

*In the opinion of Stites & Harbison, PLLC, Louisville, Kentucky, Bond Counsel, under existing laws or presently enacted and construed interest in the Series 2010A Bonds is excluded from gross income for purposes of federal income tax, assuming continuing compliance with the requirements of the Code. Interest on the Series 2010A Bonds will not be a preference item for purposes of determining federal alternative minimum taxable income for individual or corporations; however, interest paid to corporate holders of the Series 2010A Bonds may be subject to alternative minimum tax, foreign branch profits tax and in computing environmental tax under circumstances described under “TAX EXEMPTION” herein. ULH, Inc. has designated the Series 2010A Bonds as qualified tax-exempt obligations for purposes of Section 265(b)(3)(G) of the Internal Revenue Code of 1986, as amended. Under the laws of the Commonwealth as presently enacted or construed, the Series 2010A Bonds and the interest payable thereon are exempt from income and ad valorem taxation by the Commonwealth of Kentucky and any of its political subdivisions but are not exempt from estate or inheritance taxes, or taxes on financial institutions measured by income, or to any other taxes not levied or assessed directly on the Series 2010A Bonds, the interest thereon, their transfer or the income therefrom.*

**\$22,020,000**

**Louisville/Jefferson County Metro Government  
Student Housing**

**Industrial Building Refunding Revenue Bonds (ULH, Inc. – Bettie Johnson Hall Project)  
Series 2010A**

**Dated: Delivery Date**

**Price: As shown inside**

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

The Series 2010A Bonds are being issued by the Louisville/Jefferson County Metro Government (the “Issuer”) to finance a portion of the costs of issuing the Series 2010A Bonds and to refund, in whole, the \$24,080,000 County of Jefferson, Kentucky Variable Rate Demand Student Housing Industrial Building Revenue Bonds (ULH, Inc. – University of Louisville Project), Series 2001A (the “Series 2001A Bonds”). The proceeds of the Series 2001A Bonds were used to (i) finance the cost of the acquisition of a four-story, approximately 225 apartment student housing facility with 492 beds on leased property located on one-half city block bounded by South Fourth Street and West Cardinal Boulevard, in Louisville, Jefferson County, Kentucky (the “Project”), (ii) fund the Debt Service Reserve Fund, (iii) provide working capital; and (iv) pay a portion of the costs of issuing the Series 2001A Bonds. The site on which the Project has been constructed (the “Project Site”) is located on the campus of the University of Louisville (the “University”) and is leased to the Company for a term of 40 years, pursuant to a Ground Lease Agreement (as amended, the “Ground Lease”) dated July 30, 1999 between the University, as ground lessor, and the Company, as ground lessee. The Project is owned and operated by the Lessee.

**THE SERIES 2010A BONDS WILL NOT CONSTITUTE A GENERAL OBLIGATION OR INDEBTEDNESS OF THE ISSUER, OR THE COMMONWEALTH OF KENTUCKY (THE “COMMONWEALTH”) OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF THE CONSTITUTION AND LAWS OF THE COMMONWEALTH AND WILL NOT BE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE ISSUER OR THE COMMONWEALTH OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF BUT WILL BE A SPECIAL AND LIMITED OBLIGATION SECURED SOLELY BY THE SECURITY AND PAYABLE SOLELY AND ONLY FROM THE SOURCES DESCRIBED HEREIN.**

**Additionally, the Lessee’s obligations with respect to the Series 2010A Bonds are nonrecourse. See “THE LESSEE—Non-Recourse Obligation of the Lessee” herein.**

The Series 2010A Bonds will be issued as fully registered bonds and when issued will be initially registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the Series 2010A Bonds. Individual purchases of Series 2010A Bonds will be made in book-entry only form in the denomination of \$5,000 and whole multiples thereof. Purchasers of the Series 2010A Bonds will not receive physical delivery of bond certificates. So long as Cede & Co. is the registered owner of the Series 2010A Bonds as nominee of DTC, references herein to the Owners of the Series 2010A Bonds shall mean Cede & Co. and shall not mean the beneficial owners of the Series 2010A Bonds. So long as Cede & Co. is the registered owner of the Series 2010A Bonds, the payment of principal of and interest and premium, if any, on the Series 2010A Bonds will be made to Cede & Co., as nominee for DTC, which will in turn remit such principal, interest, and premium payments to the Direct Participants and Indirect Participants for subsequent disbursement to the beneficial owners. See “THE SERIES 2010A BONDS—Book-Entry Only System” herein.

