating expenses and Loan Payments under the Loan Agreement. If after payment of operating expenses, net revenues are insufficient to pay the debt service on the Series 2020 Bonds, the Company likely will have no moneys or assets other than the Project Facility from which to make the payments required under the Loan Agreement.

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

Neither the University nor SUNY will be liable for the payment of the principal of, premium, if any, or interest on the Series 2020 Bonds, nor shall the University or SUNY be responsible or liable for any other obligations of the Company, under the Loan Agreement or any of the other Financing Documents, either as principal or guarantor, **except with respect to those obligations of SUNY expressly provided in the Facility Management Agreement and the SUNY Agreement.**

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

The Project Facility is specifically designed and constructed as a student housing facility and may not be suitable for other uses. The number of entities that could be expected to purchase or lease the Company's interest in the Student Housing Facility is therefore limited, and thus the ability of the Trustee to realize funds from the sale or lease of such interest upon an event of default may be limited. Such value may be also limited by actual or alleged rights of residents. Any foreclosure proceeding may be subject to substantial delays. The ability of the Trustee to receive funds sufficient to pay the Series 2020 Bonds from any sale or foreclosure of the Company's interest in the Project Facility may be limited by a number of factors, including the limited operational use of the Project Facility as a student housing facility and the fact that the purchaser of such interest may control the Project Facility only for a limited period of time.

## **Required Occupancy Levels and Rents**

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

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

The Student Housing Facility has been constructed to serve as a student housing facility. If it were necessary to sell the Company's interest in Project Facility pursuant to the Mortgage upon an event of default, the special use nature of the Project Facility as a student housing facility and its location may limit the purchase price that could be obtained, and the net proceeds received may be less than the principal amount of the Series 2020 Bonds Outstanding. For all practical purposes, payment of the Series 2020 Bonds will be almost solely dependent upon the continued operation of the Student Housing Facility as housing for students of the University.

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

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



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

### **Public Health Epidemics or Outbreaks**

Public health epidemics or outbreaks could adversely impact the University's operations and also the Company's operations. In December 2019, a novel strain of coronavirus (COVID-19) emerged in Wuhan, Hubei Province, China. While initially the outbreak was largely concentrated in China and caused significant disruptions to its economy, it has now spread to several other countries and infections have been reported globally, including in the United States. The Governor of the State of New York, the Mayor of the City of New York and the County Executive of Onondaga County have all declared states of emergency in their respective jurisdictions. Since declaring a state of emergency in New York State on March 7, 2020, Governor Andrew M. Cuomo has issued numerous Executive Orders suspending or modifying dozens of state and local laws and issuing numerous directives to aid the state's response.

Given the evolving nature of this pandemic and its effect on travel, commerce and financial markets globally, the extent to which the coronavirus impacts the University's and the Company's operations and its financial condition will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration of the outbreak. The continued spread of the coronavirus in the United States could have a material adverse effect on the Company's operations and its financial condition, including a negative impact on the Company's collections of rents and other amounts necessary for the operation of the Student Housing Facility.

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

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

- (1) statutory liens;
- (2) rights arising in favor of the United States of America or any agency thereof;
- (3) present or future prohibitions against assignment contained in any federal statutes or regulations;

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

### **Enforceability of Remedies**

The Series 2020 Bonds are payable from the Trust Estate pledged under the Indenture, including payments to be made under the Loan Agreement and the proceeds of the collateral security pledged to secure the Series 2020 Bonds. See “SECURITY FOR THE SERIES 2020 BONDS” herein. The practical realization of value upon any default will depend upon the exercise of various remedies specified by the Financing Documents. These and other remedies may, in many respects, require judicial actions, which are often subject to discretion and delay. Under existing law (including, particularly, the Bankruptcy Code), the remedies specified by the Financing Documents may not be readily available or may be limited. A court may decide not to order the specific performance of the covenants contained in the Financing Documents. The various legal opinions to be delivered concurrently with the delivery of the Series 2020 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by state and federal laws, rulings, and decisions affecting remedies, including judicial discretion in the application of the principles of equity, and by bankruptcy, reorganization, or other laws affecting the enforcement of creditors’ rights generally.

### **Risks Relating to the University**

The ability of the Company to pay debt service on the Series 2020 Bonds depends upon its ability to market the Project Facility to students of the University. The economic feasibility of the Project Facility depends upon the ability of the University to enroll students seeking campus housing and upon the ability of the Company to attract sufficient numbers of those students to the Student Housing Facility and to maintain substantial occupancy at projected rent levels throughout the term of the Series 2020 Bonds. The University and its operations are subject to regulation, certification and accreditation by various federal, state and local government agencies and by certain nongovernmental agencies. See the information under the heading “Accreditations” in APPENDIX A attached hereto.

No assurance can be given as to the effect on future operations of existing laws, regulations or of any future changes in such laws and regulations. The University could face additional competition in the future from both private and public educational institutions that offer comparable services and programs to the population which the University presently serves. This could include the establishment of new programs and the construction, renovation or expansion of competing educational institutions. The University could face additional competition in the future from both private and public educational institutions that offer comparable services and programs to the population which the University presently serves. This could include the establishment of new programs and the construction, renovation or expansion of competing educational institutions.

Additional factors may affect future operations of the University to an extent that cannot be determined at this time. These factors include, among others, (1) changes in the demand for higher education in general or for programs offered by the University in particular; (2) cost and availability of energy; (3) high interest rates, which could prevent borrowing for needed capital expenditures; (4) a decrease in student loan funds or other aid that permits many students the opportunity to pursue higher education; (5) claims presently unknown to the University; (6) increased competition from both public and private institutions of higher learning which may offer similar academic programs or may recruit similar students; (7) reduced availability of qualified faculty to teach the programs offered by the University; (8) an inability to retain students, resulting in enrollment losses and reduced residents to lease the Student Housing Facility; (9) a downgrade in the SUNY bond rating, which due to the commitment of SUNY to the SUNY Agreement has a corresponding impact to the 2020 Bond rating to a level which prevents Upstate Properties Development, Inc. from being able to borrow at affordable rates in the future; and (10) reductions or delays in appropriations by the State to SUNY.

### **Additional Bonds**

The Issuer has the right to issue Additional Bonds under the Indenture which will be equally and ratably secured on a parity basis with the Series 2020 Bonds. SUCH ADDITIONAL BONDS COULD DILUTE THE SECURITY FOR THE SERIES 2020 BONDS. Such Additional Bonds may be issued to refund other Bonds issued under the Indenture or to finance improvements or repairs to the Project Facility or the acquisition of furniture, fixtures, machinery or other tangible personal property for installation in the Project Facility or use at the Project Facility.

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

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

The Company has covenanted to remain eligible for such tax-exempt status and to avoid operating the Project Facility as an unrelated trade or business (as determined by applying §512(a) of the Code). Failure of the Project Facility to remain so qualified or of the Company so to operate the Project Facility could affect the funds available to the Company for payments under the Loan Agreement by subjecting the Company to federal income taxation and could result in the loss of the excludability of interest on the Series 2020 Bonds from gross income for purposes of federal income taxation.

## **No Debt Service Reserve Fund**

The Financing Documents do not require the funding of a debt service reserve fund as security for the 2020 Bonds.

## **New York Foreclosure Procedures**

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

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

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

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

## **Bond Insurance Risk Factors**

In the event of default of the payment of principal of or interest on the Series 2020 Bonds when all or some becomes due, or in the event any such payment is recovered from the owners of the Series 2020 Bonds as a voidable preference under applicable bankruptcy law, the Trustee, on behalf of the owners of the Series 2020 Bonds, shall have a claim under the Policy for such payments. However, in the event of any advancement of the due date of such principal by reason of mandatory or optional redemption, the payments under the Policy are to be made in such amounts and at such times as such payments would have been due had there not been any such advancement. See “Appendix F – Specimen Municipal Bond Insurance Policy.”

In the event that BAM is unable to make payment of principal or interest as such payments become due under the Policy, the Series 2020 Bonds are payable solely from the moneys available under the Indenture. In the event that BAM becomes obligated to make payments with respect to the Series 2020 Bonds, no assurance is given that such event will not adversely affect the market price of the Series 2020 Bonds or the marketability of the Series 2020 Bonds.

The long-term ratings on the Series 2020 Bonds are dependent in part on the financial strength of BAM and its claims paying ability. BAM’s financial strength and claims paying ability are predicated upon a number of factors that could change over time. No assurance is given that the long-term ratings of BAM and the ratings of the Series 2020 Bonds will not be subject to downgrade. Any such event could adversely affect the market price or marketability of the Series 2020 Bonds. See “BOND INSURANCE” and “RATINGS” herein.

The obligations of BAM under the Policy are contractual obligations and, in an event of default by BAM, the remedies available may be limited by applicable bankruptcy law or state law related to insolvency of insurance companies.

The Underwriter has not made an independent investigation into the claims paying ability of BAM and no assurance or representation regarding the financial strength or projected financial strength of BAM is given. See “BOND INSURANCE” herein for further information provided by BAM and the Policy, which includes further instructions for obtaining current financial information concerning BAM.

## **TAX MATTERS**

In the opinion of Harris Beach PLLC, Bond Counsel to the Issuer, interest on the Series 2020 Bonds is not excluded from gross income for federal income tax purposes and is not exempt from personal income taxes imposed by the State of New York and any political subdivision thereof.

Bond Counsel expresses no opinion regarding any other state or local tax consequences related to the ownership or disposition of, or the receipt or accrual of interest on, the Series 2020 Bonds.

Interest on the Series 2020 Bonds may or may not be subject to state or local income taxes in jurisdictions other than the State of New York under applicable state or local tax laws. Bond Counsel expresses no opinion, however, as to the tax treatment of the Series 2020 Bonds under other state or local jurisdictions. Each purchaser of the Series 2020 Bonds should consult his or her own tax advisor regarding the taxable status of the Series 2020 Bonds in a particular state or local jurisdiction other than the State of New York.

## General

The following discussion summarizes certain United States (“U.S.”) federal tax considerations generally applicable to holders of the Series 2020 Bonds that acquire the Series 2020 Bonds in the initial offering. The discussion below is based upon laws, regulations, rulings, and decisions in effect and available on the date hereof, all of which are subject to change, and any such change could have retroactive effect. Prospective investors should also note that no rulings have been or are expected to be sought from the Internal Revenue Service (the “IRS”) with respect to any of the U.S. federal income tax consequences discussed below, and no assurance can be given that the IRS will not take contrary positions. Further, the following discussion does not deal with all U.S. federal income tax consequences applicable to any given investor, nor does it address the U.S. federal income tax considerations applicable to categories of investors some of which may be subject to special taxing rules (regardless of whether or not such persons constitute U.S. Holders), such as certain U.S. expatriates, financial institutions, real estate investment trusts, regulated investment companies, insurance companies, tax-exempt organizations, dealers or traders in securities or currencies, partnerships, S corporations, estates and trusts, persons holding the Series 2020 Bonds as a hedge against currency risks or as a position in a “straddle” for tax purposes, or investors whose “functional currency” is not the U.S. dollar. Furthermore, it does not address (i) alternative minimum tax consequences or (ii) the indirect effects on persons who hold equity interests in a holder. In addition, this summary generally is limited to investors that acquire the Series 2020 Bonds pursuant to this initial offering for the issue price that is applicable to such Series 2020 Bonds (i.e., the price at which a substantial amount of the Series 2020 Bonds are sold to the public) and who will hold the Series 2020 Bonds as “capital assets” within the meaning of Section 1221 of the Code.

As used herein, “U.S. Holder” means a beneficial owner of a Bond that for U.S. federal income tax purposes is an individual citizen or resident of the United States, a corporation or other entity taxable as a corporation created or organized in or under the laws of the United States or any state thereof (including the District of Columbia), an estate the income of which is subject to U.S. federal income taxation regardless of its source or a trust where a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons (as defined in the Code) have the authority to control all substantial decisions of the trust (or a trust that has made a valid election under U.S. Treasury Regulations to be treated as a domestic trust).

As used herein, “Non-U.S. Holder” generally means a beneficial owner of a Bond (other than a partnership) that is not a U.S. Holder. If a partnership holds Series 2020 Bonds, the tax treatment of such partnership or a partner in such partnership generally will depend upon the status of the partner and upon the activities of the partnership. Partnerships holding Series 2020 Bonds, and partners in such partnerships, should consult their own tax advisors regarding the tax consequences of an investment in the Series 2020 Bonds (including their status as U.S. Holders or Non-U.S. Holders).

## U.S. Holders

*Interest on The Series 2020 Bonds.* Payments of interest on the Series 2020 Bonds will be included in gross income for U.S. federal income tax purposes by a U.S. Holder as ordinary income at the time the interest is paid or accrued in accordance with the U.S. Holder’s regular method of accounting for tax purposes, provided such interest is “qualified stated interest,” as defined below.

*Original Issue Discount.* The following summary is a general discussion of the U.S. federal income tax consequences to U.S. Holders of the purchase, ownership and disposition of bonds issued with original issue discount (“OID Bonds”) for U.S. federal income tax purposes. The following summary is based upon final Treasury regulations (the “OID Regulations”) released by the IRS under the original issue discount provisions of the Code.

For U.S. federal income tax purposes, original issue discount is the excess of the stated redemption price at maturity of a bond over its issue price, if such excess equals or exceeds a specified de minimis amount (generally 1/4 of 1% of the bond's stated redemption price at maturity (i) multiplied by the number of complete years to its maturity from its issue date or, (ii) in the case of a bond providing for the payment of any amount other than qualified stated interest (as defined below) prior to maturity, multiplied by the weighted average maturity of such bond). The issue price of each maturity of substantially identical bonds equals the first price at which a substantial amount of such maturity of bonds has been sold (ignoring sales to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The stated redemption price at maturity of a bond is the sum of all payments provided by the bond other than "qualified stated interest" payments. The term "qualified stated interest" generally means stated interest that is unconditionally payable in cash or property (other than debt instruments of the issuer) at least annually at a single fixed rate.

A U.S. Holder of an OID Bond must include original issue discount in income as ordinary interest for U.S. federal income tax purposes as it accrues under a constant yield method in advance of receipt of the cash payments attributable to such income, regardless of such U.S. Holder's regular method of tax accounting. In general, the amount of original issue discount included in income by the initial U.S. Holder of an OID Bond is the sum of the daily portions of original issue discount with respect to such OID Bond for each day during the taxable year (or portion of the taxable year) on which such U.S. Holder held such OID Bond. The "daily portion" of original issue discount on any OID Bond is determined by allocating to each day in any accrual period a ratable portion of the original issue discount allocable to that accrual period. An "accrual period" may be of any length and the accrual periods may vary in length over the term of the OID Bond, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs either on the final day of an accrual period or on the first day of an accrual period. The amount of original issue discount allocable to each accrual period is generally equal to the difference between (i) the product of the OID Bond's adjusted issue price at the beginning of such accrual period and its yield to maturity (determined on the basis of compounding at the close of each accrual period and appropriately adjusted to take into account the length of the particular accrual period) and (ii) the amount of any qualified stated interest payments allocable to such accrual period. Original issue discount allocable to a final accrual period is the difference between the amount payable at maturity (other than a payment of qualified stated interest) and the adjusted issue price at the beginning of the final accrual period. Special rules apply for calculating original issue discount for an initial short accrual period. The "adjusted issue price" of an OID Bond at the beginning of any accrual period is the sum of the issue price of the OID Bond plus the amount of original issue discount allocable to all prior accrual periods minus the amount of any prior payments on the OID Bond that were not qualified stated interest payments. Under these rules, U.S. Holders generally will have to include in income increasingly greater amounts of original issue discount in successive accrual periods.

A U.S. Holder who purchases an OID Bond for an amount that is greater than its adjusted issue price as of the purchase date and less than or equal to the sum of all amounts payable on the OID Bond after the purchase date, other than payments of qualified stated interest, will be considered to have purchased the OID Bond at an "acquisition premium." Under the acquisition premium rules, the amount of original issue discount which such U.S. Holder must include in its gross income with respect to such OID Bond for any taxable year (or portion thereof in which the U.S. Holder holds the OID Bond) will be reduced (but not below zero) by the portion of the acquisition premium properly allocable to the period.

U.S. Holders may generally, upon election, include in income all interest (including stated interest, acquisition discount, original issue discount, de minimis original issue discount, market discount, de minimis market discount, and unstated interest, as adjusted by any amortizable bond premium or acquisition premium) that accrues on a debt instrument by using the constant yield method applicable to original issue discount, subject to certain limitations and exceptions. This election will generally apply

only to the debt instrument with respect to which it is made and may be revoked only with the consent of the IRS.

*Premium.* If a U.S. Holder purchases a Bond for an amount that is greater than the sum of all amounts payable on such Bond after the purchase date, other than payments of qualified stated interest, such U.S. Holder will be considered to have purchased such Bond with “amortizable bond premium” equal in amount to such excess. A U.S. Holder may elect to amortize such premium using a constant yield method over the remaining term of such Bond and may offset interest otherwise required to be included in respect of such Bond during any taxable year by the amortized amount of such premium for the taxable year. Bond premium on a Bond held by a U.S. Holder that does not make such an election will decrease the amount of gain or decrease the amount of loss otherwise recognized on the disposition of such Bond. However, if a Bond may be optionally redeemed after the U.S. Holder acquires it at a price in excess of its stated redemption price at maturity, special rules will apply that could result in a deferral of the amortization of a portion of the bond premium until later in the term of such Bond (as discussed in more detail below). Any election to amortize bond premium applies to all taxable debt instruments acquired by the U.S. Holder on or after the first day of the first taxable year to which such election applies and may be revoked only with the consent of the IRS.

The following rules apply to any Bond that may be optionally redeemed after the U.S. Holder acquires it at a price in excess of its stated redemption price at maturity. The amount of amortizable bond premium attributable to such Bond is equal to the lesser of (1) the difference between (A) such U.S. Holder’s tax basis in the Bond and (B) the sum of all amounts payable on such Bond after the purchase date, other than payments of qualified stated interest or (2) the difference between (X) such U.S. Holder’s tax basis in such Bond and (Y) the sum of all amounts payable on such Bond after the purchase date due on or before the early call date, described below, other than payments of qualified stated interest. If a Bond may be redeemed on more than one date prior to maturity, the early call date and amount payable on the early call date that produces the lowest amount of amortizable bond premium, is the early call date and amount payable that is initially used for purposes of calculating the amount pursuant to clause (2) of the previous sentence. If an early call date is not taken into account in computing premium amortization and the early call is in fact exercised, a U.S. Holder will be allowed a deduction for the excess of the U.S. Holder’s tax basis in the Bond over the amount realized pursuant to the redemption. If an early call date is taken into account in computing premium amortization and the early call is not exercised, the Bond will be treated as “reissued” on such early call date for the call price. Following the deemed reissuance, the amount of amortizable bond premium is recalculated pursuant to the rules of this section “Premium.” The rules relating to a Bond that may be optionally redeemed are complex and, accordingly, prospective purchasers are urged to consult their own tax advisors regarding the application of the amortizable bond premium rules to their particular situation.

*Disposition of Series 2020 Bonds.* Except as discussed above, upon the sale, exchange, redemption or retirement of a Bond, a U.S. Holder generally will recognize taxable gain or loss equal to the difference between the amount realized on the sale, exchange, redemption or retirement (other than amounts representing accrued and unpaid interest) of such Bond and such U.S. Holder’s adjusted tax basis in such Bond. A U.S. Holder’s adjusted tax basis in a Bond generally will equal such U.S. Holder’s initial investment in the Bond increased by accrued market discount, if any, if the U.S. Holder has included such market discount in income, and decreased by the amount of any payments, other than qualified stated interest payments, received and amortizable bond premium taken with respect to such Bond. Such gain or loss generally will be long-term capital gain or loss if the Bond has been held by the U.S. Holder at the time of disposition for more than one year. If the U.S. Holder is an individual, long-term capital gain will be subject to reduced rates of taxation. The deductibility of capital losses is subject to certain limitations.



## Non-U.S. Holders

A Non-U.S. Holder who is an individual or corporation (or an entity treated as a corporation for U.S. federal income tax purposes) holding Series 2020 Bonds on its own behalf will not be subject to U.S. federal income tax on payments of principal of, or premium (if any), or interest (including original issue discount, if any) on Series 2020 Bonds, unless the Non-U.S. Holder is a bank receiving interest described in Section 881(c)(3)(A) of the Code. To qualify for the exemption from taxation, the Withholding Agent, as defined below, must have received a statement from the individual or corporation that:

- (a) is signed under penalties of perjury by the beneficial owner of the Series 2020 Bonds,
- (b) certifies that the owner is not a U.S. Holder, and
- (c) provides the beneficial owner's name and permanent residence address.

A "Withholding Agent" is the last U.S. payor (or non-U.S. payor who is a qualified intermediary, U.S. branch of a foreign person or withholding foreign partnership) in the chain of payment prior to payment to a non-U.S. Holder (which itself is not a Withholding Agent). Generally, this statement is made on an IRS Form W-8BEN ("W-8BEN"), which is effective for the remainder of the year of signature plus three full calendar years thereafter, unless a change in circumstances makes any information on the form incorrect. Notwithstanding the preceding sentence, a Form W-8BEN with a U.S. taxpayer identification number will remain effective until a change in circumstances makes any information on the form incorrect, provided the Withholding Agent reports at least annually to the beneficial owner on IRS Form 1042-S. The beneficial owner must inform the Withholding Agent within 30 days of any change and furnish a new Form W-8BEN. A Non-U.S. Holder that is not an individual or corporation (or an entity treated as a corporation for U.S. federal income tax purposes) holding Series 2020 Bonds on its own behalf may have substantially increased reporting requirements. In particular, in the case of Series 2020 Bonds held by a foreign partnership or foreign trust, the partners or beneficiaries rather than the partnership or trust will be required to provide the certification discussed above, and the partnership or trust will be required to provide certain additional information.

A Non-U.S. Holder of Series 2020 Bonds whose income from such Series 2020 Bonds is effectively connected with the conduct of a U.S. trade or business generally will be taxed as if the holder were a U.S. Holder, provided the holder furnishes to the Withholding Agent a Form W-8ECI.

Certain securities clearing organizations and other entities that are not beneficial owners may be able to provide a signed statement to the Withholding Agent. In that case, however, the signed statement may require a copy of the beneficial owner's Form W-8BEN (or substitute form).

Generally, a Non-U.S. Holder will not be subject to U.S. federal income tax on any amount that constitutes capital gain upon retirement or disposition of Series 2020 Bonds, unless the Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of the retirement or disposition of such Series 2020 Bonds, and that gain is derived from sources within the United States. Certain other exceptions may apply, and a Non-U.S. Holder in these circumstances should consult his or her tax advisor.

Series 2020 Bonds will not be includible in the estate of a Non-U.S. Holder unless, at the time of the decedent's death, income from such Series 2020 Bonds was effectively connected with the conduct by the decedent of a trade or business in the United States.

## **Information Reporting and Backup Withholding**

Backup withholding of U.S. federal income tax may apply to payments made in respect of the Series 2020 Bonds to registered owners who are not “exempt recipients” and who fail to provide certain identifying information (such as the registered owner’s taxpayer identification number) in the required manner. Generally, individuals are not exempt recipients, whereas corporations and certain other entities generally are exempt recipients. Payments made in respect of the Series 2020 Bonds to a U.S. Holder must be reported to the IRS, unless U.S. Holder is an exempt recipient or establishes an exemption. Compliance with the identification procedures described in the preceding section would establish an exemption from backup withholding for those Non-U.S. Holders who are not exempt recipients.

In addition, upon the sale of a Bond to (or through) a broker, the broker must report the sale and withhold the entire purchase price, unless either (i) the broker determines that the seller is a corporation or other exempt recipient or (ii) the seller certifies that such seller is a Non-U.S. Holder (and certain other conditions are met). Certification of the registered owner’s Non-U.S. status would be made normally on an IRS Form W-8BEN under penalties of perjury, although in certain cases it may be possible to submit other documentary evidence.

## **Defeasance**

Under the terms of the Indenture, the Series 2020 Bonds may be legally defeased prior to their stated maturity. Prospective purchasers of the Series 2020 Bonds should be aware that, for U.S. federal income tax purposes, any such legal defeasance will be treated as a taxable exchange of such Series 2020 Bonds on which gain or loss, if any, will be recognized without any corresponding receipt of cash. In addition, after a Bond could differ from the timing and character of the amounts that would have been includible in gross income in respect of such Series 2020 Bonds had the legal defeasance not occurred. Prospective purchasers of the Series 2020 Bonds should consult their own tax advisors with respect to the more detailed consequences to them of a legal defeasance, including the applicability and effect of tax laws other than U.S. federal income tax laws.

The proposed form of opinion of Bond Counsel to be rendered with respect to the Series 2020 Bonds is attached hereto as APPENDIX D.

## **LEGAL MATTERS**

The Series 2020 Bonds are offered, subject to prior sale, when, as and if issued and accepted by the Underwriter, subject to the approving opinion of Harris Beach, PLLC, Rochester, New York, Bond Counsel, and certain other conditions. In connection with the issuance of the Series 2020 Bonds, certain legal matters for the Company will be passed upon by its counsel, Hancock Estabrook, LLP, Syracuse, New York, certain legal matters for the Issuer will be passed upon by its counsel, Harris Beach, PLLC, Syracuse, New York, and certain legal matters for the Underwriter will be passed upon by its counsel, Stevens & Lee, P.C., Reading, Pennsylvania.

The various legal opinions to be delivered concurrently with the delivery of the Series 2020 Bonds express the professional judgment of the attorneys rendering the opinion as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or the future performance of the parties to the transaction. In addition, the rendering of an opinion does not guarantee the outcome of any legal dispute that may arise out of the transaction.

## **BENEFIT PLANS AND ERISA CONSIDERATIONS**

The following is a summary of certain considerations associated with the acquisition and holding of the Series 2020 Bonds by an employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)) that is subject to Title I of ERISA, a benefit or retirement plan described in Section 4975 of the Code, including an individual retirement account (“IRA”) or a Keogh plan, a benefit or retirement plan subject to provisions under applicable federal, state, local, non-U.S. or other laws or regulations that are similar to the provisions of Title I of ERISA or Section 4975 of the Code (“Similar Laws”) and any entity whose underlying assets include “plan assets” by reason of any such employee benefit or retirement plan’s investment in such entity (each of which we refer to as a “Plan”).

### **General Fiduciary Matters**

ERISA imposes certain duties on persons who are fiduciaries of a Plan subject to Title I of ERISA, and ERISA and/or Section 4975 of the Code prohibit certain transactions involving the assets of a Plan subject to ERISA, as well as the assets of “plans” covered by Section 4975 of the Code, with its fiduciaries or other interested parties (such Plans are referred to herein as “Benefit Plans”). In general, under ERISA and the Code, any person who exercises any discretionary authority or control over the administration of such a Benefit Plan or the management or disposition of the assets of such a Benefit Plan, or who renders investment advice for a fee or other compensation (direct or indirect) to such a Benefit Plan, is generally considered to be a fiduciary of the Benefit Plan.

In considering the acquisition, holding and, to the extent relevant, disposition of the Series 2020 Bonds with a portion of the assets of a Benefit Plan, a fiduciary should determine whether the investment is in accordance with the documents and instruments governing the Benefit Plan and the applicable provisions of ERISA and the Code relating to a fiduciary’s duties to the Benefit Plan including, without limitation, the prudence, diversification, delegation of control and prohibited transaction provisions of ERISA and the Code.

Plans that are governmental plans (as defined in Section 3(32) of ERISA), certain church plans (as defined in Section 3(33) of ERISA or Section 4975(g)(3) of the Code) and non-U.S. plans (as described in Section 4(b)(4) of ERISA) are not subject to the requirements of ERISA or Section 4975 of the Code but may be subject to similar requirements and prohibitions under Similar Laws. Accordingly, fiduciaries of such Plans shall consult with their counsel in considering whether to purchase the Series 2020 Bonds.

### **Prohibited Transactions – In General**

Section 406 of ERISA prohibits Benefit Plans subject to ERISA from engaging in specified transactions involving plan assets with persons or entities who are “Parties in Interest,” within the meaning of Section 3(14) of ERISA, and Section 4975 of the Code imposes an excise tax on certain “Disqualified Persons,” within the meaning of Section 4975 of the Code, who engage in similar prohibited transactions, in each case unless an exemption is available.

A Party in Interest or Disqualified Person who engages in a non exempt prohibited transaction may be subject to other penalties and liabilities under ERISA and the Code. Further, a separate prohibited transaction could arise if, subsequent to the acquisition of a Series 2020 Bond by a Benefit Plan, the Company or one of its affiliates becomes a Party in Interest or Disqualified Person with respect to such Benefit Plan or a subsequent transfer of a Series 2020 Bond is between a Benefit Plan and a Party in Interest or Disqualified Person with respect to such Benefit Plan.

The definitions of “Party in Interest” and “Disqualified Person” are expansive. While other entities may be encompassed by these definitions, they include, most notably: (1) a fiduciary with respect to a Benefit Plan; (2) a person providing services to a Benefit Plan; and (3) an employer or employee organization any of whose employees or members are covered by the Benefit Plan. Certain Parties in Interest (or Disqualified Persons) that participate in a prohibited transaction may be subject to a penalty (or an excise tax) imposed pursuant to Section 502(i) of ERISA (or Section 4975 of the Code) unless a statutory or administrative exemption is available.

Certain transactions involving the purchase, holding or transfer of the Series 2020 Bonds might be deemed to constitute prohibited transactions under ERISA and the Code if assets of the Company were deemed to be assets of a Benefit Plan. Under final regulations issued by the United States Department of Labor at 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA (the “Plan Asset Regulation”), the assets of the Company would be treated as plan assets of a Benefit Plan for purposes of ERISA and the Code only if the Benefit Plan acquires an “equity interest” in the Company and none of the exceptions contained in the Plan Asset Regulation is applicable. An equity interest is defined under the Plan Asset Regulation as an interest in an entity other than an instrument which is treated as indebtedness under applicable local law and which has no substantial equity features.

Although there is little statutory or regulatory guidance on this subject, it appears that the Series 2020 Bonds should be treated as debt without substantial equity features for purposes of the Plan Asset Regulation. Accordingly, the assets of the Company should not be treated as the assets of Plans investing in the Series 2020 Bonds. However, there can be no complete assurance that the Series 2020 Bonds will be treated as debt obligations without substantial equity features for purposes of the Plan Asset Regulation. If the Company’s assets were deemed to constitute “plan assets” pursuant to the Plan Asset Regulation, transactions that the Company might enter into, or may have entered into in the ordinary course of business, might constitute non-exempt prohibited transactions under ERISA and/or Section 4975 of the Internal Revenue Code.

### **Prohibited Transaction Exemptions**

However, without regard to whether the Series 2020 Bonds are treated as debt obligations without substantial equity features for such purpose, the acquisition and/or holding of any Series 2020 Bonds (or an interest therein) by or on behalf of a Benefit Plan could be considered to give rise to a prohibited transaction if the Company, and other parties connected with the offering (such as the Underwriters), or any of their respective affiliates, is or becomes a Party in Interest or a Disqualified Person with respect to such Benefit Plan. In such case, certain status-based exemptions from the prohibited transaction rules could be applicable depending on the type and circumstances of the plan fiduciary making the decision to acquire the Series 2020 Bonds. Included among these exemptions are:

- PTCE 75-1, which excepts certain transactions between a Plan and certain broker dealers, reporting dealers and banks;
- PTCE 96-23, which exempts certain transactions effected at the sole discretion of an “in-house asset manager” (an “INHAM”);
- PTCE 90-1, which exempts certain investments by “insurance company pooled separate accounts”;
- PTCE 95-60, which exempts certain investments effected on behalf of an “insurance company general accounts”;

- PTCE 91-38, which exempts certain investments by bank collective investment funds; and
- PTCE 84-14, which exempts certain transactions effected at the sole discretion of a “qualified professional asset manager” (a “QPAM”).

Note that IRAs (and certain other plans described in Section 4975(e)(1) of the Code) are typically not represented by banks, insurance companies or registered investment advisors so that, practically speaking, these status-based PTCEs may be unavailable.

There is also a statutory exemption in Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code (which may be available to IRAs as well as to other Benefit Plans) which is commonly referred to as the “Service Provider Exemption.” The Service Provider Exemption covers transactions involving “adequate consideration” with persons who are Parties in Interest or Disqualified Persons solely by reason of their (or their affiliate’s) status as a service provider to the Benefit Plan involved and none of which is a fiduciary with respect to the Plan assets involved (or an affiliate of such a fiduciary).

The availability of each of these PTCEs and/or the Service Provider Exemption is subject to a number of important conditions which the Plan’s fiduciary must consider in determining whether such exemptions apply. Also, there can be no assurance that all the conditions of any such exemptions will be satisfied at the time that the Series 2020 Bonds are acquired by a purchaser, or thereafter, if the facts relied upon for utilizing a prohibited transaction exemption change, or that the scope of relief provided by these exemptions will necessarily cover all acts that might be construed as prohibited transactions. Therefore, a Benefit Plan fiduciary considering an investment in the Series 2020 Bonds should consult with its counsel prior to making such purchase.

