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**LOAN AGREEMENT**

**By and Between**

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

**and**

**MEMORIAL SLOAN-KETTERING  
CANCER CENTER**

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**Dated as of February 26, 2003**

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**Relating to Dormitory Authority of the State of New York Memorial Sloan-Kettering Cancer Center Revenue Bonds Issued under the Dormitory Authority of the State of New York Memorial Sloan-Kettering Cancer Center Revenue Bond Resolution, adopted February 26, 2003.**

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## LOAN AGREEMENT

**LOAN AGREEMENT**, dated as of February 26, 2003, by and between the **DORMITORY AUTHORITY OF THE STATE OF NEW YORK**, a body corporate and politic of the State of New York, constituting a public benefit corporation created pursuant to Chapter 524 of the Laws of 1944 of the State of New York, as amended (the "Authority"), and **MEMORIAL SLOAN-KETTERING CANCER CENTER**, a corporation duly incorporated and existing pursuant to the Not-For-Profit Corporation Law of the State of New York (the "Center").

### PRELIMINARY STATEMENT

The Center, in order to enable it to obtain loans from the Authority on the terms and conditions contained herein, has requested the Authority to adopt the Resolution, which authorizes the issuance of Bonds by the Authority to provide moneys for loans to the Center for, among other purposes, the payment of the Costs of Projects. The principal amount of Bonds issued pursuant to the Resolution shall constitute the aggregate amount of the loan to the Center made pursuant hereto.

The **AUTHORITY** and the **CENTER** hereby mutually covenant and agree as follows:

**SECTION 1. Definitions.** (a) Unless otherwise defined herein or the context clearly indicate a different meaning, all terms which are defined in the Resolution shall have the same meanings, respectively, herein as such terms are given in the Resolution.

(b) In addition, as used herein, unless the context clearly indicate a different meaning, the following terms shall have the following respective meanings.

**Adjusted Operating Loss** means for any Fiscal Year of the Center an amount equal to the loss from operations of the Center and the Affiliates for such Fiscal Year, less the sum of (i) any unrestricted contributions, pledges and bequests to the Center or the Affiliates for such Fiscal Year, and (ii) eight percent (8%) of the average of the aggregate unrestricted investments of the Center and the Affiliates for the three immediately preceding Fiscal Years of the Center, calculated in accordance with generally accepted accounting principles applicable to the Center in effect on the date here, which calculation shall be made substantially as set forth in Exhibit A hereto.

**Affiliate** means each of the Related Corporations and the Hospital, their respective successors and assigns, and all entities now existing or hereafter formed or acquired whose financial statements are required under generally accepted accounting principles to be combined with those of the Center.

**Annual Administrative Fee** means the fee payable during each Bond Year for the general administrative and supervisory expenses of the Authority in the amount or amounts

more particularly described in Schedule A hereto, which is made a part hereof, as such Schedule A may be amended, modified or supplemented by the Authority with the consent of the Center.

**Authority Fee** means the fee payable to the Authority consisting of all of the Authority's internal costs and overhead expenses attributable to the issuance of the Bonds and the construction of the Projects, as more particularly described in Schedule B hereto, which is made a part hereof, with Schedule B may be amended, modified or supplemented by the Authority with the consent of the Center.

**Authorized Officer** means, with respect to any act or document to be performed or executed on behalf of an Affiliate, the person or persons authorized by any provision of the certificate of incorporation, charter, the by-laws, other organizational document or resolution of such Affiliate to perform such act or execute such document.

**Bond** means any bond of the Authority issued under and pursuant to the Resolution.

**Cash and Investments** means, collectively, all cash and investments of the Center and the Affiliates, other than (i) those that are permanently restricted and (ii) the nominal value of cash and the fair market value of investments that have been encumbered by Liens given pursuant to Section 14(a)(v) hereof to secure obligations that do not constitute Debt.

**Collateral** means (i) the pledge of or security interest in the Gross Receipts of the Center and the Related Corporations, (ii) the mortgage or mortgages on Research Center Property, Restricted Property, Unrestricted Property and Hospital Property, (iii) the security interest in the furnishings and equipment located in and used in connection with any of the Research Center Property, Restricted Property, Unrestricted Property and Hospital Property, (iv) the pledge of or security interest in any and all Sale Proceeds, (v) such other collateral security to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority, in each case given or made by the Center or a Related Corporation in accordance with Section 11 hereof, and by the Hospital pursuant to Section 3.10 of the Inducement Agreement and (vi) any other pledge, security interest or mortgage given or made to the Authority pursuant to Section 14 hereof or pursuant to Section 3.08 of the Inducement Agreement.

**Contract Documents** means any general contract or agreement for the construction of a Project or any component thereof, notice to bidders, information for bidders, form of bid, general conditions, supplemental general conditions, general requirements, supplemental general requirements, bonds, plans and specifications, addenda, change orders, and any other documents entered into or prepared by or on behalf of the Center relating to the construction of a Project, and any amendments to the foregoing.

**Debt** means when used in this Loan Agreement, when used in connection with any person, indebtedness for borrowed money incurred or guaranteed by such person, whether or not evidenced by notes, bonds, debentures or other similar evidences of indebtedness, including indebtedness under purchase money mortgages, capital leases, installment sales agreements and similar security arrangements which appear as debt on the audited balance sheet of such person in accordance with generally accepted accounting principles.

**Debt Ratio** means as of any Measurement Date of calculation a ratio of the Cash and Investments of the Center and the Affiliates to the aggregate principal amount of outstanding Debt of the Center and the Affiliates, as determined by the chief financial officer of the Center based upon the unaudited combined financial statements of the Center and the Affiliates if the Measurement Date is not the last day of the Center's Fiscal Year, and based upon the audited combined financial statements of the Center and the Affiliates for such Fiscal Year if the Measurement Date is the last day of such Fiscal Year; *provided, however*, that for purposes of calculation of the Debt Ratio, Option Bonds held by or on behalf of the Center or an Affiliate (and the correlative obligations under the Loan Agreement) shall not be considered Debt.

**Derivative Agreement** means an interest rate or currency exchange agreement, an interest rate cap or collar, an agreement for the purchase of debt securities to be delivered in the future or any other similar hedge or derivative arrangement.

**Derivative Obligation** means, as of any particular date of calculation:

(i) when used in Sections 11(c) and 14 hereof with respect to a Derivative Agreement in connection with which the Center or an Affiliate has given a Lien pursuant to Section 14(a)(v) hereof or Section 3.08(a)(v) of the Inducement Agreement, the amount that is or may be payable to the counter-party thereunder that is then secured by Liens on Property of the Center or an Affiliate; and

(ii) solely when used in Section 14(b)(1) hereof with respect to a Derivative Agreement that is not then secured by Liens on Property of the Center or an Affiliate, but for which the Center or an Affiliate is obligated upon the occurrence of a future event to give such security, the maximum amount that may be payable to the counter-party thereunder assuming that (A) in the case of an arrangement based upon interest rates, the relevant interest rates have changed by two hundred (200) basis points from the rates at the time such agreement or arrangement was entered into, and (B) in the case of an arrangement based upon currency rates, that the relevant exchange rates have risen or fallen by twenty-five percent (25%) from those existing at the time such agreement or arrangement was entered into, in each case so as to increase the amount that may be payable thereunder by the Center or an Affiliate.

**Fiscal Year** means a twelve month period beginning January 1<sup>st</sup> of a year and ending on December 31<sup>st</sup> of such year, or such other twelve month period as the Center may elect as its fiscal year.

**Funding Event** means any one of the events set forth in Section 11(a) hereof.

**Guaranty** means each guaranty of payment of the Center's obligations hereunder made by Sloan-Kettering Institute for Cancer Research and S.K.I. Realty.

**Governmental Requirements** means any present and future laws, rules, orders, ordinances, regulations, statutes, requirements and executive orders applicable to a Project of the United States, the State and any political subdivision thereof, and any agency, department,

commission, board, bureau or instrumentality of any of them, now existing or hereafter created, and having or asserting jurisdiction over a Project or any part of either.

**Gross Receipts** means, when used in connection with any person (i) accounts, contract rights, chattel paper, instruments, general intangibles and other obligation of any kind of such, now or hereafter existing, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services, whether or not such services have been performed, and all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any such accounts, contract rights, chattel paper, instruments, general intangibles or obligations, (ii) the rents, profits and issues of the Research Center Property and (iii) all proceeds of any and all of the foregoing collateral, including without limitation any amounts received from the sale, exchange, lease or other disposition of any of the foregoing collateral and, to the extent not otherwise included, all payments under insurance (whether or not the Authority is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing collateral; **exclusive, however,** of (A) any and all gifts, grants, bequests, donations and contributions heretofore or hereafter received by such person, whether unrestricted or restricted by the donor or maker thereof, and (B) any and all income and earnings on investments of such person, including, but not limited to, interest income, dividends and realized or unrealized gains.

**Hospital** means Memorial Hospital for Cancer and Allied Diseases, its successors and assigns.

**Hospital Property** means all of the right, title and interest of the Hospital in and to:

- (i) the land now owned by it, and the buildings and improvements thereon, regardless of when acquired or erected, in the City, County and State of New York, more particularly described in Schedule C hereto, and;
- (ii) any and all land hereafter acquired by the Hospital, and the buildings and improvements thereon, regardless of when acquired or erected.

**Insured Bond** means an Outstanding Bond for which the Authority or the Center obtained from an Insurer at the time of initial issuance a financial guaranty insurance policy pursuant to which the Insurer is obligated to pay the Holder of such Bond the principal or Sinking Fund Installments of and interest on such Bond not otherwise paid by the Authority in accordance with the terms of such Bond and of the Resolution.

**Insurer or Insurers** means MBIA Insurance Corporation, a stock insurance company incorporated under the laws of the State of New York, and any other person, including, but not limited to, a firm, association or corporation, including a public body or governmental agency, which, at the time of initial issuance of a Bond, issued at the request of the Authority or the Center a financial guaranty insurance policy pursuant to which such person is obligated to pay the Holder of such Bond the principal or Sinking Fund Installments of and interest on such Bond not otherwise paid by the Authority in accordance with the terms of such Bond and of the Resolution.

**Insurers' Consent** means the written consent of the Insurers of a majority in principal amount of the Insured Bonds.

**Investment Property** means any (i) common or preferred stock, note, bond or debenture of any corporation, (ii) interest in a unit investment trust, mutual fund, hedge fund, limited partnership or limited liability company, and (iii) investment agreement or other investment property, held as part of the Cash and Investments of the Center or a Related Corporation, but such term shall not include any Sale Proceeds.

**Lien** means any mortgage, pledge, lien, charge or security interest in the nature thereof (including any conditional sales agreement, equipment trust agreement, or other title retention agreement) or other encumbrance of whatsoever nature.

**Limited Secured Debt** has the meaning given to such term in Section 11(c) hereof.

**Liquidity Facility** when used in Section 10 hereof means, in the case of Option Bonds, a Liquidity Facility as such term is defined in the Resolution, and in the case of any other Debt means an irrevocable letter of credit, standby purchase agreement, line of credit or other agreement or arrangement pursuant to which the Center may obtain moneys for payment of the purchase price of the principal amount of such Debt put or tendered for purchase at the option of the holders thereof.

**Management Consultant** means a nationally recognized accounting firm or management consulting firm or other similar firm, experienced in reviewing and assessing hospital operations (which may include a firm of independent public accountants that, when appointed as Management Consultant, is then serving as the Center's auditor), selected by the Center and acceptable to the Authority and the Insurers in the exercise of their respective reasonable judgment.

**Measurement Date** means June 30<sup>th</sup> and December 31<sup>st</sup> of each Fiscal Year of the Center; *provided, however*, that, if the Center's Fiscal Year does not end on December 31<sup>st</sup> of a calendar year, the Measurement Dates shall be the last day of the second quarter of the Center's Fiscal Year and last day of such Fiscal Year.

**Mortgaged Property** means the real property mortgaged to the Authority pursuant to Sections 11 and 14 hereof or Section 3.10 of the Inducement Agreement, including all fixtures.

**Official Statement** means an official statement or other offering document relating to and in connection with the sale, remarketing or reoffering of Bonds.

**Option Bond** has the meaning given to such term in the Resolution.

**Permitted Encumbrance** means when used in connection with any Research Center Property, Restricted Property, Unrestricted Property or Hospital Property any of the following:



- (ii) The lien of taxes and assessments which are not delinquent;
- (iii) The lien of taxes and assessments which are delinquent but the validity of which is being contested in good faith unless thereby the property or the interest of the Authority therein may be in danger of being lost or forfeited;
- (iv) Minor defects and irregularities in the title to the such property which do not in the aggregate materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held;
- (v) Easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held; and
- (v) Such other encumbrances, defects, and irregularities to which the Insurers' Consent and the prior written consent of the Authority have been obtained.

**Property** means when used in connection with a person, the assets of such person, whether consisting of real property, tangible or intangible personal property, or an interest or estate in any such property.

**Related Agreements** means each of the Guaranties, the Inducement Agreement, the Intercreditor Agreement, each Remarketing Agreement, each Interest Rate Exchange Agreement, each Broker-Dealer Agreement, the Auction Agent Agreement and each agreement entered into in connection with a Credit Facility or Liquidity Facility, to which the Center is a party.

**Related Corporation** means (i) each of (A) Sloan-Kettering Institute for Cancer Research and (B) S.K.I. Realty Inc., each of which is a corporation duly incorporated and existing pursuant to the Not-for-Profit Corporation Law of the State, their successors and assigns, (C) MSK Insurance, Ltd., a corporation duly incorporated and existing pursuant to the laws of the Cayman Islands, its successors and assigns, and (ii) all entities now existing (other than the Hospital) or hereafter formed or acquired whose financial statements are required under generally accepted accounting principles to be combined with those of the Center.

**Research Center Property** means all of the right, title and interest of the Center and each Related Corporation in and to:

- (i) the land now owned by the Institute in the City, County and State of New York, generally known as (A) 405 through 415 East 68<sup>th</sup> Street, New York, New York, being Block 1463, Lots 5 and 11 and (B) 425 East 68<sup>th</sup> Street, New York, New York, being Block 1461, Lot 13, and the building and improvements thereon, regardless of when acquired or erected;

(ii) the Sale Proceeds derived from the sale or other disposition of any Research Center Property; and

(iii) any building or improvement erected or constructed with Sale Proceeds derived from the sale or other disposition of Research Center Property, and the land on which it is erected or constructed.

**Resolution** means the “Memorial Sloan–Kettering Cancer Center Revenue Bond Resolution” of the Authority, adopted on February 26, 2003, as the same may be amended, supplemented or otherwise modified pursuant to the terms thereof.

**Restricted Gift** means, when used in connection with a Project, 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 that constitutes a Cost of a Project.

**Restricted Property** means all of the right, title and interest of the Center and each Related Corporation in and to:

(iii) the land now owned or hereafter acquired by any of them, and the building and improvements thereon, regardless of when acquired or erected, more particularly described in Schedule D hereto;

(iv) any real property acquired by any of the Center or a Related Corporation in exchange for other Restricted Property or acquired with Sale Proceeds derived from the sale or other disposition of Restricted Property;

(v) the Sale Proceeds derived from the sale or other disposition of any Restricted Property;

(iv) any building or improvement erected or constructed with Sale Proceeds derived from the sale or other disposition of Restricted Property, and the land on which it is erected or constructed;

(vi) any real property acquired by the Center or a Related Corporation from the Hospital; and

(vi) any real property acquired by any of the Center or a Related Corporation with cash or the proceeds of the disposition of any other Property paid or delivered to any of them by the Hospital in full or partial satisfaction of any Debt of the Hospital to any of them or of any account payable by or receivable from the Hospital to any of them.