As additional security for the Series 2010A Bonds, the University of Louisville Foundation, Inc. (the “Guarantor”) has entered into an Unconditional Guaranty dated as of January 1, 2010 for the benefit of the Trustee. If on a Bond Fund Assessment Date (as defined herein) the Trustee determines that there are not funds held under the Indenture sufficient to make payments of principal of and interest on the Series 2010A Bonds then due, the Trustee shall make demand on the Guarantor and the Guarantor shall provide such demanded amounts on the Second Business Day following such demand.

The Series 2010A Bonds will bear interest from their date of delivery, payable semi-annually on each April 1 and October 1 commencing April 1, 2010.

The Series 2010A Bonds will mature and will be subject to optional, extraordinary, and mandatory redemption prior to maturity as described herein. See “THE SERIES 2010A BONDS—Redemption of Series 2010A Bonds” herein.

*The Series 2010A Bonds are offered when, as, and if issued by the Issuer and received by the Underwriter and are subject to prior sale and the approval of legality by Stites & Harbison, PLLC, Louisville, Kentucky, Bond Counsel, and to certain other conditions. Certain legal matters will be passed upon for the Issuer by its counsel, James T. Carey, Esq., Assistant County Attorney, for the Lessee and the Foundation by their counsel, Stites & Harbison, PLLC, Louisville, Kentucky, and for the Underwriter by its counsel, Kutak Rock LLP, Omaha, Nebraska. Delivery of the Series 2010A Bonds through the facilities of DTC in New York, New York is expected on or about February 23, 2010.*

**Morgan Keegan & Company, Inc.**

Dated: January 21, 2010

## SERIES 2010A BONDS

### Serial Bonds

| Principal Amount | Maturity Date   | Interest Rate | Price     | Yield  | CUSIP      |
|------------------|-----------------|---------------|-----------|--------|------------|
| \$ 765,000       | October 1, 2010 | 2.000%        | 100.875%  | 0.550% | 546605 CD6 |
| \$ 780,000       | October 1, 2011 | 2.000%        | 101.668%  | 0.950% | 546605 CE4 |
| \$ 785,000       | October 1, 2012 | 2.000%        | 101.529%  | 1.400% | 546605 CF1 |
| \$ 810,000       | October 1, 2013 | 2.500%        | 102.785%  | 1.700% | 546605 CG9 |
| \$ 830,000       | October 1, 2014 | 3.000%        | 103.929%  | 2.100% | 546605 CH7 |
| \$ 855,000       | October 1, 2015 | 3.000%        | 102.072%  | 2.600% | 546605 CJ3 |
| \$ 875,000       | October 1, 2016 | 3.000%        | 100.000%  | 3.000% | 546605 CK0 |
| \$ 905,000       | October 1, 2017 | 3.500%        | 101.670%  | 3.250% | 546605 CL8 |
| \$ 940,000       | October 1, 2018 | 4.000%        | 103.684%  | 3.500% | 546605 CM6 |
| \$ 975,000       | October 1, 2019 | 4.000%        | 102.403%  | 3.700% | 546605 CN4 |
| \$1,015,000      | October 1, 2020 | 4.000%        | 101.593%† | 3.800% | 546605 CP9 |
| \$1,050,000      | October 1, 2021 | 4.000%        | 100.791%† | 3.900% | 546605 CQ7 |
| \$1,095,000      | October 1, 2022 | 4.000%        | 100.393%† | 3.950% | 546605 CR5 |
| \$1,135,000      | October 1, 2023 | 4.000%        | 100.000%  | 4.000% | 546605 CS3 |
| \$1,180,000      | October 1, 2024 | 4.000%        | 98.905%   | 4.100% | 546605 CT1 |
| \$1,230,000      | October 1, 2025 | 4.000%        | 98.286%   | 4.150% | 546605 CU8 |
| \$1,275,000      | October 1, 2026 | 4.125%        | 98.518%   | 4.250% | 546605 CV6 |
| \$1,325,000      | October 1, 2027 | 4.250%        | 99.383%   | 4.300% | 546605 CW4 |
| \$1,380,000      | October 1, 2028 | 4.250%        | 98.103%   | 4.400% | 546605 CX2 |
| \$2,815,000      | October 1, 2029 | 4.375%        | 99.021%   | 4.450% | 546605 CY0 |

† Priced to first optional redemption date.