Because of the foregoing, the Series 2020 Bonds (and any interest therein) may not be purchased or held by any person investing “plan assets” of any Plan, unless such purchase and holding will not constitute or result in a non-exempt prohibited transaction under ERISA and the Code or similar violation of any applicable Similar Laws. Any Benefit Plan fiduciary considering whether to purchase Series 2020 Bonds on behalf of a Benefit Plan should consult with its counsel regarding the applicability of the fiduciary responsibility and prohibited transaction provisions of ERISA and the Code to such investment and the availability of any of the exemptions referred to above. Persons responsible for investing the assets of Plans that are not subject to ERISA or Section 4975 of the Code should seek similar counsel with respect to the prohibited transaction provisions of the Code and the applicability of any similar federal, state, local or foreign law.

## **Representation**

It is the responsibility of each purchaser (and each subsequent transferee) of the Series 2020 Bonds to ensure that its purchase, holding and transfer of such Series 2020 Bonds is not a prohibited transaction. Each purchaser of a Bond will be deemed to have represented and warranted that either under ERISA, the Code or applicable Similar Laws (1) it is not a Plan, such as an IRA, and no portion of the assets used to acquire or hold the Series 2020 Bonds constitutes assets of any Plan or (2) the acquisition, holding and disposition of a Bond (or any interest herein) will not constitute a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or similar violation under any applicable Similar Laws for which there is no applicable statutory, regulatory or administrative exemption.

**The foregoing discussion is general in nature and is not intended to be all-inclusive. Due to the complexity of these rules and the penalties that may be imposed upon persons involved in non-**

**exempt prohibited transactions, it is particularly important that fiduciaries, or other persons considering purchasing Series 2020 Bonds on behalf of, or with the assets of, any Plan, consult with their counsel regarding the potential applicability of ERISA, Section 4975 of the Code and any Similar Laws to such investment and whether an exemption would be applicable to the purchase and holding of the Series 2020 Bonds. The acquisition, holding and, to the extent relevant, disposition of the Series 2020 Bonds by or to any Plan is in no respect a representation by the Company or any of the affiliates or representatives that such an investment meets all relevant legal requirements with respect to investments by such Plans generally or any particular Plan, or that such an investment is appropriate for Plans generally or any particular Plan.**

## **LITIGATION**

### **The Issuer**

There is not now pending or, to the knowledge of the Issuer, threatened any litigation restraining or enjoining the issuance or delivery of the Series 2020 Bonds or questioning or affecting the validity of the Series 2020 Bonds or the proceedings or authority under which they are to be issued. Neither the creation, organization or existence of the Issuer nor the title of any of the present member, directors or other officials of the Issuer to their respective offices is being contested. There is no litigation pending or, to the Issuer's knowledge, threatened which in any manner questions the right of the Issuer to enter into the any of the Financing Documents or to secure the Series 2020 Bonds in the manner provided in the Indenture or the Act.

### **The Company**

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

## **UNDERWRITING**

The Series 2020 Bonds are being purchased by Stifel, Nicolaus & Company, Incorporated (the "Underwriter"). The Underwriter has agreed to purchase the Series 2020 Bonds for an aggregate purchase price of \$30,736,062.50. Such purchase price represents the par amount of the Series 2020 Bonds (\$30,875,000.00), less underwriter's discount (\$138,937.50).

The Underwriter will be obligated to purchase all of the Series 2020 Bonds if any of such Series 2020 Bonds are purchased. The Series 2020 Bonds may be offered and sold to certain dealers (including dealers depositing such Series 2020 Bonds into investment trusts) at prices lower than the initial public offering prices, and such public offering prices may be changed, from time to time, by the Underwriter. The Company has agreed to indemnify the Issuer and the Underwriter against losses, claims and liabilities arising out of any materially incorrect statement or information with respect to the Company contained in or material information omitted from this Official Statement. The initial public offering prices set forth on the inside front cover page of this Official Statement may be changed by the Underwriter from time to time without any requirement of prior notice. The Underwriter reserves the right to sell Series 2020 Bonds to certain dealers and others at prices lower than those offered to the public.

## **VERIFICATION OF MATHEMATICAL COMPUTATIONS**

The accuracy of the mathematical computations of the adequacy of the maturing principal amounts of and interest on the investments held in escrow to pay the principal of any redemption premium on and interest on the refunded 2011 Bonds when due and on the Redemption Date, will be verified solely as to mathematical accuracy by Causey Demgen & Moore, P.C., certified public accountants.

## **CONTINUING DISCLOSURE**

The Issuer has determined that no financial or operating data concerning the Issuer is material to any decision to purchase, hold or sell the Series 2020 Bonds and the Issuer will not provide any such information. The Company has undertaken all responsibilities for any continuing disclosure to holders of the Series 2020 Bonds as described below, and the Issuer shall have no responsibility or liability to the holders of the Bonds or any other person with respect to such disclosures.

On or before the date of issuance of the Series 2020 Bonds, the Company will enter into a Continuing Disclosure Agreement (the “Continuing Disclosure Agreement”) in substantially the form set forth in APPENDIX E hereto. Pursuant to the Continuing Disclosure Agreement, the Company will agree to provide certain continuing disclosure for the benefit of the holders of the Series 2020 Bonds pursuant to Securities and Exchange Commission Rule 15c2-12 (the “Rule”). The provisions of the Continuing Disclosure Agreement will be for the benefit of the beneficial owners of the Series 2020 Bonds under the circumstances described therein, and each beneficial owner will be a beneficiary of the provisions of the Continuing Disclosure Agreement with the right to enforce such provisions directly against the Company. However, breach of the provisions of the Continuing Disclosure Agreement will not be considered an Event of Default under the Indenture or the Loan Agreement and none of the rights and remedies provided under the Indenture or the Loan Agreement upon an Event of Default (other than specific performance) will be available to the beneficial owners in the event of such breach. Unless otherwise required by law, no beneficial owner is entitled to damages for the Company’s noncompliance with its obligations under the Continuing Disclosure Agreement.

The Borrower may from time to time appoint or engage an agent to act on its behalf in performing its obligations under the Continuing Disclosure Agreement and may discharge any such agent, with or without appointing a successor; provided that the Borrower will not be relieved in any respect by appointment of an agent from primary liability for the performance of its obligations under the Continuing Disclosure Agreement. An agent may resign by providing 30 days’ written notice to the Borrower and the Trustee. The Borrower has initially appointed Manufacturers and Traders Trust Company, as its dissemination agent in accordance with the provisions of the Continuing Disclosure Agreement described in this paragraph.

### **Continuing Disclosure Filing History**

Pursuant to the terms of the continuing disclosure agreement executed in connection with the issuance of the 2011 Bonds, the Company agreed to provide, among other things, (i) its annual audited financial statements (the “Annual Audit”); (ii) an update of certain operating data related to the Student Housing Facility (the “Operating Data”); and (iii) certain unaudited biannual financial and operating reports prepared by management of the Company (the “Biannual Report”) to the Municipal Securities Rulemaking Board (MSRB) through the MSRB’s Electronic Municipal Market Access System (“EMMA”).

The Company failed to file, in a timely manner (a) its Annual Audit for the fiscal year ending December 31, 2016, (b) its unaudited financial statements in lieu of the Annual Audit as required by the continuing disclosure agreement and (c) a notice of such failure to file. The Company also failed to file, in a timely manner, (a) its Operating Data for the fiscal years ending December 31, 2016, 2018 and 2019, and (b) a notice of such failure to file. Finally, the Company failed to file, in a timely manner (a) the Biannual Report for the last five fiscal years, and (b) a notice of such failure to file. The Company has completed a remedial filing with the missing Operating Data and a Biannual Report for the most recent period, together with a failure to file notice.

### **INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS**

The consolidated financial statements of the Company as of June 30, 2019 and 2018 and for the years then ended, are included in APPENDIX B of this Official Statement. The consolidated financial statements as of June 30, 2019 and for the year then ended have been audited by Fust Charles Chambers LLP, independent certified public accountants, as stated in their report appearing in APPENDIX B. As indicated in the Fust Charles Chambers LLP Independent Auditor's Report, the consolidated financial statements of the Company as of June 30, 2018, were audited by other auditors whose report dated September 12, 2018, expressed an unmodified opinion on those statements.

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

Harris Beach PLLC, Bond Counsel to the Issuer, has also served as counsel to the Issuer.

Hancock Estabrook, LLP, counsel to the Company, has also represented the University on other matters from time to time.

The Trustee's banking affiliate provides certain financial services to the University from time to time.

### **RATINGS**

S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("S&P") has assigned a rating of "AA" (stable outlook) to the Series 2020 Bonds with the understanding that upon delivery of the Series 2020 Bonds, the Policy will be issued by BAM.

S&P has given the Series 2020 Bonds an underlying rating of "A+" with a "negative outlook" based upon the rating agency's analysis of the historical audited financial statements and occupancy of the Student Housing Facility, structure of the financing, the agreements between the Company and SUNY, information provided by the Company and the University, an analysis of prior rating reviews performed by S&P and a conference call with representatives of the Company and the University.

Such ratings and outlook reflects only the view of S&P and its rationale for such rating, and any desired explanation of the significance of such rating or rationale should be obtained from S&P. There is no assurance that such ratings will apply for any given period of time or that they will not be lowered or withdrawn entirely if, in the judgment of S&P, circumstances so warrant. The Underwriter has undertaken no responsibility to bring to the attention of the holders of the Series 2020 Bonds any proposed revision or withdrawal of the ratings on the Series 2020 Bonds or to oppose any such proposed revision or withdrawal. Any downward revision or withdrawal of such ratings and/or outlook could have an adverse effect on the market price of the Series 2020 Bonds. Such ratings should not be taken as a recommendation to buy or hold the Series 2020 Bonds.



## **MISCELLANEOUS**

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

Neither this Official Statement nor any other disclosure in connection with the Series 2020 Bonds is to be construed as a contract with the holders of the Series 2020 Bonds. Any statements made in this Official Statement involving matters of opinion or estimates, whether or not expressly so identified, are intended merely as such and not as representations of fact. No representation is made that any of such statements will be realized.

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

### **UPSTATE PROPERTIES DEVELOPMENT, INC.**

By:                     /s/ Eric Smith                      
Chair

### **ONONDAGA CIVIC DEVELOPMENT CORPORATION**

By:                     /s/ Robert M. Petrovich                      
President and Chief Executive Officer

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## APPENDIX A

CERTAIN INFORMATION CONCERNING SUNY, THE UNIVERSITY,  
THE COMPANY AND THE PROJECT

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**APPENDIX A**  
**CERTAIN INFORMATION CONCERNING SUNY,**  
**UPSTATE MEDICAL UNIVERSITY & THE COMPANY**

**STATE UNIVERSITY OF NEW YORK**



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

SUNY is assigned the responsibility for the planning, supervision and administration of facilities enabling programs in accordance with a master plan to be proposed by SUNY and approved by the Board of Regents. SUNY is governed by a Board of Trustees comprised of 18 members, 15 appointed by the Governor with the advice and consent of the Senate, the president of SUNY-wide Student Assembly, ex officio and voting, and the president of the University Faculty Senate, ex officio and non-voting. The Chairman and Vice-Chairman of the Board are designated by the Governor. The 15 Trustees appointed by the Governor currently serve overlapping terms of seven years, the student Trustee a one-year term, and the faculty Trustee a two-year term. Trustees receive no compensation for their services other than reimbursement of expenses. The Board of Trustees appoints its own officers, the Chancellor, the senior System Administration staff and campus Presidents.

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

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

Each University Center and College of SUNY is administered locally although subject to overall review and supervision by SUNY's Board of Trustees. Graduate study at the doctoral level is offered by SUNY at 15 of its institutions, and graduate work at the master's level at 29 campuses. SUNY is continuing to broaden and expand overall opportunities for advanced degree study. Graduate study areas embrace a wide spectrum including agriculture, business administration, criminal justice, dentistry, education, engineering, forestry, law, library science, medicine, nursing, optometry, pharmacy, social work, and veterinary medicine as well as the liberal arts and sciences. Four-year programs strongly emphasize the liberal arts and sciences and also include specialization in teacher education, business, forestry, maritime service, ceramics, and the fine and performing arts. Two-year programs include nursing and liberal arts transfer programs and a wide variety of technical curriculums such as agriculture, business, and the industrial and medical technologies. SUNY Educational Opportunity Centers located throughout the State provide training for skilled and semiskilled occupations and college foundation courses. In addition to courses such as high school equivalency, college preparation, typing, bookkeeping, and vending and business machine repair, these centers provide a broad range of services, including personal counseling, diagnostic testing, placement and referral services.

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

Set forth below is a list of each institution of the University (excluding community colleges).

### **University Centers**

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

### **Health Sciences Centers**

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

### **Academic Medical Centers and Hospitals**

University at Buffalo  
Downstate Medical Center  
College of Optometry  
Stony Brook University  
Upstate Medical University

### **University Colleges**

State University College at Brockport	State University College at Old Westbury
State University College at Buffalo	State University College at Oneonta
State University College at Cortland	State University College at Oswego
State University College at Fredonia	State University College at Plattsburgh
State University College at Geneseo	State University College at Potsdam
State University College at New Paltz	State University College at Purchase
SUNY Empire State College	

### **Specialized Colleges**

College of Environmental Science and Forestry at Syracuse	College of Optometry at New York City
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### **Colleges of Technology**

College of Technology at Alfred	College of Technology at Delhi
College of Technology at Canton	College of Agriculture and Technology
College of Agriculture and Technology at Morrisville	College of Agriculture and Technology at Cobleskill
Maritime College at Fort Schuyler	College of Technology at Farmingdale
SUNY Polytechnic Institute	

## **Statutory Colleges (At Cornell University & Alfred University)**

College of Agriculture and Life Sciences at Cornell	College of Veterinary Medicine at Cornell
College of Human Ecology at Cornell	School of Industrial and Labor Relations at Cornell
College of Ceramics at Alfred University	

## **Other Institutions**

Agricultural Experimental Station at Geneva

## **State University Fiscal Structure**

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

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

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

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

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

## **Appropriations of State Funds to SUNY**

In addition to its own sources of revenues, the successful maintenance and operation of SUNY and its overall financial viability are dependent upon the ability and willingness of the State to continue making appropriations of State funds in the amounts which, together with other available revenues of SUNY, are sufficient to pay the operating expenses and to meet other financial obligations of SUNY. Appropriations of State funds have historically constituted a significant portion of SUNY's revenues, and no assurance can be given that State funds will be available in the future in the amounts contemplated or required by SUNY or which have been historically appropriated and paid to SUNY.

The State has made appropriations to SUNY from the General Fund. These appropriations are made in connection with the State's annual budget process and are therefore dependent upon the availability of budgetary resources and the allocation thereof.

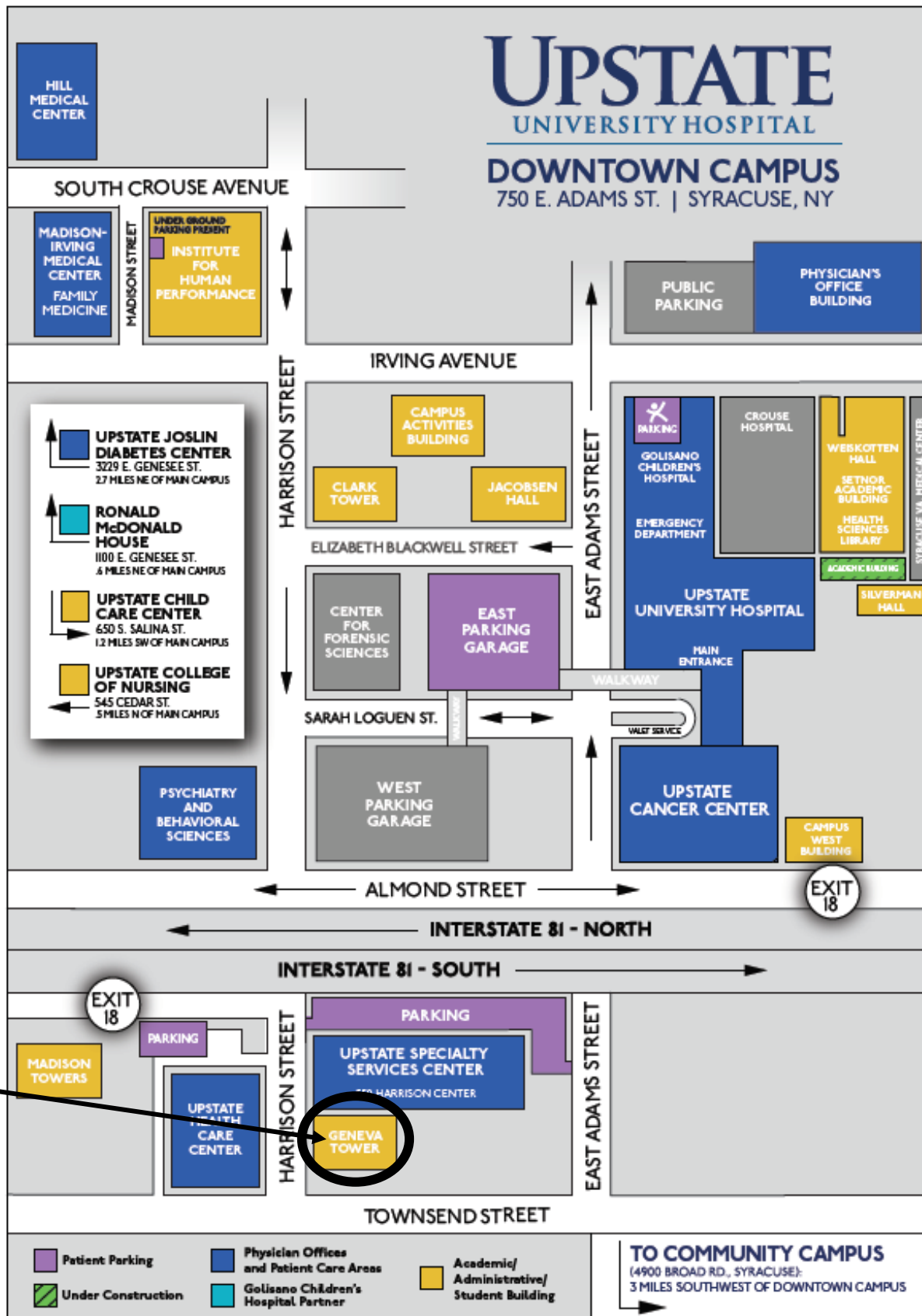
Prior to 2012-13, a portion of the total State appropriation to this component of SUNY was offset by the application of other SUNY income for operating expenses, with the remainder of the appropriation constituting the State-funded portion. Starting in 2012-13, this process was altered, with the State-funded portion of this support being transferred multiple times a year into accounts holding other SUNY income. The history of total appropriations for the operations of SUNY which includes both State-funded support and spending authority for tuition revenue, but excludes student aid appropriations, fringe benefits, debt service for educational facilities, community colleges and other special programs, is shown below:

**State-Funded SUNY Appropriations**

<b><u>State Fiscal Year Ended March 31</u></b>	<b><u>Appropriated from State Purposes Account</u></b>
2013	\$969,050,300
2014	\$971,259,860
2015	\$979,531,900
2016	\$1,004,249,800
2017	\$1,011,590,300
2018	\$1,015,990,300
2019	\$1,018,312,300
2020	\$1,017,062,300

Source: University Officials





Geneva Tower

## UPSTATE MEDICAL UNIVERSITY



### About SUNY Upstate Medical University

Located in Syracuse, NY, State University of New York Upstate Medical University ("SUNY Upstate" or "Upstate") is the only academic medical university in the Central New York region. It is comprised of four colleges – Medicine, Graduate Studies, Nursing, and Health Professions — and is the training ground for an additional 600 medical residents and fellows. Upstate also hosts a clinical campus in Binghamton, NY, for third and fourth year medical students. Upstate owns University Hospital with dozens of specialty clinics, the Upstate Golisano Children's Hospital, and Upstate University Hospital at Community General. Upstate is also home to a robust biomedical research enterprise, with all investigations aimed at benefitting human health. As well, the institution offers emerging therapies and treatments to patients via its many clinical trials.

Upstate is the leading employer in the region with 11,000 employees in its workforce, generating an annual economic impact of more than \$2.5 billion statewide with an operating budget of \$1.8 billion, of which less than 3% is direct New York State support.

SUNY Upstate's dedication to its immediate community has resulted in a revitalization of downtown Syracuse with building projects that have repurposed abandoned properties. Upstate is also a committed partner for urban Syracuse and has won the "Spirit of Caring" award for employee volunteer efforts in the community.

### Mission Statement

The mission of Upstate is to improve the health of the communities it serves through education, biomedical research and health care.

### Upstate Medical University Vision Statement:

United in expertise, compassion and hope to create a healthier world for all.

### Values

- We drive innovation and discovery by empowering our university family to bring forth new ideas and to ensure quality.
- We respect people by treating all with grace and dignity and embracing diversity.
- We serve our community by living our mission.
- We value integrity by being open and honest to build trust and teamwork.
- We embrace diversity and inclusion to state that all are welcome here.



## Upstate Medical University History



### College of Medicine and the Formation of Upstate Medical University

The present Upstate College of Medicine traces its ancestry to September 15, 1834, when Geneva Medical College (GMC) was founded as a department of Geneva (now Hobart) College.

The medical school was the brainchild of Edward Cutbush, MD, who became its first dean. GMC held its first classes in February 1835, and graduated its first six physicians later that year. In 1849 it graduated Elizabeth Blackwell, the first woman to earn a Doctor of Medicine (MD) degree.

Among the early luminaries at GMC were Professor of Surgery Frank Hastings Hamilton, pioneer in orthopedics, military surgery, and military hygiene; Stephen Smith, briefly a GMC student in 1847-1848, later an innovative sanitarian and surgeon in New York City; Lecturer in the Theory and Practice of Medicine Austin Flint, developer of modern methods of auscultation, cofounder (with Hamilton and several other GMC faculty) of the University of Buffalo College of Medicine, and eventually President of the American Medical Association; and Professor of Anatomy and Physiology Willard Parker, who became the premier surgeon at Bellevue.

In 1871 Hobart disbanded GMC and sold its library, anatomical specimens, and other tangible assets to Dean John Towler. Acting as a private citizen, Towler donated these materials to the new Syracuse University (SU) on condition that the trustees immediately establish an AMA-approved medical school. Thus the SU College of Medicine came into being on December 4, 1871, with Frederick Hyde as dean.

In the 1870s the SU College of Medicine was (along with Harvard, the University of Pennsylvania, and the University of Michigan) among the first to institute a graded medical instruction program, with definite pre-clinical and clinical years. In the 1890s it was again (along with Johns Hopkins, Harvard, University of Pennsylvania, and a few others) among the first in America to organize its curriculum according to the so-called "German model," with intense scientific and especially laboratory training for students in the first two years, and rigorous clinical training on rounds thereafter. The prime mover behind this reorganization at SU was Prof. of Medicine Henry Leopold Elsner, a specialist in diagnosis and prognosis who had studied in Europe and who insisted on only the most modern pathology laboratories for him and his students.

This tradition of steadily improving educational methods, practices, and facilities placed the SU College of Medicine in the Carnegie Foundation's Flexner Report in 1910. The Flexner Report hastened the demise of many medical schools in the United States and Canada, but, as Abraham Flexner wrote, "Of the eleven medical schools now existing in the state, only the bona-fide university departments can then expect to survive: outside of New York city, SU alone has just now a chance. The schools of Buffalo, Albany, and Brooklyn belong to the past. None of the three has even yet emerged from the fee-dividing stage. Syracuse, with a smaller total fee income than any of them, devotes every dollar to the development of the fundamental branches and has fairly earned support from outside."

SU sold the medical school in 1950 to the new SUNY Upstate Medical Center, where it remains today. After a name change to SUNY Health Science Center at Syracuse in the mid-1980s, the institution returned to the familiar name Upstate, but emphasizing its university structure, to become SUNY Upstate Medical University in 2000.

The first two decades of the 21st century has been a period of growth: the opening of the Institute for Human Performance (IHP) for basic and clinical research; the East Tower expansion of University Hospital that houses the Golisano Children's Hospital and other clinical specialties; two new, 1,500-car parking garages; a renovated gross anatomy lab; the Setnor Academic Building with a unique clinical skills center; the Biotechnology Research Center; the acquisition of Community General Hospital; the Neuroscience Research Building; the 8,600 square-foot simulation center; the Upstate Cancer Center; and the New Academic Building. These and other capital improvements benefit students and faculty in all SUNY Upstate's Colleges: Medicine, Graduate Studies, Nursing and Health Professions.

## **College of Graduate Studies**

In 1936, President Franklin D. Roosevelt laid the cornerstone of what is now Weiskotten Hall, the main biomedical sciences building and the home of the College of Graduate Studies.

The graduate studies program began in 1947 when Master of Science (MS) and Doctor of Philosophy (PhD) degrees in Biochemistry were first offered. PhD degree programs in the other basic sciences continued to be added, including the PhD in Neuroscience which began in 1995.

## **College of Health Professions**

While the College of Health Professions was formed in 1971, programs in the Health Professions have been in existence on this campus since 1956.

College of Health Professions' students can choose from eight health care fields. All of the degree programs are upper division, meaning students enroll for their junior and senior years of college. Two offer master's degrees. Each curriculum includes courses in professional subject areas, liberal arts and sciences as well as a clinical experience component. The College has a strong Arts and Sciences Department which contributes to a broadly based education for students in health sciences.

The setting and structure of the College of Health Professions provides an opportunity for students in the various programs to learn to practice together as future members of the health care delivery team.

## **College of Nursing**

To meet the shortage of nurses, Upstate initiated an Associate's Degree Program in 1959. More than 500 registered nurses graduated from the program between 1959 and 1976.

In the fall of 1984, a combined Bachelor of Science and Master of Science Program (BS/MS) was offered by the Department of Nursing of University Hospital at Upstate. Seventeen full-time students were enrolled in the first class. Enrollment grew, and the College of Nursing was initially established in 1986, with the appointment of the first dean. The program has grown to include masters' programs for nurse practitioners and a Doctor of Nursing practice which is offered online.

## **Accreditations**

Upstate is accredited by the **Middle States Commission on Higher Education**, which recently re-accredited Upstate for a full eight-year term for meeting standards of excellence in areas such as governance, assessment, and student support services. All educational programs are registered through the **New York State Education Department** and are approved by the **Veterans Administration** for the training of veterans under Public Law 98-358.

The College of Medicine (COM) is accredited by the **Liaison Committee on Medical Education (LCME)** and **Council on Education for Public Health**. In 2019, the COM completed a successful routine accreditation review process, which involved a self-study and site visit from the LCME.

The programs in the Colleges of Health Professions and Nursing are accredited by the appropriate professional associations through the following bodies:

- ❖ **Accreditation Review Commission on Education for the Physician Assistant, Inc.,**
- ❖ **Commission on Accreditation for Respiratory Care,**
- ❖ **Commission on Accreditation in Physical Therapy Education,**
- ❖ **National Accrediting Agency for Clinical Laboratory Sciences,**
- ❖ **Commission on Accreditation of Allied Health Education Programs,**
- ❖ **Commission on Collegiate Nursing Education, American Physical Therapy Association and**
- ❖ **the Joint Review Committee on Education in Radiologic Technology.**

## **Organization and Governance**

The Upstate Council is responsible for the “operations and affairs” of the University. It is the council’s responsibility to exercise such powers as are provided for in the Education Law, subject to the general management, supervision, control, and approval of and in accordance with rules established by the State University Trustees. Consistent with the statutory responsibilities of such bodies, they shall develop and foster strong relationships between their institutions and local communities and promote campus and University interests.

### Name

**James E. Sparkes, Esq., Chair**

**John B. Johnson, Jr.**

**Gwyn Mannion**

**Diane M. Dwire**

**Samuel D. Rowser**

**Linda R. Ervin**

**Eric R. Allyn**

**Calvin L. Corridors**

**Dr. Stephen Glatt, *Faculty Representative***

**Akshay Patel, *Student Representative***

**Dr. Patricia Numann, *Alumni Representative***

## **Administration**

### Principal Administrative Officers

#### **Mantosh Dewan, MD, Interim President**

Mantosh Dewan, MD, is a SUNY Distinguished Service Professor in the Department of Psychiatry. He is former chair of the department and has also served as director of Undergraduate Education and director of Residency Training. He was interim dean of the College of Medicine. Throughout his career, which began at Upstate Medical in 1979 as an assistant professor of psychiatry, he has written 35 books and book chapters and 75 papers, and given hundreds of presentations on topics that range from brain imaging and economics of mental health care to psychotherapy and medical education. He received his medical degree from University of Bombay and completed his residency at SUNY Health Science Center (now SUNY Upstate Medical University) in Syracuse.

#### **Lawrence Chin, MD, Dean, College of Medicine**

Dr. Lawrence Chin has served the Upstate community in a variety of roles, most recently as the Robert B. and Molly G. King Endowed Professor and Chair of Neurosurgery. Dr. Chin has brought outstanding leadership to his role as Chair of Neurosurgery and Chair of the UUMAS Governing Board. In his career at Boston University School of Medicine, University of Maryland School of Medicine and at Upstate, he has been involved in many aspects of academic medicine, from clinical care and teaching to research. Dr. Chin is the recipient of numerous honors, awards and visiting professorships and has held a range of leadership positions in the American Association of Neurological Surgeons, the Congress of Neurological Surgeons, and other organizations.

#### **Robert J. Corona DO, CPE, MBA, FCAP, FASCP, CEO Upstate University Hospital**

Serving as CEO, Dr. Corona also is the Chief Innovation Officer and Associate Dean for Industry and Academic Relations. As an endowed chair for the Department of Pathology and Laboratory Medicine, his role includes leadership of the CNY Biotechnology Accelerator and the Upstate Cord Blood Bank. Dr. Corona is board certified by the American Board of Pathology in neuropathology, clinical informatics and anatomic pathology.

**David C. Amberg, PhD, Vice President for Research**

Dr. Amberg has served as Vice President for Research since July 2014, overseeing the clinical, translational and basic research portfolios of the University. Dr. Amberg also provides expertise in research integrity and research conflict of interest, having served in those leadership capacities prior to his vice president post. Dr. Amberg, a Professor of Biochemistry & Molecular Biology and a Jacobsen Scholar.

**Mark Schmitt, PhD, Dean, College of Graduate Studies**

As dean, Dr. Schmitt oversees the overall operations of the College which educates PhD, Masters, and MD/PhD students in six different biomedical science programs. In addition, he is a faculty member and has a research lab in the Department of Biochemistry and Molecular Biology. He is also active in both Graduate and Medical education at Upstate.

**Tammy Austin-Ketch, PhD, FNP, FAANP, Dean, College of Nursing**

Dr. Tammy Austin-Ketch oversees the academic and clinical activities of the College of Nursing for degree programs at the baccalaureate (RN-BS), master of science, and doctoral (DNP) levels. Prior to her arrival at Upstate, she was employed for nearly 20 years at SUNY Buffalo serving as Assistant Dean for MS and DNP programming, as well as actively practicing as a family nurse practitioner.

**Katherine Beissner, PT, PhD, Dean, College of Health Professions**

Dr. Beissner provides leadership in a College that offers 10 allied health profession degrees offered at the baccalaureate, masters, and doctoral levels. She also oversees the coordination and development of enrichment pipeline programs for racial/ethnic minority and disadvantaged students to enhance interest in, and preparedness for careers in the health professions.

**Lynn Cleary, MD, Vice President for Academic Compliance and University Accreditation**

Reporting to the president and the executive dean, Dr. Cleary works collaboratively with the college deans, faculty and staff on academic program development and academic infrastructure. She serves as the academic liaison between Upstate and SUNY Central Administration and the accreditation liaison officer to the Middle States Commission on Higher Education. Dr. Cleary is a SUNY Distinguished Teaching Professor and Professor of Medicine.

**Eric J. Smith, CPA, MBA, Senior Vice President for Finance and Administration, Senior Associate Dean for Finance, College of Medicine**

Reporting to the president, Mr. Smith oversees the University's finance, accounting and budget, and post-award sponsored programs offices. In addition, he is responsible for the operations of many shared service departments serving all components of the University, including human resources, business services (payroll, contracts/campus purchasing, and accounts payable), university police, facilities and capital planning, property management, and other related operations. Mr. Smith serves in leadership and governance roles for various university affiliates, including the Research Foundation for SUNY, Faculty-Student Association, Upstate Properties Development, and the Upstate Foundation. He has led various performance improvement, strategic planning and accreditation initiatives since joining Upstate in 2005 as the Assistant Vice President for Finance. Mr. Smith is a Certified Public Accountant and prior to joining Upstate spent 12 years with PricewaterhouseCoopers as a Senior Manager in the Assurance and Business Advisory Services Group.

**Eileen Pezzi, MPA, Vice President for Development**

Ms. Pezzi administers the activities of the Upstate Foundation, including the Alumni Association for the Colleges of Nursing and Health Professions. She is responsible for organizing and implementing multi-year, million-dollar capital, annual and endowment campaigns, planned giving, corporate and foundation gift giving, fund management, investment management and special events. She also oversees a 40-member board of directors.