**Sale Proceeds** means when used in connection with any Unrestricted Property, Restricted Property, Research Center Property or Mortgaged Property;

(i) the cash proceeds of the sale or other disposition of such property remaining after deducting therefrom the reasonable costs and expenses incurred by the seller in connection with such sale or disposition, including but not limited

to, amounts received as deferred payment of the purchase price pursuant to any purchase money mortgage or otherwise;

(ii) any intangible personal property received by the Center or an Affiliate in exchange for and as the whole or partial consideration for the sale or other disposition of such property;

(iii) any insurance, condemnation or eminent domain proceeds that the Center or a Related Corporation elects to treat as Sale Proceeds in accordance with Section 24 hereof; and

(vii) any and all investments in which such cash proceeds may from time to time be invested and the income or earnings on such investments;

*provided, however*, that when used in Section 11(b) hereof in connection with the Sale Proceeds derived from the sale or other disposition of Unrestricted Property, Sale Proceeds shall mean only the cash proceeds, the investment thereof and the investment income or earnings thereon that as of the date a Funding Event occurs are then unspent.

**Secured Debt Limit** means as of any date of calculation an amount equal to fifteen percent (15%) of the Unrestricted Net Assets of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available.

**Series Resolution** means any resolution of the Authority authorizing the issuance of a Series of Bonds pursuant to Article II of the Resolution, as the same may be amended, supplemented or otherwise modified pursuant to the terms hereof.

**Shared Collateral** mean:

(i) the pledge of or security interest in the Gross Receipts of the Center and the Related Corporations, *provided, however*, that the rents, profits and issues of the Research Center Property, other than receivables and other income derived by the Center or an Affiliate from its general business activities in the Research Center Property, shall not constitute Shared Collateral;

(ii) the mortgage or mortgages on Restricted Property, Unrestricted Property and Hospital Property;

(iii) the security interest in the furnishings and equipment located in and used in connection with any of the Unrestricted Property and Hospital Property;

(iv) the pledge of or security interest in any and all Sale Proceeds (except for Sale Proceeds resulting from the sale or other disposition of Research Center Property);

(viii) such other collateral security to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority, in each case given or made by the Center or a Related Corporation in accordance with Section 11 hereof, and by the Hospital pursuant to Section 3.10 of the Inducement Agreement; and

(vi) any other pledge, security interest or mortgage given or made to the Authority pursuant to Section 14 hereof or pursuant to Section 3.08 of the Inducement Agreement.

**Short-term Debt** means any Debt incurred in the ordinary course of business the principal of which is payable on demand or within three hundred sixty-five (365) days after such Debt was incurred.

**Tender Date** means the date on which an Option Bond is required to be purchased from the Holder thereof upon a tender for purchase or redemption at the option of the Holder or upon a mandatory tender for purchase, in each case in accordance with the terms of the Resolution and such Option Bond.

**Tender Price** means the purchase price or Redemption Price payable on the Tender Date to the holder of an Option Bond that has been tendered or deemed tendered for purchase or redemption at the option of the Holder or upon a mandatory tender for purchase, in each case in accordance with the terms of the Resolution and such Option Bond.

**Term Option Bond** means an Option Bond that is subject to mandatory tender by the Holder thereof for purchase on a date that is not less than three hundred sixty-five (365) days after either the immediately preceding Tender Date or the date of initial issuance.

**Total Operating Revenues** means, as to any period of time, total operating revenues of the Center and the Affiliates, less all deductions from revenues, as determined in accordance with generally accepted accounting principles consistently applied.

**2001 Loan Agreement** means the Loan Agreement, dated as of December 5, 2001, by and between the Authority and the Center in connection with the issuance of 2001 Resolution Bonds, as the same shall have been heretofore or hereafter amended, supplemented or otherwise modified as permitted thereby.

**2001 Resolution** means the Authority's Memorial Sloan-Kettering Cancer Center Revenue Bond Resolution, adopted December 5, 2001, as the same may be amended or supplemented from time to time.

**2001 Resolution Bonds** means bonds issued by the Authority pursuant to the 2001 Resolution.

**Unrestricted Net Assets** means for any Fiscal Year the unrestricted net assets of the Center and the Affiliates as determined in accordance with generally accepted accounting principles and reported in the audited combined financial statements of the Center and the Affiliates for such Fiscal Year.

**Unrestricted Property** means all of the right, title and interest of the Center and each Related Corporation in and to the land now owned or hereafter acquired by any of them, and the buildings and improvements thereon, regardless of when acquired or erected, that is not Research Center Property or Restricted Property.

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

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

**SECTION 2. Corporate Power of the Center.** The Center hereby represents and warrants that the Center has the requisite power and authority to authorize, execute and deliver, and to perform its obligations under the Loan Agreement.

**SECTION 3. Parties to Benefit.** This Loan Agreement is executed in connection with the issuance of the Bonds by the Authority. Except as otherwise expressly provided herein, nothing herein, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the Authority, the Center and the Trustee, any right, remedy or claim, legal or equitable, hereunder or by reason hereof or of any provision hereof, all the provisions hereof being intended to be and being for the sole and exclusive benefit of the Authority, the Center and the Trustee.

**SECTION 4. Project Financing.** (a) The Authority agrees to use its best efforts from time to time to authorize, issue, sell and deliver Bonds in the aggregate principal amount sufficient, together with other moneys available therefor, to pay the Costs of the Project and Costs of Issuance. The proceeds of the Bonds shall be applied as specified in the Series Resolution authorizing the issuance thereof or the Bond Series Certificate relating to such Bonds.

(b) The Center agrees that, upon the request of an Authorized Officer of the Authority and as a condition to the issuance of a Series of Bonds, it shall deliver to the Authority a certificate of an Authorized Officer of the Center satisfactory to an Authorized Officer of the Authority setting forth and representing (i) the amount of Restricted Gifts theretofore received by the Center and each Affiliate in connection with the Project financed thereby, (ii) that all of such amount has been or will be spent on such Project or will be otherwise applied in a manner acceptable to an Authorized Officer of the Authority, (iii) that such amount will not be reimbursed from the proceeds of the sale of such Bonds, (iv) whether the Center reasonably expects that additional Restricted Gifts in connection with such Project will be received by the Center or an Affiliate while such Bonds are Outstanding, and (v) such other matters as may be required by an Authorized Officer of the Authority to determine whether issuance of such Bonds will comply with the requirements of the Code.

(c) If, prior to completion of construction of a Project, the Center or an Affiliate receives any Restricted Gift therefor, the Center shall, to the extent not inconsistent with

the terms of such Restricted Gift, either (i) to the extent necessary to complete the Project, apply such amount in a manner acceptable to an Authorized Officer of the Authority, or (ii) to the extent such moneys will exceed the amount necessary to complete the Project, pay such amount to the Trustee for deposit to the Debt Service Fund. If, after completion of the construction of the Project, the Center receives any Restricted Gift which prior to such completion it reasonably expected to receive, the Center shall deliver a like amount to the Trustee for deposit to the Debt Service Fund.

(d) The Center represents, warrants and covenants that it and the Affiliates have expended or will expend on each Project, from sources other than the proceeds of the issuance of Bonds, an amount equal to the amount of Restricted Gifts received and reasonably expected to be received by it and the Affiliates in the future from pledges or otherwise, and no such moneys will be pledged as collateral for the Bonds or is otherwise expected to be used to pay the principal of or interest on Bonds. For purposes of this paragraph, it is understood that all or any part of a Project may be named in honor of a donor or donors in recognition of pledges, contributions or services of the donor or donors that are unrelated to the Costs of such Project, and amounts pledged or contributed by the donor or donors for purposes unrelated to the Costs of such Project will not be considered to have been raised for purposes of constructing or equipping such Project.

**SECTION 5. Construction of Projects.** (a) The Center agrees that, whether or not there are sufficient moneys available to it under the provisions of the Resolution and the Series Resolution and hereunder, the Center shall complete the acquisition, design, construction, reconstruction, rehabilitation and improving or otherwise providing and furnishing and equipping of the Project, substantially in accordance with the Contract Documents related to such Project. Subject to the conditions hereof, the Authority will, to the extent of moneys available in the Construction Fund, cause the Center to be reimbursed for, or pay, any costs and expenses incurred by the Center which constitute Costs of the Project, provided such costs and expenses are approved by an Authorized Officer of the Authority, which approval shall not be unreasonably withheld.

Nothing contained in this Section shall be construed to require the Center to complete the acquisition, design, construction, rehabilitation and improving or otherwise providing, furnishing and equipping of a Project if prior to completion thereof (i) such Project or the property upon which such Project is located or any portion thereof shall have been taken by eminent domain or condemnation or shall have damaged or destroyed, (ii) such Project or property, or portion thereof, is not to be repaired, replaced or restored, and (iii) the proceeds of any condemnation award or insurance policy resulting from such taking, damage or destruction shall have been paid to the Trustee as required by Section 24 hereof.

(b) (1) To the extent that moneys are available therefor, moneys in a Construction Fund shall be disbursed from the applicable account thereof as the construction of the Project progresses, but not more frequently than once a month, unless otherwise agreed to in writing by an Authorized Officer of the Authority, in amounts and at the times as shall be requested by the Center pursuant to a request for disbursement as hereinafter provided, but not in excess of that needed, in the reasonable judgment of the Authority, to reimburse the Center for, or to pay, any costs and expenses constituting Costs of such Project previously paid or then due; **provided,**

*however*, that the Authority may, in its sole discretion, withhold or delay making any advance in connection with the Project at any time there is pending an action or proceeding, judicial or administrative, challenging the Center's right to undertake such Project or any part thereof, or in which there is in issue (A) the validity of any governmental permit, consent or authorization, or the issuance thereof, necessary in connection with such Project or any part thereof, or (B) the due authorization or validity of the Bonds, unless the Center has provided the Authority with security in such form and amount as may be reasonably required by an Authorized Officer of the Authority.

(2) Prior to making and delivering any certificate required pursuant to Section 5.04(c) of the Resolution to be delivered to the Trustee in connection with payments to be made pursuant to Section 5.04(b) of the Resolution, the Center shall have submitted to the Authority, and have received Authority approval with respect to, the form and substance of, the Project budget and shall deliver to the Authority in connection with the delivery of each certificate required pursuant to Section 5.04(c) of the Resolution the following:

(i) a list of invoices, whether paid or unpaid, including, with respect to each invoice, the name of the vendor, a brief description of the goods or services, the amount of the invoice, a description of the building or buildings to which such payment relates, and, if such invoice has been paid, the date paid, the check number and the amount of the payment;

(ii) copies of architect's certification(s), if any, relating to the invoices listed pursuant to subsection (2)(i) above;

(iii) a reconciliation of the approved budget with funds already disbursed together with funds requested for disbursement currently; all enclosed with

(iv) a certificate executed by two Authorized Officers of the Center, or by their designees identified to the Authority as such, certifying that:

(A) The enclosed architect's certification(s) is (are) a true and correct copy of the architect's certification(s) received by the Center of the work to which it relates;

(B) The enclosed reconciliation of the approved budget with funds already disbursed together with funds requested for disbursement currently is true and correct;

(C) Expenses or monies for which payment is requisitioned have been incurred or expended for items which constitute Costs of the Project, as that term is defined in the Resolution, which Project has not been modified except as permitted by this Loan Agreement.

(D) Each amount contained therein has not been the basis of any prior disbursement from the Construction Fund;

- (E) The payments being requisitioned are within the project budget submitted to and approved by the Authority in accordance with the provisions of Section 2(b) of the Loan Agreement, and to the best of the Authorized Officers' knowledge, the Project can be completed within budget; and,
- (F) Except as otherwise disclosed and agreed to by the Authority in writing, the Center has complied with all provisions of the Loan Agreement and the tax certificate, including, but not limited to those related to the use of the Project and certain prohibitions against use for sectarian religious instruction or religious worship and certain non tax-exempt purposes.

In addition to the foregoing requirements, the Authority, in its sole and absolute discretion, may require the Center to deliver copies of all invoices, paid or unpaid, and copies of the front and back of canceled checks, if any, relating to payments for the Costs of a Project. The Authority, in its sole and absolute discretion, may waive, from time to time, any of the provisions of paragraph (b) of this Section. No such waiver shall be deemed a waiver by the Authority of its right to thereafter require compliance with the provisions of this Section.

(c) The Center will receive the disbursements of moneys in the Construction Fund to be made hereunder, and will hold the right to receive the same, as a trust fund for the purpose of paying the Costs of the Project for which each disbursement was made, and will apply the same first to such payment before using any part thereof for any other purposes.

(d) The Center shall permit the Authority and each Insurer, and their respective authorized representatives, at any time during normal business hours, to enter upon the property of the Center and the Project to inspect the Project and all materials, fixtures and articles used or to be used in construction of such Project, and to examine all Contract Documents. The Center shall furnish to the Authority and each Insurer and its authorized representatives, when requested, copies of such Contract Documents. In the event that, after such inspection or examination, after consultation with the Center, the Authority, may in the reasonable exercise of its discretion, engage an independent consultant, such as an accounting firm, or to implement or increase its project management oversight, such action may be taken at the Center's expense. The Center shall retain all documents pertaining to expenditures for items which constitute Costs of the Project for at least seven (7) years after the date of completion of the Project to which such documents relate. All such documents shall be made available to the Authority and each Insurer, and their respective authorized representatives, for inspection, upon reasonable prior notice.

(e) The Center acknowledges and agrees that disbursements from the Construction Fund are to be made by the Trustee and shall be made in accordance with the Resolution only upon receipt by the Trustee of the documents required by the Resolution to be executed and delivered in connection with such disbursements. The Authority agrees to provide the Center, upon request therefor, with a copy of any certificate made by the Authority and delivered to the Trustee in connection with payments from the Construction Fund for the payment of Costs of Issuance.



(f) The Project shall be deemed to be complete upon delivery to the Authority, each Insurer and the Trustee of a certificate signed by an Authorized Officer of the Center, which certificate shall be delivered as soon as practicable after the completion of such Project, or upon delivery to the Trustee and the Center of a certificate signed by an Authorized Officer of the Authority and delivered at any time after completion of such Project. Any such certificate shall comply with the requirements of Section 5.04 of the Resolution. The Authority agrees that it will not execute and deliver any such certificate unless the Authority has notified the Center in writing that, in the Authority's judgment, such Project has been completed substantially in accordance with the plans and specifications therefor and the Center has failed to execute and deliver the certificate provided for herein within thirty (30) days after such notice is given. The moneys, if any, remaining in the Construction Fund after such Project has been deemed to be complete shall be paid as provided in Section 5.04 of the Resolution.

**SECTION 6. Amendment of Projects.** (a) The Center, with the prior written consent of an Authorized Officer of the Authority, which consent will not be unreasonably withheld, may amend a Project to decrease, increase or otherwise modify the scope thereof. Any such increase may provide for the addition of any further acquisition, design, construction, reconstruction, rehabilitation, renovation, improving, or otherwise providing, furnishing and equipping of a Project which the Authority is authorized to undertake. After the date hereof, the Center shall not enter into, amend or modify, by change order or otherwise, any Contract Document that materially affects the scope or nature of a Project, without the prior written approval of an Authorized Officer of the Authority, which approval shall not be unreasonably withheld. The Center shall deliver to the Authority copies of such changes orders as the Authority may from time to time request.

(b) The Authority, upon request of the Center, may, but shall not be required to, issue Bonds to refund Outstanding Bonds or Bonds to provide moneys required for the cost of completing a Project in excess of the moneys in the applicable account in the Construction Fund. Nothing contained herein or in the Resolution shall be construed as creating any obligation upon the Authority to issue Bonds for such purpose, it being the intent hereof to reserve to the Authority full and complete discretion to decline to issue Bonds for such purpose. The proceeds of any additional Bonds shall be deposited and applied as specified in the Series Resolution authorizing such Bonds or the Bond Series Certificate relating to such Series of Bonds.