No dealer, broker, salesman, or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representations should not be relied upon as having been authorized by the Issuer, the Lessee, or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Series 2010A Bonds by any person in any state in which it is unlawful for such person to make such offer, solicitation, or sale.

The information set forth herein has been obtained from the Issuer, the Lessee, or other sources that are deemed to be reliable, but is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation of, the Underwriter. The information herein is subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create an implication that there has been no change in the affairs of the Lessee since the date hereof. The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

THE ISSUER HAS PROVIDED ONLY THAT INFORMATION IN THIS OFFICIAL STATEMENT THAT IS CONTAINED UNDER THE HEADING “THE ISSUER” AND, AS TO THE ISSUER, UNDER THE HEADING “LITIGATION.” THE ISSUER HAS NOT FURNISHED OR VERIFIED ANY OTHER INFORMATION OR STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT AND IS NOT RESPONSIBLE FOR THE SUFFICIENCY, COMPLETENESS, OR ACCURACY OF SUCH OTHER INFORMATION OR STATEMENTS.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2010A BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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## OFFICIAL STATEMENT

**\$22,020,000**

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
STUDENT HOUSING  
INDUSTRIAL BUILDING REFUNDING REVENUE BONDS  
(ULH, INC. – BETTIE JOHNSON HALL PROJECT)  
SERIES 2010A**

### INTRODUCTORY STATEMENT

This Official Statement, including the cover page and the Appendices hereto, is provided to furnish certain information in connection with the sale by Louisville/Jefferson County Metro Government (the “Issuer”) of \$22,020,000 in aggregate principal amount of its Student Housing Industrial Building Refunding Revenue Bonds (ULH, Inc.—Bettie Johnson Hall Project), Series 2010A (the “Series 2010A Bonds”). The Series 2010A Bonds are to be issued by the Issuer pursuant to a Trust Indenture (the “Indenture”) dated as of January 1, 2010, between the Issuer and The Bank of New York Mellon Trust Company, N.A., Louisville, Kentucky, as Trustee (the “Trustee”), to finance a portion of the costs of issuing the Series 2010A Bonds and to refund the outstanding principal amount of the \$24,080,000 County of Jefferson, Kentucky Variable Rate Demand Student Housing Industrial Building Revenue Bonds (ULH, Inc. – University of Louisville Project), Series 2001A (the “Series 2001A Bonds”). The proceeds of the Series 2001A Bonds were used to (i) finance the cost of the acquisition of a four-story, approximately 225 apartment student housing facility with 492 beds on leased property located on one-half city block bounded by South Fourth Street and West Cardinal Boulevard, in Louisville, Jefferson County, Kentucky (the “Project”), (ii) fund the Debt Service Reserve Fund, (iii) provide working capital; and (iv) pay a portion of the costs of issuing the Series 2001A Bonds.

The Issuer will lend the proceeds of the Series 2010A Bonds to ULH, Inc., a Kentucky nonprofit corporation (the “Lessee”) exempt from federal income taxes as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), pursuant to the Loan Agreement (the “Loan Agreement”) dated as of January 1, 2010, between the Issuer and the Lessee. The Lessee is obligated pursuant to the Loan Agreement to pay to the Issuer, or to its assigns, including the Trustee, such loan payments as will be sufficient to pay the principal of, premium, if any, and interest on the Series 2010A Bonds, as the same mature and become due.

The land on which the Project is constructed was leased to the Lessee pursuant to a Ground Lease Agreement dated as of July 30, 1999, between The University of Louisville, as Lessor (the “Lessor” or the “Ground Lessor”) and the Lessee (as amended, the “Ground Lease”). On the date of issuance of the Series 2010A Bonds, the proceeds thereof (other than those used to pay costs of issuing the Series 2010A Bonds) will be used to refund the Series 2001A Bonds.