**Linda Veit, MPH, Interim Chief of Staff, Assistant Vice President of Community Relations**

Ms. Veit is responsible for the development and evaluation of value-added programs and partnerships with community and external organizations. Ms. Veit can provide advice on strategic community program development, as it relates to Upstate's priorities, as well as connect Upstate experts to community organizations. Her office serves as a liaison between Upstate and the broader community.

**Daryll C. Dykes, PhD, MD, JD, Chief Diversity Officer**

Dr. Dykes is a native of Syracuse and alumnus of Upstate's MD/PhD program. He completed his orthopedic surgery residency and fellowships in spine surgery and trauma surgery in Minneapolis, MN, and subsequently earned his law degree from William Mitchell College of Law. He is an alumnus of the Robert Wood Johnson Foundation Health Policy Fellowship and served as a senior health policy advisor in the United States Congress and Food and Drug Administration before returning to Upstate in 2018 to join the orthopedic surgery faculty. Dr. Dykes also previously served as President & CEO of Medical and Surgical Spine Consultants of Minnesota and was also a member of the faculty of the University of Minnesota Medical School.

## Degree Programs (all four colleges)

<u>Program</u>	<u>Degree Level(s)</u>
Anatomy	MS
Anatomy and Cell Biology	PhD
Behavioral Analysis Studies	MS
Biochemistry	MS
Biochemistry and Molecular Biology	PhD/MS
Cardiorespiratory Sciences	BS
Cardiovascular Perfusion	BS
Cell and Developmental Biology	PhD/MS
Clinical Perfusion	MS
Medical Imaging Sciences	BS, BPS
Medical Biotechnology	BS
Medical Technology	BS and MS
Medicine	MD
Medicine / Doctor of Philosophy	MD/PhD
Medicine / Master of Public Health	MD/MPH
Microbiology and Immunology	PhD
Neuroscience	PhD
Nursing	BS, MS, DNP, and Post Master's Advanced Certificate
Pharmacology	MS/PhD
Physician Assistant Studies	MS
Physical Therapy	DPT
Public Health	MPH
Physiology	PhD
Radiation Therapy Technology	BS and BPS
Respiratory Therapy	BS
	BS, BPS

## Tuition, Fees & Expenses for the 2019-20 Academic Year

### Tuition

	<u>In-State</u>	<u>Out-of-State</u>
<b>College of Graduate Studies</b>		
MS	\$12,031	\$23,821
PhD	\$12,031	\$23,821
<b>College of Health Professions</b>		
Cardiovascular Perfusion	\$7,791	\$17,701
Medical Imaging	\$7,791	\$17,701
Medical Biotechnology	\$7,791	\$17,701
Medical Technology	\$7,791	\$17,701
Radiation Therapy	\$7,791	\$17,701
Respiratory Care	\$7,791	\$17,701
Physician Assistant*	\$24,666	\$45,396
Doctor or Physical Therapy*	\$33,239	\$41,653
<b>College of Medicine</b>		
MD	\$44,391	\$65,881
MPH	\$12,031	\$23,821
<b>College of Nursing</b>		
BS	\$7,791	\$17,701
Masters	\$12,031	\$23,821
Doctor of Nursing	\$25,841	\$32,881

\*Includes Summer School



## Enrollment

Total student enrollment and medical residents at Upstate over the past five years is shown in the table below.

	<u>Fall 2015</u>	<u>Fall 2016</u>	<u>Fall 2017</u>	<u>Fall 2018</u>	<u>Fall 2019</u>
Full Time	1,244	1,281	1,301	1,332	1,363
Part Time	239	246	246	256	231
Total Student Enrollment	1,483	1,527	1,547	1,588	1,594
Medical Residents	523	554	587	612	650
Total Students & Residents	2,006	2,081	2,134	2,200	2,244

## Demand

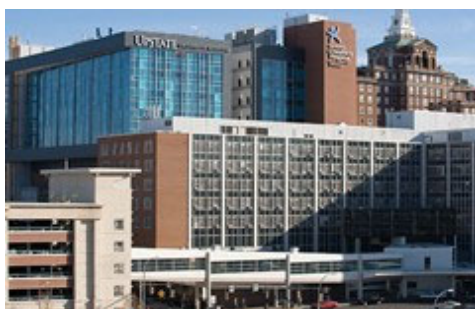
	<u>Fall 2015</u>	<u>Fall 2016</u>	<u>Fall 2017</u>	<u>Fall 2018</u>	<u>Fall 2019</u>
<u>College of Medicine</u>					
Applications	4,361	4,426	4,334	4,358	4,501
Acceptances	421	432	452	466	464
Selectivity	9.65%	9.76%	10.43%	10.69%	10.31%
Enrolled	160	164	168	175	169
Matriculation	38.00%	37.96%	37.17%	37.55%	36.42%
<u>College of Graduate Studies</u>					
Applications	197	192	186	165	97
Acceptances	53	56	47	59	44
Selectivity	26.90%	29.17%	25.27%	35.76%	45.36%
Enrolled	26	18	21	20	24
Matriculation	49.06%	32.14%	44.68%	33.90%	54.55%
<u>College of Health Professions</u>					
Applications	1,733	1,719	1,913	1,681	1,593
Acceptances	194	226	242	256	248
Selectivity	11.19%	13.15%	12.65%	15.23%	15.57%
Enrolled	148	152	159	168	173
Matriculation	76.29%	67.26%	65.70%	65.63%	69.76%
<u>College of Nursing</u>					
Applications	211	276	378	275	332
Acceptances	170	182	238	204	194
Selectivity	80.57%	65.94%	62.96%	74.18%	58.43%
Enrolled	133	149	188	143	152
Matriculation	78.24%	81.87%	78.99%	70.10%	78.35%

Source: College Officials

## Faculty

As of the fall of 2019, there were a total of 584 full time and 66 part time faculty members, composed of 539 FT/53 PT in the College of Medicine/College of Graduate Studies, 35 FT/8 PT in the College of Health Professions, and 10 FT/5 PT in the College of Nursing.

## UPSTATE UNIVERSITY HOSPITAL



As a patient care enterprise, Upstate serves 1.8 million people, covering one-third of New York State. Upstate University Hospital has a total of 734 licensed beds: a 420-bed hospital in downtown Syracuse and Upstate Community Hospital, a 312-bed facility four miles away. More than half of Upstate's employees are connected to patient care.

Upstate University Hospital has long held the distinction of caring for among the most seriously ill and injured in the state. It is a Level-I trauma center and operates the Golisano Children's Hospital, the region's only children's hospital, which opened in fall 2009. University Hospital is also a NYS Designated Center for: Stroke, AIDS, Trauma, Burn, SAFE services, and Poison Control, and offers kidney transplant and 80 unique specialty clinics. Its Joslin Diabetes Center is a NYS Center of Excellence and its Epilepsy Center is a Level 4, the highest designation possible. University Hospital currently hosts 42 medical residency programs for over 600 medical residents.

Statistical highlights of Upstate University Hospital are as follows for the year ended December 31:

	<u>2017</u>	<u>2018</u>	<u>2019</u>
Admissions	34,044	34,772	35,923
Emergency Department Visits	101,417	102,015	105,687
Hospital Clinic Visits	365,050	383,665	406,676
Ambulatory Visits	306,557	321,083	349,100



**Golisano Children's Hospital**

### University Hospital's Vision Statements

- University Hospital will provide comprehensive, seamless and innovative patient and family centered health care to improve the health status of the communities we serve.
- University Hospital will be the preferred area employer by offering an environment where employees and volunteers are personally and professionally valued, recognized and supported.
- University Hospital will be a clinical center of educational and research excellence by continuously evaluating and adopting innovative practices in technology and health care.

**Administration**

Robert J. Corona DO, CPE, MBA, FCAP, FASCP, CEO Upstate University Hospital

Amy Tucker, MD, MHCM, Vice President for Ambulatory Services and Population Health, Chief Medical Officer

Nancy E. Page, MS, RN, NEA-BC, Chief Nursing Officer

Stuart M. Wright, CPA, MBA, Chief Financial Officer

Nancy Daoust, MS, LNHA, FACHE, Chief Ambulatory Officer

Mark Zeman, Chief Information Officer

Lawrence Chin, MD, Dean, College of Medicine

Susan Furtney, MPH, Chief Strategy Officer

## **UPSTATE PROPERTIES DEVELOPMENT, INC (THE “COMPANY” OR THE “BORROWER”)**

### **Purpose**

Upstate Properties Development, Inc. is a not-for-profit corporation organized in 2008 to support Upstate by, among other things, providing and supporting campus facilities for the use of Upstate, including residential facilities for the use of students, residents, and faculty of Upstate, and obtaining financing to accomplish this mission.

### **Board of Directors**

The Company is governed by a three-member board of directors which includes Eric J. Smith, Senior Vice President for Finance and Administration, SUNY Upstate Medical University, Mantosh J. Dewan, MD, Interim President, SUNY Upstate Medical University, and Thomas E. Taylor, Esquire, Bousquest Holstein PLLC., (Syracuse, NY).



**Geneva Tower**

Geneva Tower, which was funded with proceeds of the Series 2011 Bonds, consists of a twenty-one (21) story, 137,200 square foot building to house students (of any of the four colleges), medical residents, fellows, Upstate Medical campus guests for which certain units are annually leased (that more recently included Upstate medical personnel needed for COVID-19 unable to leave the campus). The complex consists of approximately two-hundred seventy-six (276) beds, student lounges, fitness facilities, and laundry facilities. All units include private bedrooms to address the current needs of students, residents and fellows of Upstate. Geneva Tower is located on approximately four acres and situated at East Adams Street and Townsend Street, Syracuse, New York, adjacent to Upstate’s campus. Geneva Tower is owned by the Company and has been managed and operated by Upstate since 2011.

Geneva Tower ten-month housing rates per occupant are \$12,000 and \$9,900 for a one- and two-bedroom apartment, respectively, and \$10,400 for a four-bedroom suite. Summer rental fees equal \$1,800 and \$1,400 for one and two bedroom apartments, respectively, and \$1,600 for a four-bedroom suite. Such rates include utilities, cable, and wireless internet.

The vast majority of Geneva Tower occupants are medical students, medical residents, medical fellows and graduate students enrolled in various medical programs. Medical residents and medical fellows lease from July 1 through June 30 to coincide with the requirements of their programs. Students who reside in Geneva Tower for multiple years, but who are not required to be on campus during the summer months, sometimes lease for 12 full months to avoid move-out/move-in.

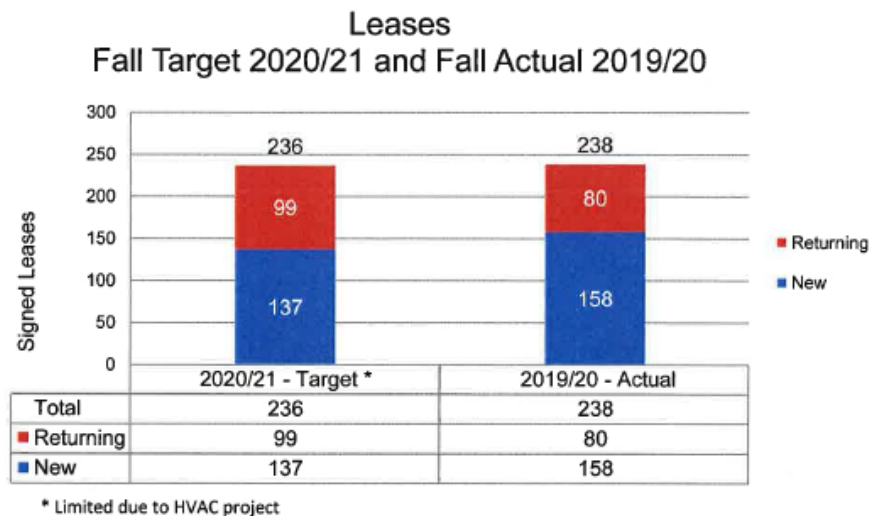
## Pending Litigation

Cor Loguen Crossing Company, LLC (the “Plaintiff”) has commenced a derivative action on behalf of Upstate-Cor Company, LLC (“Upstate-Cor”), an indirect for-profit subsidiary of the Company. Upstate-Cor is a New York limited liability company in which both Loguen Crossing Corporation, (“Loguen Crossing”) a wholly owned, direct, for-profit subsidiary of the Company, and the Plaintiff are the sole members. The action seeks unspecified money damages and specific performance directing Loguen Crossing to transfer certain real property intended for potential future development (the “Kennedy Square Property”) to Upstate-Cor pursuant to the terms of the September 2012 Upstate-Cor operating agreement. Because Loguen Crossing is a wholly owned, direct, for-profit subsidiary of the Company, the action also seeks damages and specific performance against the Company under the “alter ego” theory and by piercing Loguen Crossing’s corporate veil.

The action commenced in June 2019. The Company and Loguen Crossing have moved to dismiss the Plaintiff’s complaint based upon the applicable six-year statute of limitations. The motion to dismiss was originally scheduled to be heard on October 23, 2019, but before it was heard, Plaintiffs filed an amended complaint. A motion was made to dismiss the amended complaint, again based on the applicable statute of limitations. The motion was denied by the court. The parties have commenced documentary discovery relating to the litigation. It is too early in the proceedings to assess the likelihood of an unfavorable outcome, or the range of any potential loss.

**The Kennedy Square Property, which is the subject of the above litigation, is unrelated to the Student Housing Facility, and the ultimate outcome of the litigation is not expected to affect title to the Student Housing Facility or the Project Revenues. See “THE MANAGEMENT AGREEMENT” herein for a discussion of the Manager’s duties regarding the collection of Project Revenues and the transfer of such Project Revenues to the Trustee.**

## Geneva Tower Lease Summary



NOTE: For the 2020-21 academic year, certain beds were removed from the inventory of available residential leases of 276 in total, to accommodate the completion of an HVAC project currently in process at Geneva Tower. As a result, Geneva Tower management turned away new applications for leases, well in advance of the beginning of the 2020-21 fiscal year. To accommodate beds that have been removed from inventory, debt service requirements associated with the first year of the Series 2020 Bonds have been structured accordingly.

## Financial Information Summary

For the past five fiscal years ended June 30, the financial information presented below has been derived from the audited financial statements of the Company, which is inclusive of Geneva operations and other properties owned by the Company.

### Upstate Properties Development, Inc. Consolidated Statements of Financial Position For Years Ended June 30, 2015-2019

	2015	2016	2017	2018	2019
<b>ASSETS</b>					
Cash	\$ 319,679	\$ 410,689	\$ 191,338	\$ 311,128	\$ 293,162
Account receivable	175,965	17,445	90,273	129,325	83,541
Prepaid expenses	11,326	9,490	9,837	9,442	12,800
Pledged revenue	384,113	502,060	340,676	409,717	472,732
Repairs and replacements	297,847	531,765	1,033,824	1,307,054	1,557,827
Bond fund	1,208,308	1,374,769	1,325,322	1,248,075	1,251,276
Renewal fund	-	-	39,962	-	-
Deferred financing costs	622,603	-	-	-	-
Property and equipment, net	31,169,855	30,376,199	29,614,776	31,140,701	29,553,921
<b>TO TAL ASSETS</b>	<b>\$ 34,189,696</b>	<b>\$ 33,222,417</b>	<b>\$ 32,646,008</b>	<b>\$ 34,555,442</b>	<b>\$ 33,225,259</b>
<b>LIABILITIES</b>					
Accounts payable	\$ -	\$ 10,665	\$ 10,910	\$ -	\$ -
Accrued interest	130,961	127,011	125,044	122,462	119,757
Current portion of bonds payable, net	550,000	577,011	607,011	637,011	667,011
Current portion of note payable	25,000	-	-	-	-
Deferred revenue	271,243	311,516	233,366	211,238	247,952
Bonds payable, net	31,587,868	30,424,054	29,821,966	29,185,215	28,516,756
<b>TO TAL LIABILITIES</b>	<b>\$ 32,565,072</b>	<b>\$ 31,450,257</b>	<b>\$ 30,798,297</b>	<b>\$ 30,155,926</b>	<b>\$ 29,551,476</b>
<b>NET ASSETS</b>					
Unrestricted	\$ 1,624,624	\$ 1,772,160	\$ 1,847,711	\$ -	\$ -
Without donor restrictions	-	-	-	4,399,516	3,673,783
<b>TO TAL NET ASSETS</b>	<b>\$ 1,624,624</b>	<b>\$ 1,772,160</b>	<b>\$ 1,847,711</b>	<b>\$ 4,399,516</b>	<b>\$ 3,673,783</b>
<b>TO TAL LIABILITIES AND NET ASSETS</b>	<b>\$ 34,189,696</b>	<b>\$ 33,222,417</b>	<b>\$ 32,646,008</b>	<b>\$ 34,555,442</b>	<b>\$ 33,225,259</b>

**Upstate Properties Development, Inc.**  
**Consolidated Statements of Activities**  
**For Years Ended June 30, 2015-2019**

	2015	2016	2017	2018	2019
<b>OPERATING SUPPORT AND INCOME</b>					
Rental income	\$ 2,649,153	\$ 2,863,005	\$ 2,738,060	\$ 2,789,857	\$ 2,653,704
Support from affiliate	1,348,092	636,220	833,842	567,907	855,464
Donated land	-	-	-	2,750,000	-
Miscellaneous income	55,610	10,680	49,659	10,369	7,125
<b>TOTAL OPERATING SUPPORT AND INCOME</b>	<b>4,052,855</b>	<b>3,509,905</b>	<b>3,621,561</b>	<b>6,118,133</b>	<b>3,516,293</b>
<b>OPERATING EXPENSES</b>					
Interest	1,600,461	1,592,387	1,563,481	1,530,454	1,496,374
Depreciation	872,722	852,685	880,997	875,354	877,414
Utilities	292,966	275,365	220,688	187,689	213,941
Insurance	74,959	128,925	124,746	108,376	113,203
Real estate taxes and assessments	112,000	158,267	158,215	160,195	173,303
Maintenance and operations	262,059	197,622	432,654	256,675	511,066
Legal	11,760	19,308	17,289	11,790	450
Administration	115,773	125,736	128,666	129,117	133,334
Donation	-	-	-	216,957	-
Miscellaneous	9,018	12,074	19,274	13,230	13,575
Loss on sale of real property	-	-	-	76,491	-
<b>TOTAL OPERATING EXPENSES</b>	<b>3,351,718</b>	<b>3,362,369</b>	<b>3,546,010</b>	<b>3,566,328</b>	<b>3,532,660</b>
<b>INCOME (LOSS)</b>	<b>701,137</b>	<b>147,536</b>	<b>75,551</b>	<b>2,551,805</b>	<b>(16,367)</b>
<b>NON-OPERATING EXPENSE/GAIN</b>					
Capital contribution from affiliate	994,155	-	-	-	-
Loss on impairment of property and equipment	-	-	-	-	(709,366)
<b>TOTAL NON-OPERATING INCOME (LOSS)</b>	<b>994,155</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(709,366)</b>
<b>CHANGES IN UNRESTRICTED NET ASSETS</b>	<b>1,695,292</b>	<b>147,536</b>	<b>75,551</b>	<b>-</b>	<b>-</b>
<b>CHANGES IN NET ASSETS WITHOUT DON. RSTR.</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,551,805</b>	<b>(725,733)</b>
<b>NET ASSETS, BEGINNING</b>	<b>(70,668)</b>	<b>1,624,624</b>	<b>1,772,160</b>	<b>1,847,711</b>	<b>4,399,516</b>
<b>NET ASSETS, ENDING</b>	<b>\$ 1,624,624</b>	<b>\$ 1,772,160</b>	<b>\$ 1,847,711</b>	<b>\$ 4,399,516</b>	<b>\$ 3,673,783</b>

**Upstate Properties Development, Inc. (Geneva Tower Only)**  
**Projected Statement of Activities for the Fiscal Year Ended June, 30, 2020 and**  
**Budgeted Statement of Activities for the Fiscal Year Ended June 30, 2021**

	Projected 6/30/2020	Budget 6/30/2021
REVENUE		
Rental Income	\$ 2,723,291	\$ 2,724,882
Other Income	490,666	355,074
Total Revenue	<u>3,213,957</u>	<u>3,079,956</u>
EXPENSES		
Interest	1,439,081	631,770
Depreciation/Amort	900,402	902,608
Utilities	214,566	230,028
Insurance	56,100	60,220
RE Taxes & Assessments	56,295	57,894
Maintenance	330,287	191,088
Legal	896	1,000
Administration	136,261	138,987
Miscellaneous expense	12,571	14,000
Total Expenses	<u>3,146,459</u>	<u>2,227,595</u>
NET INCOME	<u>\$ 67,498</u>	<u>\$ 852,361</u>

NOTE: Due to the refunding of the Series 2011 Bonds and structure of the Series 2020 Bonds, interest expense is projected to be less for fiscal year 2021 than is shown above for fiscal 2020.



APPENDIX B

AUDITED FINANCIAL STATEMENTS OF UPSTATE PROPERTIES DEVELOPMENT, INC.  
FOR THE YEARS ENDED JUNE 30, 2019 AND 2018

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**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Consolidated Financial Statements and Schedules

June 30, 2019 and 2018

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Consolidated Financial Statements and Schedules

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## **INDEPENDENT AUDITOR'S REPORT**

Board of Directors  
Upstate Properties Development, Inc. and Subsidiary:

We have audited the accompanying consolidated financial statements of Upstate Properties Development, Inc. and Subsidiary, which comprise the consolidated statement of financial position as of June 30, 2019 and the related consolidated statements of activities and cash flows for the year then ended, and the related notes to the consolidated financial statements.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

Board of Directors

Page 2 of 2

### **Auditor's Responsibility, Continued**

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion, the 2019 consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Upstate Properties Development, Inc. and Subsidiary as of June 30, 2019, and the changes in their net assets and their cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

### **Prior Period Financial Statements**

The consolidated financial statements of Upstate Properties Development, Inc. and Subsidiary as of June 30, 2018, were audited by other auditors whose report dated September 12, 2018, expressed an unmodified opinion on those statements.

### **Other Matter**

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The consolidating statement of financial position and consolidating statement of activities on Schedule 1 and 2 on pages 16 to 17 are presented for purposes of additional analysis and are not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

*Fust Charles Chambers LLP*

October 29, 2019

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Consolidated Statements of Financial Position

June 30, 2019 and 2018

<u>Assets</u>	<u>2019</u>	<u>2018</u>
Current assets:		
Cash	\$ 293,162	\$ 311,128
Accounts receivable	83,541	129,325
Prepaid expenses	12,800	9,442
	<hr/>	<hr/>
Total current assets	389,503	449,895
	<hr/>	<hr/>
Cash assets limited as to use:		
Pledged revenue	472,732	409,717
Repairs and replacements	1,557,827	1,307,054
Bond fund	1,251,276	1,248,075
	<hr/>	<hr/>
Total cash assets limited as to use	3,281,835	2,964,846
	<hr/>	<hr/>
Property and equipment, net	29,553,921	31,140,701
	<hr/>	<hr/>
Total assets	\$ 33,225,259	\$ 34,555,442
	<hr/> <hr/>	<hr/> <hr/>
<u>Liabilities and Net Assets</u>		
Current liabilities:		
Accrued interest	\$ 119,757	\$ 122,462
Current portion of bonds payable, net of unamortized legal and financing costs	667,011	637,011
Deferred revenue	247,952	211,238
	<hr/>	<hr/>
Total current liabilities	1,034,720	970,711
	<hr/>	<hr/>
Noncurrent liabilities:		
Bonds payable, net of unamortized legal and financing costs	28,516,756	29,185,215
	<hr/>	<hr/>
Total liabilities	29,551,476	30,155,926
	<hr/>	<hr/>
Net assets without donor restrictions	3,673,783	4,399,516
	<hr/>	<hr/>
Commitment and contingencies (notes 6 and 7)		
Total liabilities and net assets	\$ 33,225,259	\$ 34,555,442
	<hr/> <hr/>	<hr/> <hr/>

See accompanying notes to consolidated financial statements.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Consolidated Statements of Activities

Years ended June 30, 2019 and 2018

	<u>2019</u>	<u>2018</u>
Support and income:		
Rental income	\$ 2,653,704	\$ 2,789,857
Support from affiliate	855,464	567,907
Donated land	-	2,750,000
Miscellaneous income	7,125	10,369
	<u>3,516,293</u>	<u>6,118,133</u>
Total support and income		
Expenses:		
Interest	1,496,374	1,530,454
Depreciation	877,414	875,354
Utilities	213,941	187,689
Insurance	113,203	108,376
Real estate taxes and assessments	173,303	160,195
Maintenance and operations	511,066	256,675
Legal	450	11,790
Administration	133,334	129,117
Donation	-	216,957
Miscellaneous	13,575	13,230
Loss on sale of real property	-	76,491
	<u>3,532,660</u>	<u>3,566,328</u>
Total operating expenses		
Non-operating expense:		
Loss on impairment of property and equipment (note 2(g))	709,366	-
	<u>(725,733)</u>	<u>2,551,805</u>
Change in net assets		
Net assets at beginning of year	4,399,516	1,847,711
Net assets at end of year	<u>\$ 3,673,783</u>	<u>\$ 4,399,516</u>

See accompanying notes to consolidated financial statements.



**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Consolidated Statements of Cash Flows

Years ended June 30, 2019 and 2018

	<u>2019</u>	<u>2018</u>
Cash flows from operating activities:		
Change in net assets	\$ (725,733)	\$ 2,551,805
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	877,414	875,354
Loss on sale of real property	-	76,491
Donated land	-	(2,750,000)
Loss on impairment of property and equipment	709,366	-
Interest from amortized legal and financing costs	22,988	22,989
Amortization of bond premium	(1,447)	257
(Increase) decrease in operating assets:		
Accounts receivable	45,784	(39,052)
Prepaid expenses	(3,358)	395
Increase (decrease) in operating liabilities:		
Accounts payable	-	(10,910)
Accrued interest	(2,705)	(2,582)
Deferred revenue	36,714	(22,128)
Net cash provided by operating activities	<u>959,023</u>	<u>702,619</u>
Cash flows from investing activities:		
Purchases of property and equipment	-	(92,654)
Proceeds from sale of house	-	364,887
Change in cash assets limited as to use	<u>(316,989)</u>	<u>(225,062)</u>
Net cash provided by (used in) investing activities	<u>(316,989)</u>	<u>47,171</u>
Net cash used in financing activities:		
Payments on bonds payable	<u>(660,000)</u>	<u>(630,000)</u>
Net change in cash	(17,966)	119,790
Cash at beginning of year	<u>311,128</u>	<u>191,338</u>
Cash at end of year	\$ <u><u>293,162</u></u>	\$ <u><u>311,128</u></u>
Noncash financing and investing activity:		
Donated land	\$ <u><u>-</u></u>	\$ <u><u>2,750,000</u></u>

See accompanying notes to consolidated financial statements.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Notes to Consolidated Financial Statements

June 30, 2019 and 2018

(1) Nature of Operations and Principles of Consolidation

Upstate Properties Development, Inc. (the Organization), located in Syracuse, New York, is a not-for-profit organization established to provide and support campus facilities for use by its affiliate SUNY Upstate Medical University (Upstate). The Organization's primary facility consists of a 137,200 square foot student housing complex, located on land adjacent to Upstate's campus, consisting of approximately 276 beds, which are leased out to students. The Organization also holds other properties for future development in support of the mission of Upstate, including a vacant 21 story, 199 unit building (Harrison House), a storage facility, and approximately eight acres of land adjacent to other Upstate owned properties.

The accompanying consolidated financial statements include the financial information of the Organization and its wholly-owned subsidiary, Upstate Loguen Crossing Corporation, Inc. (ULCC).

ULCC was formed on July 25, 2012 for the purpose of holding property for private development and is a New York corporation. The Organization is the sole shareholder of all the issued and outstanding shares of common stock of ULCC.

(2) Summary of Significant Accounting Policies

(a) New Accounting Pronouncement

On July 1, 2018, the Organization adopted Accounting Standards Update 2016-14, *Not-for-Profit Entities (Topic 958), Presentation of Financial Statements of Not-for-Profit Entities* (ASU 2016-14), which makes targeted changes to the not-for-profit financial reporting model and applied these changes retrospectively. The existing three category classification of net assets has been replaced with a simplified model that combines temporarily restricted and permanently restricted into a single category called "net assets with donor restrictions." The guidance for classifying deficiencies in endowment funds and on accounting for the lapsing of restrictions on gifts to acquire property and equipment have also been simplified and clarified. New disclosures have been incorporated to highlight restrictions on the use of resources that make otherwise liquid assets unavailable for meeting near-term financial requirements. ASU 2016-14 also imposes several new requirements related to reporting expenses. ASU 2016-14 was effective for fiscal years beginning after December 15, 2017.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Notes to Consolidated Financial Statements

(2) Summary of Significant Accounting Policies, Continued

(b) Basis of Presentation

The consolidated financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America and present net assets and revenues, expenses, and gains and losses based on the existence or absence of donor-imposed restrictions. The Organization is required to report information regarding its financial position and activities according to two classes of net assets: net assets without donor restrictions and net assets with donor restrictions.

(c) Cash and Cash Equivalents

For purposes of the consolidated statements of cash flows, the Organization uses the indirect method of reporting net cash flows from operating activities, and considers all short-term investments with an original maturity of three months or less to be cash equivalents. At June 30, 2019 and 2018, there were no cash equivalents.

(d) Concentrations of Credit Risk

The Organization places its operating cash holdings with various financial institutions, which at times, may exceed federally insured limits. The Organization has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk with respect to cash.

(e) Cash Assets Limited as to Use

Certain amounts at June 30, 2019 and 2018 are required to be set aside per the bond funding agreements for debt service payments (bond fund), operations and maintenance costs (pledged revenue), and repairs and replacements. The assets limited as to use consist entirely of cash and amounted to \$3,281,835 and \$2,964,846 at June 30, 2019 and 2018, respectively.

(f) Rental Revenue and Accounts Receivable

Rental income consists of charges for basic rent to students for housing. Rental income is recognized as earned according to the provisions of the lease. Advance payments from students for the subsequent fiscal year are recorded as deferred revenue.

The Organization considers accounts receivable to be fully collectible; accordingly, no allowance for doubtful accounts is required. Accounts receivable are written off when collection efforts have been exhausted. There was no bad debt expense for the years ended June 30, 2019 and 2018.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Notes to Consolidated Financial Statements

(2) Summary of Significant Accounting Policies, Continued

(g) Property and Equipment

Property and equipment are recorded at cost at the date of acquisition if purchased or their fair value at the date of donation in the case of gifts. The Organization's policy is to capitalize expenditures for these items in excess of \$5,000. Lesser amounts are expensed. Depreciation is recorded using the straight-line method over the estimated economic useful lives of the asset, which range from 5-40 years.

When property and equipment are retired or otherwise disposed of, the cost and accumulated depreciation are removed from the accounts and any gain or loss is recorded in the consolidated statements of activities.

Expenditures for repairs and maintenance not considered to substantially lengthen property life are charged to expense as incurred.

The Organization follows Financial Accounting Standards Board (FASB) issued guidance regarding accounting for the impairment or disposal of long-lived assets. This guidance addresses financial accounting and reporting for the impairment of long-lived assets, excluding goodwill and intangibles assets, to be held and used or disposed. Based on the Organization's analysis, there was an asset impairment relating to construction in progress of approximately \$709,000 recorded as a non-operating expense in the consolidated statement of activities at June 30, 2019 (see note 4). There were no impairments at June 30, 2018.

(h) Debt Issuance Costs

The Organization has debt issuance costs which include legal and financing costs incurred with the issuance of the Organization's bonds and are amortized on the straight line method over the term of the loan, which approximates the effective interest method. At June 30, 2019 and 2018, the accumulated amortization on the debt issuance costs was approximately \$136,000 and \$159,000, respectively. Amortization expense amounted to approximately \$23,000 for the years ended June 30, 2019 and 2018, and is included in interest expense within the consolidated statements of activities.

(i) Support from Affiliate

In connection with its day to day operations, Upstate supplies personnel and other related support to the Organization, some of which is reimbursed. The estimated value of this support is reported as support from affiliate with offsetting expenses in the consolidated statements of activities (see note 8).

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Notes to Consolidated Financial Statements

(2) Summary of Significant Accounting Policies, Continued

(j) Income Taxes - Upstate Properties Development, Inc.

The Organization is a not-for-profit organization as described in Section 501(c)(3) of the Internal Revenue Code (Code) and is exempt from federal income taxes on related income pursuant to Section 501(a) of the Code.

The standards for accounting for uncertainty in income taxes establish a recognition threshold and measurement for income tax positions recognized in the financial statements. These standards had no impact on the accompanying consolidated financial statements.

As of June 30, 2019 and 2018, the Organization did not have any unrecognized tax benefits or any related accrued interest or penalties. The tax years open to examination by federal and state taxing authorities are June 30, 2016 through June 30, 2019 for the Organization.

(k) Income Taxes - Upstate Loguen Crossing Corporation, Inc.

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is recorded if realization of the deferred tax assets is not likely.