**SECTION 7. Compliance with Governmental Requirements.** The Contract Documents shall conform to all Governmental Requirements. The Center shall comply with (i) all Governmental Requirements which, if not complied with, could adversely affect the Center, its operations or financial condition or title to its properties in any material respect and (ii) any requirement of an insurance company writing insurance thereon irrespective of the nature of the work required to be done. Anything contained in this Section to the contrary notwithstanding, the Center shall have the right to contest the validity of any Governmental Requirement or the application thereof at the Center's sole cost and expense. During such contest, compliance with any such contested Governmental Requirement may be deferred by the Center, provided that prior to commencing any action or proceeding, administrative or judicial, contesting such Governmental Requirement the Center shall notify the Authority of the Center's intention to contest such Governmental Requirement and, if an Authorized Officer of the Authority requests, shall furnish to the Authority a surety bond, moneys or other security, reasonably satisfactory to

an Authorized Officer of the Authority, securing compliance with the contested Governmental Requirement and payment of all interest, penalties, fines, fees and expenses resulting from or in connection with such contest or the failure of the Center to comply with the contested Governmental Requirement. Any such action or proceeding instituted by the Center shall be commenced as soon as is reasonably possible after the assertion of the applicability to a Project or any part thereof of the contested Governmental Requirement by a governmental authority and shall be prosecuted to final adjudication or other final disposition with reasonable dispatch. Notwithstanding the furnishing of any bond, deposit or other security, the Center promptly shall comply with any such Governmental Requirement and compliance shall not be deferred if at the time such Project, or any part thereof, to which such contested Governmental Requirement relates, would in the reasonable judgment of an Authorized Officer of the Authority be in substantial danger by reason of the Center's noncompliance with such Governmental Requirement of being sold, attached, forfeited, foreclosed, transferred, conveyed, assigned or otherwise subjected to any proceeding, equitable remedy, lien, charge, fee or penalty that would materially impair (i) the interests or security of the Authority hereunder, under the Resolution; (ii) the ability of the Authority to enforce its rights hereunder or thereunder; (iii) the ability of the Authority to fulfill the terms of any covenants or perform any of its obligations hereunder or under the Resolution; or (iv) the ability of the Center to fulfill the terms of any covenants or perform any of its obligations hereunder.

**SECTION 8. Information Concerning the Center.** The Center, whenever requested by an Authorized Officer of the Authority, shall provide and certify or cause to be provided and certified: (i) subject to legal restrictions, if any, such information concerning the Center or a Guarantor, its finances and other related topics as such Authorized Officer reasonably determines to be necessary, including, but not limited to, such information as in the reasonable judgment of an Authorized Officer of the Authority is necessary to enable the Authority to complete and publish an Official Statement relating to and in connection with the offering, sale, remarketing or reoffering of Bonds at the time when Bonds are to be offered, sold, remarketed or reoffered; *provided, however*, that the Center shall not be required to provide patient records, the names of donors of the Center or the Affiliates or other information the Center is required by law to keep confidential; (ii) a certificate of an Authorized Officer of the Center and each Guarantor to the effect that the Center or such Guarantor has reviewed the parts of the Official Statement describing the it, the applicable Project, the sources and uses of the proceeds of the Bonds, and such other information contained in the Official Statement as was supplied by the Center or such Guarantor; and that as of the dates of sale and delivery of the Bonds such parts of the Official Statement do not contain any untrue statement of a material fact and do not omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which the statements were made, not misleading; and (iii) such additional information as the Authority from time to time reasonably considers necessary to enable it to make any reports or obtain any approvals required by law, governmental regulation or the Resolution in order to issue the Bonds or to effect any of the transactions contemplated hereby or by the Resolution.

**SECTION 9. Financial Obligations of the Center.** (a) Except to the extent that moneys are available therefor under the Resolution or hereunder, including moneys in the Debt Service Fund (other than moneys required to pay, the Redemption Price or purchase price of Outstanding Bonds theretofore called for redemption or contracted to be purchased, plus

interest accrued to the date of redemption or purchase), and excluding interest accrued but unpaid on investments held in the Debt Service Fund, the Center hereby unconditionally agrees to pay, so long as Bonds are Outstanding, to or upon the order of the Authority, from its general funds or any other moneys legally available to it:

(i) On or before the date of delivery of the Bonds of a Series, the Authority Fee agreed to by the Authority and the Center in connection with the issuance of the Bonds of such Series;

(ii) On or before the date of delivery of the Bonds of a Series, such amount, if any, as is required, in addition to the proceeds of such Bonds available therefor, to pay the Costs of Issuance of the Bonds of such Series, and other costs in connection with the issuance of the Bonds of such Series;

(iii) Five Business Days prior to an interest payment date on Outstanding Variable Interest Rate Bonds, the interest coming due on such Variable Interest Rate Bonds on such interest payment date, assuming that such Bonds will, from and after the next succeeding date on which the rates at which such Bonds bear interest are to be determined, bear interest at a rate per annum equal to the rate per annum for such Bonds on the immediately preceding Business Day, plus one percent (1%) per annum;

(iv) On December 10<sup>th</sup> and June 10<sup>th</sup> of each Bond Year, the interest on Outstanding Bonds that are not Variable Interest Rate Bonds payable on the next succeeding January 1<sup>st</sup> and July 1<sup>st</sup>, respectively;

(v) On June 10<sup>th</sup> of each Bond Year, the principal and Sinking Fund Installments of Outstanding Bonds payable during the next succeeding Bond Year;

(vi) Except as provided below, by 1:30 p.m., New York City time, on the day on which payment of the purchase price of an Option Bond tendered for purchase which has not been remarketed and for which there is no Liquidity Facility then in effect, is due, the purchase price of such Option Bond, which shall be paid in immediately available funds; *provided, however*, that (A) if the Center has received notice that such payment is due given by or on behalf of the Authority after 10:00 a.m., New York City time, but prior to 3:00 p.m., New York City time, on such day, then payment by the Center shall be made by 5:00 p.m., New York City time on such day, and (B) if such notice is given after 3:00 p.m., New York City time, on such day, then payment by the Center shall be made by 10:00 a.m. on the next succeeding Business Day;

(vii) At least thirty (30) days with respect to Bonds other than Option Bonds and Variable Interest Rate Bonds and fifteen (15) days with respect to Option Bonds and Variable Interest Rate Bonds prior to any date on which the Redemption Price or purchase price of Bonds previously called for redemption or

contracted to be purchased, other than the Purchase Price, is to be paid, the amount required to pay the Redemption Price or purchase price of such Bonds;

(viii) On December 10<sup>th</sup> of each Bond Year one-half (½) of the Annual Administrative Fee payable during such Bond Year in connection with each Series of Bonds, and on June 10<sup>th</sup> of each Bond Year the balance of the Annual Administrative Fee payable during such Bond Year; *provided, however*, that the Annual Administrative Fee with respect to a Series of Bonds payable during the Bond Year during which such Annual Administrative Fee became effective shall be equal to the Annual Administrative Fee with respect to such Series of Bonds multiplied by a fraction the numerator of which is the number of calendar months or parts thereof remaining in such Bond Year and the denominator of which is twelve (12);

(ix) Promptly after notice from the Authority, but in any event not later than fifteen (15) days after such notice is given, the amount set forth in such notice as payable to the Authority (A) for the Authority Fee then unpaid, (B) to reimburse the Authority for payments made by it pursuant to Section 9(e) hereof and any expenses or liabilities incurred by the Authority pursuant to Section 25, 28 or 29 hereof, (C) to reimburse the Authority for any external costs or expenses incurred by it attributable to the issuance of a Series of Bonds or the financing or construction of a Project, including but not limited to any fees or other amounts payable by the Authority under a Remarketing Agreement, a Credit Facility or a Liquidity Facility, (D) for the costs and expenses incurred by the Authority to compel full and punctual performance by the Center of all the provisions hereof or of the Resolution in accordance with the terms thereof and (E) for the fees and expenses of the Trustee and any Paying Agent in connection with performance of their duties under the Resolution;

(x) Promptly upon demand by an Authorized Officer of the Authority (a copy of which shall be furnished to the Trustee), all amounts required to be paid by the Center as a result of an acceleration pursuant to Section 29 hereof;

(xi) Promptly upon demand by an Authorized Officer of the Authority, the difference between the amount on deposit in the Arbitrage Rebate Fund available to be rebated in connection with the Bonds of a Series or otherwise available therefor under the Resolution and the amount required to be rebated to the Department of the Treasury of the United States of America in accordance with the Code in connection with the Bonds of such Series;

(xii) Promptly upon demand by an Authorized Officer of the Authority, all amounts required to be paid by the Authority to a Counterparty in accordance with an Interest Rate Exchange Agreement or to reimburse the Authority for any amounts paid to a Counterparty in accordance with an Interest Rate Exchange Agreement; and

(xiii) Not less than fifteen (15) days prior to the day set forth on Schedule E hereto on which a premium installment is payable to an Insurer for a financial guaranty insurance policy in connection with Bonds of a Series, the amount thereof as set forth on Schedule E, as Schedule E may from time to time be revised by the Authority in connection with the initial issuance of Bonds of a Series.

Subject to the provisions hereof and of the Resolution, the Center shall receive a credit against the amount required to be paid by the Center during a Bond Year pursuant to paragraph (a)(v) of this Section 9 on account of any Sinking Fund Installments if, prior to the date notice of redemption is given pursuant to the Resolution with respect to Bonds to be redeemed through any Sinking Fund Installments during the next succeeding Bond Year, either (i) the Center delivers to the Trustee for cancellation one or more Bonds of the Series and maturity to be so redeemed or (ii) the Trustee, at the direction of the Authority, has purchased one or more Bonds of the maturity to be so redeemed from amounts on deposit in the Debt Service Fund in accordance with subdivision 5.06(c) of the Resolution during such Bond Year. The amount of the credit shall be equal to the principal amount of the Bonds so delivered.

The Authority hereby directs the Center, and the Center hereby agrees, to make the payments required by this Section 9(a) as follows: (i) the payments required by paragraphs (a)(iii), (a)(iv), (a)(v), (a)(vii) and (a)(x) of this Section directly to the Trustee for deposit and application in accordance with Section 5.05 of the Resolution; (ii) the payments required by paragraph (a)(ii) of this Section directly to the Trustee for deposit in the Construction Fund or other fund established under the Resolution, as directed by and Authorized Officer of the Authority; (iii) the payments required by paragraphs (a)(i), (a)(viii) and (a)(ix) of this Section directly to the Authority; and (iv) the payments required by paragraphs (a)(vi), (a)(xi), (a)(xii) and (a)(xiii) of this Section to or upon the written order of the Authority.

(b) Notwithstanding any provisions herein or in the Resolution to the contrary (except as otherwise specifically provided for in this subdivision), all moneys paid by the Center to the Trustee pursuant hereto or otherwise held by the Trustee shall be applied in reduction of the Center's indebtedness to the Authority hereunder, first, with respect to interest and, then, with respect to the principal amount of such indebtedness, but only to the extent that, with respect to interest on such indebtedness, such moneys are applied by the Trustee for the payment of interest on Outstanding Bonds, and, with respect to the principal of such indebtedness, such moneys have been applied to, or are held for, payments in reduction of the principal amount of Outstanding Bonds and as a result thereof Bonds have been paid or deemed to have been paid in accordance with Section 12.01(b) of the Resolution. Except as otherwise provided in the Resolution, the Trustee shall hold such moneys in trust in accordance with the applicable provisions of the Resolution for the sole and exclusive benefit of the Holders of Bonds, regardless of the actual due date or applicable payment date of any payment to the Holders of Bonds.

(c) The obligations of the Center to make payments or cause the same to be made hereunder shall be absolute and unconditional and the amount, manner and time of making such payments shall not be decreased, abated, postponed or delayed for any cause or by reason of the happening or non-happening of any event, irrespective of any defense or any right of set-off,

recoupment or counterclaim which the Center may otherwise have against the Authority, the Trustee, or any Bondholder for any cause whatsoever including, without limiting the generality of the foregoing, failure of the Center to complete any Project or the completion thereof with defects, failure of the Center to occupy or use any Project, any declaration or finding that the Bonds of any Series are or the Resolution is invalid or unenforceable or any other failure or default by the Authority or the Trustee; *provided, however*, that nothing herein shall be construed to release the Authority from the performance of any agreements on its part herein contained or any of its other duties or obligations, and in the event the Authority shall fail to perform any such agreement, duty or obligation, the Center may institute such action as it may deem necessary to compel performance or recover damages for non-performance. Notwithstanding the foregoing, the Authority shall have no obligation to perform its obligations hereunder to cause advances to be made to reimburse the Center for, or to pay, the Costs of any Project beyond the extent of moneys in the Construction Fund established for such Project available therefor.

The Loan Agreement and the obligation of the Center to make payments hereunder are general obligations of the Center.

(d) An Authorized Officer of the Authority, for the convenience of the Center, shall furnish to the Center statements of the due date, purpose and amount of payments to be made pursuant hereto. The failure to furnish such statements shall not excuse non-payment of the amounts payable hereunder at the time and in the manner provided hereby. The Center shall notify the Authority as to the amount and date of each payment made to the Trustee by the Center.

(e) The Authority shall have the right in its sole discretion to make on behalf of the Center any payment required pursuant to this Section which has not been made by the Center when due. No such payment by the Authority shall limit, impair or otherwise affect the rights of the Authority under Section 29 hereof arising out of the Center's failure to make such payment and no payment by the Authority shall be construed to be a waiver of any such right or of the obligation of the Center to make such payment.

(f) The Center, if it is not in default hereunder, shall have the right to make voluntary payments in any amount to the Trustee. In the event of a voluntary payment, the amount so paid shall be deposited in the Debt Service Fund and applied in accordance with Section 5.06 of the Resolution or held by the Trustee for the payment of Bonds in accordance with Section 12.01(b) of the Resolution. Upon any voluntary payment by the Center, the Authority agrees to direct the Trustee to purchase or redeem Bonds in accordance with the Resolution or to give the Trustee irrevocable instructions in accordance with Section 12.01(b) of the Resolution; *provided, however*, that in the event such voluntary payment is in the sole judgment of the Authority sufficient to pay all amounts then due hereunder and under the Resolution, including the purchase or redemption of all Bonds Outstanding, or to pay or provide for the payment of all Bonds Outstanding in accordance with Section 12.01(b) of the Resolution, the Authority agrees, in accordance with the instructions of the Center, to direct the Trustee to purchase or redeem all Bonds Outstanding, or to cause all Bonds Outstanding to be paid or to be deemed paid in accordance with Section 12.01(b) of the Resolution.

(g) As soon as practicable after the later of the date a Project is deemed to be complete pursuant to Section 5(f) hereof or the issuance of the Bonds of a Series, the Authority shall determine, and notify the Center of, the actual Authority Fee incurred by the Center in connection with such Project to the date of such notice. The balance, if any, of such Authority Fee then unpaid, to the extent not paid from the Construction Fund, shall be paid by the Center pursuant to paragraph (a)(ix) of this Section. If upon such determination the actual amount of the Authority Fee incurred by the Center in connection with such Project to the date of such notice is less than the amount paid theretofore, the Authority shall promptly refund to the Center the amount paid in excess of such actual amount. The Authority agrees to provide the Center with a copy of each certificate delivered by the Authority to the Trustee in connection with payments to be made pursuant to Section 5.04(c) of the Resolution with respect to the Costs of Issuance of Bonds.

**SECTION 10. Financial Covenants of the Center.** The Center hereby covenants and agrees as follows:

(i) **Adjusted Operating Loss Calculation.** If (A) the most recently available audited combined financial statements of the Center and the Affiliates show a decrease in Unrestricted Net Assets of \$50,000,000 or more or (B) the Debt Ratio on any Measurement Date that is the last day of the Center's Fiscal Year, as shown on the certificate delivered in accordance with Section 26 hereof, is less than 1.2 : 1.0, the Center will promptly, but in no event more than thirty (30) days after such financial statements became available, cause the Adjusted Operating Loss to be calculated and a copy of such calculation, certified by an Authorized Officer of the Center, delivered to the Authority and each Insurer.