The Lessee entered into a Management Agreement dated as of July 1, 2009 (the “Management Agreement”) with Allen & O’Hara Education Services, Inc. (the “Manager”) pursuant to which the Manager will agree to manage the Project until June 30, 2010. The Manager has performed management services for the Project since its completion. See “THE MANAGER AND THE MANAGEMENT AGREEMENT” herein.

As additional security for the Series 2010A Bonds, the University of Louisville Foundation, Inc., a Kentucky nonprofit corporation (the “Foundation”) (see “THE FOUNDATION” herein), will issue its Unconditional Guaranty (the “Guaranty”) guaranteeing to the Trustee the payment of all amounts owing by the Lessee under the Loan Agreement, among other things. See “SUMMARIES OF PRINCIPAL

FINANCING DOCUMENTS—THE GUARANTY” in Appendix B hereto and “CERTAIN CONSOLIDATED FINANCIAL STATEMENTS OF THE FOUNDATION” in Appendix E hereto.

Pursuant to the terms of the Indenture, the Issuer will assign and grant a security interest in all of its rights under the Loan Agreement (except for the Unassigned Rights) to the Trustee which, on behalf of the owners of the Series 2010A Bonds, will exercise all of the Issuer’s rights thereunder (except for Unassigned Rights). See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2010A BONDS” herein.

The obligations of the Lessee under the Loan Agreement are non-recourse to the Lessee, and judgment in any action or proceeding shall be enforceable against the Lessee only to the extent of the Lessee’s interest in the Project. See “THE LESSEE—Non-Recourse Obligation of the Lessee” herein.

To secure its obligations under the Loan Agreement, the Lessee will grant to the Trustee a first lien on the Lessee’s interest in the Premises (as defined herein) created by the Ground Lease and will assign and pledge to the Trustee the Lessee’s interest in the leases, rents, issues, profits, revenues, income, receipts, moneys, royalties, rights and benefits of and derived from the Project pursuant to a Leasehold Mortgage, Security Agreement and Fixture Financing Statement (the “Leasehold Mortgage”) dated as of January 1, 2010 from the Lessee to the Trustee, and the Assignment of Rents and Leases dated as of January 1, 2010 from the Lessee to the Trustee (the “Assignment”).

This Official Statement and the Appendices hereto contain brief descriptions of, among other matters, the Issuer, the Lessee, the Project, the University, the Foundation, the Manager, the Guaranty, the Management Agreement, the Series 2010A Bonds, the Loan Agreement, the Ground Lease and the Indenture. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Ground Lease, the Loan Agreement, the Guaranty, the Management Agreement, the Leasehold Mortgage, the Assignment and the Indenture (collectively, the “Bond Documents”) are qualified in their entirety by reference to such documents, and references herein to the Series 2010A Bonds are qualified in their entirety to the forms thereof included in the Indenture.

## **THE ISSUER**

The Issuer is a public body corporate and politic, duly created and existing as a consolidated local government of the Commonwealth under the Constitution and laws of the Commonwealth. The Issuer is governed by the Metro Council composed of an elected Mayor and 26 elected Council Members. The Issuer is authorized by Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the “Act”) to issue the Series 2010A Bonds and to loan the proceeds to the Lessee. The issuance of the Series 2010A Bonds and the execution and delivery of the Loan Agreement and the Indenture were authorized by an Ordinance of the Issuer on December 17, 2009 acting by and through its Metro Council.