ULCC recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. ULCC records income tax related interest and penalties as tax expense.

As of June 30, 2019 and 2018, ULCC did not have any unrecognized tax benefits or any related accrued interest or penalties.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Notes to Consolidated Financial Statements

(2) Summary of Significant Accounting Policies, Continued

(l) Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

(m) Subsequent Events

Management has evaluated subsequent events through October 29, 2019, which is the date the financial statements were available to be issued.

(3) Liquidity and Availability of Financial Assets

As of June 30, 2019, financial assets available within one year for general expenditure, such as operating expenses, were as follows:

Cash	\$ 293,162
Accounts receivable	<u>83,541</u>
Total	<u><u>\$ 376,703</u></u>

(4) Property and Equipment

Property and equipment consisted of the following at June 30:

	<u>2019</u>	<u>2018</u>
Land (a)	\$ 3,242,827	\$ 3,242,827
Construction in progress (b)	475,000	1,184,366
Buildings	30,233,341	30,233,341
Equipment	<u>1,446,750</u>	<u>1,446,750</u>
	35,397,918	36,107,284
Less: accumulated depreciation	<u>5,843,997</u>	<u>4,966,583</u>
	<u><u>\$ 29,553,921</u></u>	<u><u>\$ 31,140,701</u></u>

(a) During 2018, a parcel of land appraised at \$2,750,000 was gifted to the Organization from The Upstate Foundation, Inc. The Organization is currently evaluating future plans for this site.

(b) During 2019, certain costs related to the Harrison House project were determined by management to be impaired.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Notes to Consolidated Financial Statements

(4) Property and Equipment, Continued

Depreciation charged to expense for the years ended June 30, 2019 and 2018 was \$877,414 and \$875,354, respectively.

During 2018, the Organization sold a house no longer being used in its operations. Partial proceeds from the sale, amounting to \$216,957, were donated to The Upstate Foundation, Inc. in accordance with an agreement put in place when the house was originally gifted to the Organization.

(5) Bonds Payable

Bonds payable at June 30, were as follows:

	Fiscal year of <u>maturity</u>	<u>2019</u>	<u>2018</u>
OCDC, Series 2011 (a)	2042	\$ 28,690,000	\$ 29,350,000
Unamortized Premium - Series 2011 (a)	2042	<u>1,024,416</u>	<u>1,025,863</u>
		29,714,416	30,375,863
Less: unamortized legal and financing costs		<u>530,649</u>	<u>553,637</u>
Total, net of unamortized legal and financing costs		29,183,767	29,822,226
Less: net current portion		<u>667,011</u>	<u>637,011</u>
Total		<u>\$ 28,516,756</u>	<u>\$ 29,185,215</u>

- (a) In November 2011, the Organization issued Fixed Rate Demand Civic Facility Revenue Bonds in the amount of \$32,000,000 through the Onondaga Civic Development Corporation (OCDC) (the 2011 OCDC Bonds). The bonds are payable in annual principal installments that escalate through maturity in December 2041, plus semi-annual interest payments ranging from 4.0% to 5.5%. The bond premium is being amortized, using the effective interest method over the remaining life of each of the series of the bonds. The Organization has the option to redeem the 2011 OCDC Bonds maturing after December 1, 2020, in whole or in part at any time, at a redemption price equal to 100% of the principal plus accrued interest.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Notes to Consolidated Financial Statements

(5) Bonds Payable, Continued

In connection with the bonds payable, the Organization entered into a loan agreement with OCDC on November 30, 2011, which was assigned to the Trustee (a banking corporation). Under the agreement the Organization is obligated to make loan payments in amounts sufficient to pay the principal and interest on the 2011 OCDC Bonds when due. The loan agreement is secured by a building loan mortgage and security agreement which includes a priority mortgage lien and a security interest in the student housing complex. The carrying value of the note approximates fair value. In addition, the Organization has granted a security interest in and assigned to the Trustee the gross revenues, together with the Organization's right to receive and collect revenues.

In addition, the Organization and SUNY (for and on behalf of Upstate) entered into an agreement, dated November 10, 2011, for a term coincident with the term of the loan agreement, pursuant to which, among other things, SUNY agrees that if at the beginning of the fall or spring semester in any academic year the occupancy of the Student Housing Facility falls below the level that is projected to be necessary to achieve the level of revenues required under the facility management agreement, SUNY will promptly lease in its own name those of the unoccupied units in the Student Housing Facility, and pay at such time the then established lease rates for the Student Housing Facility, as shall be necessary to achieve the required level of project revenues and pass financial covenants in accordance with the loan agreement.

The debt agreements contain covenant requirements that the Organization maintain certain financial ratios and comply with other non-financial provisions. At June 30, 2019 and 2018, the Organization was in compliance with required covenants under the debt agreements.

Estimated maturities of long-term debt are as follows:

	Long-term <u>debt</u>	Amortization <u>of premium</u>	Amortization of legal and financing <u>costs</u>	<u>Total</u>
2020	\$ 690,000	\$ 6,640	\$ 22,989	\$ 673,651
2021	725,000	12,016	22,989	714,027
2022	760,000	13,993	22,989	751,004
2023	795,000	19,246	22,989	791,257
2024	830,000	27,949	22,989	834,960
Thereafter	<u>24,890,000</u>	<u>944,572</u>	<u>415,704</u>	<u>25,418,868</u>
	<u>\$ 28,690,000</u>	<u>\$ 1,024,416</u>	<u>\$ 530,649</u>	<u>\$ 29,183,767</u>

Cash paid for interest amounted to \$1,476,091 and \$1,532,779, respectively, for the years ended June 30, 2019 and 2018.



**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Notes to Consolidated Financial Statements

(6) Commitments

The aforementioned loan agreement with OCDC states that the Organization is required to make monthly payments into a pledged revenue fund to cover a variety of obligations, with any remaining amounts being transferred to a surplus fund. The surplus fund will be allocated back to any of the reserve funds required by the loan agreement if there are any shortfalls within those reserve funds. In addition, account balances over \$10,000 in the surplus fund can be utilized by the Organization as needed. Twice a year, the Organization will transfer amounts, at their discretion, from the pledged revenue fund to the other required funds. These payments will first be allocable to the rebate fund and secondly to the bond fund to fund the next required debt service payment. Remaining balances will then be set aside in an operations and maintenance fund in the amount of one-half of annual operating expenses. Additional payments will then be transferred to a repair and replacement fund until a balance of \$3,200,000 is available in that fund. Additionally, the net proceeds of any insurance settlement or condemnation award received by the Trustee shall be deposited in the renewal fund.

The Organization entered into a guaranty agreement (Agreement) with the Trustee in November 2011 relating to the issuance of the 2011 OCDC Bonds. Under the Agreement, the Organization unconditionally guarantees to the Trustee, for the benefit of the bond holders, the full and prompt payment of the principal and interest of the bonds when they become due and payable, whether at stated maturity, by acceleration, call for redemption, or otherwise. The Organization further irrevocably and unconditionally agrees that upon the default in any of the guaranteed obligations, the remaining debt service payments may become immediately due and payable.

(7) Contingency

The Organization has been named in litigation arising in the normal course of business, and as such, has consulted with legal counsel. At June 30, 2019, it is too early in the proceedings to assess the likelihood of an unfavorable outcome, or the range of any potential loss.

(8) Transactions with Affiliate

The Organization and State University of New York (SUNY) (for and on behalf of Upstate), as Manager (the Manager), have entered into a facility management agreement, dated November 10, 2011. Under the facility management agreement, the Organization has appointed SUNY to be the Manager of the Student Housing Facility for a term coincident with the term of the loan agreement with OCDC. Under the facility management agreement, the Manager agrees, among other things, to cause Upstate to actively promote and market the Student Housing Facility as an integral part of the overall housing program of Upstate; to cause Upstate to establish a schedule of lease rates to be charged at the Student Housing Facility sufficient to generate the projected revenues.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Notes to Consolidated Financial Statements

(8) Transactions with Affiliate, Continued

In accordance with the facility management agreement, Upstate provides personnel and other related support (included in project support) in managing the student housing complex at no cost to the Organization. Upstate also supports other costs listed below related to other projects of the Organization. The estimated value of the support from affiliate reported as support from affiliate and expense in the consolidated statements of activities for the years ended June 30 is as follows:

	2019		
	<u>Project support</u>	<u>Other support</u>	<u>Total</u>
Administration	\$ 133,334	\$ -	\$ 133,334
Insurance	-	57,234	57,234
Real estate taxes	-	120,108	120,108
Utilities	17,214	14,380	31,594
Maintenance	334,042	177,024	511,066
Miscellaneous	2,128	-	2,128
	<u>\$ 486,718</u>	<u>\$ 368,746</u>	<u>\$ 855,464</u>
	2018		
	<u>Project support</u>	<u>Other support</u>	<u>Total</u>
Administration	\$ 129,117	\$ -	\$ 129,117
Insurance	-	54,814	54,814
Real estate taxes	-	109,313	109,313
Utilities	-	11,392	11,392
Maintenance	239,307	17,368	256,675
Miscellaneous	2,231	4,365	6,596
	<u>\$ 370,655</u>	<u>\$ 197,252</u>	<u>\$ 567,907</u>

In the ordinary course of business, the Organization provides housing and parking to Upstate for various programmatic needs. For the years ended June 30, 2019 and 2018, the Organization recorded rental income of approximately \$376,000 and \$242,000, respectively, related to this activity.

The Organization is owed \$83,541 and \$129,325 from Upstate at June 30, 2019 and 2018, respectively. This is classified as accounts receivable in the consolidated statements of financial position.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Notes to Consolidated Financial Statements

(9) Functional Expense

Expenses presented by both nature and function related to providing services are as follows for the years ended June 30:

	2019		
	<u>Program</u>	<u>Management and general</u>	<u>Total</u>
Interest	\$ 1,496,374	\$ -	\$ 1,496,374
Depreciation	877,414	-	877,414
Utilities	213,941	-	213,941
Insurance	91,501	21,702	113,203
Real estate taxes and assessments	173,303	-	173,303
Maintenance and operations	511,066	-	511,066
Legal	450	-	450
Administration	-	133,334	133,334
Miscellaneous	13,575	-	13,575
	<u>\$ 3,377,624</u>	<u>\$ 155,036</u>	<u>\$ 3,532,660</u>
	2018		
	<u>Program</u>	<u>Management and general</u>	<u>Total</u>
Interest	\$ 1,530,454	\$ -	\$ 1,530,454
Depreciation	875,354	-	875,354
Utilities	187,689	-	187,689
Insurance	87,076	21,300	108,376
Real estate taxes and assessments	160,195	-	160,195
Maintenance and operations	256,675	-	256,675
Legal	11,790	-	11,790
Administration	-	129,117	129,117
Donation	216,957	-	216,957
Miscellaneous	13,230	-	13,230
Loss on sale of real property	76,491	-	76,491
	<u>\$ 3,415,911</u>	<u>\$ 150,417</u>	<u>\$ 3,566,328</u>

The consolidated financial statements report certain categories of expenses that are attributable to more than one functional expense category. Therefore, these expenses may require allocation on a reasonable basis that is consistently applied. Otherwise, the expenses are directly assigned to a category. For the years ended June 30, 2019 and 2018, all expenses were directly assigned to a functional expense category and did not require allocation.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Consolidating Statement of Financial Position

June 30, 2019

<u>Assets</u>	Upstate Properties Development, Inc. <u>Inc.</u>	Upstate Loguen Crossing Corporation, Inc. <u>Inc.</u>	<u>Total</u>
Current assets:			
Cash	\$ 293,162	\$ -	\$ 293,162
Accounts receivable	83,541	-	83,541
Prepaid expenses	12,800	-	12,800
	<u>389,503</u>	<u>-</u>	<u>389,503</u>
Total current assets			
Cash assets limited as to use:			
Pledged revenue	472,732	-	472,732
Repairs and replacements	1,557,827	-	1,557,827
Bond fund	1,251,276	-	1,251,276
	<u>3,281,835</u>	<u>-</u>	<u>3,281,835</u>
Total cash assets limited as to use			
Property and equipment, net	<u>29,553,921</u>	<u>-</u>	<u>29,553,921</u>
Total assets	<u>\$ 33,225,259</u>	<u>\$ -</u>	<u>\$ 33,225,259</u>
<u>Liabilities and Net Assets</u>			
Current liabilities:			
Accrued interest	\$ 119,757	\$ -	\$ 119,757
Current portion of bonds payable, net of unamortized legal and financing costs	667,011	-	667,011
Deferred revenue	247,952	-	247,952
	<u>1,034,720</u>	<u>-</u>	<u>1,034,720</u>
Total current liabilities			
Noncurrent liabilities:			
Bonds payable, net of unamortized legal and financing costs	28,516,756	-	28,516,756
Total liabilities	29,551,476	-	29,551,476
Net assets without donor restrictions	<u>3,673,783</u>	<u>-</u>	<u>3,673,783</u>
Total liabilities and net assets	<u>\$ 33,225,259</u>	<u>\$ -</u>	<u>\$ 33,225,259</u>

See accompanying independent auditor's report.

**UPSTATE PROPERTIES DEVELOPMENT, INC.  
AND SUBSIDIARY**

Consolidating Statement of Activities

Year ended June 30, 2019

	Upstate Properties Development, <u>Inc.</u>	Upstate Loguen Crossing Corporation, <u>Inc.</u>	<u>Total</u>
Support and income:			
Rental income	\$ 2,653,704	\$ -	\$ 2,653,704
Support from affiliate	833,762	21,702	855,464
Miscellaneous income	<u>7,125</u>	<u>-</u>	<u>7,125</u>
Total support and income	<u>3,494,591</u>	<u>21,702</u>	<u>3,516,293</u>
Expenses:			
Interest	1,496,374	-	1,496,374
Depreciation	877,414	-	877,414
Utilities	213,941	-	213,941
Insurance	91,501	21,702	113,203
Real estate taxes and assessments	173,303	-	173,303
Maintenance and operations	511,066	-	511,066
Legal	450	-	450
Administration	133,334	-	133,334
Miscellaneous	<u>13,575</u>	<u>-</u>	<u>13,575</u>
Total operating expenses	<u>3,510,958</u>	<u>21,702</u>	<u>3,532,660</u>
Non-operating expense:			
Loss on impairment of property and equipment (note 2(g))	<u>709,366</u>	<u>-</u>	<u>709,366</u>
Change in net assets	(725,733)	-	(725,733)
Net assets at beginning of year	<u>4,399,516</u>	<u>-</u>	<u>4,399,516</u>
Net assets at end of year	<u>\$ 3,673,783</u>	<u>\$ -</u>	<u>\$ 3,673,783</u>

See accompanying independent auditor's report.

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## APPENDIX C

### CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES

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## **CERTAIN DEFINITIONS**

"Accountant" means a nationally or regionally recognized firm of independent certified public accountants selected by the Company having expertise in the particular businesses in which the Company is engaged.

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

"Act" means Section 1411 of the Not-For-Profit Corporation Law of the State of New York as amended.

"Additional Bonds" means any Bonds, other than the Series 2020 Bonds, issued pursuant to Section 2.13 of the Indenture.

"Annual Budget" means the annual budget for operation of the Project Facility prepared by and approved by the Management Committee (as defined in the Facility Management Agreement) pursuant to the Facility Management Agreement.

"Assignment of Agreements" means the Assignment of Agreements, dated as of August 1, 2020 from the Company to the Trustee, as amended or supplemented from time to time.

"Assignment of Mortgage" means the Assignment of Mortgage, dated as of August 1, 2020 from the Issuer to the Trustee, as amended or supplemented from time to time.

"Authorized Representative" means with respect to the Issuer, its Chair or its President/CEO, with respect to the Company, any officer of the Company, and with respect to both such additional Persons as, at the time, are designated to act on behalf of the Issuer or the Company, as the case may be, by written certificate furnished to the Trustee and to the Issuer or the Company, as the case may be, containing the specimen signature of each such Person and signed on behalf of (i) the Issuer by its Chair or its President/CEO, or (ii) the Company by any officer of the Company.

"BAM" means Build America Mutual Assurance Company, or any successor thereto.

"Bonds" means the Series 2020 Bonds and any Additional Bonds, authorized to be issued pursuant to the Indenture to finance all or a portion of the Project Costs.

"Bond Counsel" means the law firm of Harris Beach PLLC or an attorney or firm of attorneys whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized.

"Bond Fund" means the fund so designated which is created by Section 4.01 of the Indenture.

"Bondholder" or "Holder" or "Owner" means the registered owner at the time in question of any Bond, as shown on the registration books maintained by the Bond Registrar pursuant to the Indenture.

"Bond Payment Date" means any date on which a Debt Service Payment shall be payable on any of the Bonds according to their terms so long as any of the Bonds shall be Outstanding.

"Bond Purchase Agreement" means the Bond Purchase Agreement, dated August 5, 2020, by and among the Issuer, the Company and the Underwriter, as amended or supplemented from time to time.

"Bond Registrar" means the Trustee, acting as such, and any successor bond registrar for the Bonds appointed pursuant to Article IX of the Indenture, their respective successors and any other corporation which may at any time be substituted in their respective places pursuant to the Indenture.

"Bond Resolution" means, collectively, the resolution adopted by the Issuer on March 18, 2020 authorizing the issuance, execution, sale and delivery of the Series 2020 Bonds and the execution and delivery of Issuer Documents, as such resolutions may be amended or supplemented from time to time.

"Bond Year" means the one-year period beginning on the day after the expiration of the preceding Bond Year. The first Bond Year begins on the dated date of original issuance of the Bonds and ends one year later.

"Business Day" means a day other than a Saturday, Sunday, legal holiday or other day on which the Trustee is authorized by law or executive order to remain closed.

"Capital Additions" means all Property or interests in Property, real, personal and mixed (a) which constitute additions, improvements or extraordinary repairs to or replacements of all or any part of the Project Facility, and (b) the cost of which is properly capitalized under generally accepted accounting principles.

"Capital Reserves" means all necessary reserves for the capital repair, replacement, alteration or improvement of the Project Facility.

"Certificate of Authentication" means, collectively, the certificates executed by an authorized officer of the Trustee certifying the due authentication of the Series 2020 Bonds in the aggregate principal amount of \$30,875,000.

"Closing Date" means the date of the sale and delivery of the Series 2020 Bonds and the delivery of the Financing Documents.

"Code" means the Internal Revenue Code of 1986, as amended, and the final, temporary and proposed regulations of the United States Department of the Treasury promulgated thereunder.

References to Sections of the Code shall be construed also to refer to successor and renumbered sections.

"College" means the State University of New York, Upstate Medical University.

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

"Commercial Code" shall mean the Uniform Commercial Code, as the same may from time to time be in effect in the State.

"Company" means Upstate Properties Development, Inc., a not-for-profit corporation and organization described in Section 501(c)(3) of the Code, organized and existing under the laws of the State of New York, with an office located at 750 East Adams Street, 208 Campus Activities Building, Syracuse, New York 13104 and its successors and assigns.

"Company Documents" means the Indenture, the Loan Agreement, the Acknowledgment, the Environmental Compliance and Indemnification Agreement, the Mortgage, the Bond Purchase Agreement, the Facility Management Agreement, the SUNY Agreement, the Continuing Disclosure Agreement, the Preliminary Official Statement and the Official Statement.

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

"Continuing Disclosure Agreement" means the Continuing Disclosure Agreement, dated as of August 1, 2020, by and between the Company and the Trustee, as the same may be amended or supplemented from time to time.

"County Resolution" shall have the meaning ascribed to such term in the recitals to the Indenture.

"Debt Service Coverage Ratio" means, with respect to any Fiscal Year, the ratio of Net Revenues Available for Debt Service to the sum of Debt Service Payments for such Fiscal Year.

"Debt Service Payment" means, with respect to any Bond Payment Date, (i) the interest payable on such Bond Payment Date on the Bonds Outstanding, plus (ii) whether upon maturity

or mandatory sinking fund redemption, the principal, if any, payable on such Bond Payment Date on the Bonds Outstanding, plus (iii) the premium, if any, payable on such Bond Payment Date on the Bonds Outstanding.

"Default Rate" means the lesser of two percent (2.00%) above the then applicable interest rate then borne by the Bonds, or the maximum rate permitted by law, that being the rate at which interest accrues on the Bonds from and after the date of occurrence of an Event of Default and for so long as such Event of Default remains in effect.

"Defeasance Obligations" shall mean (i) cash; (ii) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – (SLGBs)); (iii) direct obligations of the U.S. Treasury which have been stripped by the U.S. Treasury; (iv) obligations of Resolution Funding Corp. ("REFCORP") (*provided, however*, that, only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book-entry form shall qualify as Defeasance Obligations); and (v) obligations issued by the following agencies which are backed by the full faith and credit of the U.S.: (a) U.S. Export-Import Bank (Eximbank) Direct Obligations or fully guaranteed certificates of beneficial ownership; (b) Farmers Home Administration (FmHA); (c) Federal Financing Bank; (d) General Services Administration; Participation Certificates; (e) U.S. Maritime Administration; Guaranteed Title XI financing; and (f) U.S. Department of Housing and Urban Development (HUD) Project Notes, Local Authority Bonds, New Communities Debentures – U.S. government guaranteed debentures, U.S. Public Housing Notes and Bonds – U.S. government guaranteed public housing notes and bonds.

"Depository" or "DTC" means The Depository Trust Company, New York, New York, and its successors and assigns.

"Earnings Fund" means the fund so designated which is created by Section 4.01 of the Indenture.

"Environmental Compliance and Indemnification Agreement" means the Environmental Compliance and Indemnification Agreement, dated as of November 1, 2011, from the Company to the Issuer.

"Equipment" shall have the meaning ascribed to such term in the recitals to the Indenture.

"Event of Default" means any of those events defined as Events of Default by Section 8.01 of the Indenture or, when used with respect to the Loan Agreement, any of those events defined as Events of Default by Section 7.1 of the Loan Agreement.

"Exempt Obligation" means (i) an obligation of any state or territory of the United States of America, any political subdivision of any state or territory of the United States of America, or any agency, authority, public benefit corporation or instrumentality of such state, territory or political subdivision, the interest on which is excludable from gross income under Section 103 of the Code, which is not a "specified private activity bond" within the meaning of Section 57(a)(5) of the Code, and which, at the time an investment therein is made or such obligation is deposited in any fund or account under the Indenture, is rated, without regard to qualification of such rating

by symbols such as "+" or "-" and numerical notation, no lower than the second highest rating category for such obligation by at least two nationally recognized statistical rating services; (ii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of, the payment of the principal of or interest on any of the foregoing; and (iii) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

"Extraordinary Services" and "Extraordinary Expenses" means all services rendered and all reasonable, out-of-pocket expenses incurred by the Trustee or any Paying Agent under the Indenture other than Ordinary Services and Ordinary Expenses including but not limited to, the services rendered and expenses reasonably incurred by the Trustee with respect to any Event of Default under the Financing Documents, or the happening of an occurrence which, with the passage of time or the giving of a notice, would ripen into an Event of Default.

"Facility Management Agreement" means the Project Facility Management Agreement, dated as of August 1, 2020 by and between SUNY and the Company, as amended or supplemented from time to time.

"Federal Agency Obligation" means (i) an obligation issued by any federal agency or instrumentality; (ii) an obligation the principal of and interest on which are fully insured or guaranteed as to payment by a federal agency; (iii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing; and (iv) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

"Financing Documents" means, collectively, the Bonds, the Indenture, the Loan Agreement, the Bond Purchase Agreement, the Pledge and Assignment, the Mortgage and Security Agreement, the Assignment of Agreements, the Assignment of Mortgage, the Continuing Disclosure Agreement, the Preliminary Official Statement, the Official Statement and any other document or instrument executed in connection therewith to secure the Company's obligation to repay the Series 2020 Bonds or make the Debt Service Payments due under the Loan Agreement, and any other instrument or document supplemental thereto.

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

"Governmental Authority" means the United States, the State, and any other state or any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of these, having jurisdiction over the construction, equipping, ownership, leasing, operation and/or maintenance of the Project Facility.

"Governmental Obligations" means (i) a direct obligation of the United States of America; (ii) an obligation the principal of and interest on which are fully insured or guaranteed by the United States of America; (iii) an obligation to which the full faith and credit of the United States of America are pledged; (iv) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest

on any of the foregoing; and (v) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

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

"Improvements" shall have the meaning ascribed to such term in the recitals to the Indenture.

"Indenture" means the Indenture of Trust, dated as of August 1, 2020, by and between the Issuer and the Trustee pursuant to which the Bonds are authorized to be issued, as may be amended or supplemented by any additional Supplemental Indenture.

"Independent Counsel" means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court in the State.

"Insured Obligations" means the Series 2020 Bonds.

"Interest Payment Date" means each June 1 and December 1 (or the next succeeding Business Day if such first day is not a Business Day), commencing with December 1, 2020.

"Investment Agreement" means an agreement for the investment of moneys with a Qualified Financial Institution.

"Issuer" means (i) Onondaga Civic Development Corporation and its successors and assigns and (ii) any not-for-profit corporation resulting from or surviving any consolidation or merger to which the Onondaga Civic Development Corporation or its successors or assigns may be a party.

"Issuer Documents" means the Bonds, the Indenture, the Bond Purchase Agreement, the Mortgage and Security Agreement, the Assignment of Mortgage, the Loan Agreement, the Pledge and Assignment, the Preliminary Official Statement and the Official Statement.

"Land" shall have the meaning ascribed to such term in the recitals to the Indenture.

"Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest publicly announced from time to time by JPMorgan Chase Bank, N.A., at its principal office in The City of New York, New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank,

N.A.) plus 3%, and (ii) the then applicable highest rate of interest on the Insured Obligations and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. In the event JPMorgan Chase Bank, N.A., ceases to announce its Prime Rate, the Prime Rate shall be the prime or base lending rate of such other bank, banking association or trust company as BAM, in its sole discretion and absolute discretion, shall designate. Interest at the Late Payment Rate on any amount owing to BAM shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

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

"Loan Agreement" means the Loan Agreement, dated as of August 1, 2020, by and between the Issuer and the Company, as amended or supplemented from time to time.

"Loss Event" means in the event that at any time during the term of the Loan Agreement, the whole or part of the Project Facility shall be damaged or destroyed, or the whole or any part of the Project Facility shall be taken or condemned by a competent authority for any public use or purpose, or by agreement between the Issuer and those authorized to exercise such right, or if the temporary use of the Project Facility or any part thereof shall be so taken by Condemnation or agreement.

"Maximum Annual Debt Service" means the highest Debt Service Payment for any succeeding Fiscal Year relating to the Bonds.

"Mortgage and Security Agreement" means the Mortgage and Security Agreement, dated as of August 1, 2020 from the Company to the Issuer, as amended or supplemented from time to time.

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

"Net Revenues Available for Debt Service" shall mean, for any period, the sum of (i) unrestricted revenues less unrestricted expenses, exclusive of unrealized and realized gains and losses on any long term investments, (ii) all interest and depreciation expense for such period; and (iii) amortization for such period; provided that no determination of Net Revenues Available for Debt Service shall take into account any gains and losses resulting from changes in accounting principles not involving the receipt or expenditure of cash, or any other non-operating, non-cash expenses.

"Office of the Trustee" means the corporate trust officers of the Trustee located at 285 Delaware Avenue, 3<sup>rd</sup> Floor, Buffalo, New York 14202.

"Official Statement" means the Official Statement of the Issuer, dated the date thereof, with respect to the offering and sale of the Series 2020 Bonds.

"Operating Account" means the account established by the Company pursuant to Section 6.20(d) of the Loan Agreement.

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

"Operation and Maintenance Fund" means the fund so designated which is created by Section 4.01 of the Indenture.

"Opinion of Counsel" shall mean a written opinion of counsel who may (except as otherwise expressly provided in the Loan Agreement or any other Financing Document) be counsel for the Company or the Issuer and who shall be acceptable to the Trustee.

"Ordinary Services" and "Ordinary Expenses" means those services normally rendered and those reasonable, out-of-pocket expenses normally incurred by a trustee or paying agent under instruments similar to the Indenture, including reasonable fees and disbursements of counsel to the Trustee.

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

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

(ii) any Bond (or portion of a Bond) for the payment or redemption of which there has been separately set aside and held in the Bond Fund either:

(A) moneys and/or



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

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

provided, however, that, in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under the Indenture, such Bonds including Series 2020 Bonds owned by the Company or any affiliate of the Company shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. Bonds which have been pledged in good faith to a Person may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Company or any affiliate of the Company.

"Participant" means any of those brokers, dealers, banks and other financial institutions from time to time for which the Depository holds Bonds as securities depository.

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

"Permitted Collateral" means any of the following:

(i) Government Obligations described in clauses (i), (ii) or (iii) of the definition of Government Obligations;

(ii) Federal Agency Obligations described in clauses (i) or (ii) of the definition of Federal Agency Obligations;

(iii) commercial paper that (A) matures within two hundred seventy (270) days after its date of issuance, (B) is rated in the highest short term rating category by at least one nationally recognized statistical rating service, and (C) is issued by a domestic corporation whose unsecured senior debt is rated by at least one nationally recognized statistical rating service no lower than in the second highest rating category; and

(iv) financial guaranty agreements, surety or other similar bonds or other instruments of an insurance company that has an equity capital of at least \$125,000,000 and is rated by Bests Insurance Guide or a nationally recognized statistical rating service in the highest rating category.

"Permitted Encumbrances" means:

(i) the Pledge and Assignment, the Indenture and any other Financing Document;

(ii) Liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not in default;

(iii) utility, access and other easements and rights-of-way restrictions and exceptions that an Authorized Representative of the Company certifies to the Issuer and the Trustee will not interfere with or impair the Company's use of the Project Facility as provided in the Loan Agreement;

(iv) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to Property similar in character to the Project Facility and as do not, either singly or in the aggregate, materially impair the Property affected thereby for the purpose for which it is owned by the Company;

(v) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien or right in respect thereof if payment is not yet due and payable, or are insured over, or which are not delinquent, or the amount or validity of which, are being contested and execution thereon is stayed or has been due for less than ninety (90) days;

(vi) any mortgage, Lien, security interest or other encumbrance which exists in favor of the Trustee;

(vii) Reserved;

(viii) such other Liens and exceptions to title that do not materially impair the value of the Project Facility as approved in writing by the Trustee;

(ix) deposits, endorsements, guaranties, and other encumbrances incurred in the ordinary course of business and which do not secure indebtedness;

(x) Liens granted on a parity or subordinate basis with the Liens granted to the Trustee as security for the Bonds to secure indebtedness incurred or permitted pursuant to the Loan Agreement;

(xi) Liens to secure indebtedness permitted to be incurred pursuant to the Loan Agreement;

(xii) those Liens on the Project Facility in existence as of the date of the Indenture;

(xiii) leases to students of the College as permitted by the Financing Documents;  
and

(xiv) any exception or encumbrance set forth on Schedule B, Section II of the Title Policy.

"Permitted Investments" means any of the following: (i) Government Obligations; (ii) Federal Agency Obligations; (iii) Exempt Obligations; (iv) uncollateralized certificates of deposit that are fully insured by the Federal Deposit Insurance Corporation and issued by a banking organization authorized to do business in the State; (v) collateralized certificates of deposit that are (A) issued by a banking organization authorized to do business in the State that has an equity capital of not less than \$125,000,000, whose unsecured senior debt, or debt obligations fully secured by a letter of credit, contract, agreement or surety bond issued by it, are rated by at least one nationally recognized statistical rating service in at least the second highest rating category, and (B) are fully collateralized by Permitted Collateral; (vi) Investment Agreements that are fully collateralized by Permitted Collateral; and (vii) money markets.

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

"Pledge and Assignment" means the Pledge and Assignment, dated as of August 1, 2020, by and between the Issuer and the Trustee, pursuant to which the Issuer assigns to the Trustee substantially all of its rights under the Loan Agreement (except the Unassigned Rights).

"Pledged Revenue Fund" means the fund so designated which is created by Section 4.01 of the Indenture.

"Policy" means the Municipal Bond Insurance Policy issued by BAM that guarantees the scheduled payment of principal of and interest on the Insured Obligations when due.

"Preliminary Official Statement" means the Preliminary Official Statement of the Issuer, dated the date thereof, with respect to the offering and sale of the Series 2020 Bonds.

"Project" shall have the meaning ascribed to such term in the recitals to the Indenture.

"Project Costs" means

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

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

(iii) capitalized interest on the Bonds;

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

(v) all costs of title insurance;

(vi) the payment of the issuance costs with respect to the Bonds;

(vii) the payment of the fees and expenses of the Issuer and the Trustee during the period of construction and renovation of the Project Facility;

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

(ix) all other costs and expenses relating to the completion of the Project Facility.

"Project Facility" shall have the meaning ascribed to such term in the recitals to the Indenture.

"Project Fund" means the fund so designated which is created by Section 4.01 of the Indenture.