(ii) **Management Consultant.** If either (A) the Debt Ratio on any Measurement Date, as shown on the certificate delivered in accordance with Section 26 hereof, is less than 1.0 : 1.0 or (B) the Debt Ratio on any Measurement Date that is the last day of the Center's Fiscal Year, as shown on the certificate delivered in accordance with Section 26 hereof, is less than 1.2 : 1.0 and the Adjusted Operating Loss for such Fiscal Year, calculated as required by paragraph (i) above, is greater than \$50,000,000, the Center will:

(1) Within sixty (60) days thereafter, unless a Management Consultant report has been delivered during the preceding one hundred eighty (180) days, engage at its own expense a Management Consultant to review the operations and management of Center and the Affiliates and any other matter deemed appropriate by the Authority and to make such recommendations with respect to such operations, management and other matters as it considers reasonably required for the Center and the Affiliates to establish and maintain a Debt Ratio of not less than 1.0 : 1.0 and to eliminate the Adjusted Operating Loss;

(2) Promptly after the report and recommendations of the Management Consultant are available, but in no event more than one hundred twenty (120) days after the Management Consultant is engaged, deliver or cause

to be delivered to the Authority and each Insurer a copy of the Management Consultant's report and recommendations;

(3) Within sixty (60) days after the Management Consultant's report and recommendation were delivered to the Center, (a) deliver to the Authority and each Insurer (i) a certified copy of a resolution adopted by the Board of Managers of the Center accepting both the Management Consultant's report and the report delivered pursuant to clause (ii) below, and (ii) a written report of the Center's Board of Managers and of an Authorized Officer of the Center setting forth in reasonable detail the actions taken and proposed to be taken by the Center and the Affiliates to implement the recommendations of the Management Consultant, and (b) commence and diligently prosecute all reasonable actions necessary to implement the recommendations of the Management Consultant, other than those that are inconsistent with any federal or State law, rule or regulation or judicial or governmental administrative order applicable to the Center's or an Affiliate's property or operations; and

(4) Within thirty (30) days after the end of each calendar quarter ending more than sixty (60) days after the report required by paragraph (3)(a)(ii) above is delivered, deliver to the Authority and each Insurer a written report of the Center's Board of Managers and of an Authorized Officer of the Center setting forth in reasonable detail the actions taken and proposed to be taken by the Center and the Affiliates to implement the recommendations of such Management Consultant.

(iii) ***Liquidity for Tender Option Obligations.*** (A) The Center will not, without the prior written consent of the Insurers, authorize the Authority to issue or convert, or consent to the issuance or conversion by the Authority of, any Option Bonds, unless upon such issuance or conversion a Liquidity Facility has been provided. Notwithstanding the foregoing, the Center may authorize the Authority to issue or convert, or consent to the issuance or conversion by the Authority of, any Term Option Bonds without a Liquidity Facility; ***provided, however;*** that if on a date that is three hundred sixty-five days prior to the Tender Date of a Term Option Bond either:

(1) the Cash and Investments of the Center and the Affiliates, as reflected on the unaudited combined financial statements of the Center and the Affiliates for the most recent fiscal quarter for which unaudited combined financial statements are then available, are less than one hundred twenty percent (120%) of the Tender Price payable on the Tender Date of such Option Bond; or

(2) the senior unsecured Debt of the Center or any senior unenhanced debt obligation issued on behalf of the Center and payable from unsecured payments to be made by the Center is rated either (x) by any two of the following below the following respective ratings: "A" by Fitch, Inc.; "A-



2" by Moody's Investors Service, Inc.; or "A" by Standard & Poor's Rating Service; or (y) by any one of the following below the following respective ratings: "A-" by Fitch, Inc.; "A-3" by Moody's Investors Service, Inc.; or "A-" by Standard & Poor's Rating Service;

then the Center shall do or cause to be done any of the following:

(1) obtain a Liquidity Facility for such Term Option Bond from a Provider whose unsecured senior debt, or the unsecured senior debt of any guarantor of the Provider's obligations under such Liquidity Facility, is rated by at least one Rating Service in either the second highest long-term rating category or such lower long-term rating category to which the Authority and the Insurers have given their prior written consent;

(2) make provision for payment by the Center or an Affiliate of the Tender Price of such Term Option Bond on such terms and conditions as may be required by the Authority and the Insurers or establish to the satisfaction of the Authority and the Insurers that the Center and the Affiliates have sufficient liquidity to pay the Tender Price; or

(3) convert such Term Option Bond from and after the Tender Date such that the Term Option Bond will no longer be an Option Bond.

Except as provided in (B) below, any Option Bond purchased on a Tender Date by or on behalf of the Center may, in the sole discretion of the Center, be remarketed or surrendered to the Authority for cancellation.

(B) The Center, promptly after notice from the Authority or the Trustee that an event of default under the Resolution has occurred and is continuing, shall deliver or cause to be delivered to the Authority for cancellation all Option Bonds held by or on behalf of the Center or an Affiliate that were tendered for purchase by the Holders thereof, not remarketed and, as a consequence thereof, acquired by the Center or an Affiliate.

**SECTION 11. Funding Events and Collateral Requirement.** (a) **Funding Events.** Each of the Funding Events set forth in Section 11 of the 2001 Loan Agreement will be a "Funding Event" hereunder.

(b) **Collateral Upon Funding Event.** Except as otherwise expressly provided in this paragraph (b), the Center covenants and agrees that, as soon as practicable after the occurrence of a Funding Event, but in no event more than sixty (60) days thereafter:

(i) It will give or cause to be given to the Authority a pledge of or perfected security interest in Gross Receipts of the Center and the Related Corporations; and

(ii) It will make and deliver or cause to be made and delivered to the Authority a mortgage or mortgages in recordable form on all Research Center Property, Unrestricted Property and Restricted Property; and

(iii) It will cause the Hospital to make and deliver to the Authority a mortgage or mortgages in recordable form on all Hospital Property in accordance with Section 3.04 of the Inducement Agreement; *provided, however*, that, if the consent or approval of the Department of Health of the State of New York is required by law to be obtained prior to making or delivering any such mortgage, the Center will take or cause the Hospital to take all actions reasonably necessary to obtain such consent or approval and will make and deliver such mortgage promptly after such consent or approval is obtained, but in no event more than sixty (60) days thereafter; *provided, further*, that no default hereunder shall result from a failure to make and deliver any such mortgage if the same is solely due to the inability of the Center or the Hospital to obtain any consent thereto or approval thereof required by law after diligent effort has been made to obtain such consent or approval; and

(iv) It will give or cause to be given to the Authority a perfected security interest in the furnishings and equipment located in and used in connection with the property to be mortgaged in accordance with this Section; and

(v) It will give or cause to be given to the Authority a pledge of or perfected security interest in the Sale Proceeds of the sale or disposition of any Hospital Property, Research Center Property, Restricted Property or Unrestricted Property, including, but not limited to a pledge of or security interest in the right to receive any Sale Proceeds payable thereafter that are deferred payment of any portion of the purchase price of such property pursuant to a purchase money mortgage or otherwise, and the proceeds of such right; or

(vi) In lieu of all or any of clauses (i) through and (v) above, inclusive, it will give or cause to be given to the Authority such other Collateral to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority.

The Authority agrees that, if no Funding Event or Event of Default is then continuing, and if there has not occurred any event, which with the passage of time or the giving of notice, or both, will constitute an Event of Default, it will as soon as practicable after the written request of the Center release any and all Collateral from any pledge, security interest or mortgage made or given pursuant to this Section, and execute such instruments as the Center may reasonably require to effect or evidence such release.

(c) ***Collateral Upon Excess Secured Debt.*** The Center covenants and agrees that, if at the time the Center or a Related Corporation gives a Lien to secure an obligation incurred pursuant to clause (v) of Section 14(a) hereof, the aggregate principal amount of Debt secured by Liens given pursuant to clauses (viii) and (ix) of Section 14(a), together with the aggregate amount of Derivative Obligations then secured by Liens given pursuant to clause (v)

of Section 14(a), including the Derivative Obligation then to be secured (collectively, the “**Limited Secured Debt**”), exceeds the Secured Debt Limit, the Center, as security for its obligations hereunder, will promptly give or cause to be given to the Authority a Lien or Liens on Property reasonably acceptable to the Authority and the Insurers, the fair market value or, in the case of mortgages on real property, the appraised value of which is at the time such Liens are given at least equal to the amount by which the Limited Secured Debt exceeds the Secured Debt Limit. Notwithstanding the foregoing, no Lien or Liens otherwise required by this paragraph (c) to be given will be required if the obligations of the Center hereunder are then secured by Collateral given pursuant to paragraph (b) of this Section.

The Authority agrees that, if no Event of Default or any event which with the passage of time or the giving of notice, or both, would constitute an Event of Default is then continuing, it will as soon as practicable after the written request of the Center (which may be made no more frequently than once each calendar quarter) and receipt of evidence satisfactory to it and the Insurers that the Limited Secured Debt no longer exceeds the Secured Debt Limit release any and all Collateral from any pledge, security interest, or mortgage made or given pursuant to this paragraph (c), and execute such instruments as the Center may reasonably require to effect or evidence such release.

(d) **Lien Priority; Required Documents.** Except as otherwise permitted by Section 14 hereof and except with regard to the Shared Collateral, the pledge and lien on which is of equal priority with the pledge or lien securing the 2001 Loan Agreement, each mortgage, pledge and security interest made or given pursuant to this Section shall be a first lien on the affected Property subject to only Permitted Encumbrances. Simultaneously with delivery of any Collateral, the Center shall also (i) deliver to the Authority and each Insurer such certificates and opinions of counsel to the Center and the Affiliates with respect to such Collateral as the Authority or an Insurer may reasonably require in connection delivery of such Collateral, including but not limited to such matters as the Center’s or an Affiliate’s corporate power and authority, the due authorization to execute and deliver documents and instruments, and the execution and delivery and the valid, binding and enforceable nature of the pledges, security interests or mortgages made or given and of the documents and instruments executed by the Center or an Affiliate, (ii) take the necessary steps to create, perfect and protect the lien on such Collateral, including but not limited to execution of security agreements and other instruments and the authorization of financing statements, (iii) deliver, to the Authority such title insurance policies as the Authority may reasonably require in connection with any mortgage, (iv) pay all fees, taxes, charges and other expenses incurred in connection with the delivery of such Collateral, (v) make such representations, warranties and covenants with respect to such Collateral as the Authority may reasonably require, and (vi) take such other actions as the Authority may request pursuant to Section 37 hereof.

**SECTION 12. Consent to Pledge and Assignment.** The Center consents to and authorizes the assignment, transfer or pledge by the Authority to the Trustee of (i) the Authority’s rights to receive any or all of the payments required to be made pursuant to Section 9(a) hereof, (ii) any or all pledges, security interests and mortgages made or given by the Center or an Affiliate pursuant to Section 11 hereof or pursuant to the Inducement Agreement, and (iii) all funds and accounts established by the Resolution and pledged thereby, in each case to secure any payment or the performance of any obligation of the Center hereunder or arising out of the

transactions contemplated hereby whether or not the right to enforce such payment or performance shall be specifically assigned by the Authority to the Trustee. The Center further agrees that the Authority may pledge and assign to the Trustee any and all of the Authority's rights and remedies hereunder or under any Related Agreement. Upon any pledge, transfer or assignment by the Authority to the Trustee authorized by this Section, the Trustee shall be fully vested with all of the rights of the Authority so assigned and pledged and may thereafter exercise or enforce, by any remedy provided therefor hereby or by law, any of such rights directly in its own name. Any such pledge and assignment shall be limited to the Authority's rights (i) to receive payments required to be made pursuant to Section 9(a) hereof, (ii) to receive payments required to be made by a Guarantor under its Guaranty, (iii) in and under any pledge, security interest or mortgage made or given pursuant to Section 11 hereof and (iv) to enforce all other obligations required to be performed by the Center hereunder. Any realization upon any pledge, security interest or mortgage made or given pursuant to Section 11 hereof shall not, by operation of law or otherwise, result in cancellation or termination hereof or of the obligations of the Center or a Guarantor hereunder or under any Guaranty.

**SECTION 13. Additional Representation and Covenants.** The Center warrants and represents that (i) it has the requisite power and authority (A) to authorize, execute and deliver, and to perform its obligations under, the Loan Agreement and the Related Agreements, (B) to incur the indebtedness contemplated hereby and thereby and (C) to make and give the pledges, security interests and mortgages contemplated by Section 11 hereof to be made or given by the Center, (ii) the Loan Agreement and each Related Agreement to which it is a party constitute valid and binding obligations of the Center enforceable in accordance with their terms and (iii) the execution and delivery of, consummation of the transaction contemplated by and performance of the Center's obligations under the Loan Agreement and each of Related Agreement to which it is a party do not violate, conflict with or constitute a default under the charter or by-laws of the Center or the Affiliates or any indenture, mortgage, trust, endowment, or other commitment or agreement to which the Center is a party or by which it or any of its properties are bound, or any existing law, rule, regulation, judgment, order, writ, injunction or decree of any governmental authority, body, agency or other instrumentality or court having jurisdiction over the Center, the Affiliates or any of its properties.

The Center covenants on behalf of itself and the Related Corporations that (i) except as otherwise expressly permitted by Sections 11 and 14 hereof, all Collateral will be free and clear of any pledge, lien, charge, security interest or encumbrance thereon that are prior to, or of equal rank with, the pledge, lien, charge or security interest that may be granted or made pursuant to Section 11 hereof (except with regard to the Shared Collateral, the pledge or lien on which is of equal priority with the pledge or lien securing the 2001 Loan Agreement) and (ii) all corporate action on the part of the Center and each Related Corporation to authorize such pledges, security interests and mortgages has been or will be duly and validly taken. The Center further covenants that the Center and the Related Corporations shall at all times, to the extent permitted by law, defend, preserve and protect each such pledge, security interest and mortgage and all of the rights of the Authority and the Holders of Bonds thereunder, hereunder and under the Resolution against all claims and demands of all persons whomsoever.

**SECTION 14. Liens; Secured Debt.** (a) **Permitted Liens.** The Center covenants and agrees that neither it nor any Related Corporation will incur, issue, assume or

guaranty any Debt secured by Liens on any Property unless either (A) the Center or such Related Corporation effectively provides by documents reasonably satisfactory to the Authority that the Center's indebtedness hereunder (together with, if the Center so determines, any other indebtedness or obligation thereafter created that is not subordinate in right of payment to the Center's indebtedness hereunder) shall be secured equally and ratably with or prior to all other obligations secured thereby as long as such Debt shall be so secured, or (B) the Center or the Related Corporation has obtained the Insurers' Consent and the prior written consent of the Authority thereto. Notwithstanding the foregoing provisions of this Section, the Center or a Related Corporation may create or suffer the existence of:

- (i) Liens to secure Debt incurred pursuant to this Loan Agreement;
- (ii) Liens to secure all or any part of the purchase price of furnishings or equipment acquired by the Center or a Related Corporation, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;
- (iii) Liens to secure all or any part of the purchase price of Investment Property acquired by the Center or a Related Corporation, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;
- (iv) Liens heretofore existing on Property or existing thereon at the time such Property was acquired by the Center or a Related Corporation, provided the principal amount of the Debt secured by any such Lien does not exceed ninety-five percent (95%) of the fair market value (in the opinion of an Authorized Officer of the Center) of such Property;
- (v) Subject to the limitations set forth in paragraph (b) of this Section, Liens on intangible personal property to secure obligations incurred by the Center or a Related Corporation to the counter-party in connection with a Derivative Agreement;
- (vi) With the prior written consent of each Insurer, Liens on any of the Collateral to secure Debt incurred to the Authority (other than pursuant to the Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds);
- (vii) With the Insurers' Consent, Liens on Property other than the Collateral to secure Debt incurred to the Authority (other than pursuant to this Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds);

(viii) Subject to the limitations set forth in paragraph (b) of this Section, Liens on intangible personal property, other than accounts receivable, to secure Short-term Debt;

(ix) Subject to the limitations set forth in paragraph (b) of this Section, Liens on accounts receivable;

(x) Liens on pledges to make gifts or bequests to secure Debt, provided that the proceeds of such Debt is applied by the Center or an Affiliate to acquire real property or furnishings and equipment to be used in and in connection with Research Center Property, Unrestricted Property, Restricted Property, Hospital Property or Mortgaged Property;

(xi) With the Insurers' Consent and the prior written consent of the Authority Liens on Property to secure obligations incurred by the Center or a Related Corporation to a counter-party in connection with a Credit Facility or a Liquidity Facility; and

(xii) Any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any Lien referred to in the foregoing clauses (i) through (xi) inclusive or of any Debt or other obligation secured thereby; *provided, however*, that in the case of Liens given to secure Debt (A) the principal amount of Debt or secured thereby shall not exceed the greater of (1) the principal amount of Debt so secured at the time of such extension, renewal or replacement or (2) ninety-five percent (95%) of the original purchase price or cost of construction of the Property subject to such Lien, and (B) such extension, renewal or replacement Lien shall be limited to all or part of substantially the same property to which the Lien that was extended, renewed or replaced applied (plus improvements on such property).