The present members of the Metro Council, in order of district represented, are as follows:

Jerry E. Abramson, Mayor  
Judith Green, Council Member  
Barbara Shanklin, Council Member  
Mary C. Woolridge, Council Member  
David W. Tandy, Council Member  
Cheri Bryant Hamilton, Council Member  
George Unseld, Council Member  
Kenneth C. Fleming, Council Member

Tom Owen, Council Member  
Tina Ward-Pugh, Council Member  
Jim King, Council Member  
Kevin Kramer, Council Member  
Rick Blackwell, Council Member  
Vicki Aubrey Welch, Council Member  
Robert Henderson, Council Member  
Marianne Butler, Council Member  
Kelly Downard, Council Member  
Glen Stuckel, Council Member  
Jon Ackerson, Council Member  
Hal Heiner, Council Member  
Stuart Benson, Council Member  
Dan Johnson, Council Member  
Robin Engel, Council Member  
James Peden, Council Member  
Madonna Flood, Council Member  
Doug Hawkins, Council Member  
Brent Ackerson, Council Member

### **THE PROJECT**

The Bettie Johnson Hall Project is a four-story, Class A, apartment style student housing facility consisting of approximately 225 apartments containing 492 student beds. It is on two acres of land on the northeast corner of the University's Belknap campus on one-half city block bounded by South Fourth Street and West Cardinal Boulevard in Louisville, Jefferson County, Kentucky. The site is owned by the Commonwealth for the use and benefit of the University and is leased to the Lessee pursuant to the Ground Lease, as described herein. Construction of the Project was completed in August, 2000.

The Project was designed to reflect "Old Louisville" architecture and consists of two "L" shaped, connecting buildings surrounding a secured courtyard. The building has a wood frame construction with a brick and synthetic stucco exterior. It meets or exceeds all building code requirements, including a full sprinkler system and handicap accessibility.

The units consist of the variety of unit types, as described below. Each bedroom has a maximum occupancy of one resident and there is a maximum resident-to-bath ratio of two to one. The building utilizes a security card access system. Each unit is fully furnished, including a fully appointed kitchen with a range, full-size refrigerator, dishwasher, microwave and garbage disposal. Additionally, each bedroom door of the multi-bedroom units has its own deadbolt for added privacy within the unit.

Other amenities include a pool, sand volleyball court and barbecue area in the courtyard, parking on a reserved University-owned lot across the street from the Project with one parking space per resident, direct connections to the campus computer network in each bedroom, cable television in each bedroom, a fitness center, computer center, recreation lounge, management office, two laundry facilities on each floor and direct phone link to University Police.

The Project's unit mix and rental rates as of 2009-2010 are as follows:

| Unit Type                           | Unit Mix       |                |                       |                          |
|-------------------------------------|----------------|----------------|-----------------------|--------------------------|
|                                     | Number of Apts | Number of Beds | Monthly Rents Per Bed | Semesterly Rents Per Bed |
|                                     |                |                | Nine Month Lease      | Nine Month Lease         |
| 1 Bedroom/1 Bath                    | 12             | 12             | 799                   | 4045                     |
| 1 Bedroom/1 Bath<br>(Large and ADA) | 3              | 3              | 899                   | 3595                     |
| 2 Bedroom/1 Bath                    | 53             | 106            | 599                   | 2696                     |
| 2 Bedroom/2 Bath                    | 119            | 238            | 629                   | 2831                     |
| 2 Bedroom/2 Bath<br>(ADA)           | 6              | 12             | 629                   | 2831                     |
| 3 Bedroom/2 Bath                    | 5              | 15             | 629                   | 2831                     |
| 4 Bedroom/2 Bath                    | 22             | 88             | 599                   | 2696                     |
| 4 Bedroom/2 Bath<br>(ADA)           | 4              | 16             | 599                   | 2696                     |
| Manager's<br>Apartment              | <u>1</u>       | <u>2</u>       | 0                     | 0                        |
|                                     | 225            | 492            |                       |                          |

Actual cash flow from the Project is set forth below, and projected cash flow from the Project is set forth herein under the heading "CASH FLOW FORECAST."

The units in the Project are rented on a nine-month, academic year basis. Units are also rented in the summer to students attending summer school and to groups for seminars, camps and other summer programs.



The actual cash flow for the Project for the academic years ending in 2007 through 2009 is set forth below.