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

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

"Qualified Financial Institution" means any of the following entities that has an equity capital of at least \$125,000,000 or whose obligations are unconditionally guaranteed by an affiliate or parent having an equity capital of at least \$125,000,000:

(i) a securities dealer, the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation, and (A) that is on the Federal Reserve Bank of New York list of primary government securities dealers and (B) whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one nationally recognized statistical rating service not lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated, by at least one nationally recognized

statistical rating service not lower than in the highest rating category; provided, however, that no short term rating may be utilized to determine whether an entity qualifies under this summarized paragraph as a Qualified Financial Institution if the same would be inconsistent with the rating criteria of any Rating Agency;

(ii) a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provisions of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provisions of law, a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, a savings bank, a savings and loan association, an insurance company or association chartered or organized under the laws of the United States of America, any state of the United States of America, or any foreign nation whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one nationally recognized statistical rating service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one nationally recognized statistical rating service no lower than in the highest rating category; provided, however, that no short term rating may be utilized to determine whether an entity qualifies under this paragraph as a Qualified Financial Institution if the same would be inconsistent with the rating criteria of any Rating Agency;

(iii) a corporation affiliated with or which is a subsidiary of any entity described in (ii) above or which is affiliated with or a subsidiary of a corporation which controls or wholly owns any such entity, whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one nationally recognized statistical rating service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one nationally recognized statistical rating service not lower than in the highest rating category; provided, however, that no short term rating may be utilized to determine whether an entity qualifies under this summarized paragraph as a Qualified Financial Institution if the same would be inconsistent with the rating criteria of any Rating Agency;

(iv) the Government National Mortgage Association or any successor thereto, the Federal National Mortgage Association or any successor thereto, or any other federal agency or instrumentality; or

(v) a corporation whose obligations, including any investments of any moneys held under the Indenture purchased from such corporation, are insured by an insurer that meets the applicable rating requirements set forth above.

"Rating Agency" means any nationally recognized securities rating agency.

"Record Date" means the Regular Record Date or the Special Record Date, as the case may be.

"Redemption Date" means the date determined by the Trustee, following receipt by the Trustee of notice from the Issuer or the Company, on behalf of the Issuer, pursuant to the Indenture as of the date as of which a redemption shall be effective.

"Redemption Price" means, when used with respect to a Bond, the principal amount thereof plus the applicable redemption premium, if any, payable thereon, plus accrued interest to the Redemption Date.

"Regular Record Date" means, with respect to any Bond Payment Date, the fifteenth (15<sup>th</sup>) day of the calendar month (whether or not a Business Day) next preceding such Bond Payment Date.

"Renewal Fund" means the fund so designated and created pursuant to Section 4.01 of the Indenture.

"Repair and Replacement Fund" means the fund so designated which is created by Section 4.01 of the Indenture.

"Repair and Replacement Fund Requirement" means 1/12<sup>th</sup> of \$250 per bed, per month which will be transferred together with rental revenues to the Trustee no less than monthly, unless paid in advance for the upcoming year by the Company.

"Restricted Gift" means, when used in connection with the Project Facility, any gift, grant or bequest of money or other Property made or given by any Person the use of which has been restricted by such Person to paying any cost or expense of the Project Facility.

"Series 2020 Bonds" means the Issuer's \$30,875,000 original principal amount Onondaga Civic Development Corporation Taxable Revenue Bonds (Upstate Properties Development, Inc. Project), Series 2020.

"Special Record Date" means a date for the payment of interest on the Bonds after an Event of Default has occurred fixed by the Trustee pursuant to Section 2.03(b) of the Indenture.

"State" means the State of New York.

"SUNY" means the State University of New York.

"SUNY Agreement" means the Agreement, dated as of August 1, 2020 by and between the Company and SUNY, as amended or supplemented from time to time.

"Supplemental Indenture" means any indenture supplemental to or amendatory of the Indenture, which may be executed by the Issuer and the Trustee in accordance with Article X of the Indenture.

"Surplus Fund" means the fund so designated which is created by Section 4.01 of the Indenture.

"Tax-Exempt Bonds" means Bonds issued pursuant to the Indenture, the interest on which is excluded from the gross income of the Bondholder thereof for Federal income tax purposes and all renewals, and/or refinances thereof.

"Title Policy" means the title policy issued by Stewart Title Insurance Company to the Trustee, the Issuer and the Company, dated and certified on the Closing Date.

"Trust Estate" means all Property which may from time to time become subject to the Lien of the Indenture.

"Trustee" means Manufacturers and Traders Trust Company, a New York banking corporation organized and existing under the laws of the United States, as Trustee under the Indenture, and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as such hereunder.

"Unassigned Rights" shall mean collectively:

(i) the right of the Issuer in its own behalf to receive all Opinions of Counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications required to be delivered to the Issuer under the Loan Agreement;

(ii) the right of the Issuer to grant or withhold any consents or approvals required of the Issuer under the Loan Agreement;

(iii) the right of the Issuer to enforce, in its own behalf, the obligation of the Company to complete the Project;

(iv) the right of the Issuer, in its own behalf (or on behalf of the appropriate taxing authorities), to enforce, receive amounts payable under or otherwise exercise its rights under Sections 1.5, 2.1, 2.2, 3.1, 3.2(e), 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 5.1, 6.1, 6.2, 6.3, 6.5, 6.6, 6.10, 6.11, 6.13, 6.18, 6.19, 7.7, 8.1, 8.2, 8.4, 9.3, 9.10, 9.13, 9.17, 9.18 and 9.19 of the Loan Agreement; and

(v) the right of the Issuer, in its own behalf, to declare an Event of Default under Section 7.1 of the Loan Agreement with respect to any of the Unassigned Rights.

"Underwriter" means Stifel, Nicolaus & Company, Incorporated, a Missouri corporation, together with its successors or assigns.

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

*The following description of certain provisions of the Loan Agreement is only a brief outline of some of the provisions thereof, and does not purport to summarize or describe all of the provisions thereof. Reference is made to the Loan Agreement for full and complete details of the provisions thereof.*

### **Issuance of Series 2020 Bonds**

On the Closing Date, or on such other date as the Issuer, the Trustee, and the Company may mutually agree upon, the Trustee shall deposit the proceeds of the Series 2020 Bonds in the Project Fund (i) upon receipt of the Series 2020 Bonds and (ii) subject to the terms and conditions of the Indenture. Additional Bonds may be issued and purchased from time to time, as set forth in the Indenture on a pari passu basis with the Series 2020 Bonds. Each series of Additional Bonds shall be issued only for the purpose provided in the Supplemental Indenture executed in connection therewith.

The Issuer agrees to loan the proceeds of the Series 2020 Bonds to the Company and the Company agrees to pay to the Trustee the principal of and interest on the Series 2020 Bonds and all other amounts due under the Loan Agreement in accordance with the terms of the Loan Agreement, the Indenture and the Series 2020 Bonds. *(Section 3.1)*

### **Payment Provisions; Pledge of Loan Agreement**

For so long as Bonds are Outstanding, the Company covenants to make debt service payments for and in respect of the Series 2020 Bonds pursuant to the Loan Agreement, which the Issuer agrees shall be paid by the Company directly to the Trustee at least fifteen (15) days prior to any Bond Payment Date for deposit in the Bond Fund in an amount equal to the sum of (i) with respect to interest due and payable on the Series 2020 Bonds, an amount equal to the interest next becoming due and payable on the Series 2020 Bonds on the immediately succeeding Interest Payment Date (less any amount available in the Project Fund for transfer to the Bond Fund), (ii) the principal amount of the Series 2020 Bonds then Outstanding which will become due on the immediately succeeding Interest Payment Date (whether at maturity or by redemption or acceleration as provided in the Indenture), and (iii) the principal of and redemption premium, if any, including sinking fund installments, on the Series 2020 Bonds to be redeemed which will become due on the immediately succeeding redemption date together with accrued interest to the date of redemption. The Company further agrees to: (i) pay or cause to be paid to the Trustee an amount equal to the Repair and Replacement Fund Requirement and (ii) pay such additional amounts as set forth in the Indenture with respect to interest on the Series 2020 Bonds in the event of an Event of Default.

Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund, after transfer required to be made therein pursuant to the Indenture, is not sufficient to pay the principal of redemption premium, if any, and interest on the Series 2020 Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Company shall forthwith pay the amount of such deficiency in immediately



available funds to the Trustee for deposit in the Bond Fund and such payment shall constitute debt service payments under this summarized section.

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

The Company shall have the option to prepay its debt service payment obligations with respect to the Series 2020 Bonds, in whole or in part at the times and in the manner provided in Article VIII of the Loan Agreement as and to the extent provided in the Indenture for redemption of the Series 2020 Bonds.

In addition to the debt service payments required pursuant to paragraphs (a) and (b) of the section of the Loan Agreement under the heading "Payment Provisions; Pledge of Loan Agreement", throughout the term of the Loan Agreement, the Company shall pay to the Issuer within ten (10) days of receipt of an invoice setting forth the nature and payee of each such expense and demand for payment therefor, an amount equal to the sum of the reasonable expenses of the Issuer and the members thereof incurred:

(i) by reason of the Issuer's issuance of the Series 2020 Bonds or any Additional Bonds, or

(ii) in connection with the carrying out of the Issuer's duties and obligations under the Financing Documents to which it is a party, the payment of which is not otherwise provided for under the Loan Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Issuer.

In addition, the Company shall pay, as an additional payment, within fifteen (15) days after receipt of an invoice setting forth the nature and payee of each such expense and demand for payment therefor, the reasonable expenses payable by the Issuer to the Trustee and BAM pursuant to and under the Indenture.

Pursuant to the Indenture and the Pledge and Assignment, the Issuer has pledged and assigned to the Trustee, as security for the Series 2020 Bonds, all of the Issuer's right, title and interest in the Loan Agreement (except for the Unassigned Rights), including all debt service payments under the Loan Agreement, and in furtherance of said pledge the Issuer has unconditionally assigned such debt service payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture. The Company consents to the above-described Lien and security interest, and pledge and assignment of the Loan Agreement.

The Company covenants and agrees that it will comply with the provisions of the Indenture with respect to the Company and that the Trustee shall have the power, authority, rights and protections provided in the Indenture. The Company further covenants to use its best efforts to

cause there to be obtained for the Issuer any documents or opinions required of the Issuer under the Indenture. *(Section 3.2)*

### **Obligation of Company Unconditional**

The obligations of the Company to pay debt service payments and all other payments provided for in the Loan Agreement and to maintain the Project Facility in accordance with the Loan Agreement constitute a general obligation of the Company and shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Issuer, the Trustee or the Holder of any Series 2020 Bonds and the obligation of the Company shall arise whether or not the Project Facility has been completed as provided in the Loan Agreement. For so long as Bonds are Outstanding, the Company will not suspend or discontinue any such payment or terminate the Loan Agreement (other than such termination as is provided for under the Loan Agreement) for any cause whatsoever, and the Company waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender the Loan Agreement or any obligation of the Company under the Loan Agreement or the Project Facility or any part thereof except as provided in the Loan Agreement or to any abatement, suspension, deferment, diminution or reduction in the debt service payments or other payments hereunder. *(Section 3.3)*

### **Maintenance, Alterations and Improvements**

During the term of the Loan Agreement, the Company will keep the Project Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Project Facility in the manner for which it was designed and intended and contemplated by the Loan Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen). All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Issuer shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Project Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Project Facility, or to furnish any utilities or services for the Project Facility and the Company agrees to assume full responsibility therefor.

The Company shall have the privilege of making such alterations of or additions to the Project Facility or any part thereof from time to time as it, in its discretion, may determine to be desirable for its uses and purposes; *provided*, that (i) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements (as defined in the Loan Agreement), and (ii) such additions or alterations are promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor, and in order that the Project Facility shall at all times be free of any mortgage, Lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances. All alterations of and additions to the Project Facility shall constitute a part of the Project Facility, subject to the Loan Agreement and the Indenture and the Company shall deliver or cause to be delivered to the Issuer appropriate documents as may be necessary to subject such property of the

Company to the Loan Agreement and the Lien and security interest of the Indenture, free and clear of all Liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

The Company shall have the right to install or permit to be installed at the Project Facility machinery, equipment and other personal property not constituting part of the Equipment (the "Company's Property") without subjecting such property to the Loan Agreement. The Issuer shall not be responsible for any loss of or damage to the Company's Property. The Company shall have the right to create or permit to be created any mortgage, encumbrance, Lien or charge on, or conditional sale or other title retention agreement with respect to, the Company's Property. (*Section 4.1*)

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

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

None of the foregoing shall prevent the Company from contesting in good faith, the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Project Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, and (ii) such contest shall not result in the Company, the Issuer or the Trustee being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith. (*Section 4.3*)

### **Insurance**

At all times throughout the term of the Loan Agreement including, without limitation, during any period of construction or renovation of the Project Facility, the Company shall maintain insurance with insurance companies licensed to do business in the State (or authorized in the State under the Federal Liability Risk Retention Act), against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company. (*Section 4.4*)

### **Damage, Destruction and Condemnation**

In the event that at any time during the term of the Loan Agreement, the whole or part of the Project Facility shall be damaged or destroyed, or the whole or any part of the Project Facility shall be taken or condemned by a competent authority for any public use or purpose, or by agreement between the Issuer and those authorized to exercise such right, or if the temporary use

of the Project Facility or any part thereof shall be so taken by condemnation or agreement (a "Loss Event"):

- (i) the Issuer shall have no obligation to rebuild, replace, repair or restore the Project Facility,
- (ii) there shall be no abatement, postponement or reduction in the debt service payments or other amounts payable by the Company under the Loan Agreement, and
- (iii) the Company will promptly give written notice of such Loss Event to the Issuer and the Trustee, generally describing the nature and extent thereof.

Upon the occurrence of a Loss Event, any Net Proceeds derived therefrom shall be paid to the Company and the Company shall either:

- (i) at its own cost and expense (except to the extent paid from the Net Proceeds deposited in the Renewal Fund as provided below and in the section of the Indenture under the heading "Payments into Renewal Fund; Application of Renewal Fund"), promptly and diligently rebuild, replace, repair or restore the Project Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Company shall not, by reason of payment of any such excess costs, be entitled to any reimbursement from the Issuer, the Trustee or any Bondholder, nor shall the debt service payments or other amounts payable by the Company under the Loan Agreement be abated, postponed or reduced, or
- (ii) if, to the extent and upon the conditions permitted to do so under the section of the Loan Agreement under the heading "Options" and under the Indenture, exercise its option to make advance debt service payments to redeem the Series 2020 Bonds in whole;

*provided, however,* that, any Net Proceeds derived from a Loss Event affecting the Project Facility shall be paid to the Trustee and deposited in the Renewal Fund and the Company shall elect to comply with either clause (i) or clause (ii) above.

Not later than ninety (90) days after the occurrence of a Loss Event, the Company shall advise the Issuer and the Trustee in writing of the action to be taken by the Company under this summarized section, a failure to so timely notify being deemed an election in favor of clause (i) above to be exercised in accordance with the provisions of clause (i) above.

If the Company shall elect to or shall otherwise be required to rebuild, replace, repair or restore the Project Facility as set forth in subdivision (i) above, to the extent the Net Proceeds have been deposited in the Renewal Fund, the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in the section of the Indenture under the heading "Payments into Renewal Fund; Application of Renewal Fund", to pay or reimburse the Company, at the election of the Company, either as such work progresses or upon the completion thereof; *provided, however,* the amounts so disbursed by the Trustee to the Company shall not exceed the actual cost

of such work. If, on the other hand, the Company shall, if permitted under the Loan Agreement and the Indenture, exercise its option in subdivision (ii) above, the Trustee shall transfer any Net Proceeds from the Renewal Fund to the Bond Fund to be applied to the redemption of the Series 2020 Bonds in accordance with the Indenture.

All such rebuilding, replacements, repairs or restorations, unless intended to be an additional building or Company Property above and beyond such rebuilding, replacement, repair or restoration as so designated in writing by the Company and financed out of moneys other than any Net Proceeds from such Loss Event, shall

- (i) automatically be deemed a part of the Project Facility and be subject to the Loan Agreement,
- (ii) be in accordance with Plans and Specifications and cost estimates approved in writing by the Issuer, which approval shall not be unreasonably withheld,
- (iii) not materially change the use of the Project Facility,
- (iv) to the extent required by paragraph (b) of the section of the Loan Agreement under the heading "Maintenance, Alterations and Improvements", be preceded by the furnishing by the Company to the Issuer and the Trustee of a labor and materials payment bond, or other security, reasonably satisfactory to the Issuer and the Trustee, and
- (v) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable Legal Requirements and be promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefore.

Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund, if any, shall be applied and may be invested as provided in the Indenture.

The Issuer, the Trustee and the Company shall cooperate and consult with each other in all matters pertaining to the settlement, compromising, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromising, arbitration or adjustment of any such claim or demand shall be subject to the approval of the Company and the Trustee (upon the specific written direction of a majority of the Bondholders), such approvals not to be unreasonably withheld.

Notwithstanding the foregoing, if all or substantially all of the Project Facility shall be taken or condemned, or if the taking or condemnation renders the Project Facility unsuitable for use by the Company as contemplated by the Loan Agreement, the Company shall exercise its option to terminate the Loan Agreement pursuant to the section of the Loan Agreement under the heading "Options", and the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Bond Fund, and the Company shall thereupon pay to the Trustee for deposit in the Bond Fund an amount which, when added to any amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Series 2020 Bonds in whole at the earliest possible date (including, without limitation, principal and interest to

the maturity or redemption date and redemption premium, if any), and to pay the expenses of redemption, the fees and expenses of the Issuer, the Bond Registrar, the Trustee and the Paying Agent, together with all other amounts due under the Indenture and under the Loan Agreement, and such amount shall be applied, together with such other available moneys in such Bond Fund, if applicable, to such redemption or retirement of the Series 2020 Bonds on said redemption or maturity date.

The Company shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to improvements, machinery, equipment or other property installed on or about the Project Facility but which, at the time of such damage or taking, is not part of the Project Facility and is owned by the Company.

The Company waives the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect. (*Section 5.1*)

### **Restrictions on Company**

The Company covenants that it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it; provided, however, that if no Event of Default shall have occurred and be continuing and prior written notice shall have been given to the Issuer and the Trustee, the Company may (i) sell or otherwise transfer all or substantially all of its assets to, or consolidate with or merge into, another organization or corporation or (ii) permit one or more corporations or any other organization to consolidate with or merge into it, or (iii) acquire all or substantially all of the assets of one or more corporations or any other organization; provided, however, that the surviving, resulting or transferee corporation, as the case may be, assumes in writing all of the obligations of and restrictions on the Company under the Loan Agreement, and furnishes to the Issuer a certificate to the effect that upon such sale, transfer, consolidation, merger or acquisition such corporation shall be in compliance with each of the provisions of the Loan Agreement and shall meet the requirements of the Act and such other certificates and documents as the Issuer and the Trustee may reasonably request. Furthermore, such sale, transfer, consolidation, merger, acquisition or other disposition shall occur only if, after giving effect to such sale, transfer, consolidation, merger, acquisition or other disposition, (x) no Event of Default would exist under the Loan Agreement or under the Indenture, (y) the surviving, resulting or transferee corporation will be able to incur at least one dollar (\$1.00) of debt, and (z) the unrestricted net assets (calculated in accordance with generally accepted accounting principles) of the surviving, resulting or transferee corporation are at least ninety percent (90%) of what the unrestricted net assets of the Company (calculated in accordance with generally accepted accounting principles) would have been in the absence of any such sale, transfer, consolidation, merger, acquisition or other disposition. (*Section 6.1*)

### **Indemnity**

The Company shall at all times protect and hold the Issuer, the Trustee, the Bond Registrar, the Paying Agent, BAM and the Bondholders, and any of their respective directors, members, officers, employees, servants or agents or any of such Persons and persons under the control or

supervision of any of such Persons (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing from the date the Issuer adopted the inducement resolution for the Project, and continuing throughout the term of the Loan Agreement and for the relevant statute of limitations thereafter for any Claim arising during such term (subject to paragraph (e) of this summarized section), upon or about the Project Facility or resulting from, arising out of, or in any way connected with:

(i) the financing of the Project and the marketing, issuance, sale and remarketing of the Series 2020 Bonds for such purpose (other than for representations, if any, in those portions of the Preliminary Official Statement and Official Statement made by the Issuer or the Trustee),

(ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project Facility or any part thereof or the effecting of any work done in or about the Project Facility, or any defects (whether latent or patent) in the Project Facility or any of the work done on or about the Project Facility,

(iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project Facility or any portion of any thereof or the payment of any costs in connection with the Project Facility,

(iv) the execution and delivery by the Indemnified Party, the Company or any other Person of, or performance by the Indemnified Party, the Company or any other Person, as the case may be, of, any of their respective obligations under the Loan Agreement, the Indenture or any other Financing Document, or other document or instrument delivered in connection with the Loan Document or therewith or the enforcement of any of the terms or provisions of the Loan Agreement or thereof or the transactions contemplated by the Loan Agreement or thereby,

(v) any injury to any Person or the personal property of any Person in or on the premises of the Project Facility other than those caused by such Indemnified Party,

(vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including, but not limited to, failure to comply with the requirements of any applicable zoning resolution and the SEQR Act and their respective related regulations,

(vii) any damage or injury to the person or property of (A) the Company, or (B) any other Person or their respective officers, directors, officials, partners, members, employees, attorneys, agents or representatives, or persons under the control or supervision of the Company or (C) any other Person who may be in or about the premises of the Project Facility other than those caused by such Indemnified Party,

(viii) the presence, disposal or release, of any Hazardous Materials (as defined in the Loan Agreement) that are on or from the Project Facility, other than those caused by such Indemnified Party; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Issuer or the Trustee (as directed by the Majority Bondholders), which are based upon, or in any way related to, such Hazardous Materials including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses, or

(ix) any Claim commenced against an Indemnified Party, or other action or proceeding taken by an Indemnified Party, in any case with respect to any of the matters set forth in subparagraphs (i) through (viii) of paragraph (a) of this summarized section,

Such indemnification set forth above shall be binding upon the Company for any and all Claims set forth in the Loan Agreement and shall survive the termination of the Loan Agreement.

Except as provided in paragraph (a) of this summarized section, the Company releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Company for, any Claims or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in paragraph (a) of this summarized section, including any Claims or Liability at the direction of the Company or any other obligor under any of the Financing Documents with respect to any of such matters referred to above. An Indemnified Party shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this summarized section; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a default under the Loan Agreement nor in any way impair the obligations of the Company under this summarized section; *except, that*, if (i) the Indemnified Party shall have had knowledge or notice of such claim or action but shall not have timely notified the Company of any such claim or action, (ii) the Company shall not have had knowledge or notice of such claim or action, and (iii) the Company's ability to defend or participate in such claim or action is materially impaired by reason of not having received timely notice thereof from the Indemnified Party, then the Company's obligation to so defend and indemnify such Indemnified Party shall be qualified to the extent (and only to the extent) of such material impairment.

In addition to and without limitation of any other representations, warranties and covenants made by the Company under the Loan Agreement, the Company further represents, warrants and covenants that the Company has not used Hazardous Materials on, from, or affecting the Project Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of the Company's knowledge, no prior owner of the Project Facility or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from, or affecting the Project Facility in any manner which violates any applicable Legal Requirements.



Without limiting the foregoing, the Company shall not cause or permit the Project Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any occupant or user of the Project Facility, a release of Hazardous Materials onto the Project Facility or onto any other property.

The Company shall comply with and shall use its best efforts to ensure compliance by all occupants and users of the Project Facility, with all applicable Legal Requirements, whenever and by whomever triggered, and shall obtain and comply with, and shall use its best efforts to ensure that all occupants and users of the Project Facility obtain and comply with, any and all approvals, registrations or permits required thereunder.

The Company shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove or abate, as applicable, all Hazardous Materials, on, from, or affecting the Project Facility in accordance with all applicable Legal Requirements.

For purposes of this summarized section, the term "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other applicable law, ordinance, rule, or regulation.

The indemnifications and protections set forth in this summarized section shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under its control or supervision.

Anything to the contrary in the Loan Agreement notwithstanding, the covenants of the Company contained in this summarized section shall be in addition to any and all other obligations and liabilities the Company may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the termination of the Loan Agreement until the latter of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions specified in the Loan Agreement. *(Section 6.2)*

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

The Company shall cause the Project Facility to maintain at all times while the Series 2020 Bonds remain Outstanding a Debt Service Coverage Ratio of 1.00 to 1.00. At all times while the Series 2020 Bonds remain Outstanding, the Company shall submit to the Trustee the Company's

calculation of the Debt Service Coverage Ratio when it submits such calculation to SUNY in accordance with the terms of the SUNY Agreement, but in no event later than one hundred twenty (120) days after the end of the Company's Fiscal Year.

So long as any of the Series 2020 Bonds shall remain Outstanding, the Company shall not, nor shall it permit any subsidiary to, directly or indirectly, (i) create, assume, incur or in any manner become or remain liable in respect to, any Indebtedness secured by the Project Facility or the Gross Revenues except Additional Bonds; or (ii) create, assume, incur or suffer to exist or allow to be created, assumed or incurred or suffered to exist any Lien upon any of the Project Facility or the Gross Revenues now owned or hereafter acquired, excepting, however, Permitted Encumbrances; provided, however, that notwithstanding the provisions of this summarized section to the contrary, the Company may, in the ordinary course of its operations, make, modify, terminate and otherwise deal with student leases for use of dormitory rooms included in the Project Facility, without the consent of the Issuer or the Trustee, in a manner consistent with normal College practice, provided that no such actions on the part of the Company shall waive, release, limit, modify or impair any obligations or liabilities of SUNY under the SUNY Agreement. *(Section 6.4)*

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

The Company shall furnish or cause to be furnished to the Issuer, the Underwriter, the Trustee, BAM and such other persons as the Issuer or the Trustee may request and to the Owners of the Series 2020 Bonds upon any Owner's written request to the Company:

(i) annually, within one hundred twenty (120) days after the end of the Company's Fiscal Year, (A) a copy of the annual audited financial statements of the Company for such Fiscal Year, including therein without limitation, a balance sheet as of the end of such Fiscal Year, a statement of changes in net assets and a statement of activities for such Fiscal Year or such other financial statements then required in accordance with generally accepted accounting principles applicable to the Company, audited by a firm of independent public accountants of recognized standing, (B) a certificate or other instrument signed by the Company's auditors setting forth the Debt Service Coverage Ratio for such Fiscal Year and detailing the calculation thereof and stating whether an Event of Default, or, to the best of the auditors' knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, and, if such an Event of Default or such an event has occurred and is continuing, a statement as to the nature thereof, and (C) if such an Event of Default or such an event has occurred and is continuing, a certificate of an Authorized Officer of the Company setting forth the action that the Company proposes to take with respect thereto;

(ii) quarterly statements shall be provided within forty-five (45) days of the end of the quarter (or, if required by the Trustee, monthly statements upon the occurrence of a default by the Company under the section of the Loan Agreement under the heading "Financial Covenants; No Indebtedness Secured by Project or Gross Revenues" or any other section of the Loan Agreement within thirty (30) days of the end of the month), together with a certificate of an Authorized Representative stating that the Company is not in default of any of its obligations or covenants under the Financing Documents;

(iii) promptly following approval by the Management Committee (as defined in the Facility Management Agreement), but at least sixty (60) days prior to the commencement of the academic year to which it applies, an Annual Budget for each academic year covering the operation of the Project Facility;

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

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

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

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

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

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

(x) notification in connection with Section 4.1 of the SUNY Agreement, if SUNY has leased in its own name units in the Project Facility.

At any and all reasonable times and from time to time, permit the Issuer and the Trustee, or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account (other than those books and records that by law must be treated as confidential) of, and visit the Property of the Company and to discuss the affairs, finances and accounts of the Company with any of their respective officers. (*Section 6.6*)

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

The Company agrees and covenants with respect to the SUNY Agreement to (i) perform all of the obligations of the Owner (as defined in the SUNY Agreement) under the SUNY Agreement and enforce the timely payment, performance and observance of the covenants, conditions and terms thereof by SUNY; (ii) not later than August 15 of each Fiscal Year, commencing August 15, 2020, the Company shall determine in good faith, based upon leases actually entered into by the Company as of such date, whether or not the projected Project Facility

occupancy for such Fiscal Year will be sufficient to achieve the level of the Project Revenues required under the terms of the Project Facility Management Agreement, and shall give written notice of such determination (including supporting computations in reasonable detail) to the Trustee, the Issuer and the Underwriter; if such determination is that the projected Project Facility occupancy for such Fiscal Year will not be sufficient to achieve the level of Project Revenues required under the terms of the Project Facility Management Agreement, the Company shall immediately give written notice thereof to SUNY and shall secure licenses from SUNY in accordance with the terms and conditions of the SUNY Agreement; (iii) obtain payment from SUNY of the then established license rates for the Project Facility with respect to the units licensed by SUNY as shall be necessary to achieve the level of Project Revenues required under Section 4.1 of the SUNY Agreement; (iv) take any and all action required to implement and enforce the SUNY Agreement; and (v) not consent to any amendment thereto or termination thereof without first obtaining the prior written consent of the Trustee and BAM.

The Company agrees and covenants with respect to the Project Facility Management Agreement to (i) perform all of the obligations of Owner under the Project Facility Management Agreement and enforce the timely payment, performance and observance of the covenants, conditions and terms thereof by SUNY as manager and the College; (ii) cause SUNY to transfer all Project Revenues to the Trustee in accordance with the Project Facility Management Agreement; (iii) take any and all action required to implement the Project Facility Management Agreement; and (iv) not consent to any amendment thereto or termination thereof without first obtaining the prior written consent of the Trustee. *(Section 6.12)*

### **Annual Budget**

On or before the date of issuance of the Series 2020 Bonds for the academic year commencing September 2020, and on or before the date that is sixty (60) days prior to the commencement of each academic year thereafter, the Company shall prepare or cause to be prepared an Annual Budget for such academic year and shall file a copy of such budget with the Trustee and the Underwriter. The Annual Budget of the Company shall set forth revenues and expenses and capital expenditures by category in reasonable detail and demonstrate compliance with the Debt Service Coverage Ratio covenant for the applicable Fiscal Years. As and when determined necessary or appropriate by the Company, the Annual Budget shall be amended and a copy of each revision shall be promptly filed with the Trustee and the Underwriter. *(Section 6.17)*

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

As security for the payment of all liabilities and the performance of all obligations of the Company pursuant to the Loan Agreement, the Company does continuously pledge, grant a security interest in and assign to the Issuer the Gross Revenues, together with the Company's right to receive and collect the Gross Revenues and the proceeds of the Gross Revenues.

The Company represents and warrants that no part of the Gross Revenues or any right to receive or collect the same or the proceeds thereof is subject to any Lien or assignment and that the Gross Revenues assigned pursuant to the Loan Agreement are legally available to provide security for the Company's performance under the Loan Agreement. The Company covenants

that, except in connection with the issuance of Additional Bonds pursuant to the Indenture, it shall not hereafter create or permit the creation of any Lien on or other commitment of or with respect to the Gross Revenues or the Project Facility.

The Company agrees to collect and transfer the Gross Revenues, as the same are due, to the Trustee on the last Business Day of each month for deposit to the Pledged Revenue Fund and to no other account. The Company shall provide a certificate of an Authorized Representative of the Company and the Annual Budget to the Trustee in accordance with Section 4.07 of the Indenture with respect to each transfer of Gross Revenues. The Company agrees that the Gross Revenues shall be used only for the purpose and in the manner provided in the Loan Agreement, or as provided in the Indenture.