Except for Liens permitted by this Section 14 and Permitted Encumbrances, the Center and each Related Corporation shall keep their respective Property free and clear of Liens.

(b) **Limitations on Secured Debt.** The Center covenants and agrees that neither it nor any Related Corporation will:

(i) Incur, issue, assume or guaranty (A) Debt secured by Liens given pursuant to clauses (viii) or (ix) of paragraph (a) of this Section, (B) obligations secured by Liens given pursuant to clause (v) of paragraph (a) of this Section or (C) any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any such Debt or obligation, if at the time such Debt or Derivative Obligation secured by such Liens is incurred, issued, assume or guaranteed, the aggregate principal amount of Debt and Derivative Obligations of the Center and the Affiliates so secured and then outstanding, inclusive of any secured Short-term Debt or Debt secured by accounts receivable permitted by clauses (ii) and (iii), respectively, of paragraph (b) of this Section, together with the aggregate principal amount of such Debt or Derivative

Obligation, then to be so secured, would exceed fifteen percent (15%) of the Unrestricted Net Assets of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available; or

(ii) Incur, issue, assume or guaranty Short-term Debt secured by Liens given pursuant to clause (viii) of paragraph (a) of this Section, if the aggregate principal amount of Short-term Debt of the Center and the Affiliates so secured and then outstanding, together with the aggregate principal amount of Short-term Debt then to be so secured, would exceed fifteen percent (15%) of the Total Operating Revenues of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available; *provided, however*, that unless the Authority and the Insurers otherwise agree in writing after either (x) a Funding Event has occurred and is continuing or (y) a Management Consultant has been engaged and is then serving in accordance with clause (ii) of Section 10 hereof, for a period of at least twenty (20) consecutive calendar days during each Fiscal Year of the Center the aggregate principal amount of Short-term Debt so secured shall not exceed five percent (5%) of the Total Operating Revenues of the Center and the Affiliates as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available, or

(iii) Incur, issue, assume or guaranty Debt secured by Liens on accounts receivable given pursuant to clause (ix) of paragraph (a) of this Section, if (A) the aggregate principal amount of Debt of the Center and the Affiliates so secured and then outstanding, together with the aggregate principal amount of Debt then to be so secured, would be less than eighty percent (80%) of the accounts receivable subject to such Liens or (B) the accounts receivable securing such Debt would exceed twenty-five percent (25%) of the net accounts receivable of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available.

**SECTION 15. Sale of Property.** The Center covenants that neither it nor a Related Corporation will transfer, sell, convey or otherwise dispose of any Unrestricted Property, Restricted Property, Research Center Property or Mortgaged Property, or any interest therein, for less than fair market value unless such transfer sale, conveyance or other disposition is to the Center or an Affiliate. No Unrestricted Property, Restricted Property, Research Center Property or Mortgaged Property that is any part of a Project may be transferred, sold, conveyed or otherwise disposed of unless, in the opinion of Bond Counsel, the same will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation. All Sale Proceeds of the Center or a Related Corporation shall, until expended as permitted hereby, be held by the Center or a Related Corporation separate and apart from, and not commingled with, any other cash, investments or other assets of any of them and shall be

separately identified as Sale Proceeds on the books of the Center and the Related Corporation, *except* that for purposes of investments of Sale Proceeds permitted by this Section, the Sale Proceeds may be commingled with other moneys of the Center or an Affiliate similarly invested. Sale Proceeds in the form of cash may, nevertheless, be invested and reinvested from time to time in fixed income debt securities that at the time such investment is made (i) are rated by at least one Rating Service in the third highest rating category for such securities, (ii) mature no more than thirty-six (36) months thereafter and (iii) are not securities (other than Government Obligations or Federal Agency Obligations) of an issuer or obligor in which more than ten percent (10%) of the principal amount of Sale Proceeds are invested after giving effect to the investment then to be made.

Except as otherwise provided below, the Center or an Affiliate may, prior to the occurrence of a Funding Event or if no Funding Event is then continuing, in its or their sole discretion, apply the Center's or a Related Corporation's Sale Proceeds derived from the sale or other disposition of Unrestricted Property to any corporate purpose of the Center or a Related Corporation. The Center or a Related Corporation may, in its or their sole discretion, apply the Sale Proceeds derived from the sale or other disposition of Restricted Property, Research Center Property or Mortgaged Property to any one or more of the following:

- (i) To acquire title to other real property;
- (ii) To pay the costs of constructing buildings and improvements on land theretofore owned or thereafter acquired by any of them;
- (iii) With the consent of the Insurers and the Authority, to pay or make provision for payment of Outstanding Bonds, either at their respective maturity or redemption dates; and
- (iv) To such other corporate purpose or purposes of the Center or a Related Corporation to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority.

Notwithstanding the foregoing, no Sale Proceeds derived from the sale of any Unrestricted Property, Restricted Property, Research Center Property or Mortgaged Property that is any part of a Project shall be applied to any of the foregoing purposes unless, in the opinion of Bond Counsel, such application will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation.

**SECTION 16. Tax-Exempt Status.** The Center represents that it, the Hospital, the Sloan-Kettering Institute for Cancer Research and S.K.I. Realty Inc. (i) are organizations described in Section 501(c)(3) of the Code, or corresponding provisions of prior law, and not "private foundations," as such term is defined under Section 509(a) of the Code, (ii) have received a letter or other notification from the Internal Revenue Service to that effect and such letter or other notification has not been modified, limited or revoked, (iii) are in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification, (iv) the facts and circumstances which form the basis of such letter or other notification as



represented to the Internal Revenue Service continue to exist, and (v) are exempt from federal income taxes under Section 501(a) of the Code.

**SECTION 17. Securities Acts Status.** The Center represents that it and each Affiliate is an organization organized and operated (i) exclusively for charitable purposes, (ii) not for pecuniary profit, and (iii) no part of the net earnings of which inures to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended. The Center agrees that neither it nor an Affiliate will perform any act or enter into any agreement which would adversely affect such status as set forth in clauses (i), (ii) and (iii) of this Section.

**SECTION 18. Maintenance of Corporate Existence.** The Center covenants that (i) it and each Related Corporation will maintain their corporate existence, (ii) it and each Related Corporation that is a non-profit charitable organizations will continue to operate as non-profit charitable organizations, (iii) it and each Related Corporation will obtain, maintain and keep in full force and effect such governmental approvals, consents, licenses, permits and accreditation as may be necessary for each of them to continue to so operate, (iv) except as expressly permitted hereby, neither the Center nor any Related Corporation will dissolve or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another person or permit one or more persons to consolidate with or merge into it. The Center or a Related Corporation may, in its sole discretion, dispose of all or substantially all of its assets to, or consolidated with or merge into, the Center or a Guarantor. In addition, with the Insurers' Consent and the prior written consent of the Authority, the Center or a Related Corporation may: (A) sell or otherwise transfer all or substantially all of its assets to, or consolidate with or merge into, another organization or corporation; *provided, however,* that, if the transfer, merger or consolidation is by the Center or a Related Corporation that is an organization that qualifies as an organization described in Section 501(c)(3) of the Code, or any successor provision of federal income tax law, the transferee, resulting or surviving organization or corporation shall also be an organization described in Section 501(c)(3) of the Code, or any successor provision of federal income tax law, (B) permit one or more corporations or any other organization to consolidate with or merge into it, or (C) acquire all or substantially all of the assets of one or more corporations or other organizations. Notwithstanding the foregoing provisions of this Section, no disposition, transfer, consolidation or merger otherwise permitted hereby shall be permitted unless (1) the same would not in the opinion of Bond Counsel adversely affect the exclusion of interest on any Bond from gross income for purposes of federal income taxation, (2) neither the Center nor an Affiliate will as a result thereof be in default hereunder or under any Related Agreement to which it is a party, (3) if the transfer, merger or consolidation is by the Center or a Related Corporation incorporated under the laws of the State, the transferee, resulting or surviving organization or corporation is also incorporated under the laws of the State, (4) if the transfer, merger or consolidation is by the Center or a Related Corporation that is an organization that qualifies as an organization described in Section 501(c)(3) of the Code, or any successor provision of federal income tax law, the transferee, resulting or surviving organization or corporation shall also be an organization described in Section 501(c)(3) of the Code, or any successor provision of federal income tax law, and (5) the surviving, resulting or transferee corporation of the Center or a Related Corporation assumes in writing all of the obligations of the Center or such Related Corporation, as the case may be, hereunder and under the Related Agreements to which it is a party, and furnishes to the Authority and each Insurer (x) a certificate

to the effect that upon such sale, transfer, consolidation, merger or acquisition such corporation will be in compliance with each of the provisions hereof and of the Related Agreements to which it is a party, and will meet the requirements of the Act, and (y) such other certificates and documents as the Authority or an Insurer may reasonably require to establish compliance with this Section.

**SECTION 19. Environmental Review and Historic Preservation.** For the purpose of assisting the Authority in making any findings or determinations which might be required by (i) Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereunder (collectively, "SEQR") or (ii) the New York State Historic Preservation Act of 1980 and the regulations promulgated thereunder (collectively, the "Preservation Act"), the Center agrees as follows:

(a) to prepare such documents, if any, as the Authority or other governmental body having primary responsibility under SEQR or the Preservation Act determines are required by SEQR or the Preservation Act, in such form and containing such information in such detail as the Authority or such other governmental body determines is required by SEQR or the Preservation Act, which documents are and shall be accurate in all material respects; and

(b) to file such documents with, or send such documents to, the persons or places required by SEQR or the Preservation Act or the Authority, and to present documentation of such filing or sending in such form as is satisfactory to an Authorized Officer of the Authority.

**SECTION 20. Use and Control of Project.** Subject to the rights, duties and remedies of the Authority hereunder, the Center or the Affiliates shall have sole and exclusive control and possession of and responsibility for (i) the Projects, (ii) the operation of the Projects and supervision of the activities conducted therein or in connection with any part thereof, and (iii) the maintenance, repair and replacement of the Projects, *provided, however*, that, except as otherwise limited hereby, the foregoing shall not prohibit use of a Project by persons other than the Center and the Affiliates in furtherance of the Center's purposes if such use will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes.

**SECTION 21. Restrictions on Religious Use.** The Center agrees that with respect to any Project or portion thereof, so long as such Project or portion thereof exists and is owned by the Center or an Affiliate and unless and until such Project or portion thereof is sold for the fair market value thereof, such Project or portion thereof owned by the Center or an Affiliate shall not be used for sectarian religious instruction or as a place of religious worship or in connection with any part of a program of a school or department of divinity for any religious denomination; *provided, however*, that the foregoing restriction shall not prohibit the free exercise of any religion; and, *provided, further*, that if at any time hereafter, in the opinion of Bond Counsel, the then applicable law would permit a Project or a portion thereof to be used without regard to the above stated restriction, said restriction shall not apply to such Project and each portion thereof. The Authority and its agents may conduct such inspections as an Authorized Officer of the Authority deems necessary to determine whether any Project or any

portion of real property thereof financed by Bonds is being used for any purpose proscribed hereby. The Center hereby further agrees that prior to any disposition of any portion of a Project for less than fair market value, it shall execute and record in the appropriate real property records an instrument subjecting, to the satisfaction of the Authority, the use of such portion of such Project to the restriction that (i) so long as such portion of such Project (and, if included in the Project, the real property on or in which such portion of such Project is situated) shall exist and (ii) until such portion of such Project is sold or otherwise transferred to a person who purchases the same for the fair market value thereof at the time of such sale or transfer, such portion of such Project shall not be used for sectarian religious instruction or as a place of religious worship or used in connection with any part of the program of a school or department of divinity of any religious denomination. The instrument containing such restriction shall further provide that such restriction may be enforced at the insistence of the Authority or the Attorney General of the State, by a proceeding in any court of competent jurisdiction, by injunction, mandamus or by other appropriate remedy. The instrument containing such restriction shall also provide that if at any time thereafter, in the opinion of Bond Counsel, the then applicable law would permit such portion of such Project, or the real property on or in which such portion is situated, to be used without regard to the above stated restriction, then said restriction shall be without any force or effect. For the purposes of this Section an involuntary transfer or disposition of a Project or a portion thereof, upon foreclosure or otherwise, shall be considered a sale for the fair market value thereof.

**SECTION 22. Maintenance, Repair and Replacement.** The Center agrees that, throughout the term hereof, it shall, at its own expense, hold, operate and maintain the Projects in a careful, prudent and economical manner, and keep the same, with the appurtenances and every part and parcel thereof, in good repair, working order and safe condition and shall from time to time make all necessary and proper repairs, replacements and renewals so that at all times the operation of the Projects may be properly and advantageously conducted. The Center shall not make any material change or alteration of a structural nature in or to any Project without the prior written consent of an Authorized Officer of the Authority, which consent shall not be unreasonably withheld. Nothing in this Section 22 shall be construed to prevent the Center from clearing property of existing structures to prepare such property for a new building, the construction of which is part of a Project. The Center shall have the right to remove or replace any type of fixtures, furnishings and equipment in the Projects which may have been financed by the proceeds of the sale of Bonds provided the Center substitutes for any removed or replaced fixtures, furnishings and equipment, additional fixtures, furnishings and equipment having equal or greater value and utility that the fixtures, furnishings and equipment so removed or replaced.

The Center further agrees that it shall pay at its own expense all extraordinary costs of maintaining, repairing and replacing the Projects except insofar as funds are made available therefor from proceeds of insurance, condemnation or eminent domain awards.

**SECTION 23. Insurance.** (a) The Center, at its sole cost and expense, shall procure and maintain, or cause to be procured and maintained, to the extent reasonably obtainable, from responsible insurers reasonably acceptable to an Authorized Officer of the Authority, insurance of the type and in the amounts customarily maintained by institutions

providing services similar to those provided by the Center or the Affiliates. All policies of insurance required by this Section shall be primary to any insurance maintained by the Authority.