**Summary of Historical Cash Flow <sup>1</sup>**

|  | <b>For the academic years ending June 30,</b> |                    |                    |
|--|---|--------------------|--------------------|
|  | <b>2007</b>                                   | <b>2008</b>        | <b>2009</b>        |
| Net Rental Revenues                      | \$2,464,958                                   | \$2,538,636        | \$2,551,853        |
| Other Income <sup>2</sup>                | 448,193                                       | 415,326            | 374,310            |
| Operating Expenses <sup>3</sup>          | <u>(1,248,146)</u>                            | <u>(1,277,928)</u> | <u>(1,226,763)</u> |
| Net Revenues Available for Fixed Charges | \$1,665,005                                   | \$1,676,034        | \$1,699,400        |
| <br>                                     |   |                    |                    |
| Replacement Reserves                     | <u>(61,605)</u>                               | <u>(62,013)</u>    | <u>(62,878)</u>    |
| Net Income After Reserves                | \$1,603,400                                   | \$1,614,021        | \$1,636,522        |
| <br>                                     |   |                    |                    |
| Gross Debt Service and Fees              | (\$1,391,260)                                 | (\$1,316,915)      | (\$983,047)        |
| Debt Service Coverage Ratio              | 1.15  | 1.23               | 1.66               |
| Net Revenues After Debt Service          | \$212,140                                     | \$297,106          | \$653,475          |
| <br>                                     |   |                    |                    |
| Occupancy                                | 98.6%   | 100%               | 96.5%              |

<sup>1</sup>Some totals do not add due to rounding.

<sup>2</sup>Includes earnings on the Debt Service Reserve Fund.

<sup>3</sup>Excludes depreciation and non-cash expenses, and does not include subordinated management fees.

For additional information regarding the Manager of the Project, see “THE MANAGER AND THE MANAGEMENT AGREEMENT” herein.

**THE LESSEE**

**General**

The Lessee is a nonprofit corporation duly organized and existing under the laws of the Commonwealth. Its purpose, among other things, is to purchase, acquire, lease, sublease, accept assignment of, or otherwise accept title to, real and personal property designated to be used for low-cost student housing for the benefit of the University, whether located on campus or elsewhere, when such activity is requested by the University and believed to be in the best interest of the University and the Lessee, in its sole discretion, as well as do and perform such other actions as, in its opinion, may be incidental to, or in furtherance of, the foregoing. The Lessee does not have and is not expected to have any assets other than Project revenues which will be pledged to payment of the Bonds. The directors of the Lessee are as follows:

| <b>Name</b>                  | <b>Occupation</b>  |
|------------------------------|--|
| Mrs. Marie Abrams            | Retired, currently Chair, Jewish Council for Public Affairs            |
| Mr. Kevin Cogan              | Chairman, Jefferson Development Group                                  |
| Mr. Burt Deutsch             | President, Corradino Group (Engineering and Planning)                  |
| Mr. Owsley B. Frazier        | Frazier International History Museum                                   |
| Ms. Joyce Hagen              | President and CEO, Passport Health Plans                               |
| Dr. James R. Ramsey          | President, University of Louisville                                    |
| Dr. Salem George             | President, Family & Internal Medicine Associates                       |
| Mr. Harry Jones              | Jones Plastic & Engraving  |
| Mr. J. Chester Porter        | Chairman/CEO, Porter Bancorp; Managing Partner Chester Porter Law Firm |
| Mr. Sam Rechter              | Principal, Rogers Group Investments, Inc.                              |
| Mr. Eddy Roberts             | Retired  |
| Mr. Robert W. Rounsavall III | Manager, Dixie Properties  |
| Dr. William Selvidge         | Physician and CEO and co-owner of Advanced Lifeline Services, Inc.     |
| Mr. Frank Weisberg           | Chairman, Parks & Weisberg Realtors                                    |
| Mr. William G. Wilcox        | Retired  |

### **Non-Recourse Obligation of the Lessee**

The Issuer and the Trustee will agree that the Lessee will not have any liability under the Loan Agreement or any other documents delivered in connection with the issuance of the Series 2010A Bonds beyond its interest in the Project and not to enforce the liability and obligation of the Lessee to perform and observe the obligations contained in the Loan Agreement or any of the other Bond Documents in any action or proceeding wherein a money judgment shall be sought against the Lessee, except that the Issuer, or its assigns, including the Trustee may bring an action for specific performance or other appropriate action or proceeding to enable the Issuer, or its assigns, including the Trustee, to enforce and realize upon the Loan Agreement, provided, however, that any judgment in any such action or proceeding shall be enforceable against the Lessee only to the extent of the Lessee's interest in the Project's revenues. The Issuer and the Trustee will agree that neither will sue for, seek, nor demand any deficiency against the Lessee in such action or proceeding, under or by reason of or in connection with the Loan Agreement or any of the other Bond Documents. The officers, directors, employees and agents of the Lessee will have no personal liability for the obligations of the Lessee.