The Company shall establish the Operating Account to be held separate and apart from all other accounts of the Company. The Company shall pay Operating Expenses from the Operating Account. The Company shall cause the depository of the Operating Account to enter into a written deposit account control agreement, which shall be satisfactory in form and substance to the Trustee, and pursuant to which the depository shall agree (i) that amounts on deposit therein constitute Pledged Revenues (as defined below) that the depository holds on deposit in the Operating Account for the Trustee for the benefit of the Owners of the Series 2020 Bonds, and (ii) to transfer the Pledged Revenues on deposit therein to the Trustee upon receipt from the Trustee of notice stating that delivery of such Pledged Revenues is required. Except for the Operating Account, the Company shall not create any other accounts or deposit any moneys with a financial institution. If invested, moneys in the Operating Account shall be invested in Permitted Investments. (*Section 6.20*)

### **Collection of Gross Revenues**

In the event that the Issuer notifies the Company that account debtors are to make payments directly to the Issuer or to the Trustee, such payments shall be made directly to the Issuer or the Trustee notwithstanding anything contained in this summarized section, but the Company shall continue to deliver to the Trustee for deposit in accordance with Section 4.07 of the Indenture any payments received by the Company with respect to the Gross Revenues. (*Section 6.21*)

### **Events of Default**

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

(i) Failure of the Company to pay any debt service payment that has become due and payable by the terms of the section of the Loan Agreement under the heading "Payment Provisions; Pledge of Loan Agreement" which results in a default in the due and punctual payment of the principal of, redemption premium, if any, or interest on any Bond;

(ii) Failure of the Company to pay any amount (except as set forth in paragraphs (i) and (vii) of this summarized section) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under the Loan Agreement, and

continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice from the Issuer, the Trustee, or the Holders of more than a majority in aggregate principal amount of the Series 2020 Bonds Outstanding, specifying the nature of such default;

(iii) Failure of the Company to observe and perform any covenant, condition or agreement under the Loan Agreement on its part to be performed (except as set forth in paragraphs (i), (ii) or (vii) of this summarized section) and (i) continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Issuer, the Trustee, or the Holders of more than a majority in aggregate principal amount of the Series 2020 Bonds Outstanding, or (ii) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, and the Company fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue, with reasonable diligence, its efforts to cure the same;

(iv) The Company shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) take any action for the purpose of effecting any of the foregoing, or (vii) be adjudicated a bankrupt or insolvent by any court;

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

(vi) Any representation or warranty made (i) by or on behalf of the Company in the application, commitment letter and related materials submitted to the Issuer or the initial purchaser(s) of the Series 2020 Bonds for approval of the Project or its financing, or (ii) by the Company in the Loan Agreement or in any of the other Financing Documents, or (iii) in the Bond Purchase Agreement, or (iv) any report, certificate, financial statement or other instrument furnished pursuant to the Loan Agreement or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made; or

(vii) An "Event of Default" caused by the Company under the Indenture or under any other Financing Document shall occur and be continuing. *(Section 7.1)*

## **Remedies on Default**

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

(i) The Trustee, as and to the extent provided in Articles VIII and XII of the Indenture, may cause all principal installments of debt service payments payable under the section of the Loan Agreement under the heading "Payment Provisions; Pledge of Loan Agreement" for the remainder of the term of the Loan Agreement to be immediately due and payable, whereupon the same, together with the accrued interest thereon, shall become immediately due and payable; *provided, however,* that, upon the occurrence of an Event of Default under paragraphs (d) or (e) of the section of the Loan Agreement under the heading "Events of Default", all principal installments of debt service payments payable under the section of the Loan Agreement under the heading "Payment Provisions; Pledge of Loan Agreement" for the remainder of the term of the Loan Agreement, together with the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Issuer, the Trustee, the Holders of the Series 2020 Bonds or any other Person being a condition to such acceleration;

(ii) The Issuer, with the prior written consent of the Trustee and BAM, or the Trustee with the consent of BAM may terminate the Loan Agreement. No such termination of the Loan Agreement shall relieve the Company of its liability and obligations under the Loan Agreement and such liability and obligations shall survive any such termination;

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

(iv) The Trustee, with the consent of BAM, may take any action permitted under the Indenture with respect to an Event of Default thereunder; and

(v) The Issuer, without the consent of the Trustee or any Bondholder, may proceed to enforce its Unassigned Rights by bringing an action for damages, injunction or specific performance and the Company appoints the Issuer its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish such conveyance.

In the event that the Company fails to make any debt service or other payment required in the section of the Loan Agreement under the heading "Payment Provisions; Pledge of Loan Agreement", the installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid.

No action taken pursuant to this summarized section (including termination of the Loan Agreement pursuant to this summarized section or by operation of law or otherwise) shall, except as expressly provided in the Loan Agreement, relieve the Company from its obligations hereunder, all of which shall survive any such action. (*Section 7.2*)

### **Remedies Cumulative**

The rights and remedies of the Issuer or the Trustee under the Loan Agreement shall be cumulative and shall not exclude any other rights and remedies of the Issuer or the Trustee allowed by law with respect to any default under the Loan Agreement. Failure by the Issuer or the Trustee to insist upon the strict performance of any of the covenants and agreements in the Loan Agreement set forth or to exercise any rights or remedies upon default by the Company under the Loan Agreement shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Company with all of the covenants and conditions of the Loan Agreement, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated, or of the right to recover possession of the Project Facility by reason thereof. (*Section 7.3*)

### **Options**

The Company is granted the option to make advance debt service payments for the deposit in the Bond Fund to effect the retirement of the Series 2020 Bonds in whole or the redemption in whole or in part of the Series 2020 Bonds, all in accordance with the terms of the Indenture; *provided, however*, that, no partial redemption of the Series 2020 Bonds may be effected through advance debt service payments under the Loan Agreement if there shall exist and be continuing an Event of Default. The Company shall exercise its option to make such advance debt service payments by delivering a written notice of an Authorized Representative of the Company to the Trustee in accordance with the Indenture, with a copy to the Issuer, setting forth (i) the amount of the advance debt service payment, (ii) the principal amount of Bonds Outstanding requested to be redeemed with such advance debt service payment (which principal amount shall be in such minimum amount or integral multiple of such amount as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Bonds are to be redeemed. Such advance debt service payment shall be paid to the Trustee in legal tender on or before the redemption date and shall be an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Series 2020 Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Issuer, the Bond Registrar, the Trustee and the Paying Agent in connection with such redemption. In the event the Series 2020 Bonds are to be redeemed in whole or otherwise retired, the Company shall further pay on or before such redemption date, in legal tender, to the Issuer, the Trustee, the Bond Registrar and the Paying Agent, as the case may be, all fees and expenses owed such party or any other party entitled thereto under the Loan Agreement or the Indenture together with all other amounts due and payable under the Loan Agreement and the other Financing Documents.



The Company shall have the option to terminate the Loan Agreement on any date during the term of the Loan Agreement by causing the redemption, purchase or defeasance in whole of all Outstanding Bonds in accordance with the terms set forth in the Indenture.

As a condition precedent to the termination of the Loan Agreement, pursuant to the paragraph immediately above, the Company shall pay to the Trustee, in consideration thereof, in legal tender, advance debt service payments, for deposit in the Bond Fund (if payment in full of the principal or the Redemption Price of, and interest on, all the Outstanding Bonds, and the interest thereon at maturity or upon earlier redemption has not yet been made) equal to the sum of the following:

(i) an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to redeem, purchase or defease the Outstanding Bonds in accordance with the provisions of the Indenture including, without limitation, the principal of or the Redemption Price (as the case may be) of, together with interest to maturity or redemption date (as the case may be) on, the Outstanding Bonds; and

(ii) expenses of redemption, the fees and expenses of the Issuer and the Trustee and all other amounts due and payable under the Loan Agreement or the Indenture on or before such date.

The Company shall not, at any time, assign or transfer its option to terminate the Loan Agreement as contained in this summarized section separate and apart from a permitted assignment of the Loan Agreement pursuant to the section of the Loan Agreement under the heading "Assignment" without the prior written consent of the Issuer and the Trustee. *(Section 8.1)*

### **Termination of Loan Agreement**

After full payment of the Series 2020 Bonds or provision for the payment in full thereof having been made in accordance with Section 7.01 of the Indenture and the payment of the fees and expenses of the Issuer, the Paying Agent, the Bond Registrar, BAM and the Trustee and all other amounts due and payable under the Loan Agreement or the Indenture, the Loan Agreement shall terminate, subject, however, to the survival of the obligations of the Company under the sections of the Loan Agreement under the headings "Indemnity" and "Compensation and Expenses of Trustee, Bond Registrar, Paying Agent and Issuer". *(Section 8.4)*

### **Assignment**

The Company may not at any time, except as otherwise permitted pursuant to the section of the Loan Agreement under the heading "Restrictions on Company", assign or transfer the Loan Agreement, without the prior written consent of the Issuer, BAM and the Trustee (which consents shall not be unreasonably withheld); provided, however, that, (1) the Company shall nevertheless remain liable to the Issuer for the payment of all debt service payments and for the full performance of all of the terms, covenants and conditions of the Loan Agreement and of any other Financing Document to which it shall be a party, (2) any assignee or transferee of the Company in whole of the Project Facility shall have assumed in writing and have agreed to keep and perform all of the terms of the Loan Agreement on the part of the Company to be kept and performed, shall be jointly

and severally liable with the Company for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel addressed to the Issuer and Trustee, such assignment or transfer shall not legally impair in any respect the obligations of the Company for the payment of all debt service payments nor for the full performance of all of the terms, covenants and conditions of the Loan Agreement or of any other Financing Document to which the Company shall be a party, nor impair or limit in any respect the obligations of any obligor under any other Financing Document, (4) shall utilize the Project Facility in compliance with the Act, (5) such assignment or transfer shall not violate any provision of the Loan Agreement, the Indenture or any other Financing Document, (6) such assignment or transfer shall in no way diminish or impair the Company's obligation to carry the insurance required under the section of the Loan Agreement under the heading "Insurance" and the Company shall furnish written evidence satisfactory to the Issuer and the Trustee that such insurance coverage shall in no manner be limited by reason of such assignment or transfer, and (7) each such assignment or transfer contains such other provisions as the Issuer or the Trustee may reasonably require. The Company shall furnish or cause to be furnished to the Issuer and the Trustee a copy of any such assignment or transfer in substantially final form at least thirty (30) days prior to the date of execution thereof.

Any consent by the Issuer, BAM or the Trustee to any act of assignment or transfer shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Company, or the successors or assigns of the Company, to obtain from the Issuer and the Trustee consent to any other or subsequent assignment or transfer, or as modifying or limiting the rights of the Issuer or the Trustee under the foregoing covenant by the Company. *(Section 9.3)*

## **Amendments**

The Loan Agreement may be amended only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture; *provided, however*, that, any amendment of the section of the Loan Agreement under the heading "Taxes, Assessments and Charges" shall not require the consent of the Trustee. *(Section 9.6)*

## **Inspection of Facility**

The Company will permit the Trustee, or its duly authorized agents, at all reasonable times during normal business hours upon written notice to enter upon the Project Facility and to examine and inspect the Project Facility and exercise their rights under the Loan Agreement, under the Indenture and under the other Financing Documents with respect to the Project Facility. *(Section 9.10)*

## SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST

*The following description of certain provisions of the Indenture is only a brief outline of some of the provisions thereof and does not purport to summarize or describe all of the provisions thereof. Reference is made to the Indenture for full and complete details of the provisions thereof.*

### **Delivery of Series 2020 Bonds**

(a) Upon the execution and delivery of the Indenture, the Issuer shall execute and deliver the Series 2020 Bonds to the Trustee and the Trustee shall authenticate the Series 2020 Bonds and deliver them upon receipt of the proceeds of the Series 2020 Bonds in accordance with the directions of the Issuer and the provisions of this summarized section.

(b) Prior to or simultaneously with the delivery by the Trustee of the Series 2020 Bonds there shall be filed with the Trustee the following:

(i) original executed counterparts of the Financing Documents;

(ii) a copy, duly certified by the Issuer, of the Bond Resolution authorizing the execution and delivery of the Financing Documents to which the Issuer is a party and the issuance, execution and delivery of the Series 2020 Bonds;

(iii) a certificate of the Issuer, dated as of the Closing Date, regarding the corporate existence of the Issuer; the due authorization, execution and delivery by the Issuer of each of the Issuer Documents; the absence of material litigation involving the Issuer; the absence of defaults by the Issuer; and such other matters as the Trustee, the Underwriter or Bond Counsel may reasonably request;

(iv) a certificate of the Company, dated as of the Closing Date, regarding the valid corporate existence of the Company; the due authorization, execution and delivery by the Company of the Company Documents; the absence of material litigation involving the Company; and the absence of defaults by the Company; and such other matters as the Issuer, the Trustee, the Underwriter or Bond Counsel may reasonably request;

(v) a certificate of the Trustee, dated as of the Closing Date, regarding the organization and existence of the Trustee; the due authorization, execution and delivery by the Trustee of the Indenture; the incumbency of officers of the Trustee authorized to execute, acknowledge and deliver the Indenture, and all other instruments necessary or proper in connection with the exercise by the Trustee of its duties under the Indenture; and the due authentication by the Trustee of the Series 2020 Bonds;

(vi) an opinion of counsel for the Issuer, dated as of the Closing Date, to the effect that the Issuer is a duly organized and existing not-for-profit local development corporation; and that each of the Financing Documents to which the Issuer is a party has been duly authorized by the Issuer, is in full force and effect and is valid and binding upon

the Issuer in accordance with its terms; and addressing such other matters as the Trustee, the Underwriter or Bond Counsel may reasonably request;

(vii) an opinion of counsel to the Trustee, dated as of the Closing Date, as to the valid existence of the Trustee, the due authorization, execution and delivery by the Trustee of the Indenture; and such other matters as the Issuer, the Underwriter or Bond Counsel may reasonably request;

(viii) an opinion or Opinions of Counsel to the Company, dated as of the Closing Date, as to the valid existence of the Company; the status of the Company as an organization described in Section 501(c)(3) of the Code; the due authorization, execution and delivery by the Company of the Financing Documents to which the Company is a party; the absence of material litigation involving the Company; and such other matters as the Issuer, the Underwriter or Bond Counsel may reasonably request;

(ix) an opinion of Bond Counsel, dated as of the Closing Date, to the effect that (A) the Issuer is duly authorized and entitled to issue the Series 2020 Bonds and (B) upon the execution, authentication and delivery thereof, the Series 2020 Bonds will be duly and validly issued and will constitute valid and binding special obligations of the Issuer;

(x) an authorization to the Trustee, signed by an Authorized Representative of the Issuer, to authenticate and deliver the Series 2020 Bonds to the purchaser or purchasers therein identified upon the terms specified therein;

(xi) notice from any Rating Agency rating the Series 2020 Bonds on the Closing Date, if any, of the rating(s) to be assigned the Series 2020 Bonds on the Closing Date;

(xii) UCC-1 financing statements relating to (i) the security interests granted pursuant to the Indenture to the Trustee and (ii) the security interests granted pursuant to the Loan Agreement and assigned to the Trustee pursuant to the Pledge and Assignment;

(xiii) a copy of the County Resolution;

(xiv) to the extent not previously provided, certificates for policies of insurance with the coverages required to be delivered to the Trustee by the Loan Agreement; and

(xv) such other documents as the Trustee, its counsel or Bond Counsel may reasonably require. (*Section 2.07*)

## **Additional Bonds**

(a) The Issuer may issue Additional Bonds hereunder from time to time on a pari passu basis with the Series 2020 Bonds issued under the Indenture for any of the purposes listed below:

(1) To pay the cost of completing the Project Facility or completing an addition to the Project Facility based on the original general design and scope of the Project Facility or such addition thereto set forth in the original plans and specifications therefor, with such changes as may have become necessary to carry out such original design, or to reimburse expenditures of the Company for any such costs;

(2) To pay the cost of Capital Additions or to reimburse expenditures of the Company for any such cost;

(3) To pay the cost of refunding through redemption of any Outstanding Bonds issued under the Indenture and subject to such redemption; or

(4) To pay the cost of any additional project approved by the Issuer.

(b) In any such event the Trustee shall, at the written request of the Issuer, authenticate the Additional Bonds and deliver them as specified in the request, but only upon receipt of:

(1) (A) a Supplemental Indenture setting forth the terms of the Additional Bonds and, for Additional Bonds described in subsection (a)(2) or (a)(4) above, describing the Capital Additions to become part of the Project Facility; and (B) a supplement to the Loan Agreement providing for additional Debt Service Payments to be made by the Company sufficient to cover the debt service due on the Additional Bonds;

(2) For Additional Bonds described in subsection (a)(1), (a)(2) or (a)(4) above, (A) a certificate signed by an Authorized Representative of the Company stating that the proceeds of the Additional Bonds plus other amounts, if any, available to the Company for the purpose will be sufficient to pay the cost thereof; and (B) payments and additional payments, if any, scheduled to be paid by the Company under the Loan Agreement will be adequate to satisfy all of the Debt Service Payments required to be made on the Bonds to remain Outstanding during the remaining life thereof; provided, however, such Additional Bonds shall not be issued to cure any deficiencies existing on the date of such certification in any funds required to be maintained under the Indenture;

(3) For Additional Bonds described in subsection (a)(1) above, (i) a certificate of the Company stating (A) the estimated cost of completion of the Project Facility or the addition thereto and (B) that all approvals required for completion of the Project Facility or addition thereto have been obtained, other than building permits for any portions of the Project Facility or such addition thereto which, based on consultations with the Company and contractor or other construction manager, will be obtained in due course so as not to interrupt or delay construction of the Project Facility or such addition thereto and other

than licenses or permits required for occupancy or operation of the Project Facility or such addition thereto upon its completion;

(4) for Additional Bonds described in subsection (a)(3) above, (A) a certificate of an Authorized Representative of the Company that notice of redemption of the Bonds to be refunded has been given or that provisions have been made therefor, and (B) a certificate of an Accountant stating that the proceeds of the Additional Bonds plus the other amounts, if any, stated to be available for the purpose, will be sufficient to accomplish the purpose of the refunding and to pay the cost of refunding, which shall be itemized in reasonable detail;

(5) for any Additional Bonds, a certified resolution of the Issuer (A) stating the purpose of the issue, (B) establishing the series of Additional Bonds to be issued and providing the terms and form of Additional Bonds thereof and directing the payments to be made into the funds established under the Indenture, (C) authorizing the execution and delivery of the Additional Bonds to be issued and (D) authorizing redemption of any previously issued Bonds which are to be refunded;

(6) for any Additional Bonds, a certificate of an Authorized Representative of the Company stating (A) that no Event of Default under the Indenture or under the Loan Agreement has occurred and is continuing (except, in the case of Additional Bonds described in subsection (a)(1) above, for an Event of Default, if any, resulting from non-completion of the Project Facility or an addition thereto) and (B) that the proceeds of the Additional Bonds plus other amounts, if any, stated to be available for that purpose will be sufficient to pay the costs for which the Additional Bonds are being issued, which shall be itemized in reasonable detail;

(7) for any Additional Bonds, a certified resolution of the board of directors of the Company (A) approving the issuance of the Additional Bonds and the terms thereof, (B) authorizing the execution of any required amendments or supplements to the Indenture and the Loan Agreement, (C) for Additional Bonds described in subsection (a)(1) or (2) above, approving plans and specifications for the Project Facility or an addition thereto, and (D) for Additional Bonds described in subsection (a)(3) above, authorizing redemption of the Bonds to be refunded;

(8) for any Additional Bonds, an opinion or opinions of Bond Counsel to the effect that (A) the purpose of the Additional Bonds is one for which Additional Bonds may be issued under this summarized section, (B) all conditions prescribed in the Indenture as precedent to the issuance of the Additional Bonds have been fulfilled, (C) the Additional Bonds have been validly authorized and executed and when authenticated and delivered pursuant to the request of the Issuer will be valid, legally binding, special obligations of the Issuer, and are entitled to the benefit and security of the Indenture, (D) all consents of any regulatory bodies required as a condition to the valid issuance of the Additional Bonds have been obtained and (E) issuance of such Additional Bonds will not adversely affect the tax status of any Outstanding Tax-Exempt Bonds issued by the Issuer for the benefit of the Company; and

(9) for Additional Bonds described in Subsection (a)(1), (a)(2) or (a)(4) above, an opinion of Independent Counsel to the Company reasonably acceptable to the Issuer. *(Section 2.13)*

### **Establishment of Funds and Accounts**

The following trust funds and accounts are established with the Trustee and shall be held, maintained and administered by the Trustee on behalf of the Issuer in accordance with the Indenture:

(a) Onondaga Civic Development Corporation Project Fund (Upstate Properties Development, Inc. Project), Series 2020 (the "Project Fund");

(b) Onondaga Civic Development Corporation Bond Fund (Upstate Properties Development, Inc. Project), Series 2020 (the "Bond Fund");

(c) Onondaga Civic Development Corporation Renewal Fund (Upstate Properties Development, Inc. Project), Series 2020 (the "Renewal Fund");

(d) Onondaga Civic Development Corporation Earnings Fund (Upstate Properties Development, Inc. Project), Series 2020 (the "Earnings Fund").

(e) Onondaga Civic Development Corporation Pledged Revenue Fund (Upstate Properties Development, Inc. Project), Series 2020 (the "Pledged Revenue Fund");

(f) Onondaga Civic Development Corporation Repair and Replacement Fund (Upstate Properties Development, Inc. Project), Series 2020 (the "Repair and Replacement Fund");

(g) Onondaga Civic Development Corporation Operation and Maintenance Fund (Upstate Properties Development, Inc. Project), Series 2020 (the "Operation and Maintenance Fund");

(h) Onondaga Civic Development Corporation Surplus Fund (Upstate Properties Development, Inc. Project), Series 2020 (the "Surplus Fund"). *(Section 4.01)*

### **Moneys to be Held in Trust**

(a) All moneys deposited with, paid to or received by the Trustee for the account of the Issuer shall be held by the Trustee, in trust, and shall be subject to the Lien of the Indenture and held for the security of the Holders until paid in full, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture; provided, however, that moneys which have been deposited with, paid to, or received by the Trustee (i) for the redemption of a portion of the Bonds, notice of the redemption of which has been given or (ii) for the payment of Bonds or interest thereon due and payable otherwise than by acceleration, notice of the acceleration of which has been given by declaration, shall be held in

trust for and subject to a Lien in favor of only the Holders of such Bonds so called for redemption or so due and payable.

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

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

A. the Gross Revenues (other than Net Proceeds of any insurance settlement or Condemnation award) immediately upon receipt;

B. investment earnings on the Pledged Revenue Fund; and

C. all amounts which are required by other provisions of the Indenture to be transferred to the Pledged Revenue Fund.

(ii) Bond Fund. The Trustee shall deposit into the Bond Fund all moneys received by the Trustee under and pursuant to any of the provisions of the Indenture or of the Loan Agreement or the Facility Management Agreement which are required to be or which are certified to the Trustee in writing by an Authorized Representative of the Company accompanied by directions that such moneys are to be paid into the Bond Fund;

(iii) Operation and Maintenance Fund. In accordance with the priority of payments set forth in the section of the Indenture under the heading "Pledged Revenue Fund", the Trustee shall transfer from the Pledged Revenue Fund into the Operation and Maintenance Fund an amount equal to the budgeted Operating Expenses for the next succeeding six (6) months as certified to the Trustee in writing by an Authorized Representative of the Company. Amounts equal to actual Operating Expenses in excess of the budgeted Operating Expenses for the next succeeding six (6) months may be transferred from the Surplus Fund into the Operation and Maintenance Fund on any date as certified to the Trustee in writing by an Authorized Representative of the Company. All amounts in the Operation and Maintenance Fund at the end of each Fiscal Year shall be transferred to the Surplus Fund promptly following receipt by the Trustee of a Certificate from an Authorized Representative of the Company that all Operating Expenses have been paid for such Fiscal Year.

(iv) Repair and Replacement Fund. In accordance with the priority of payments set forth in the section of the Indenture, the Trustee shall transfer to the Repair and Replacement Fund the Repair and Replacement Fund Requirement.

(v) Surplus Fund. In accordance with the priority of payments set forth in the section of the Indenture under the heading "Pledged Revenue Fund", the Trustee shall transfer all remaining amounts from the Pledged Revenue Fund into the Surplus Fund.

(vi) Renewal Fund. The Net Proceeds of any insurance settlement or Condemnation award received by the Trustee shall, upon receipt thereof, be deposited in the Renewal Fund. (*Section 4.03*)



## **Use of the Moneys in the Project Fund**

(a) Moneys in the Project Fund shall be applied and expended by the Trustee in accordance with the provisions of the Loan Agreement and particularly Section 2.4 thereof and this summarized section.

(b) The Trustee is authorized to disburse from the Project Fund the amount required for the payment of Project Costs and is directed to issue its checks (or, at the direction of the Company, make wire transfers) for each disbursement from the Project Fund, upon receipt of a requisition (in substantially the form attached to the Indenture as Exhibit B) submitted to the Trustee and signed by an Authorized Representative of the Company. The Trustee shall be entitled to rely on the correctness and accuracy of such requisition as well as the propriety of the signature thereon.

(c) The Trustee shall maintain adequate records pertaining to the Project Fund and all disbursements therefrom. Until the Project Fund has been fully expended, the Trustee shall furnish the Issuer and the Company with monthly statements showing all receipts and disbursements from the Project Fund since the date of the last statement.

(d) As soon as practicable (1) any balance remaining in the Project Fund, except for amounts the Company shall have directed the Trustee to retain for any item included within the Project Costs not then due and payable shall without further authorization be transferred to the Bond Fund and thereafter be used to pay maturing principal payments, including mandatory sinking fund payments on the Bonds in accordance with paragraph (b) of the section of the Indenture under the heading "Redemption Dates and Prices", in order of maturity.

(e) All net income or gain received from investments of amounts held in the Project Fund shall be transferred by the Trustee and deposited in the Earnings Fund.

(f) If an Event of Default under the Indenture shall have occurred and the Outstanding principal amount of the Bonds shall have been declared due and payable pursuant to Article VIII of the Indenture, the entire balance remaining in the Project Fund shall be transferred to the Bond Fund. *(Section 4.04)*

## **Payments into the Bond Fund; Use of Moneys in the Bond Fund**

There shall be deposited by the Trustee into the Bond Fund when and as received the following: (i) accrued interest, if any, as provided in the section of the Indenture under the heading "Application of Series 2020 Bond Proceeds and Allocation thereof", (ii) any and all payments received by the Trustee under paragraph (a) of the section of the Loan Agreement under the heading "Payment Provisions; Pledge of Loan Agreement" and paragraph (g) of section 4.1 of the Facility Management Agreement, (iii) the balance in the Project Fund, the Pledged Revenue Fund, the Surplus Fund, the Operation and Maintenance Fund, the Repair and Replacement Fund, the Renewal Fund and the Earnings Fund to the extent specified in the Indenture, (iv) the amount of net income or gain received from the investments of moneys in the Bond Fund and (v) all other

moneys received by the Trustee under and pursuant to any of the provisions of the Loan Agreement or the Indenture which by the terms of the Indenture or the Loan Agreement are required to be or which are accompanied by directions that such moneys are to be paid into the Bond Fund. Notwithstanding anything to the contrary contained in the Indenture, if on any Bond Payment Date or Redemption Date, there is not enough money in the Bond Fund to make all the required payments, the Trustee shall transfer sufficient money for such purpose first from the available amounts in the Surplus Fund, second from the Pledged Revenue Fund, third from the Repair and Replacement Fund, fourth from the Operation and Maintenance Fund, fifth from the Renewal Fund, sixth from the Earnings Fund and seventh from the Project Fund.

So long as there remain any Bonds Outstanding, moneys in the Bond Fund shall be used solely for the payment, when due, of Debt Service Payments on the Bonds or for the redemption of the Bonds as provided in the Indenture. *(Section 4.05 and 4.06)*

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

(a) The Net Proceeds resulting from any casualty or hazard insurance proceeds or Condemnation award with respect to the Project Facility deposited or delivered to the Trustee pursuant to the Loan Agreement shall be deposited in the Renewal Fund. The amounts in the Renewal Fund shall be subject to a security interest, Lien and charge in favor of the Trustee until disbursed as provided in this summarized section.

(b) In the event the Bonds shall be subject to redemption in whole or in part pursuant to the terms set forth in the Bonds or the Indenture, and the Company shall have so directed the Trustee in writing within ninety (90) days of the occurrence of such event, the Trustee shall transfer the amounts deposited in the Renewal Fund to the Bond Fund for the redemption of such Bonds.

If, on the other hand,

(i) such Bonds shall not be subject to optional redemption (whether by reason of such event or otherwise), or

(ii) such Bonds shall be subject to optional redemption (whether by reason of such event or otherwise) and the Company shall have failed to direct the Trustee, within ninety (90) days of the occurrence of a Loss Event, to transfer the amounts deposited in the Renewal Fund to the Bond Fund for redemption of such Bonds, or

(iii) the Company shall have notified the Trustee pursuant to the Loan Agreement of its intent to rebuild, replace, repair and restore the Project Facility in writing, the Trustee shall, in accordance with subsection (c) below, from time to time disburse the amounts on deposit in the Renewal Fund to the Company to pay costs of such rebuilding, replacement, repair and restoration.

(c) The Trustee is authorized to apply the amounts in the Renewal Fund to the payment (or reimbursement to the extent the same have been paid by or on behalf of the Company or the Issuer) of the costs required for the rebuilding, replacement, repair and restoration of the Project Facility upon written instructions from the Company. The Trustee is further authorized and

directed to issue its checks for each disbursement from the Renewal Fund upon a requisition submitted to the Trustee, signed by an Authorized Representative of the Company. Such requisition shall (i) state the requisition number, (ii) specify the nature of each item and certify the same to be correct and proper under this summarized section and the Loan Agreement, as the case may be, and that such item has been properly paid or incurred as a Project Costs, (iii) certify that none of the items for which the requisition is made has formed the basis for any disbursement theretofore made from such Renewal Fund, (iv) certify that the payee and amount stated with respect to each item in the requisition are correct and that such item is due and owing, (v) specify the name and address of the Person to whom payment is due or has been made, (vi) certify that no Event of Default shall exist and be continuing under the Indenture or the Loan Agreement or any other Financing Document, nor any condition, event or act which, with notice or lapse of time or both would constitute such an Event of Default, (vii) certify that such Authorized Representative of the Company has no knowledge of any vendor's lien, mechanic's lien or security interest which should be satisfied or discharged before the payment as requisitioned is made and which will not be discharged by such payment, and (viii) if the payment is a reimbursement to the Company for costs or expenses of the Company incurred by reason of work performed or supervised by officers, partners or employees of the Company or any affiliate of the Company, certify that such officers, partners or employees were specifically employed for such purpose and that the amount to be paid does not exceed the actual cost thereof to the Company. The Trustee shall be entitled to rely on such requisition. The Trustee shall keep and maintain adequate records pertaining to the Renewal Fund and all disbursements therefrom and shall furnish copies of same to the Issuer or the Company upon reasonable written request therefor.

(d) The date of completion of the restoration of the Project Facility shall be evidenced to the Issuer and the Trustee by a certificate of an Authorized Representative of the Company stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or will be paid with the final advance, (iii) that the Project Facility has been restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that all Property included as part of the Project Facility is subject to the Loan Agreement, and (v) that the restored Project Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (A) that it is given without prejudice to any rights of the Company against third parties that exist at the date of such certificate or which may subsequently come into being, (B) that it is given only for the purposes of this summarized section and the Loan Agreement, and (C) that no Person other than the Issuer or the Trustee may benefit therefrom. Such certificate shall be accompanied by (1) a certificate of occupancy, if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Project Facility for the purposes contemplated by the Loan Agreement; and (2) an Opinion of Counsel addressed to the Issuer and the Trustee to the effect that the Project Facility as restored is adequately described for such purposes in the Loan Agreement and the Indenture.

(e) All earnings on amounts on deposit in the Renewal Fund shall be retained in such Renewal Fund and shall be disbursed in accordance with the provisions of this summarized section.

(f) Any surplus remaining in the Renewal Fund after the completion of the rebuilding, replacement, repair and restoration of the Project Facility shall be transferred by the Trustee to the

Bond Fund for redemption of Bonds, the proceeds of which were used to acquire, construct and equip the Project Facility or any Capital Addition thereto. *(Section 4.07)*

### **Payments Into Earnings Fund; Application of Earnings Fund**

(a) All investment income or earnings on amounts held in the Project Fund, the Operation and Maintenance Fund, the Repair and Replacement Fund, the Surplus Fund and the Earnings Fund or any other special fund held with respect to the Bonds under any of the Financing Documents (other than the Renewal Fund, the Pledged Revenue Fund or the Bond Fund) shall be deposited upon receipt by the Trustee into the Earnings Fund. The Trustee shall keep separate accounts of all amounts deposited in the Earnings Fund to indicate the fund source of the income or earnings.

(b) Any amounts remaining in the Earnings Fund following such transfer shall be transferred to the funds, as specifically directed by the Company, which were the sources of the earnings deposited into the Earnings Fund. If an Event of Default under the Indenture shall have occurred and the outstanding principal amount of the Bonds shall have been declared due and payable, the entire balance remaining in the Earnings Fund shall be transferred to the Bond Fund and applied to redeem Bonds in accordance with paragraph (b) of the section of the Indenture under the heading "Redemption Dates and Prices". *(Section 4.08)*

### **Pledged Revenue Fund**

Except as otherwise provided in the Indenture, moneys in the Pledged Revenue Fund will be used as provided in this summarized section (or for payment of Debt Service Payments, when the other moneys in the Bond Fund are insufficient therefor). The Issuer authorizes and directs the Trustee to withdraw funds from the Pledged Revenue Fund on May 15 and November 15 of each year (or, if such day is not a Business Day, then the Business Day immediately preceding such date), commencing November 15, 2020, to effectuate all the transfers of funds contemplated by this summarized section in the following order of priority:

FIRST, amounts on deposit in the Pledged Revenue Fund shall next be transferred the Bond Fund, until there shall be on deposit therein amounts sufficient to fund the next succeeding Debt Service Payment attributable to principal and interest in accordance with the section of the Indenture under the heading "Use of Moneys in the Bond Fund";

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

THIRD, amounts on deposit in the Pledged Revenue Fund shall next be applied to make the required deposit to the Repair and Replacement Fund in an amount equal to the Repair and Replacement Fund Requirement.

The Trustee shall on the thirtieth (30<sup>th</sup>) day following the end of each Fiscal Year transfer all remaining amounts on deposit in the Pledged Revenue Fund to the Surplus Fund to be used in accordance with the section of the Indenture under the heading "Surplus Fund".