(b) The Center, at the times specified in the following paragraphs, shall procure and maintain, or cause each Related Corporation to procure and maintain, to the extent reasonably obtainable, from each Related Corporation to procure and maintain, to the extent reasonably obtainable, from reasonable insurers acceptable to the Authority, including self-insurance, the following insurance:

(i) prior to the completion of construction of any building that constitutes Unrestricted Property, Research Center Property or Restricted Property or that is part of any Project, and until insurance is procured pursuant to subparagraph (ii) below, all risk builders' risk insurance against direct physical loss or damage, or with respect to the acquisition and installation of equipment or machinery, in lieu of all risk builders' risk, an installation floater on an all risk basis. The amount of such insurance shall be on a one hundred per centum (100%) completed value basis on the insurable portion;

(ii) at all times (except during a period when builders' risk insurance is in effect as required by subparagraph (i) above), all risk property insurance against direct physical loss or damage to a Project, Unrestricted Property, Research Center Property, Restricted Property and the Mortgaged Property, in an amount equal to not less than eighty percent (80%) of the replacement value thereof using commercial insurance, captive insurance or other forms of self-insurance or any combination thereof (such replacement value to be determined on the basis of replacement costs without allowance for depreciation), exclusive of excavations and foundations and similar property normally excluded under New York standard forms; *provided, however*, that the inclusion of the such property under a blanket insurance policy or policies of the Center insuring against the aforesaid hazards in an amount aggregating at least eighty percent (80%) of the insurable value of the insured property, exclusive of excavations and foundations and similar property normally excluded under New York standard forms, shall constitute complete compliance with the provisions of this paragraph with respect to such property; *provided, further*, that in any event, each such policy shall be in an amount sufficient to prevent the Center and the Authority from becoming co-insurers under the applicable terms of such policy;

(iii) at all times (except during a period when builders' risk insurance is in effect as required by subparagraph (i) above), all risk property insurance against direct physical loss or damage to the Hospital Property located at 1275 York Avenue in the City and State of New York currently used for in-patient services (and such other additional property or replacement property at which the Hospital may hereafter provide in-patient services), and the research facility to be located at 405-415 East 68<sup>th</sup> Street in the City and State of New York in an amount equal to not less than one hundred percent (100%) of the replacement value thereof using commercial insurance, captive insurance or other forms of self-insurance or any combination thereof (such replacement value to be determined on the basis of replacement costs without allowance for depreciation),

exclusive of excavations and foundations and similar property normally excluded under New York standard forms; *provided, however*, that the inclusion of the such property under a blanket insurance policy or policies of the Center or an Affiliate insuring against the aforesaid hazards in an amount aggregating at least one hundred percent (100%) of the insurable value of the insured property, exclusive of excavations and foundations and similar property normally excluded under New York standard forms, shall constitute complete compliance with the provisions of this paragraph with respect to such property; *provided, further*, that in any event, each such policy shall be in an amount sufficient to prevent the Center and the Authority from becoming co-insurers under the applicable terms of such policy

(iv) at all times, statutory workers' compensation insurance, covering loss resulting from injury, sickness, disability or death of employees and employer's liability insurance with limits of at least \$1,000,000 for each accident, each sickness, and aggregate occupational illness or sickness;

(v) at all times, statutory disability benefits;

(vi) at all times, commercial general liability insurance protecting the Authority, the Center and each Related Corporation against loss or losses from liabilities arising from bodily injury of persons or damage to the property of others caused by accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of injury to persons or property damage with \$2,000,000 policy aggregate, excluding liability imposed upon the Authority, the Center or a Related Corporation by any applicable workers' compensation law;

(vii) commencing with the date on which construction of any building that constitutes Unrestricted Property, Research Center Property or Restricted Property or that is part of any Project, or any part thereof is completed or first occupied, or any equipment, machinery, fixture or personal property covered by comprehensive boiler and machinery coverage is accepted, whichever occurs earlier, insurance providing comprehensive boiler and machinery coverage in an amount considered adequate by the Authority, which insurance may include deductible provisions approved by the Authority; and

(viii) each other form of insurance which the Center and a Related Corporation is required by law to provide and such other kinds of insurance in such amounts as from time to time may be reasonably required by the Authority.

(c) Any insurance procured and maintained pursuant to this Section, including any blanket insurance policy, may include deductible provisions reasonably satisfactory to the Authority. In determining whether or not any insurance required by this Section is reasonably obtainable or if the deductible on any such insurance is a reasonable deductible, the Authority may rely solely and exclusively upon the advice and judgment of any insurance consultant

chosen by the Center and approved by the Authority, and any such decision by the Authority, based upon such advice and judgment, shall be conclusive.

(d) In lieu of any insurance coverage required by this Section, the Center or a Related Corporation may, upon the recommendation of an independent insurance consultant or actuary reasonably acceptable to the Authority, self-insure against any risk provided the Center or such Related Corporation funds such self-insurance at the level recommended by such insurance consultant or actuary.

(e) Each policy maintained pursuant to this Section shall provide that the insurer writing such policy shall give at least thirty (30) days notice in writing to the Authority of the cancellation or non-renewal or material change in the policy unless a lesser period of notice is expressly approved in writing by the Authority. The Center, not later than July 15<sup>th</sup> of each year, shall provide (i) with respect to each policy of insurance maintained by the Center as of the preceding June 30<sup>th</sup>, a certificate of insurance that sets forth the name of the insurer, the insured parties or loss payees, the level of coverage, the deductible and such other information as the Authority may reasonably request, and (ii) with respect to each self-insurance plan maintained by the Center as of the preceding June 30<sup>th</sup>, a written statement describing such plan, the risks insured thereby and the then current level of funding.

(f) All policies of insurance shall be open to inspection by the Authority, each Insurer and the Trustee or their representatives at all reasonable times. If any change shall be made in any such insurance, a description and notice of such change shall be furnished to the Authority, each Insurer and the Trustee at the time of such change. The Center covenants and agrees not to make any change in any policy of insurance which would reduce the coverages or increase the deductible thereunder without the prior written consent of the Authority and each Insurer.

(g) All policies of insurance maintained pursuant to this Section, other than policies of workers' compensation insurance, shall include the Authority, as an additional insured or as mortgagee or loss payee as appropriate.

(h) In the event the Center or a Related Corporation fails to provide the insurance required by this Section, the Authority may elect at any time thereafter to procure and maintain the insurance required by this Section at the expense of the Center and shall give written notice thereof to each Insurer. The policies procured and maintained by the Authority shall be open to inspection by the Center and each Insurer at all reasonable times, and, upon request of the Center, a complete list describing such policies as of the June 30<sup>th</sup> preceding the Authority's receipt of such request shall be furnished to the Center by the Authority.

**SECTION 24. Damage or Condemnation.** In the event of a taking of a Project, Hospital Property, Research Center Property, Restricted Property or Mortgaged Property, or any portion thereof, by eminent domain or condemnation, or of damage or destruction affecting all or part thereof, all property casualty insurance, condemnation or eminent domain proceeds shall, if in excess of \$1,000,000 and not applied to reimburse the Center or an Affiliate for costs incurred to repair or restore the same, be paid to the Trustee for deposit in the

Construction Fund. All proceeds derived from an award for such taking or from property casualty insurance shall be applied as provided below.

(i) If within one hundred twenty (120) days (or such longer period as the Authority and the Center may agree) after the Authority receives actual notice or knowledge of the taking or damage, the Center and the Authority agree in writing that the property or the affected portion thereof shall be repaired, replaced or restored, the Center and the Affiliates shall proceed to repair, replace or restore the same, or the affected portion thereof, including all fixtures, furniture, equipment and effects, to its original condition insofar as possible with such changes and additions as shall be appropriate to the needs of the Center and the Affiliates and approved in writing by an Authorized Officer of the Authority. The funds required for such repair, replacement or restoration shall be paid, subject to such conditions and limitations as the Authority may impose, from the proceeds of insurance, condemnation or eminent domain awards received by reason of such occurrence and to the extent such proceeds are not sufficient, from funds to be provided by the Center and the Affiliates.

(ii) If no agreement for the repair, restoration or replacement the property or affected portion shall have been reached by the Authority and the Center within such period, either (A) if an Authorized Officer of the Center shall file with the Authority, each Insurer and the Trustee a written determination that the failure to repair, restore or replace such property will not cause the Center or a Related Corporation to be in violation of any covenant or agreement hereof or of a Guaranty or a Related Agreement, the Center in its sole discretion may, by written notice to the Authority and each Insurer given within thirty (30) days after the expiration of such period, irrevocably elect to consider and treat the proceeds as Sale Proceeds, whereupon the Authority shall cause any proceeds then held in the Construction Fund to be paid to the Center, or (B) if an election is not timely made, the proceeds then held by the Center shall be paid the Trustee for deposit in the Debt Service Fund and the proceeds then held in the Construction Fund shall be transferred to the Debt Service Fund, whereupon such proceeds shall be applied to the purchase or redemption of Outstanding Bonds.

**SECTION 25. Taxes and Assessments.** The Center shall pay when due at its own expense, and hold the Authority harmless from, all taxes, assessments, water and sewer charges and other impositions, if any, which may be levied or assessed upon the Center or the Affiliates. The Center shall file exemption certificates as required by law. The Center agrees to exhibit to an Authorized Officer of the Authority within ten (10) days after written demand by such Authorized Officer, certificates or receipts issued by the appropriate authority showing full payment of all taxes, assessments, water and sewer charges and other impositions; *provided, however,* the good faith contest of such impositions and deposits with the Authority of the full amount of such impositions shall be deemed to be complete compliance with the requirement. Notwithstanding the foregoing, the Authority in its sole discretion, after notice in writing to the Center, may pay any charges, taxes and assessments which may be levied or assessed upon a Project and which are not paid by the Center or the Affiliates when due, unless the imposition of such charges, taxes or assessments are being conducted in good faith and the Center had

deposited with the Authority in full amount of such charges, taxes or assessments. The Center agrees to reimburse the Authority for any such payment, with interest thereon from the date payment was made by the Authority at a rate equal to the highest rate of interest payable on any investment held for the Debt Service Fund on the date such payment was made by the Authority.

**SECTION 26. Reporting Requirements; Access to Records.** (a) **Reporting Requirements.** The Center shall furnish or cause to be furnished to the Authority, the Trustee, each Insurer, such other persons as the Authority may designate and, with respect to the items set forth in subparagraphs (i) and (ii) below, each "Repository", as such term is defined in each Agreement to Provide Continuing Disclosure to which the Center is a party:

(i) within sixty (60) days after the end of each of the first three quarters of the Center's Fiscal Year (A) a copy of the interim, comparative cumulative combined financial statements of the Center and the Affiliates, including therein, without limitation, a balance sheet, a statement of changes in net assets and a statement of activities, duly certified by the chief financial officer of the Center as having been prepared in accordance with generally accepted accounting principles, and, (B) if an Event of Default hereunder, or, to the best of the Center's 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, a certificate of an Authorized Officer of the Center stating the nature thereof and the action that the Center or an affected Affiliate proposes to take with respect thereto;

(ii) annually, within one hundred twenty (120) days after the end of the Center's Fiscal Year, (A) a copy of (1) the annual audited combined financial statements of the Center and the Affiliates for such Fiscal Year, (2) the annual audited financial statement of the Center for such Fiscal Year, if separate audited financial statements for the Center have been prepared for such Fiscal Year, and (3) the audited consolidated financial statements of the Center and the Affiliates, if audited such audited consolidated statements have been prepared for such Fiscal Year, in each case 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 Center, in each case audited by a firm of independent public accountants of recognized standing as may be reasonably acceptable to the Authority and the Insurers, (B) a copy of any management letter prepared by the auditors, (C) a certificate or other instrument signed by the Center's auditors 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 (D) if such an Event of Default or such an event has occurred and is continuing, a certificate of an Authorized Officer of the Center setting forth the action that the Center or the affected Affiliate proposes to take with respect thereto,



(iii) within sixty (60) days after each Measurement Date that is not the last day of the Center's Fiscal Year, and within one hundred twenty (120) days after each Measurement Date that is the last day of the Center's Fiscal Year, a certificate executed by an Authorized Officer of the Center (A) setting forth the Cash and Investments and outstanding Debt of the Center and the Affiliates and (B) calculating the Debt Ratio, each as of the applicable Measurement Date;

(iv) within one hundred twenty (120) days after the end of each of the Center's Fiscal Years, a certificate of an Authorized Officer of the Center setting forth (i) the Unrestricted Net Assets for the two most recently ended Fiscal Years, and (ii) if then required by Section 10 hereof, the Adjusted Operating Loss for such Fiscal Years;

(v) promptly after, but in no event more than thirty (30) days after, the Center or a Related Corporation either incurs, issues, assumes or guarantees (A) a Debt secured by Liens given pursuant to clause (viii) of Section (14)(a) hereof, (B) an obligation secured by Liens given pursuant to clause (v) of Section 14(a) hereof, or (C) any extension, renewal or replacement (or any successive extensions, renewals or replacements) in whole or in part of any such Debt or obligation, a certificate of an Authorized Officer of the Center (1) setting forth in reasonable detail the Debt or obligation then incurred, issued, assumed or guaranteed, (2) containing a statement to the effect that, after giving effect thereto, the Center and the Related Corporations are in compliance with each limitation applicable thereto and to each of them set forth in Section 11(c) hereof and (3) setting forth in reasonable detail the calculation of each such limitation.

(vi) promptly after, but in no event more than thirty (30) days after, the Center or a Related Corporation gives a Lien to secure an obligation incurred pursuant to clause (v) of Section 14(a) hereof, a certificate of an Authorized Officer of the Center setting forth in reasonable detail the calculation of the Secured Debt Limit, the amount of Limited Secured Debt then outstanding and the amount, if any, by which the Limited Secured Debt exceeds the Secured Debt Limit.

(vii) 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 lesser of (1) \$25,000,000 over the applicable insurance coverage and (2) two and one-half percent (2 ½%) of the value of the Center's and the Affiliate's Unrestricted Net Assets or (B) in which an adverse determination may have a material adverse effect on the combined financial or operating condition of the Center and the Affiliates;

(viii) prompt written notice of, but in no event more than ten (10) days after, a failure by the Center or a Guarantor to pay any amount payable by the Center pursuant to paragraph (a)(iii), (a)(iv), (a)(v), (a)(vi), (a)(vii), (a)(x) or (a)(xii) of Section 9 hereof;

(ix) prompt written notice to the Authority and each Insurer of the loss or change in the chief executive officer, the chief operating officer, president, or chief financial officer of the Center, the Hospital or Sloan-Kettering Institute for Cancer Research;

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

(xi) such reports with respect to the condition of, and repairs, replacements, renovations, and maintenance, to one or more Projects as the Authority or an Insurer may from time to time reasonably request; and

(xii) such other information respecting the business, property or the condition or operations, financial or otherwise, of the Center and the Related Corporations as the Authority or an Insurer may from time to time reasonably request (other than information the Center of such Related Corporation is required by law to keep confidential), including, but not limited to, such information as, in the reasonable judgment of the Authority, may be necessary in order to ensure compliance with applicable federal securities laws in effect from time to time or to maintain a market for or enable securities dealers to offer the Bonds for sale.

(b) Access to Records. At any and all reasonable times and from time to time, permit the Authority, the Trustee and each Insurer, 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 properties of the Center and each Related Corporation and to discuss the affairs, finances and accounts of the Center and the Related Corporations with any of their respective officers.