On the second Business Day preceding the thirtieth (30<sup>th</sup>) day following the end of each Fiscal Year, the Company shall deliver to the Trustee, pursuant to clause (iii) of paragraph (b) of the section of the Indenture under the heading "Moneys to be Held in Trust", a certificate of an Authorized Representative of the Company setting forth the amount to be transferred to the Operation and Maintenance Fund, including the proper account information and wiring instructions as necessary for the Trustee to make payment of amounts required under this summarized section to the Operating Account. *(Section 4.10)*

### **Repair and Replacement Fund**

(a) There shall be deposited into the Repair and Replacement Fund as and when received and in an amount equal to at least the Repair and Replacement Fund Requirement, on the first Business Day of each month in accordance with the provisions hereof and the Loan Agreement (a) all moneys deposited into the Repair and Replacement Fund pursuant to the Loan Agreement or the Indenture and (b) all other moneys received by the Trustee when accompanied by directions not inconsistent with the Loan Agreement or the Indenture that such moneys are to be paid into the Repair and Replacement Fund.

(b) Moneys in the Repair and Replacement Fund may be used (i) for the purpose of constructing or acquiring replacements of real or personal property that have become worn out, unusable or otherwise obsolete; (ii) for the purpose of making Capital Additions to the Project Facility; (iii) for the purpose of making renewals, betterments or other expenditures required to maintain the Project Facility; (iv) for the purpose of reimbursing the Company for amounts theretofore expended by the Company for the foregoing purposes, in each case under the foregoing clauses (i) through (iii) upon presentation to the Trustee of a requisition in a form substantially similar to the form attached to the Indenture as Exhibit B to the Indenture, accompanied by a resolution of the Company authorizing such expenditure; or (v) for the payment of Debt Service Payments when the moneys in the Bond Fund, the Surplus Fund and the Pledged Revenue Fund are insufficient therefor. *(Section 4.11)*

### **Operation and Maintenance Fund**

Moneys in the Operation and Maintenance Fund may be used to pay Operating Expenses (or for the payment of Debt Service Payments when the moneys in the Bond Fund, the Surplus Fund, the Pledged Revenue Fund and the Repair and Replacement Fund in that order of priority are insufficient therefor). Immediately after the Trustee makes transfers set forth in the section of the Indenture under the heading "Pledged Revenue Fund", the Trustee shall transfer an amount equal to the lesser of the next succeeding six (6) months' Operating Expenses as set forth in the Annual Budget for the Fiscal Year or the amount on deposit in the Operation and Maintenance Fund to the Operating Account. Moneys in the Operating Account shall be used as provided in paragraph (d) of the section of the Loan Agreement under the heading "Pledge of Gross Revenues; Application of Gross Revenues; Operating Account". *(Section 4.12)*

## **Surplus Fund**

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

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

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

THIRD, amounts on deposit in the Surplus Fund shall be transferred to the Repair and Replacement Fund to make any required payment to the Repair and Replacement Fund;

FOURTH, amounts on deposit in the Surplus Fund shall be transferred to the Bond Fund and used for the redemption of Bonds in accordance with the Indenture; and

FIFTH, amounts on deposit in the Surplus Fund in excess of \$10,000 may be withdrawn and used by the Company for any lawful purpose annually upon receipt by the Trustee of the annual audited financial statements of the Company and a certificate of the Company required by the section of the Loan Agreement under the heading "Reporting Requirements; Access to Records" provided that (i) no Event of Default has occurred and is continuing and (ii) the Company and its auditors have certified that the Debt Service Coverage Ratio required by paragraph (a) of the section of the Loan Agreement under the heading "Financial Covenants; No Indebtedness Secured by Project or Gross Revenues" has been met and will be maintained after such release. *(Section 4.13)*

## **Investment of Moneys**

(a) Moneys held in any fund established pursuant to the section of the Indenture under the heading "Establishment of Funds and Accounts" (other than the Bond Fund) shall be invested and reinvested by the Trustee in Permitted Investments, pursuant to direction by the Authorized Representative of the Company. Moneys held in the Bond Fund shall be invested and reinvested, pursuant to direction by the Authorized Representative of the Company, only in Governmental Obligations maturing as needed. The investment direction given by the Authorized Representative of the Company may be initially written or oral, but if oral shall be promptly confirmed in writing and upon which direction the Trustee may rely without further inquiry. Such investments shall mature in such amounts and have maturity dates or be subject to redemption at the option of the Trustee on or prior to the date on which the amounts invested therein will be needed for the purposes of such funds. The Trustee may at any time sell or otherwise reduce to cash a sufficient amount of such investments whenever the cash balance in such funds is insufficient for the purposes thereof. Any such investments shall be held by or under control of the Trustee and shall be deemed at all times a part of the fund for which such moneys are invested, and the interest accruing thereon and any profit realized from such investments shall be credited to and held in, and any loss shall be charged, (i) with respect to the Bond Fund or the Renewal Fund, to such fund, and (ii) with respect to the Project Fund, the Pledged Revenue Fund, the Operation and

Maintenance Fund, the Repair and Replacement Fund, the Surplus Fund, the Earnings Fund and any other special fund held with respect to the Bonds, to the Earnings Fund. All investments under the Indenture shall be registered in the name of the Trustee, as Trustee under the Indenture.

(b) In the event that the Trustee shall not have duly received a direction for investment for any moneys in any fund under the Indenture by 11:00 a.m. on the Business Day on which such moneys are to be invested or re-invested, the Trustee may invest such moneys as follows: (i) with respect to moneys credited to the Bond Fund in Governmental Obligations, and (ii) with respect to moneys credited to all other funds, money market funds rated "A-1" (or its equivalent) by a Rating Agency; provided, however, that the Trustee shall have no obligation to invest any moneys pursuant to this paragraph (b). *(Section 4.14)*

### **Payment to Company Upon Payment of Bonds**

Except as otherwise specifically provided in the Indenture, after payment in full of (1) the principal of, premium, if any, and interest on all the Bonds (or after provision for the payment thereof has been made in accordance with the Indenture), (2) the fees, charges and expenses of the Trustee and Paying Agent, and (3) all other amounts required to be paid under the Indenture and the Loan Agreement, all amounts remaining in any fund established pursuant to the section of the Indenture under the heading "Establishment of Funds and Accounts" or otherwise held by the Trustee and by any additional Paying Agent for the account of the Issuer or the Company under the Indenture and under the Loan Agreement shall be paid to the Company. *(Section 4.15)*

### **Payments Due on Other Than Business Days**

In any case where a Bond Payment Date shall not be a Business Day, then payment of the principal of, premium, if any, and interest on the Bonds need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date due and no interest shall accrue for the period after such date. *(Section 5.13)*

### **Priority Rights of Trustee**

The rights and privileges of the Company set forth in the Loan Agreement are specifically made subject and subordinate to the rights and privileges under the Financing Documents of the Trustee and the Holders of the Bonds. *(Section 6.01)*

### **Defeasance of Bonds**

(a) Any Outstanding Bond shall, prior to the maturity or Redemption Date thereof, be deemed to have been paid within the meaning of, and with the effect expressed in, paragraph (a) of the section of the Indenture under the heading "Discharge of Lien" if (i) there shall have been irrevocably deposited with the Trustee sufficient Defeasance Obligations, in accordance with paragraph (b) of this summarized section which will, without further investment, be sufficient, together with other amounts held for such payment, to pay the principal of the Bonds when due or to redeem the Bonds at the Redemption Price, if any, specified in the section of the Indenture under the heading "Redemption Dates and Prices", (ii) in the event such Bonds are to be redeemed prior

to maturity in accordance with the section of the Indenture under the heading "Redemption Dates and Prices", all action required by the provisions of the Indenture to redeem the Bonds shall have been taken or provided for to the satisfaction of the Trustee, and notice thereof in accordance with the section of the Indenture under the heading "Notice of Redemption" shall have been duly given or provisions satisfactory to the Trustee shall have been made for the giving of such notice, (iii) provision shall have been made for the payment of all fees and expenses of the Trustee and of any additional Paying Agents with respect to the Bonds, (iv) the Issuer shall have been reimbursed for all of its expenses under the Financing Documents and (v) all other payments required to be made under the Loan Agreement and the Indenture with respect to the Bonds shall have been made or provided for. At such time as a Bond shall be deemed to be paid under the Indenture, as aforesaid, such Bond shall no longer be secured by or entitled to the benefit of the Indenture, except for the purposes of any such payment from such moneys or Defeasance Obligations.

(b) For the purposes of clause (i) of paragraph (a) of this summarized section the Trustee shall be deemed to hold sufficient moneys to pay the principal of an Outstanding Bond not then due or to redeem Outstanding Bonds prior to the maturity thereof only if there shall be on deposit with the Trustee for such purpose Defeasance Obligations maturing or redeemable at the option of the holder thereof not later than (i) the maturity date of such Bonds, or (ii) the first date following the date on which such Bonds are to be redeemed pursuant to the Indenture (whichever may first occur), or both cash and such Defeasance Obligations, in an amount which, together with income to be earned on such Defeasance Obligations (without reinvestment) prior to such maturity date or Redemption Date, equals the principal due on such Bond, together with the premium, if any, due thereon and all interest thereon which has accrued and which will accrue to such maturity date or Redemption Date. The Trustee may, at the expense of the Company, obtain a certificate from an Accountant as to whether the cash or Defeasance Obligations held by the Trustee meet the requirements of this paragraph (b).

(c) Upon the defeasance of all Outstanding Bonds in accordance with this summarized section, the Trustee shall hold in trust, for the benefit of the Holders of such Bonds, all such moneys and/or Defeasance Obligations and shall make no other or different investment of such moneys and/or Defeasance Obligations and shall apply the proceeds thereof and the income therefrom only to the payment of such Bonds. (*Section 7.02*)

## **Events of Default**

The following shall be "Events of Default" under the Indenture, and the terms "Event of Default" or "Default" shall mean, when they are used in the Indenture, any one or more of the following events:

(a) A default in the due and punctual payment of the interest on any Bond, irrespective of notice; or

(b) A default in the due and punctual payment of the principal or Redemption Price of any Bond whether at the stated maturity thereof, upon proceedings for redemption thereof, or upon the maturity thereof by declaration or otherwise; or



(c) (i) Subject to clause (ii) below, the failure by the Issuer to observe and perform any covenant, condition or agreement under the Indenture on its part to be observed or performed (except obligations referred to in paragraphs (a) and (b) immediately above) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Issuer and the Company by the Trustee or by the Holders of not less than fifty-one percent (51%) or more in aggregate principal amount of the Bonds then Outstanding;

(ii) If the covenant, condition, or agreement which the Issuer has failed to observe or perform is of such a nature that it cannot reasonably be fully cured within such thirty (30) days, the Issuer shall not be in default if the Issuer commences a cure within such thirty (30) days and thereafter diligently proceeds with all action required to complete the cure, and, in any event, completes such cure within sixty (60) days of such written notice from the Trustee or the Holders of not less than fifty-one percent (51%) or more in aggregate principal amount of the Bonds then Outstanding, unless the Trustee or the Holders of not less than fifty-one percent (51%) or more aggregate principal amount of the Bonds then Outstanding shall give their written consent to a longer period; or

(d) The occurrence and continuance of an "Event of Default" under the Loan Agreement. *(Section 8.01)*

### **Acceleration**

(a) Upon the occurrence and continuance of an Event of Default under the section of the Indenture under the heading "Events of Default", the Trustee may, and upon the written request of the Holders of not less than fifty-one percent (51%) or more in aggregate principal amount of the Bonds then Outstanding shall, by written notice delivered to the Issuer and the Company declare all Bonds Outstanding immediately due and payable, and such Bonds shall become immediately due and payable, anything in the Bonds or in the Indenture to the contrary notwithstanding.

(b) Upon the acceleration, by declaration or otherwise, of the Bonds, the Trustee shall exercise its option under paragraph (a) of the section of the Loan Agreement under the heading "Remedies on Default" to declare all unpaid installments payable by the Company under the section of the Loan Agreement under the heading "Payment Provisions; Pledge of Loan Agreement" to be immediately due and payable. *(Section 8.02)*

### **Enforcement of Remedies**

(a) In the event the Bonds are declared immediately due and payable, the Trustee may, and upon the written request of the Holders as set forth in paragraph (d) of this summarized section shall, proceed forthwith to protect and enforce its rights and the rights of the Holders under the Act, the Bonds, the Loan Agreement and the Indenture by such suits, actions or proceedings as the Trustee, being advised by counsel, shall deem necessary or expedient. Upon the occurrence and continuance of any Event of Default, and upon being provided with the security and indemnity if so required pursuant to clause (xiv) of paragraph (b) of the section of the Indenture under the heading "Appointment of Trustee and Acceptance of Duties", the Trustee shall exercise such of

the rights and powers vested in the Trustee by the Indenture and use the same degree of care and skill in their exercise as a prudent man would exercise or use in the circumstances in the conduct of his own affairs. In considering what actions are or are not prudent in the circumstances the Trustee shall consider whether (i) to take such action as may be necessary or proper to sequester the rents and income of the Project Facility or any portion thereof, (ii) to procure from the Issuer or the Company an assignment of rents and/or a consent to enter into possession of the Project Facility or any portion thereof and to collect rents therefrom, (iii) to apply to the court for the appointment of a receiver of the rents and income of the Project Facility or any portion thereof, (iv) to declare due and payable forthwith any principal amount remaining due and unpaid and commence an action of foreclosure, (v) to apply the moneys received as rents and income from the Project Facility or any portion thereof as well as moneys received by the Trustee from any receiver appointed for the Project Facility or any portion thereof in his discretion, to the maintenance and operation of the Project Facility or any portion thereof, the payment of taxes, water rents and assessments levied thereon and any arrears thereof, to the payment of underlying Liens and to the creation and maintenance of a reserve or sinking fund, and (vi) to take any other remedy allowed under any of the other Financing Documents.

(b) The Trustee may sue for, enforce payment of and receive any amounts due or becoming due from the Issuer or the Company for the payment of the principal, premium, if any, and interest on the Outstanding Bonds under any of the provisions of the Indenture, the Bonds or the Loan Agreement without prejudice to any other right or remedy of the Trustee or of the Holders.

(c) Notwithstanding anything to the contrary contained in the foregoing paragraph (a), upon the occurrence and continuance of any Event of Default the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of, premium, if any, on and interest on the Bonds then Outstanding and to enforce and compel the performance of the duties and obligations of the Issuer and the Company under the Financing Documents. In addition, the Trustee may, without notice to the Issuer or the Company, exercise any and all remedies afforded the Issuer under Article VII of the Loan Agreement in its name or the name of the Issuer without the necessity of joining the Issuer.

(d) Regardless of the happening of an Event of Default, the Trustee, if requested in writing by the Holders of not less than fifty-one percent (51%) or more in aggregate principal amount of the Bonds then Outstanding may, and if provided with the security and indemnity required by clause (xiv) of paragraph (b) of the section of the Indenture under the heading "Appointment of Trustee and Acceptance of Duties" shall, institute and maintain such suits and proceedings as advised by such Holders shall be necessary or expedient to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of the Indenture or of any resolution authorizing the Bonds, or to preserve or protect the interests of the Holders; provided that such request is in accordance with law and the provisions of the Indenture and, in the sole judgment of the Trustee, is not unduly prejudicial to the interests of the Holders not making such request. (*Section 8.03*)

## **Application of Moneys**

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

(b) All moneys in the Bond Fund following the occurrence of an Event of Default shall be applied to the payment of the reasonable fees and expenses of the Issuer and the Trustee and then:

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

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

SECOND - To the payment of the unpaid principal or Redemption Price of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of the Indenture), in order of their due dates, with interest on such Bonds, at the rate or rates expressed thereon, from the respective dates upon which such Bonds became due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, to the Persons entitled thereto without any discrimination or preference.

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

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

(iii) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of the Indenture then, subject to the provisions of clause (ii) of paragraph (b) of this summarized section in the event that the principal of all the Bonds shall later become due by declaration or otherwise, the moneys shall be applied in accordance with the provisions of clause (i) of paragraph (b) of this summarized section.

(c) Whenever moneys are to be applied by the Trustee pursuant to the provisions of this summarized section, such moneys shall be applied within five (5) Business Days of the Trustee's receipt of such moneys. On the date of a declaration of an acceleration of the Bonds, pursuant to paragraph (a) of the section of the Indenture under the heading "Acceleration", interest on the amount of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the application of any such moneys and of the fixing of any such date. The Trustee shall not be required to make payment to the Holder of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid. *(Section 8.04)*

### **Remedies Vested in Trustee**

All rights of action (including the right to file proof of claims) under the Indenture or the Loan Agreement or under the Bonds may be enforced by the Trustee without the possession of the Bonds or the production thereof in any trial or other proceedings relating thereto. Any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiff or defendant the Holders. Subject to the provisions of the section of the Indenture under the heading "Application of Moneys", any recovery of judgment shall be for the equal benefit of the Holders of the Outstanding Bonds. *(Section 8.05)*

### **Majority Bondholders Control Proceedings**

If an Event of Default shall have occurred and be continuing, notwithstanding anything in the Indenture to the contrary, the Holders of not less than fifty-one percent (51%) or more in aggregate principal amount of the Bonds then Outstanding shall have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting any proceeding to be taken in connection with the enforcement of the terms and conditions of the Indenture or for the appointment of a receiver or any other proceedings under the Indenture, provided that the Trustee is provided with the security and indemnity set forth in clause (xiv) of paragraph (b) of the section of the Indenture under the heading "Appointment of Trustee and Acceptance of Duties" and that such direction is in accordance with law and the provisions of the Indenture and, in the sole judgment of the Trustee, is not unduly prejudicial to the interests of Bondholders not joining in such direction, and provided further, that nothing in this summarized section shall impair the right of the Trustee in its discretion to take any other action under the Indenture which it may deem proper and which is not inconsistent with such direction by Bondholders. *(Section 8.07)*

### **Individual Holder Action Restricted**

(a) No Holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Indenture or for the execution of any trust under the Indenture or for any remedy under the Indenture unless:

(i) an Event of Default has occurred of which the Trustee has been notified as provided in clause (ix) of paragraph (b) of the section of the Indenture under the heading

"Appointment of Trustee and Acceptance of Duties" or of which by said Section the Trustee is deemed to have notice, and

(ii) the Holders of not less than fifty-one percent (51%) or more in aggregate principal amount of the Bonds then Outstanding shall have made written request to the Trustee to proceed to exercise the powers granted in the Indenture or to institute such action, suit or proceeding in its own name, and

(iii) such Holders shall have offered the Trustee indemnity as provided in clause (xiv) of paragraph (b) of the section of the Indenture under the heading "Appointment of Trustee and Acceptance of Duties", and

(iv) the Trustee shall have failed or refused to exercise the powers granted in the Indenture or to institute such action, suit or proceedings in its own name for a period of sixty (60) days after receipt by it of such request and offer of indemnity.

(b) No one or more Holders of Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the security of the Indenture or to enforce any right under the Indenture except in the manner provided in the Indenture and for the equal benefit of the Holders of all Bonds Outstanding.

(c) Nothing contained in the Indenture shall affect or impair, or be construed to affect or impair, the right of the Holder of any Bond (i) to receive payment of the principal of or premium, if any, or interest on such Bond on or after the due date thereof, or (ii) to institute suit for the enforcement of any such payment on or after such due date; provided, however, no Holder of any Bond may institute or prosecute any such suit or enter judgment therein if, and to the extent that, the Company or prosecution of such suit or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the Lien of the Indenture on the Trust Estate for the equal and ratable benefit of all Holders of Bonds. *(Section 8.08)*

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

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

(i) In connection with the issuance of Additional Bonds, to set forth such matters as are specifically required or permitted under the Indenture;

(ii) To cure any ambiguity or formal defect or omission in the Indenture;

(iii) To grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

- (iv) To add to the covenants and agreements of the Issuer in the Indenture, other covenants and agreements to be observed by the Issuer;
- (v) To more precisely identify the Trust Estate;
- (vi) To subject to the Lien of the Indenture additional revenue, receipts, Property or collateral;
- (vii) To evidence the appointment of a successor Trustee;
- (viii) To preserve the tax-exempt status of the Bonds; or
- (ix) To effect any other change in the Indenture which, in the judgment of the Trustee based on an opinion of Independent Counsel, is not to the prejudice of the Trustee or the Holders.

(b) The Trustee may rely upon an opinion of Independent Counsel as conclusive evidence that any such Supplemental Indenture complies with the foregoing conditions and provisions. (*Section 10.01*)

### **Supplemental Indentures Requiring Consent of Holders**

(a) Except as provided in the section of the Indenture under the heading "Supplemental Indentures Not Requiring Consent of Holders", the Holders of not less than fifty-one percent (51%) or more in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution by the Issuer and the Trustee of such Supplemental Indentures as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in the Indenture or in any Supplemental Indenture or in the Bonds; provided, however, that nothing contained in this summarized section shall permit:

- (i) a change in the terms of redemption or maturity of the principal or the time of payment of interest on any Outstanding Bond or a reduction in the principal amount of or premium, if any, on any Outstanding Bond or the rate of interest thereon, without the consent of the Holder of such Bond; or
- (ii) the creation of a Lien upon the Trust Estate ranking prior to or on a parity with the Lien created by the Indenture, without the consent of the Holders of all Outstanding Bonds; or
- (iii) the creation of a preference or priority of any Bond or Bonds over any other Bond or Bonds, without the consent of the Holders of all Outstanding Bonds; or
- (iv) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Indenture, without the consent of the Holders of all Outstanding Bonds.

(b) If at any time the Issuer shall request the Trustee to enter into a Supplemental Indenture for any of the purposes of paragraph (a) of this summarized section, the Trustee, upon being satisfactorily indemnified with respect to expenses, shall cause notice of the proposed execution of such Supplemental Indenture to be sent to each Holder at the address of such Holder appearing on the bond register; provided, however, that the failure to give such notice or any defect therein shall not affect the validity of any proceeding taken pursuant to the Indenture. Such notice shall briefly summarize the contents of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Office of the Trustee for inspection by the Holders.

(c) If, within such period after the first mailing of the notice required by paragraph (b) of this summarized section as the Issuer shall prescribe, with the approval of the Trustee, the Issuer shall deliver to the Trustee an instrument or instruments executed by the Holders of not less than fifty-one percent (51%) or more in aggregate principal amount of the Bonds then Outstanding referring to the proposed Supplemental Indenture as described in such notice and consenting to and approving the execution thereof, the Trustee shall execute such Supplemental Indenture.

(d) If the Holders of not less than fifty-one percent (51%) or more in aggregate principal amount of the Bonds then Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as provided in the Indenture, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein or in any manner to question the propriety of the execution thereof or enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

(e) The Trustee may rely upon an opinion of Independent Counsel as conclusive evidence that (i) any Supplemental Indenture entered into by the Issuer and the Trustee and (ii) the evidence of requisite consent of the Holders thereto, comply with the provisions of this summarized section.

(f) The Trustee shall not be required to execute a Supplemental Indenture or amendment if such Supplemental Indenture or amendment adversely affects its duties, rights or immunities. (*Section 10.02*)

### **Amendments to Loan Agreement**

(a) Without the consent of or notice to the Holders, the Issuer and the Company may enter into, and the Trustee may consent to, any amendment, change or modification of the Loan Agreement as may be required (i) by the provisions thereof or of the Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission therein, (iii) for the purpose of issuing Additional Bonds under the section of the Indenture under the heading "Additional Bonds", (iv) in connection with the description of the Project Facility, (v) in order to preserve the tax-exempt status of the Bonds or (vi) in connection with any other change therein, which, in the sole judgment of the Trustee based on an opinion of Independent Counsel, does not adversely affect the interests of the Trustee or the Holders.

(b) Except for amendments, changes or modifications as provided in paragraph (a) of this summarized section, neither the Issuer nor the Trustee shall consent to any amendment, change or modification of the Loan Agreement without notice thereof being given to the Holders in the manner provided in the section of the Indenture under the heading "Supplemental Indentures Requiring Consent of Holders" and the written approval or consent of the Holders of not less than fifty-one percent (51%) or more in aggregate principal amount of the Bonds then Outstanding procured and given in the manner set forth in the section of the Indenture under the heading "Supplemental Indentures Requiring Consent of Holders"; provided, however, that no such amendment shall be permitted which changes the terms of payment thereunder without the consent of the Holders of all Outstanding Bonds.

(c) The Trustee may rely on an opinion of Independent Counsel as conclusive evidence that any such amendment, change or modification and the evidence of requisite Holder consent comply with the requirements of this summarized section. (*Section 11.01*)

### **Provisions Relating to Bond Insurance**

The following covenants and provisions in this summarized section shall remain outstanding for so long as BAM is not in default and is providing the Policy for the benefit of the Series 2020 Bonds or is owed any amounts in connection therewith.

(a) Defeasance of Insured Obligations. At least three (3) Business Days prior to any defeasance with respect to the Insured Obligations, the Issuer shall deliver to BAM draft copies of an escrow agreement, an opinion of bond counsel regarding the validity and enforceability of the escrow agreement and the defeasance of the Insured Obligations, a verification report (a "Verification Report") prepared by a nationally recognized independent financial analyst or firm of certified public accountants regarding the sufficiency of the escrow fund. Such opinion and Verification Report shall be addressed to BAM and shall be in form and substance satisfactory to BAM. In addition, the escrow agreement shall provide that:

(i) Any substitution of securities following the execution and delivery of the escrow agreement shall require the delivery of a Verification Report, an opinion of bond counsel that such substitution will not adversely affect the exclusion (if interest on the Insured Obligations is excludable) from gross income of the holders of the Insured Obligations of the interest on the Insured Obligations for federal income tax purposes and the prior written consent of BAM, which consent will not be unreasonably withheld.

(ii) The Issuer will not exercise any prior optional redemption of Insured Obligations secured by the escrow agreement or any other redemption other than mandatory sinking fund redemptions unless (i) the right to make any such redemption has been expressly reserved in the escrow agreement and such reservation has been disclosed in detail in the official statement for the refunding bonds, and (ii) as a condition to any such redemption there shall be provided to BAM a Verification Report as to the sufficiency of escrow receipts without reinvestment to meet the escrow requirements remaining following any such redemption.



(iii) The Issuer shall not amend the escrow agreement or enter into a forward purchase agreement or other agreement with respect to rights in the escrow without the prior written consent of BAM.

(b) Trustee and Paying Agent.

(i) BAM shall receive prior written notice of any name change of the Trustee or, if applicable, the Paying Agent for the Insured Obligations or the resignation or removal of the Trustee or, if applicable, the Paying Agent. Any Trustee for the Insured Obligations must be (A) a national banking association that is supervised by the Office of the Comptroller of the Currency and has at least \$250 million of assets, (B) a state-chartered commercial bank that is a member of the Federal Reserve System and has at least \$1 billion of assets, or (C) otherwise approved by BAM in writing.

(ii) No removal, resignation or termination of the Trustee for the Insured Obligations or, if applicable, the Paying Agent shall take effect until a successor, meeting the requirements above or acceptable to BAM, shall be qualified and appointed.

(c) Amendments, Supplements and Consents. BAM's prior written consent is required for all amendments and supplements to the Financing Documents, with the exceptions noted below. The Company shall send copies of any such amendments or supplements to BAM and the rating agencies which have assigned a rating to the Insured Obligations.

(i) *Consent of BAM.* Any amendments or supplements to the Financing Documents shall require the prior written consent of BAM with the exception of the following amendments or supplements:

(A) To cure any ambiguity or formal defect or omissions or to correct any inconsistent provisions in the transaction documents or in any supplement thereto, or

(B) To grant or confer upon the Holders of the Insured Obligations any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Holders of the Insured Obligations, or

(C) To add to the conditions, limitations and restrictions on the issuance of bonds or other obligations under the provisions of the Financing Documents other conditions, limitations and restrictions thereafter to be observed, or

(D) To add to the covenants and agreements of the Issuer and the Company in the Financing Documents other covenants and agreements thereafter to be observed by the Issuer and the Company or to surrender any right or power therein reserved to or conferred upon the Issuer and the Company.

(E) To issue additional parity debt in accordance with the requirements set forth in the Financing Documents (unless otherwise specified in the Indenture).

(ii) *Consent of BAM in Addition to Bondholder Consent.* Any amendment, supplement, modification to, or waiver of, any of the Financing Documents that requires the consent of Holders of the Insured Obligations or adversely affects the rights or interests of BAM shall be subject to the prior written consent of BAM.

(iii) *Insolvency.* Any reorganization or liquidation plan with respect to the Company must be acceptable to BAM. The Trustee and each owner of the Insured Obligations appoint BAM as their agent and attorney-in-fact with respect to the Insured Obligations and agree that BAM may at any time during the continuation of any proceeding by or against the Issuer or Company under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an “Insolvency Proceeding”) direct all matters relating to such Insolvency Proceeding, including without limitation, (A) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a “Claim”), (B) the direction of any appeal of any order relating to any Claim, (C) the posting of any surety, supersedeas or performance bond pending any such appeal, and (D) the right to vote to accept or reject any plan of adjustment. In addition, the Trustee and each owner of the Insured Obligations delegate and assign to BAM, to the fullest extent permitted by law, the rights of the Trustee and each owner of the Insured Obligations with respect to the Insured Obligations in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.

(iv) *Control by BAM Upon Default.* Anything in the Financing Documents to the contrary notwithstanding, upon the occurrence and continuance of a default or an Event of Default, BAM shall be entitled to control and direct the enforcement of all rights and remedies granted to the Holders of the Insured Obligations or the Trustee or Paying Agent for the benefit of the Holders of the Insured Obligations under any Financing Document. No default or Event of Default may be waived without BAM’s written consent.

(v) *BAM as Owner.* Upon the occurrence and continuance of a default or an Event of Default, BAM shall be deemed to be the sole owner of the Insured Obligations for all purposes under the Financing Documents, including, without limitations, for purposes of exercising remedies and approving amendments.

(vi) *Consent of BAM for acceleration.* BAM’s prior written consent is required as a condition precedent to and in all instances of acceleration of the Insured Obligations.

(vii) *Grace Period for Payment Defaults.* No grace period shall be permitted for payment defaults on the Insured Obligations. No grace period for a covenant default shall exceed 30 days without the prior written consent of BAM.

(viii) *Special Provisions for Insurer Default.* If an Insurer Default (as defined below) shall occur and be continuing, then, notwithstanding anything in paragraphs (c)(i)-(v) of this summarized section above to the contrary, (1) if at any time prior to or following an Insurer Default, BAM has made payment under the Policy, to the extent of such payment

BAM shall be treated like any other holder of the Insured Obligations for all purposes, including giving of consents, and (2) if BAM has not made any payment under the Policy, BAM shall have no further consent rights until the particular Insurer Default is no longer continuing or BAM makes a payment under the Policy, in which event, the foregoing clause (1) shall control. For purposes of this summarized subparagraph, “Insurer Default” means: (A) BAM has failed to make any payment under the Policy when due and owing in accordance with its terms; or (B) BAM shall (i) voluntarily commence any proceeding or file any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take action for the purpose of effecting any of the foregoing; or (C) any state or federal agency or instrumentality shall order the suspension of payments on the Policy or shall obtain an order or grant approval for the rehabilitation, liquidation, conservation or dissolution of BAM (including without limitation under the New York Insurance Law).

(d) Third Party Beneficiary. To the extent that the Indenture or any of the Financing Documents confers upon or gives or grants to BAM any right, remedy or claim under or by reason of the Indenture, BAM is explicitly recognized as being a third-party beneficiary under the Indenture or thereunder and may enforce any such right, remedy or claim conferred, given or granted under the Indenture or thereunder.

(e) Payment Procedure Under the Policy. In the event that principal and/or interest due on the Insured Obligations shall be paid by BAM pursuant to the Policy, the Insured Obligations shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, the assignment and pledge of the trust estate and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of BAM, and BAM shall be subrogated to the rights of such registered owners.

In the event that on the second (2nd) business day prior to any payment date on the Insured Obligations, the Paying Agent or Trustee has not received sufficient moneys to pay all principal of and interest on the Insured Obligations due on such payment date, the Paying Agent or Trustee shall immediately notify BAM or its designee on the same business day by telephone or electronic mail, of the amount of the deficiency. If any deficiency is made up in whole or in part prior to or on the payment date, the Paying Agent or Trustee shall so notify BAM or its designee.

In addition, if the Paying Agent or Trustee has notice that any holder of the Insured Obligations has been required to disgorge payments of principal of or interest on the Insured Obligations pursuant to a final, non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such holder within the meaning of any applicable bankruptcy law, then the Paying Agent or Trustee shall notify BAM or its designee of such fact

by telephone or electronic mail, or by overnight or other delivery service as to which a delivery receipt is signed by a person authorized to accept delivery on behalf of BAM.