**SECTION 27. Opinion of Counsel to the Center.** (a) In addition to the documents required pursuant to Article II of the Resolution, at or prior to the delivery of each Series of Bonds there shall be delivered to the Authority an opinion or opinions of counsel to the Center, in form and substance satisfactory to an Authorized Officer of the Authority and Bond Counsel, addressed to the Authority, substantially to the effect that (i) the Center is a corporation duly incorporated and validly existing in good standing under the laws of the State with all requisite corporate power and authority to own its properties and conduct its affairs as described in the Official Statement relating to the Bonds then to be issued; (ii) the Center has all requisite corporate power and authority to execute, make, deliver and perform this Loan Agreement and each of the Related Agreements entered into in connection with such Bonds and this Loan Agreement and such Related Agreement have been duly authorized, made, executed and delivered by the Center and are, and create, legal, valid and binding general obligations of the Center enforceable against the Center in accordance with their terms except as enforcement (but not validity) may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to the enforcement of creditors' rights generally and the availability of any particular remedy; (iii) execution and delivery of this Loan Agreement and each of the Related Agreements by the Center and the consummation of the transactions therein contemplated and the

performance of the Center's obligations thereunder do not violate, conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, the charter or by-laws of the Center or any indenture, mortgage, trust or any other commitments or agreements of which such counsel has knowledge (after due inquiry of appropriate officers and other representatives of the Center and review of certain documents and other records of the Center), to which the Center is a party or by which it or any of its properties are bound, or any existing law, rule or regulation or to such counsel's knowledge after due inquiry of appropriate officers of the Center an review of certain documents and other instruments of the Center, any judgment, order or decree of any governmental instrumentality or court having jurisdiction over the Center or any of its properties; (iv) to the best of such counsel's knowledge after due inquiry of appropriate officers of the Center an review of certain documents and other instruments of the Center, no event of default under the Loan Agreement or any Related Agreement, nor any occurrence which but for the passage of time or the giving of notice or both would be an event of default, has occurred; (v) to the best of their knowledge, after due inquiry of appropriate officers of the Center an review of certain documents and other instruments of the Center, the Center has complied with all material conditions and has fulfilled all material covenants required of it by each instrument providing for the indebtedness described in the Official Statement and no event of default under any such instrument, nor any occurrence which but for the passage of time or the giving of notice, or both, would be an event of default, has occurred and is continuing; (vi) no authorization, approval or order of any court or public regulatory body of the State or the United States is required in connection with the execution and delivery by the Center of the Loan Agreement and Related Agreements entered into in connection with such Bonds and the performance of its obligations thereunder and the consummation by the Center of the transactions contemplated thereby; (vii) the Center is an organization described in Section 501(c)(3) of the Code or corresponding provisions of prior law and is exempt from federal income taxes under Section 501(a) of the Code and has received a letter or other notification from the Internal Revenue Service to that effect, which letter or other notification has not been modified, limited or revoked, is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification and they are informed (after reasonable investigation) that the facts and circumstances which form the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist and the Center is exempt from federal income under Section 501(a) of the Code; (viii) the Center is not a "private foundation" as such term is defined under Section 509(a) of the Code; (ix) the Center is an organization organized and operating, (a) exclusively for charitable purposes, (b) not for pecuniary profit, and (c) no part of the net earnings of which inures to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and of the Securities Exchange Act of 1934, as amended; (x) the Center has duly authorized inclusion in the Official Statement of the information provided by the Center and contained therein (including its financial statements) and the information contained therein relating to the Center, the Affiliates, the Projects, and the sources and uses of funds and, after participating in numerous conferences and conversations and consulting on numerous occasions with representatives of the Center, the Authority and the Underwriters in preparation of the Official Statement, but without undertaking to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement, no facts have come to their attention which would lead them to believe that such information (with the exception of financial statements, schedules, studies, forecasts, other financial data and statistical

information included therein, as to which no opinion need be expressed) includes any untrue or misleading statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and (xi) to such counsel's knowledge, after due inquiry of appropriate officers of the Center an review of certain documents and other instruments of the Center, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or to the best of their knowledge, after reasonable investigation, threatened to challenge the authority or ability of the Center to continue to operate its facilities or to challenge its title to its property or which would otherwise limit, restrain or enjoin the ability of the Center to carry out the transactions contemplated in this Loan Agreement and the Related Agreements or seeking damages in excess of applicable insurance coverage, except as disclosed in the Loan Agreement or in the Official Statement.

(b) At or prior to the first date on which a Series of Bonds are issued the Center shall deliver to the Authority an opinion or opinions of counsel to each of the Affiliates, in form and substance satisfactory to an Authorized Officer of the Authority, addressed to the Authority and Bond Counsel, substantially to the effect that (i) such Affiliate is a corporation duly incorporated and validly existing in good standing under the laws of the State with power and authority to own its properties and conduct its affairs; (ii) all authorizations, approvals and orders of any court or public regulatory body of the State or the United States with respect to the transactions contemplated by the Loan Agreement and the Related Agreements have been obtained or undertaken to be obtained by such Affiliate prior to the time required by any such court or regulatory body; (iii) to the extent applicable to an Affiliate, such Affiliate is an organization described in Section 501(c)(3) of the Code or corresponding provisions of prior law and has received a letter or other notification from the Internal Revenue Service to that effect, which letter or other notification has not been modified, limited or revoked, is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification and they are informed (after reasonable investigation) that the facts and circumstances which formed the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist and such Affiliate is exempt from federal income taxes under Section 501(c)(3) of the Code; (iv) to the extent applicable to an Affiliate, such Affiliate is not a "private foundation," as such term is defined under Section 509(a) of the Code; (v) to the extent applicable to an Affiliate, such Affiliate is an organization organized and operating, (a) exclusively for charitable purposes, (b) not for pecuniary profit, and (C) no part of the net earnings of which inures to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and of the Securities Exchange Act of 1934, as amended; (vi) where applicable, such Affiliate has duly authorized inclusion in any Official Statement of the information provided by such Affiliate and contained therein relating to such Affiliate and, after reasonable investigation, no facts have come to their attention which would lead them to believe that such information (with the exception of financial and statistical information included therein, as to which no opinion need be expressed) is not true and correct in all material respects or includes any untrue statement or misleading statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and (vii) to such counsel's knowledge, after due inquiry of appropriate officers of the Center an review of certain documents and other instruments of the Center, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or to the

best of their knowledge, after reasonable investigation, threatened to challenge the authority or ability of such Affiliates to continue to operate its facility or to challenge its title to its property or valid leasehold interest or which would otherwise limit, restrain or enjoin the ability of the Center to carry out the transactions contemplated in the Loan Agreement or the Related Agreements or seeking damages in excess of applicable insurance coverage, except as disclosed in the Loan Agreement or in the Official Statement.

**SECTION 28. Indemnity by Center.** (a) To the extent permitted by law, the Center hereby releases and agrees to hold harmless and indemnify the Authority and its members, officers, officials, counsel, consultants, agents and employees from and against all, and agrees that the Authority and its members, officers, officials, counsel, consultants, agents and employees shall not be liable for any (i) liabilities, suits, actions, claims, demands, damages, losses, expenses and costs of every kind and nature resulting from any action taken in accordance with, or permitted by, the Loan Agreement, any Remarketing Agreement, and Liquidity Facility, or the Resolution, or arising from or incurred by the Authority by reason of (A) its financing of a Project pursuant hereto or (B) any Remarketing Agreement, any Liquidity Facility and the Resolution (but excluding loss, damage or liability which may arise as a result of gross negligence, willful misconduct or intentional misrepresentation), or (ii) loss or damage to property or any injury to or death of any or all persons that may be occasioned by any cause whatsoever pertaining to a Project or arising by reason of or in connection with the presence on, in or about the premises of a Project of any person; including in each case, without limiting the generality of the foregoing, causes of action and attorneys' fees and other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing and including any loss, damage or liability which may arise as a result of the negligence (but excluding any loss, damage or liability which may arise as a result of the gross negligence, willful misconduct or intentional misrepresentation) of any party so indemnified by the Center, and to deliver at the request of an Authorized Officer of the Authority any further instrument or instruments in form satisfactory to such Authorized Officer as such Authorized Officer deems necessary to effectuate more fully the provisions of this paragraph (a); *provided, however*, that the indemnity provided in this sentence shall be effective only to the extent of any loss or liability that may be sustained by the Authority in excess of net proceeds received from any insurance carried with respect to such loss or liability; *provided, further*, that the Authority and the Center shall each provide a waiver of rights of subrogation against the other in any insurance coverage obtained relating to a Project. The indemnity provided by this paragraph (a) shall be in addition to and not limited by any of the provisions of Section 25 or Section 29 hereof (but shall not apply in the case of circumstances described in paragraph (b) of this Section); *provided, however*, that to the extent the Authority receives indemnification pursuant to such Sections, the Authority shall not be entitled to additional indemnification pursuant to this paragraph (a).

(b) The Center agrees, to the extent permitted by law, to indemnify and hold harmless the Authority, any member, officer, official, employee, counsel, consultant and agent of the Authority, each and any purchaser of Bonds whose name is set forth in a contract of purchase between any such purchaser or purchasers and the Authority providing for the sale of Bonds by the Authority or on a bid submitted at public sale for the purchase of Bonds and each person, if any, who controls any such purchaser within the meaning of Section 15 of the Securities Act of 1933, as amended, against any and all losses, claims, damages, liabilities or expenses whatsoever, joint or several, insofar as such losses, claims, damages, liabilities or expenses (or

actions in respect thereof) are caused by, arise out of or are based upon any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact relating to the Center or a Project made, provided or certified by the Center or any agent thereof and contained in an official statement or other offering document, or any amendment thereof or supplement thereto, of the Authority approved by an Authorized Officer of the Center relating to the Bonds offered for sale thereby, or caused by, arising out of or based upon any omission or alleged omission from such an official statement, or any amendment thereof or supplement thereto, of any material fact relating to the Center, a Guarantor or a Project necessary in order to make the statements made therein in the light of the circumstances under which they were made, not misleading.

(c) In case any action shall be brought against any person indemnified pursuant to this Section and in respect of which indemnity may be sought against the Center, such person shall promptly notify the Center in writing, and the Center shall promptly assume the defense thereof, including the employment of counsel and the payment of all expenses; *provided, however,* that the Center shall have the right to negotiate and consent to settlement and it shall be the duty of such person to cooperate with the Center in such defense, but the failure of such person to so cooperate will not relieve the Center of its obligations under this Section with respect to any other person. Such person shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such person unless the employment of such counsel has been specifically authorized by the Center. The Center shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Center or if there be a final judgment for the plaintiff in any such action, with or without consent, the Center shall indemnify and hold harmless such party from and against any loss or liability by reason of such settlement or judgment.

**SECTION 29. Defaults and Remedies.** (a) As used herein the term "Event of Default" shall mean:

(i) the Center shall (A) default in the timely payment of any amount payable pursuant to Section 9 hereof (other than pursuant to Section 9(a)(iii) or 9(a)(xi) hereof) or in the delivery of Exempt Obligations or Government Obligations or the payment of any other amounts required to be delivered or paid by or on behalf of the Center in accordance herewith or with the Resolution and such default continues for a period in excess of seven (7) days or (B) default in the timely payment of any amount payable pursuant to Section 9(a)(iii) and such default continues for a period in excess of one (1) Business Day or (C) default in the timely payment of any pursuant to Section 9(a)(xi) hereof;

(ii) the Center or a Related Corporation that qualifies as an organization described in Section 501(c)(3) of the Code or that is entitled to tax-exempt status pursuant to Section 501(a) of the Code shall no longer be qualified as an organizations described in Section 501(c)(3) of the Code or entitled to tax-exempt status pursuant to Section 501(a) of the Code, or shall become a "private foundation" as defined under Section 509(a) of the Code or shall otherwise fail to comply with the provisions of Section 18 hereof;

(iii) the Center or a Related Corporation incurs, issues, assumes or guarantees Debt or other obligation secured by Liens inconsistent with the limitations contained in Section 14 hereof or otherwise fails to comply with the provisions of Section 11, 14 or 15 hereof and the same continues uncured for ten (10) days after written notice thereof shall have been given to the Center;

(iv) the Center fails to duly and punctually observe any other covenant or agreement herein contained and such failure continues for thirty (30) days after written notice thereof shall have been given to the Center; *provided, however*, that if, in the determination of the Authority, such failure cannot be cured within such thirty (30) day period but can be cured by appropriate action, it shall not constitute an Event of Default hereunder if the Center within such thirty (30) day period initiates corrective action and thereafter diligently pursues the same;

(v) as a result of any default in payment or performance required of the Center or any Event of Default hereunder, whether or not declared, continuing or cured, the Authority shall be in default in the payment or performance of any of its obligations under the Resolution or an "event of default" (as defined in the Resolution) shall have been declared under the Resolution so long as such default or event of default shall remain uncured or the Trustee, a Facility Provider or Holders of the Bonds shall be seeking the enforcement of any remedy under the Resolution as a result thereof;

(vi) the Center or an Affiliate shall be in default under any Related Agreement (which default has not been waived or cured) if the Center's or such Affiliate's obligations thereunder are secured by a lien upon or pledge which is equal or prior to the lien hereby created thereon or the pledge thereof made hereby and, upon such default, (A) the principal of any indebtedness thereunder may be declared to be due and payable or (B) the lien upon or pledge may be foreclosed or realized upon;

(vii) the Center or an Affiliate shall (A) be generally not paying its debts as they become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, (C) make a general assignment for the benefit of its creditors, (D) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (E) be adjudicated insolvent or be liquidated or (F) take corporate action for the purpose of any of the foregoing;

(viii) a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the Center or an Affiliate, a custodian, receiver, trustee or other officer with similar powers with respect to the Center or such Affiliate or with respect to any substantial part of its property, or an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of

the Center or such Affiliate, or any petition for any such relief shall be filed against the Center or such Affiliate and such petition shall not be dismissed within ninety (90) days;

(ix) the charter of the Center or an Affiliate shall be suspended or revoked;

(x) a petition to dissolve the Center or an Affiliate or to revoke its license to operate its facilities shall be filed by the Center or such Affiliate with the legislature of the State or other governmental authority having jurisdiction over the Center or such Affiliate;

(xi) an order of dissolution of the Center or an Affiliate shall be made by the legislature of the State or other governmental authority having jurisdiction over the Center or such Affiliate, which order shall remain undismitted or unstayed for an aggregate of thirty (30) days;

(xii) a petition shall be filed with a court having jurisdiction for an order directing the sale, disposition or distribution of all or substantially all of the property belonging to the Center or an Affiliate, which petition shall remain undismitted or unstayed for an aggregate of ninety (90) days;

(xiii) an order of a court having jurisdiction shall be made directing the sale, disposition or distribution of all or substantially all of the property belonging to the Center or an Affiliate, which order shall remain undismitted or unstayed for the earlier of (A) three (3) Business Days prior to the date provided for in such order for such sale, disposition or distribution or (B) an aggregate of thirty (30) days from the date such order shall have been ordered;

(xiv) a judgment for the payment of money in amount in excess of the lesser of (A) \$25,000,000 over the insured risk and (B) two and one-half percent (2½%) of the value of the Center's and the Affiliates' Unrestricted Net Assets, if, in the reasonable judgment of the Authority or the Holders of a majority in principal amount of the Outstanding Bonds, the same will materially adversely affect the rights of the Holders of Outstanding Bonds and such judgment has not been vacated, discharged or stayed within sixty (60) days after entry thereof;

(xv) an Event of Default under the Inducement Agreement has occurred;

(xvi) any representation or warranty made by the Center herein or in any Related Agreement to which it is a party or in any certificate, agreement, instrument or statement made in connection herewith or with the sale and issuance of Bonds shall prove to have been false or misleading in any material respect;

(xvii) any representation or warranty made by an Affiliate in any Related Agreement to which it is a party or in any certificate, agreement, instrument or



statement made in connection herewith or with the sale and issuance of Bonds shall prove to have been false or misleading in any material respect;

(xviii) a Related Agreement or any material provision of this Loan Agreement or a Related Agreement shall cease for any reason to be valid and binding, or the Center or an Affiliate shall initiate legal proceedings or assert in legal proceedings that (A) this Loan Agreement or a Related Agreement or any material provision of this Loan Agreement or a Related Agreement is invalid or (B) the Center has no liability on this Loan Agreement or any Related Agreement to which it is a party or (C) an Affiliate has no liability on any Related Agreement to which it is a party; or

(xix) a "Notice Event", as defined in either of the Guaranties, has occurred and is continuing.

(b) Upon the occurrence of an Event of Default the Authority may take any one or more of the following actions:

(i) declare all sums payable by the Center hereunder immediately due and payable;

(ii) direct the Trustee to withhold any and all payments, advances and reimbursements from the proceeds of Bonds or the Construction Fund or otherwise to which the Center may otherwise be entitled hereunder and in the Authority's sole discretion apply any such proceeds or moneys for such purposes as are authorized by the Resolution;

(iii) withhold any or all further performance hereunder;

(iv) maintain an action against the Center hereunder to recover any sums payable by the Center or to require its compliance with the terms hereof;

(v) assign to or otherwise deliver to the Trustee all its rights to and interests to the Collateral;

(vi) to the extent permitted by law, (A) enter upon any Project and complete the construction of any Project in accordance with the plans and specifications with such changes therein as the Authority may deem appropriate and employ watchmen to protect the Project, all at the risk, cost and expense of the Center, consent to such entry being hereby given by the Center, (B) at any time discontinue any work commenced in respect of the construction of any Project or change any course of action undertaken by the Center and not be bound by any limitations or requirements of time whether set forth herein or otherwise, (C) assume any construction contract made by the Center in any way relating to the construction of any Project and take over and use all or any part of the labor, materials, supplies and equipment contracted for by the Center, whether or not previously incorporated into the construction of such Project, and (D) in connection with the construction of a Project undertaken by the Authority

pursuant to the provisions of this clause (vi), (1) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment in connection with the construction of such Project, (2) pay, settle or compromise all bills or claims which may become liens against any Project or against any moneys of the Authority applicable to the construction of a Project, or which have been or may be incurred in any manner in connection with completing the construction of a Project or for the discharge of liens, encumbrances or defects in the title to a Project or against any moneys of the Authority applicable to the construction of a Project, and (3) take or refrain from taking such action hereunder as the Authority may from time to time determine. The Center shall be liable to the Authority for all sums paid or incurred for construction of any Project whether the same shall be paid or incurred pursuant to the provisions of this clause (vi) or otherwise, and all payments made or liabilities incurred by the Authority hereunder of any kind whatsoever shall be paid by the Center to the Authority upon demand. For purposes of exercising the rights granted by this clause (iv) during the term hereof, the Center hereby irrevocably constitutes and appoints the Authority its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Center;

(vii) take any and all actions available hereunder or under the Inducement Agreement or by law to realize on the Collateral and the Liens securing the Debt hereunder; and

(viii) take any and all other action or proceeding permitted by the terms hereof or by law.

(c) All rights and remedies herein given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or may be given by reason of any law, statute, ordinance or otherwise, and no failure to exercise or delay in exercising any remedy shall effect a waiver of the Authority's right to exercise such remedy thereafter.

(d) At any time before the entry of a final judgment or decree in any suit, action or proceeding instituted on account of any Event of Default or before the completion of the enforcement of any other remedies hereunder, the Authority may annul any declaration made or action taken pursuant to paragraph (a) of this Section and its consequences if such Events of Default shall be cured. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereto.

**SECTION 30. Compliance with Resolution.** The Center hereby approves of and agrees to the provisions of the Resolution. The Authority hereby agrees that it will not, without the written consent of the Center, adopt any Supplemental Resolutions or to issue any Series of Bonds, other than the Series 2003 Bonds, consent to the issuance of which is hereby given. The Center agrees to do all things within its power in order to enable the Authority to comply with all requirements and to fulfill all covenants of the Resolution which require the

Center to comply with requests or obligations so that the Authority will not be in default in the performance of any covenant, condition, agreement or provision of the Resolution.

The Authority covenants that, if the Center has done everything it is required to so to enable the Authority to comply with the Resolution, it will comply with all the requirements and fulfill all the covenants applicable to the Authority contained in the Resolution.

The Authority agrees to use reasonable efforts to enforce the Authority's rights and to require the Trustee to substantially comply with the Trustee's material obligations under the Resolution and each Bond Series Certificate.

**SECTION 31. Investment of Moneys.** The Center hereby acknowledges that the Authority may in its sole discretion direct the investment of moneys held under the Resolution as provided therein and that no representation or warranty has been made by the Authority with respect to interest rates on, or the amount to be earned as a result of, any such investment. The Authority shall regularly consult with the Center regarding such investments. Neither the Authority nor the Trustee shall have any liability arising out of or in connection with the making of any investment authorized by the provisions of Article VI of the Resolution in the manner provided therein, for any depreciation in value of any investment or for any loss, direct or indirect, resulting from any such investment. The Authority hereby agrees that it shall direct the making of investments as permitted by the Resolution as soon as practicable when moneys are legally available therefor.

**SECTION 32. Payments to the Center.** The Authority shall, as soon as practicable after receipt of moneys paid to the Authority by the Trustee pursuant to Section 12.01 (other than Section 12.01(e) thereof) of the Resolution, pay such moneys to the Center after deducting therefrom the amount, if any, then owed to the Authority by the Center pursuant hereto.

**SECTION 33. Limitation on Agreements.** Except as expressly provided hereby or by the Resolution, neither the Center nor an Affiliate shall enter into any contracts or agreements or perform any act which may adversely affect any of the assurances, interests or rights of the Authority or the Holders hereunder or under the Resolution.

**SECTION 34. Limitation on Authority Rights.** As long as no Event of Default has occurred and is continuing, and no event has occurred that, with the giving of notice or lapse of time, or both, would constitute an Event of Default, the Authority will not, without the prior written consent of the Center (i) change the dates on which an Option Bond is to be tendered for purchase or the period during which a Variable Interest Rate Bond shall bear interest at a particular rate, (ii) convert a Variable Interest Rate Bond to bear interest at a fixed rate to its maturity, (iii) seek the removal or resignation of a Remarketing Agent or appoint a successor Remarketing Agent, (iv) elect or direct to redeem Bonds pursuant to Section 4.02 of the Resolution, (v) amend or modify the dates on or Redemption Price at which a Variable Interest Rate Bond after its conversion to bear interest at a fixed rate to the maturity date thereof may be redeemed at the election or direction of the Authority in accordance with Section 4.02 of the Resolution, or (vi) remarket at a price other than par any Option Bond tendered or deemed to have been tendered for purchase. The Center may at any time request the Authority to take such

action as may be required by the Resolution or a Series Resolution authorizing the issuance of Option Bonds or Variable Interest Rate Bonds to change the dates on which such Option Bonds are to be tendered for purchase or the period during which such Variable Interest Rate Bonds shall bear interest at a particular rate or to convert such Variable Interest Rate Bonds to bear interest at a fixed rate to their maturity.

**SECTION 35. Consultation with the Center.** The Authority agrees that it will consult with the Center prior to (i) giving any direction for the deposit or application of voluntary payments pursuant to Section 9(f) hereof, (ii) giving any notice to the Trustee of the Bonds to be redeemed pursuant to Section 4.03 of the Resolution, (iii) rebating any moneys to the Department of the Treasury of the United States of America; *provided, however*, that such consultation shall not be a condition precedent to any action to be taken by the Trustee pursuant to a direction of, or upon receipt of a notice from, the Authority, and failure to so consult with the Center shall not affect the validity of any proceedings for the redemption of Bonds or of any other action taken by the Trustee pursuant to such direction or upon receipt of such notice.

**SECTION 36. Tax Covenants.** (a) Each of the Center and the Authority covenants that it shall take no action, nor shall it approve the Trustee's taking any action or making any investment or use of the proceeds of Bonds, which would cause the Bonds of any Series to be "arbitrage bonds" within the meaning of Section 148(a) of the Code, and any proposed or final regulations thereunder as are applicable to the Bonds at the time of such action, investment or use. The Center (or any related person, as defined in Section 147(a) (2) of the Code) shall not, pursuant to an arrangement, formal or informal, purchase Bonds in an amount related to the amount of any obligation to be acquired from the Center by the Authority.

(b) The Center covenants that it will not take any action or fail to take any action which would cause any representation or warranty of the Center contained in a Tax Certificate then to be untrue and shall comply with all covenants and agreements of the Center contained in each Tax Certificate, unless, in the opinion of Bond Counsel, taking or failing to take such action or failing to comply with its obligations under a Tax Certificate would not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes.

(c) In the event that the Authority is notified in writing that the Bonds or any transaction pertaining thereto is the subject of any Internal Revenue Service or Securities and Exchange Commission investigation, suit or order, it shall promptly give notice thereof to the Center. In the event that the Center is notified in writing that the Bonds or any transaction pertaining thereto is the subject of any Internal Revenue Service or Securities and Exchange Commission investigation, suit or order, it shall promptly give notice thereof to the Authority. Upon the occurrence of such an event, the Center and the Authority shall fully cooperate with one another and participate in all aspects of the conduct of the response thereto.

(d) The Authority shall retain in its possession, so long as required by the Code, copies of all documents, reports and computations made by it in connection with the calculation of earnings and the rebate of all or a portion thereof to the Department of the Treasury of the United States of America, which shall be subject at all reasonable times to the inspection of the Center and its agents and representatives, any of whom may make copies thereof. Upon written request from the Center the Authority shall as soon as practicable provide the Center with a copy

of such documents, reports and computations. The Authority shall also provide the Center with a copy of all documents and reports filed with the Department of the Treasury of the United States of America relating to the rebate of earnings.

**SECTION 37. UCC Filings.** The Center hereby irrevocably appoints each of the Authority and the Trustee during the term hereof as its lawful attorney-in-fact to execute, on behalf of the Center, one or more financing statements and continuation statements thereof as to the security interests that may be granted pursuant to Section 11 or 14 hereof or pursuant to the Inducement Agreement to the Trustee, in any moneys (or investments thereof), Securities, Mortgages and fixtures, furnishings and equipment and the rights to receive the same and to file such financing statements and continuation statements therefor in any appropriate public office. The Authority and the Trustee shall forward to the Center, in due course, and upon request to an Insurer, a copy of any financing or continuation statement executed on behalf of the Center as provided herein.

**SECTION 38. Certificate as to Representations and Warranties.** The obligations of the Authority hereunder and the delivery of each Series of Bonds are conditioned upon the receipt by the Authority at or prior to delivery of each Series of Bonds of a certificate of an Authorized Officer of the Center and of each Affiliate acceptable to an Authorized Officer of the Authority to the effect that the representations and warranties contained herein are true and correct and in full force and effect on and as of the date of delivery of each such Series of Bonds as if made on the date of delivery of such Series of Bonds.

**SECTION 39. Disclaimer of Personal Liability.** No recourse shall be had against or liability incurred by any member, director, trustee, officer, official, counsel, consultant, employee or agent of the Authority or of the Center or any person executing the Loan Agreement for any covenants and provisions hereof or for any claims based thereon.

**SECTION 40. Severability of Invalid Provisions.** If any one or more of the covenants, stipulations, promises, obligations and agreements provided herein or in the Resolution or any of the Bonds on the part of the Authority or the Center to be performed should be contrary to law, then such covenant or covenants, stipulation or stipulations, promise or promises, obligation or obligations, agreement or agreements shall be null and void, shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, obligations and agreements contained herein and shall in no way affect the validity of the other provisions hereof or of the Resolution or any of the Bonds.

**SECTION 41. Further Assurances.** The Center, at any and all times, shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights and moneys, securities, funds and security interests hereby or by the Resolution pledged, assigned or granted, or intended so to be, or which the Center may hereafter become bound to pledge, assign or grant.

**SECTION 42. Amendments to Loan Agreement.** The Loan Agreement may be amended only in accordance with Section 7.11 of the Resolution and each amendment shall

be made by an instrument in writing signed by an Authorized Officer of the Center and of the Authority, an executed counterpart of which shall be filed with the Trustee.

**SECTION 43. Termination.** The Loan Agreement shall remain in full force and effect until no Bonds are Outstanding and until all other payments, expenses and fees payable hereunder by the Center shall have been made or provision made for the payment thereof; *provided, however*, that Sections 32 and 34 hereof and the liabilities and the obligations of the Center to provide reimbursement for or indemnification against expenses, costs or liabilities made or incurred pursuant to Section 25, 28 and 30 hereof and the obligations of the Center under Section 9(a)(xi) shall nevertheless survive any such termination. Upon such termination, an Authorized Officer of the Authority shall promptly deliver such documents as may be reasonably requested by the Center to evidence such termination and the discharge of the Center's duties hereunder, and the release or surrender of any security interests granted by the Center to the Authority pursuant hereto.

**SECTION 44. Actions by the Authority.** Any time the Authority is permitted or directed to act pursuant to this Loan Agreement, such action may be taken by an Authorized Officer of the Authority.

**SECTION 45. Notices.** All notices, approvals, requests, consents, demands and directions required or authorized to be given by either party pursuant to or in respect hereof or the Bonds shall be in writing and shall be hand delivered against the written receipt therefor or sent by registered or certified mail, in the case of the Authority, addressed to it to the attention of the Authority's Executive Director with a copy of the Authority's General Counsel, at 515 Broadway, Albany, New York 12207; in the case of the Center, addressed to it to the attention of the Center's Executive Vice President, at 1275 York Avenue, New York, New York 10021; with a copy to the Center's Senior Vice President-Finance at 633 Third Avenue, New York, New York 10017; and, in the case of the Trustee, addressed to it at the principal trust office of the Trustee; or at such other address as the person to be notified shall have specified by notice to the other persons. The Center agrees to give to the Authority all notices sent by it to the Trustee and to the Trustee all notices sent by it to the Authority and the Authority agrees to give to the Center all notices sent by it to the Trustee.


**SECTION 46. Section Headings.** All headings preceding the text of the several sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part hereof nor shall they affect its meaning, construction or effect.

**SECTION 47. Governing Law.** The Loan Agreement shall be governed by and construed in accordance with the laws of the State.

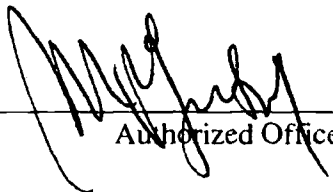
**SECTION 48. Effective Date.** The Loan Agreement shall be effective as of the date on which Bonds are first issued and delivered to the purchasers thereof, *except* that Section 29 hereof shall be effective as of the date on which the Authority first becomes obligated to sell Bonds to the underwriters or purchasers thereof.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

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

By   
Authorized Officer

**MEMORIAL SLOAN-KETTERING  
CANCER CENTER**

By   
Authorized Officer

**SCHEDULE A**

**ANNUAL ADMINISTRATIVE FEES**

In connection with the  
2003 Series 1 Bonds:

Amount of Fee: \$100,000 per year

Times of Payment:

Each December 10<sup>th</sup>:  
(commencing December 10, 2003): \$50,000

Each June 10<sup>th</sup>  
(commencing June 10, 2004): \$50,000



**SCHEDULE B**

**AUTHORITY FEE**

In connection with the  
2003 Series 1 Bonds:

Amount of Fee: \$50,000

Times of Payment: paid at closing

## SCHEDULE C

### HOSPITAL PROPERTY

- (1) 410 East 68<sup>th</sup> Street, New York, New York, currently known as the Howard Building.
- (2) 411 through 419, inclusive, East 67<sup>th</sup> Street, New York, New York, currently known as the Firestone Building and the Radiation Therapy Facility.
- (3) 444 East 68<sup>th</sup> Street, New York, New York, currently known as the Bobst Building.
- (4) 1250 First Avenue, New York, New York, being Block 1462, Lot 1, and currently known as the Arnold and Marie Schwartz Pavillion.
- (5) 425 East 67<sup>th</sup> Street, New York, New York, being Block 1461, Lot 31, and currently known as the Enid Haupt Building and the Land Jacobsen Outpatient Building.
- (6) 1275 York Avenue, New York, New York, being Block 1462, Lot 5, and currently used as the Hospital's main inpatient facility.
- (7) 355 and 357 East 68<sup>th</sup> Street, New York, New York, being Block 1443, Lots 20 and 22, and currently used as the genitourinary facility.
- (8) the land and the buildings and improvements located thereon at Commack Road, Commack, New York, being Block 01.00, Lot 64.001 on the map of the County of Suffolk.

## **SCHEDULE D**

### **RESTRICTED PROPERTY**

(1) 430 East 67<sup>th</sup> Street, New York, New York, being Block 1461, Lot 31, and now known as the Rockefeller Research Laboratories.

(2) 633 Third Avenue, New York, New York, being Block 1314, Lots 1401 through 1404, inclusive, Lot 1410, Lot 1414, Lot 1427, and Lots 1440 through 1442, inclusive, currently used as an administrative office building.

(3) 866 Third Avenue, New York, New York, being Block 1307, Lot 1003, and now known as the Lawrence Rockefeller Outpatient Facility.

**Exhibit A**

**Calculation of Adjusted Operating Loss\***  
**(in thousands)**

Loss from Operations:			\$(69,227)
Add the Sum of:			
Unrestricted Contributions	\$84,332		
Net Assets Released from Restriction	36,030		
8% of the Average of the Unrestricted Cash and Investments for the Three Prior Fiscal Years	<u>127,175</u>		
			\$(247,537)
Adjusted Operating Gain (Loss)			\$178,310

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\*All numbers are to be taken or derived from the Audited Combined Financial Statements of the Center and the Affiliates.