The Paying Agent or Trustee shall irrevocably be designated, appointed, directed and authorized to act as attorney-in-fact for holders of the Insured Obligations as follows:

(i) If there is a deficiency in amounts required to pay interest and/or principal on the Insured Obligations, the Paying Agent or Trustee shall (A) execute and deliver to BAM, in form satisfactory to BAM, an instrument appointing BAM as agent and attorney-in-fact for such holders of the Insured Obligations in any legal proceeding related to the payment and assignment to BAM of the claims for interest on the Insured Obligations, (B) receive as designee of the respective holders (and not as Paying Agent) in accordance with the tenor of the Policy payment from BAM with respect to the claims for interest so assigned, (C) segregate all such payments in a separate account (the "BAM Policy Payment Account") to only be used to make scheduled payments of principal of and interest on the Insured Obligation, and (D) disburse the same to such respective holders; and

(ii) If there is a deficiency in amounts required to pay principal of the Insured Obligations, the Paying Agent or Trustee shall (A) execute and deliver to BAM, in form satisfactory to BAM, an instrument appointing BAM as agent and attorney-in-fact for such holder of the Insured Obligations in any legal proceeding related to the payment of such principal and an assignment to BAM of the Insured Obligations surrendered to BAM, (B) receive as designee of the respective holders (and not as Paying Agent) in accordance with the tenor of the Policy payment therefore from BAM, (C) segregate all such payments in the BAM Policy Payment Account to only be used to make scheduled payments of principal of and interest on the Insured Obligation, and (D) disburse the same to such holders.

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

Payments with respect to claims for interest on and principal of Insured Obligations disbursed by the Paying Agent or Trustee from proceeds of the Policy shall not be considered to discharge the obligation of the Issuer with respect to such Insured Obligations, and BAM shall become the owner of such unpaid Insured Obligations and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of the preceding paragraphs or otherwise. The Financing Documents shall not be discharged or terminated unless all amounts due or to become due to BAM have been paid in full or duly provided for.

Irrespective of whether any such assignment is executed and delivered, the Issuer, the Company, the Paying Agent and the Trustee agree for the benefit of BAM that:

(i) They recognize that to the extent BAM makes payments directly or indirectly (e.g., by paying through the Paying Agent or Trustee), on account of principal of or interest on the Insured Obligations, BAM will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Company on behalf of the Issuer, with interest thereon, as provided and solely from the sources stated in the Financing Documents and the Insured Obligations; and

(ii) They will accordingly pay to BAM the amount of such principal and interest, with interest thereon as provided in the transaction documents and the Insured Obligations, but only from the sources and in the manner provided therein for the payment of principal of and interest on the Insured Obligations to holders, and will otherwise treat BAM as the owner of such rights to the amount of such principal and interest.

(f) Additional Payments. The Company agrees unconditionally that it will pay or reimburse BAM on demand any and all reasonable charges, fees, costs, losses, liabilities and expenses that BAM may pay or incur, including, but not limited to, fees and expenses of BAM's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of the Financing Documents ("Administrative Costs"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of BAM spent in connection with the actions described in the preceding sentence. The Company agrees that failure to pay any Administrative Costs on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to BAM until the date BAM is paid in full.

Notwithstanding anything in the Indenture to the contrary, the Company agrees to pay to BAM (i) a sum equal to the total of all amounts paid by BAM under the Policy ("BAM Policy Payment"); and (ii) interest on such BAM Policy Payments from the date paid by BAM until payment thereof in full by the Company, payable to BAM at the Late Payment Rate per annum (collectively, "BAM Reimbursement Amounts") compounded semi-annually. Notwithstanding anything to the contrary, including without limitation the post default application of revenue provisions, BAM Reimbursement Amounts shall be, and the Company covenants and agrees that the BAM Reimbursement Amounts are, payable from and secured by a lien on and pledge of the same revenues and other collateral pledged to the Insured Obligations on a parity with debt service due on the Insured Obligations.

(g) Debt Service Reserve Fund. The prior written consent of BAM shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service Reserve Fund. Amounts on deposit in the Debt Service Reserve Fund related to the Series 2020 Bonds shall be applied solely to the payment of debt service due on the Insured Obligations.

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

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

(j) So long as the Insured Obligations are outstanding or any amounts are due and payable to BAM, the Company shall not sell, lease, transfer, encumber or otherwise dispose of the Project Facility or any material portion thereof, except upon obtaining the prior written consent of BAM.

(k) No contract shall be entered into or any action taken by which the rights of BAM or security for or source of payment of the Insured Obligations may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of BAM.

(l) If an event of default occurs under any agreement pursuant to which any Obligation (as defined below) of the Company has been incurred or issued and that permits the holder of such Obligation or trustee to accelerate the Obligation or otherwise exercise rights or remedies that are adverse to the interest of the holders of the Insured Obligations or BAM, as BAM may determine in its sole discretion, then an event of default shall be deemed to have occurred under the Indenture and the related Financing Documents for which BAM or the Trustee, at the direction of BAM, shall be entitled to exercise all available remedies under the Financing Documents, at law and in equity. For purposes of the foregoing "Obligation" shall mean any bonds, loans, certificates, installment or lease payments or similar obligations that are payable and/or secured on a parity or subordinate basis to the Insured Obligations.

### **Consent of Holders**

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

(i) The fact and date of the execution by any Holder or his attorney of such instrument may be proved by (A) the certificate (which need not be acknowledged or

verified) of an officer of a bank or trust company satisfactory to the Trustee or of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the Person signing such instrument acknowledged to him the execution thereof on such date, or (B) by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. The authority of the Person or Persons executing any such instrument on behalf of a corporate Holder may be established without further proof if such instrument is signed by a Person purporting to be the president or a vice-president of such corporation.

(ii) The ownership of any Bonds shall be proven by the bond register.

(b) Any request, consent or vote of the Holder of any Bond shall bind all future Holders of such Bond with respect to anything done or suffered to be done or omitted to be done by the Issuer or the Trustee in accordance therewith, unless and until such request, consent or vote is revoked by the filing with the Trustee of a written instrument, signed and executed by the Holder of the Bond, in form and substance and within such time as shall be satisfactory to the Trustee.  
*(Section 13.01)*

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## APPENDIX D

### PROPOSED FORM OF OPINION OF BOND COUNSEL

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August \_\_, 2020

Onondaga Civic Development Corporation  
333 W. Washington Street  
Syracuse, New York 13202

**Re: \$30,875,000 Onondaga Civic Development Corporation Taxable Revenue  
Refunding Bonds (Upstate Properties Development, Inc. Project), Series 2020**

Ladies and Gentlemen:

We have examined the record of proceedings in connection with the issuance by the Onondaga Civic Development Corporation (the “Issuer”) of its \$30,875,000 Onondaga Civic Development Corporation Taxable Revenue Refunding Bonds (Upstate Properties Development, Inc. Project), Series 2020 (the “Bonds”). The Bonds are authorized to be issued pursuant to (i) Section 1411 of the Not-for-Profit Corporation Law (“N-PCL”) of the State of New York (the “State”), as amended (hereinafter collectively called the “Act”), (ii) Resolution No. 192 as amended by Resolution No. 472, adopted by the Onondaga County Legislature on October 6, 2009 and September 6, 2011, respectively (collectively, the “County Resolution”), (iii) a bond resolution adopted by the directors of the Issuer on March 18, 2020 (the “Bond Resolution”), and (iv) an Indenture of Trust, dated as of August 1, 2020 (the “Indenture”), by and between the Issuer and Manufacturers and Traders Trust Company, as trustee (the “Trustee”) for the purpose of financing the Project (as hereinafter defined) being undertaken by Upstate Properties Development, Inc., a New York not-for-profit corporation (the “Company”).

The project being financed by the Bonds (the “Project”) consists of: (i) the advance refunding of the Issuer’s Revenue Bonds (Upstate Properties Development, Inc. Project), Series 2011; and (ii) the payment of the costs of issuance of the Series 2020 Bonds.

All capitalized terms not otherwise defined herein shall have the meaning given such terms in the Indenture.

The Bonds are being purchased by Stifel Nicolaus & Company, Incorporated (the “Underwriter”), pursuant to a certain Bond Purchase Agreement, dated August 5, 2020, by and among the Issuer, the Company, and the Underwriter (the “Bond Purchase Agreement”).

Under the terms of a certain Loan Agreement, dated as of August 1, 2020 (the “Loan Agreement”), between the Issuer and the Company, the Issuer has loaned the proceeds of the Bonds to the Company, and the Company has agreed to make loan payments in such amounts and at such times as will be sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable and to make certain other payments with respect to the Bonds as described therein.

As security for the Series 2020 Bonds, the Issuer assigned to the Trustee all of its rights (except Unassigned Rights) under the Loan Agreement, pursuant to the terms of a certain Pledge and Assignment, dated as of August 1, 2020, from the Issuer to the Trustee (the "Pledge and Assignment").

The Bonds are dated as of their date of issuance and bear interest from that date on the unpaid principal amount at the rates set forth in, and pursuant to the terms of, the Indenture and the Bonds. The Bonds are subject to prepayment or redemption prior to maturity, in whole or in part, at such time or times, or under such circumstances and in such manner as are set forth in the Bonds and the Indenture, respectively.

As Bond Counsel, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates and documents as we have deemed necessary or appropriate for the purposes of rendering the opinions set forth herein. In such examination, we have assumed the genuineness of all signatures, the authenticity and due execution of all documents submitted to us as originals and the conformity to the original documents of all documents submitted to us as copies. As to any facts material to our opinion, we have relied upon, and assumed the accuracy and truthfulness of, the aforesaid instruments, certificates and documents, without having conducted any independent investigation.

In rendering the opinions set forth below, we have relied upon the opinion of Hancock Estabrook, LLP, counsel to the Company, and Bond, Schoeneck & King, PLLC, counsel to the Trustee, of even date herewith, as to the matters set forth in each of such opinions without making any independent investigation of the factual basis therefor or the legal conclusions set forth therein.

Based upon and in reliance upon the foregoing, it is our opinion that:

(a) The Issuer is a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York and is duly organized and existing under the laws of the State.

(b) The Issuer is duly authorized and entitled by law and the County Resolution to issue, execute, sell and deliver the Bonds for the purpose of financing the Project and to execute and deliver the Issuer Documents.

(c) The Bond Resolution has been duly and lawfully adopted by the Issuer, is in full force and effect, and is valid and legally binding upon the Issuer in accordance with its terms.

(d) Each of the Issuer Documents has been duly authorized, executed and delivered by the Issuer and each is validly and legally binding and enforceable against the Issuer in accordance with its terms.

(e) The Bonds have been duly authorized, executed and delivered, have been duly issued for value by the Issuer and are valid and legally binding special obligations of the Issuer

payable in accordance with their terms and are entitled to the benefit and security of the Indenture in accordance with its terms.

(f) The Bonds do not constitute a debt of Onondaga County, New York or the State of New York, and neither Onondaga County, New York nor the State of New York will be liable thereon.

(g) Interest on the Bonds is included in gross income for federal income tax purposes and is subject to personal income taxes imposed by the State of New York or any political subdivision thereof.

The foregoing opinions are qualified to the extent that the enforceability of the Bond Resolution, the Bonds, any of the Financing Documents and any other document executed in connection therewith may be limited by any applicable bankruptcy, insolvency or other similar law or equitable principle now or hereafter enacted by the State of New York or the federal government or pronounced by a court having proper jurisdiction, affecting the enforcement of creditors' rights generally.

We express no opinion as to: (i) the title to the Project Facility; (ii) the sufficiency of the description of the Project Facility in the Indenture, the Loan Agreement or any other document; or (iii) the perfection or priority of any liens, charges or encumbrances on the Project Facility. Further, we have not been requested to examine and have not examined any documents or information relating to the Issuer or the Company other than the record of proceedings hereinabove referred to, and no opinion is expressed as to any financial information, or the adequacy thereof, which has been or may be supplied to the Trustee, the initial purchaser of the Bonds or any other person.

This opinion is furnished by us for your benefit and may not be relied upon by any other person without our express written consent. This opinion is given as of the date hereof, and we disclaim any obligation to update this opinion letter for events occurring after the date of this opinion letter. We express no opinion herein except as to the laws of the State of New York and the federal laws of the United States.

Very truly yours,

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## APPENDIX E

### PROPOSED FORM OF CONTINUING DISCLOSURE AGREEMENT

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## CONTINUING DISCLOSURE AGREEMENT

THIS CONTINUING DISCLOSURE AGREEMENT (this “Disclosure Agreement”) dated August 27, 2020 is executed and delivered by UPSTATE PROPERTIES DEVELOPMENT, INC., a New York nonprofit corporation (the “Company”) and MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation, as dissemination agent (the “Dissemination Agent”).

### W I T N E S S E T H:

WHEREAS, pursuant to a Bond Purchase Agreement dated August 5, 2020, by and among Onondaga Civic Development Corporation (the “Issuer”), the Company, and Stifel, Nicolaus & Company, Incorporated, as the underwriter (the “Underwriter”), the Issuer is selling \$30,875,000 aggregate principal amount of its Taxable Revenue Refunding Bonds (Upstate Properties Development, Inc. Project), Series 2020 (the “Bonds”) to the Underwriter; and

WHEREAS, Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (the “Rule”), provides that a Participating Underwriter (as defined in the Rule) shall not purchase or sell municipal securities in connection with an Offering (as defined in the Rule) unless the Participating Underwriter has reasonably determined that an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such securities, to provide, either directly or indirectly through an indenture trustee or a designated agent, certain specified financial information and operating data and notices of certain material events; and

WHEREAS, this Disclosure Agreement is authorized to be executed and delivered by the Company in order to enable the Underwriter to comply with the requirements of the Rule.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Company, intending to be legally bound hereby, agrees as follows:

#### Section 1. Definitions.

In addition to the terms defined in the above recitals, the following terms shall have the meanings specified below:

“Annual Report” shall mean the information to be provided by the Company annually for each fiscal year pursuant to Section 2(a) hereof.

“Biannual Report” shall mean the information to be provided by the Company biannually for each fiscal year pursuant to Section 2(b) hereof.

“Dissemination Agent” means, initially, Manufacturers and Traders Trust Company, and any other person or entity designated from time to time in writing by the Company and which

has filed with the Company a written acceptance of such designation and of the duties of the Dissemination Agent under this Disclosure Agreement.

“EMMA” shall mean the MSRB’s Electronic Municipal Market Access System (or any successor electronic filing system established in accordance with the Rule for the submission of information required to be filed under the Rule). As of the date of this Disclosure Agreement, information regarding submissions to the MSRB through EMMA is available at <http://emma.msrb.org/submission>.

“Financial Obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

“Indenture” shall mean the Indenture of Trust, dated as of August 1, 2020, between the Issuer and the Trustee.

“Issuance Date” means August 27, 2020, the date of issuance and delivery of the Bonds.

“Loan Agreement” shall mean the Loan Agreement, dated as of August 1, 2020 between the Issuer and the Company.

“MSRB” shall mean the Municipal Securities Rulemaking Board or its lawful successors.

“Obligated Person” shall mean, at any applicable time, each “obligated person” (as that term is defined in paragraph (f)(10) of the Rule) with respect to the Bonds. As of the Issuance Date, “Obligated Person” means the Company. The Company has determined that as of the Issuance Date, there are no “obligated persons” with respect to the Bonds for purposes of the Rule other than the Company, and that the Issuer is not an “obligated person” with respect to the Bonds for purposes of the Rule.

“Official Statement” shall mean the Official Statement, dated August 5, 2020, of the Issuer and the Company with respect to the Bonds.

“Participating Underwriter” shall mean Stifel, Nicolaus & Company, Incorporated, as the underwriter of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

“SEC” means the United States Securities and Exchange Commission.

“Trustee” means Manufacturers and Traders Trust Company, as trustee.

Terms not otherwise defined herein shall have the same meanings as in the Indenture.

## Section 2. Covenants of the Company.

The Company covenants as follows:

(a) The Company shall file directly, or deliver to the Dissemination Agent for filing, with the MSRB, through EMMA, within 180 days after the end of each fiscal year commencing with the fiscal year ending June 30, 2020, certain financial information and other operating data with respect to the Company (collectively, the “Annual Report”), as follows:

(1) The financial statements of the Company for the most recent fiscal year prepared in accordance with accounting principles generally accepted in the United States of America, applied on a consistent basis, and audited by the Company’s independent certified public accountants in accordance with auditing standards generally accepted in the United States of America; provided however, that such annual audited financial statements may be provided separately from the balance of the Annual Report and that, if such audited financial statements are not available within 180 days of the end of each fiscal year of the Company, unaudited financial statements will be provided, and audited financial statements will subsequently be submitted when they become available;

(2) The computation of the debt service coverage ratio for the fiscal year as required by the terms of the Loan Agreement and notice of the failure to satisfy the debt service coverage ratio set forth in the Loan Agreement, if such a failure occurs;

(3) Information detailing the occupancy of the Student Housing Facility for the fiscal year of the Company covered by the relevant audited financial statements; and

(4) An annual update of the information in the sections captioned “SUNY UPSTATE MEDICAL UNIVERSITY – Enrollment” and “Demand” in Appendix A to the Official Statement.

(b) The Company shall file directly, or deliver to the Dissemination Agent for filing, with the MSRB, through EMMA, within 60 days after the end of the six month period ending December 31 of each year, commencing with the six month period ending December 31, 2020, certain financial information and other operating data with respect to the Company (collectively, the “Biannual Report”), as follows:

(1) Unaudited biannual financial reports prepared by management of the Company; and

(2) Information detailing the occupancy of the Student Housing Facility for the six month period covered by the biannual financial report, including without limitation the number of units, if any, leased by SUNY pursuant to the SUNY Agreement.

The Company may submit the Annual Report as a single document or as a series of separate documents comprising a package. The Company may provide the Annual Report or Biannual Report by specific cross-reference to other documents which have been submitted to the MSRB via the EMMA System or filed with the SEC. The audited financial statements of the Company may be submitted separately from the balance of the Annual Report when such audited financial statements are accepted by the board of directors of the Company, which may be later than the date the Annual Report is required to be filed, provided that if the audited financial statements are not available by the date the Annual Report is required to be filed, then the Company shall file unaudited financial statements by the date the Annual Report is required to be filed and shall file the audited financial statements as soon as available thereafter. The Company reserves the right to modify from time to time the specific types of information provided and the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the Company; provided that the Company agrees that any such modification will be done in a manner consistent with the Rule. The Company may, at its option, satisfy this obligation by providing specific reference to one or more official statements issued on behalf of the Company and previously provided to and available from the MSRB, in accordance with the Rule.

If the Company delivers to the Dissemination Agent an Annual Report or Biannual Report for filing it shall do so not later than five days prior to the date specified in subsection (a) and (b) above for providing such reports to the MSRB, through EMMA.

(c) In a timely manner, not in excess of ten (10) business days after the occurrence of the event, the Company shall file directly, or deliver to the Dissemination Agent for filing, with the MSRB, through EMMA, notice of any of the following events (collectively, “Reportable Events”) with respect to the Bonds:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on any debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of any credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) Modifications to rights of the bond owners, if material;

- (8)     Unscheduled bond calls, if material, and tender offers;
- (9)     Defeasances;
- (10)    Release, substitution, or sale of property securing payment of the Bonds, if material;
- (11)    Rating changes on the Bonds;
- (12)    Bankruptcy, insolvency, receivership or similar proceeding of the Company;
- (13)    The consummation of a merger, consolidation, or acquisition involving the Company or the sale of all or substantially all of the assets of the Company, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14)    Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (15)    Incurrence of a Financial Obligation of the Company, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Company, any of which affects holders of the Bonds, if material; and
- (16)    Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Company, any of which reflect financial difficulties.

The foregoing sixteen (16) Reportable Events are quoted from the Rule. The SEC requires the listing of the Reportable Events set forth in clauses (1) through (16) above although some of such events may not be applicable to the Bonds.

(d)     In a timely manner, the Company shall give, or cause the Dissemination Agent to give, to the Trustee, the Issuer and the MSRB, through EMMA, notice of any failure by the Company to provide any information required pursuant to subsection (a) or subsection (b) above in the form attached hereto as Exhibit A on or before the date specified in subsection (a) or subsection (b) (as applicable) above.

(e)     If the Company files the reports, notices or other information required by subsections (a), (b) and (c) above directly with the MSRB, it shall promptly notify the Dissemination Agent and provide the Dissemination Agent with a copy of such filing(s).

(f)     To the extent the Dissemination Agent, in the course of performing its duties as Trustee under the Indenture, acquires actual knowledge of an event which may require the Company to file a report or notice hereunder under Section 2(c) hereof, the

Dissemination Agent shall notify the Company of such event; provided however, that the failure of the Dissemination Agent so to advise the Company shall not constitute a breach by the Dissemination Agent of any of its duties and responsibilities under this Disclosure Agreement or in its capacity as Trustee under the Indenture and the Dissemination Agent shall not incur any liability for any such failure. For purposes of this Disclosure Agreement, the Dissemination Agent in its capacity as Trustee shall not be deemed to have actual knowledge of any event or occurrence except events described in paragraphs 2(c)(1), (3), (8) (9) or (14), unless it shall be notified in writing specifically of the event or occurrence at its designated corporate trust office.

(g) At the same time that it provides any report or notice to the MSRB pursuant to this Section 2, the Company shall provide a copy of such report or notice to the Trustee.

(h) If the Company elects to meet the requirements of this Section 2 by delivering such reports or notices to the Dissemination Agent for filing, then concurrently with the delivery to the MSRB of any information provided to it by the Company for filing pursuant to subsections (a), (b) or (c) above, the Dissemination Agent shall confirm to the Company that it has filed such information with the MSRB.

(i) The Company agrees that the provisions of this Section 2 shall be for the benefit of the registered holders and beneficial owners of the Bonds, and shall be enforceable by any holders or beneficial owners of the Bonds, or by the Trustee on their behalf, in accordance with the provisions of Section 6 herein.

### Section 3. Regarding the Trustee.

The Trustee shall have no responsibility or liability in connection with the Company's filing obligations under this Disclosure Agreement. In acting on behalf of the registered holders and beneficial owners of the Bonds pursuant to this Disclosure Agreement, the Trustee shall be entitled to rights, protections and immunities provided to it under the Indenture.

### Section 4. Termination of Reporting Obligations.

The Company's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If the Company's obligations with respect to the payment of the Bonds are assumed in full by some other entity, such other entity shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the Company, and the Company shall have no further responsibility hereunder. In addition, the Company's obligation to provide information and notices as specified in Section 2 hereof shall terminate (a) at such other times as such information and notices (or any portion thereof) are no longer required to be provided by the Rule as it applies to the Bonds, (b) in the event of a repeal or rescission of the Rule or (c) upon a determination that the Rule is invalid or unenforceable.

#### Section 5. Amendment.

Notwithstanding any other provision of this Disclosure Agreement, the Company and the Dissemination Agent may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, if the Company and the Dissemination Agent have received an opinion of counsel knowledgeable in federal securities laws to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

#### Section 6. Remedies for Default.

In the event of a breach or default by the Company of its covenants to provide annual financial information and notices as provided in Section 2 hereof, the sole right and remedy of the Trustee or any registered holder or beneficial owner of Bonds shall be to bring an action in a court of competent jurisdiction to compel specific performance by the Company and the Dissemination Agent. A breach or default under this Disclosure Agreement shall not constitute a default or an event of default under the Bonds, the Indenture, the Loan Agreement executed in connection therewith, or any other agreement. The Trustee shall be under no obligation to enforce this Disclosure Agreement unless (a) directed in writing by the registered holders or beneficial owners of at least 25% of the outstanding principal amount of the Bonds and (b) furnished with indemnity and security for expenses satisfactory to it in its sole discretion.

#### Section 7. Additional Information.

Nothing in this Disclosure Agreement shall be deemed to prevent the Company from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report, any Biannual Report or notice of occurrence of a Reportable Event, in addition to that which is required by this Disclosure Agreement. If the Company chooses to include any information in any Annual Report, any Biannual Report or notice of occurrence of a Reportable Event, in addition to that which is specifically required by this Disclosure Agreement, the Company shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Reportable Event.

#### Section 8. Dissemination Agent.

The Dissemination Agent shall have only such duties as are specifically set forth herein. The Dissemination Agent (i) shall not be liable for any error in judgment or for any act done or step taken or omitted by it in the absence of gross negligence or willful misconduct, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection therewith, except for its own gross negligence or willful misconduct, (ii) shall not be obligated to take any legal action or other action hereunder, which might in its judgment involve any expense or liability unless it has been furnished with indemnification satisfactory to it, and (iii) shall be entitled to consult with counsel satisfactory to it, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by

it hereunder in good faith and in accordance with the opinion of such counsel. The duties and responsibilities of the Dissemination Agent hereunder shall be determined solely by the express provisions of this Disclosure Agreement, and no further duties or responsibilities shall be implied. The Dissemination Agent shall not have any liability under, or duty to inquire into the terms and provisions of any agreement or instructions, other than as outlined in this Disclosure Agreement. The Dissemination Agent may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Dissemination Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Dissemination Agent shall not incur any liability for following the instructions herein contained or expressly provided for, or written instructions given by the other parties hereto. In the administration of this Disclosure Agreement, the Dissemination Agent may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Dissemination Agent shall not be liable for anything done, suffered or omitted in the absence of gross negligence or willful misconduct by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. The Dissemination Agent may resign and be discharged of its duties and obligations hereunder by giving notice in writing of such resignation specifying a date when such resignation shall take effect. Any corporation or association into which the Dissemination Agent in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Dissemination Agent in its individual capacity shall be a party, or any corporation or association to which all or substantially all the corporate trust business of the Dissemination Agent in its individual capacity may be sold or otherwise transferred, shall be the Dissemination Agent under this Disclosure Agreement without further act. The Company covenants and agrees to defend, indemnify and hold the Dissemination Agent and its directors, officers, agents and employees (collectively, the "Indemnitees") harmless from and against any and all liabilities, losses, damages, fines, suits, actions, demands, penalties, costs and expenses, including incidental expenses, reasonable legal fees and expenses and the costs and expenses of defending or preparing to defend against any claim ("Losses") that may be imposed on, incurred by, or asserted against, the Indemnitees or any of them for following any instruction or other direction upon which the Dissemination Agent is authorized to rely pursuant to the terms of this Disclosure Agreement. In addition to and not in limitation of the immediately preceding sentence, the Company also covenants and agrees to indemnify and hold the Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against the Indemnitees or any of them in connection with or arising out of the Dissemination Agent's performance under this Disclosure Agreement provided the Dissemination Agent has not acted with gross negligence or engaged in willful misconduct. Anything in this Disclosure Agreement to the contrary notwithstanding, in no event shall the Dissemination Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Dissemination Agent has been advised of such loss or damage and regardless of the form of action. The sole and exclusive remedy for breach of this Disclosure Agreement by the Dissemination Agent shall be an action to compel specific performance. This Section 8 shall survive termination of this Disclosure Agreement and the resignation or removal of the Dissemination Agent for any reason.



Section 9. Miscellaneous.

(a) Binding Nature of Agreement. This Disclosure Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. In addition, registered owners of the Bonds, which for the purposes of this Section 9 includes the holders of a book-entry credit evidencing an interest in the Bonds, from time to time shall be third party beneficiaries hereof and shall be entitled to enforce the provisions hereof as if they were parties hereto; but no consent of beneficial owners of the Bonds shall be required in connection with any amendment of this Disclosure Agreement, except as required by the Rule. Holders of book-entry credits evidencing an interest in the Bonds may file their names and addresses with the Company for the purposes of receiving notices and with the Trustee for the purpose of giving direction under this Disclosure Agreement.

(b) Notices. All notices and other communications required or permitted under this Disclosure Agreement shall be in writing and shall be deemed to have been duly given, made and received only when delivered (personally, by recognized national or regional courier service, or by other messenger, for delivery to the intended addressee or when deposited in the United States mails, registered or certified mail, postage prepaid, return receipt requested), addressed or sent as set forth below:

(1) To the Dissemination Agent at:

Manufacturers and Traders Trust Company  
285 Delaware Avenue – 3<sup>rd</sup> Floor  
Buffalo, NY 14202  
Attention: Corporate Trust Department

(2) To the Trustee at:

Manufacturers and Traders Trust Company  
285 Delaware Avenue – 3<sup>rd</sup> Floor  
Buffalo, NY 14202  
Attention: Corporate Trust Department

(3) To the Company at:

Upstate Properties Development, Inc.  
750 E Adams St  
Syracuse, New York 13210-2342  
Attention: Chair

(4) To the Issuer at:

Onondaga Civic Development Corporation  
333 W. Washington Street  
Syracuse, NY 13202  
Attention: President/CEO

Any party may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section.

(c) Execution in Counterparts. This Continuing Disclosure Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Continuing Disclosure Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall be executed by all of the parties hereto.

(d) Controlling Law. This Continuing Disclosure Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of New York and the Rule.

(e) Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Company, the Dissemination Agent, the Issuer, the Trustee, the Participating Underwriter, and the registered owners and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company and the Dissemination Agent have executed this Continuing Disclosure Agreement as of the date first above written.

UPSTATE PROPERTIES DEVELOPMENT, INC.

By: \_\_\_\_\_  
Name: Eric J. Smith  
Title: Chair

MANUFACTURERS AND TRADERS TRUST  
COMPANY, AS DISSEMINATION AGENT

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

EXHIBIT A

NOTICE TO EMMA OF FAILURE TO FILE REPORT

Name of Issuer: Onondaga Civic Development Corporation

Name of Bond Issue: Onondaga Civic Development Corporation (the “Issuer”) of its \$30,875,000 Taxable Revenue Refunding Bonds (Upstate Properties Development, Inc. Project), Series 2020 (the “Bonds”)

Name of Borrower: Upstate Properties Development, Inc.

Date of Issuance: August 27, 2020

NOTICE IS HEREBY GIVEN that the Borrower has not provided an Annual Report with respect to the above-named Bonds. The Borrower anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

UPSTATE PROPERTIES DEVELOPMENT, INC.

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

## APPENDIX F

### SPECIMEN MUNICIPAL BOND INSURANCE POLICY

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## MUNICIPAL BOND INSURANCE POLICY

ISSUER: [NAME OF ISSUER]

Policy No: \_\_\_\_\_

MEMBER: [NAME OF MEMBER]

BONDS: \$ \_\_\_\_\_ in aggregate principal  
amount of [NAME OF TRANSACTION]  
[and maturing on]

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

Risk Premium: \$ \_\_\_\_\_

Member Surplus Contribution: \$ \_\_\_\_\_

Total Insurance Payment: \$ \_\_\_\_\_

BUILD AMERICA MUTUAL ASSURANCE COMPANY ("BAM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") for the Bonds named above (as set forth in the documentation providing for the issuance and securing of the Bonds), for the benefit of the Owners or, at the election of BAM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the first Business Day following the Business Day on which BAM shall have received Notice of Nonpayment, BAM will disburse (but without duplication in the case of duplicate claims for the same Nonpayment) to or for the benefit of each Owner of the Bonds, the face amount of principal of and interest on the Bonds that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by BAM, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of such principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in BAM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by BAM is incomplete, it shall be deemed not to have been received by BAM for purposes of the preceding sentence, and BAM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, any of whom may submit an amended Notice of Nonpayment. Upon disbursement under this Policy in respect of a Bond and to the extent of such payment, BAM shall become the owner of such Bond, any appurtenant coupon to such Bond and right to receipt of payment of principal of or interest on such Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under such Bond. Payment by BAM either to the Trustee or Paying Agent for the benefit of the Owners, or directly to the Owners, on account of any Nonpayment shall discharge the obligation of BAM under this Policy with respect to said Nonpayment.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent (as defined herein) are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless BAM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration) and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment made to an Owner by or on behalf of the Issuer of principal or interest that is Due for Payment, which payment has been recovered from such Owner pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means delivery to BAM of a notice of claim and certificate, by certified mail, email or telecopy as set forth on the attached Schedule or other acceptable electronic delivery, in a form satisfactory to BAM, from and signed by an Owner, the Trustee or the Paying Agent, which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount, (d) payment instructions and (e) the date such claimed amount becomes or became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer, the Member or any other person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

BAM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee, the Paying Agent, the Member and the Issuer specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee, the Paying Agent, the Member or the Issuer (a) copies of all notices required to be delivered to BAM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to BAM and shall not be deemed received until received by both and (b) all payments required to be made by BAM under this Policy may be made directly by BAM or by the Insurer's Fiscal Agent on behalf of BAM. The Insurer's Fiscal Agent is the agent of BAM only, and the Insurer's Fiscal Agent shall in no event be liable to the Trustee, Paying Agent or any Owner for any act of the Insurer's Fiscal Agent or any failure of BAM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, BAM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to BAM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy. This Policy may not be canceled or revoked.

This Policy sets forth in full the undertaking of BAM and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. THIS POLICY IS ISSUED WITHOUT CONTINGENT MUTUAL LIABILITY FOR ASSESSMENT.

In witness whereof, BUILD AMERICA MUTUAL ASSURANCE COMPANY has caused this Policy to be executed on its behalf by its Authorized Officer.

BUILD AMERICA MUTUAL ASSURANCE COMPANY

By: \_\_\_\_\_  
Authorized Officer



**Notices (Unless Otherwise Specified by BAM)**

Email:

[claims@buildamerica.com](mailto:claims@buildamerica.com)

Address:

200 Liberty Street, 27th floor

New York, New York 10281

Telecopy:

212-962-1524 (attention: Claims)

SPECIMEN

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**UPSTATE PROPERTIES DEVELOPMENT, INC.**

a supporting corporation to

**UPSTATE**  
MEDICAL UNIVERSITY

**SUNY Upstate Medical University**