## **THE SERIES 2010A BONDS**

### **General**

The Series 2010A Bonds will be issued in the aggregate principal amount of \$22,020,000, will be dated the date of issuance thereof, and will mature, subject to prior redemption, on the dates set forth on the inside cover hereof. The Series 2010A Bonds will bear interest at the rates set forth on the inside cover hereof payable on each April 1 and October 1, commencing April 1, 2010. Series 2010A Bonds will be issued in minimum denominations of \$5,000 in whole multiples thereof ("Authorized Denominations").

Interest on the Series 2010A Bonds will be paid in arrears on each Interest Payment Date. Interest on the Series 2010A Bonds will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

The principal of the Series 2010A Bonds and the premium, if any, on the Series 2010A Bonds are payable at the Operations Office of the Trustee. Interest on each Series 2010A Bond will be paid on each Interest Payment Date to the registered owner thereof as of the close of business on the Regular Record Date preceding the Interest Payment Date by check or draft mailed to the registered owner of any Series 2010A Bond at its address as it appears on the registration books of The Bank of New York Mellon Trust Company, N.A., Louisville, Kentucky (the “Registrar”), in addition, any owner of not less than Five Hundred Thousand Dollars (\$500,000) in aggregate principal amount outstanding of Series 2010A Bonds may request payment by wire transfer, provided that, while DTC (as hereinafter defined) is the Owner of the Series 2010A Bonds, all payments of principal of, premium, if any, and interest on the Series 2010A Bonds will be paid to DTC or its nominee by wire transfer.

### **Additional Bonds**

Under the Indenture, Additional Bonds payable from the Trust Estate on a parity with the Series 2010A Bonds may be issued as further described herein under the heading “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2010A BONDS—Additional Bonds.”

### **Redemption of Series 2010A Bonds**

***Optional Redemption.*** The Series 2010A Bonds maturing on or after October 1, 2020 shall be subject to redemption prior to maturity, in whole or in part (in Authorized Denominations), at the option of the Issuer upon the written request of the Lessee on any day, on or after October 1, 2019, at a redemption price equal to 100% of the principal amount of the Series 2010A Bonds to be redeemed plus accrued but unpaid interest to the redemption date. Any optional redemption shall be conditioned upon the Trustee’s receipt of Available Moneys sufficient to pay the redemption price of the Series 2010A Bonds to be redeemed on or prior to the redemption date.

#### ***Extraordinary Optional Redemption.***

(a) The Series 2010A Bonds shall also be subject to redemption, at the option of the Issuer upon the written request of the Lessee, in full if:

(i) the Project shall have been destroyed or damaged to such an extent that, in the opinion of a Consulting Architect expressed in a certificate filed with the Issuer and the Trustee, (A) the Project cannot reasonably be restored within a period of twelve (12) months to the condition thereof immediately preceding such destruction or damage, or (B) the Lessee is thereby prevented from carrying on its normal operations therein for a period of 12 consecutive months, or (C) the cost of restoration or replacement would exceed the net proceeds of insurance payable in respect of such destruction or damage by more than Two Hundred Fifty Thousand Dollars (\$250,000); or

(ii) title to, or the temporary use of, a substantial portion of the Project shall have been taken under the exercise of the power of eminent domain by any governmental authority or person, firm, or corporation acting under governmental authority to such an extent that, in the opinion of a Consulting Architect expressed in a certificate filed with the Issuer and the Trustee, (A) the Project cannot be reasonably restored or replaced within a period of 12 months to substantially the condition thereof immediately preceding such taking, or (B) the Lessee is

thereby prevented from carrying on its normal operations therein for a period of 12 consecutive months, or (C) the cost of restoration or replacement would exceed the total amount of compensation for such taking by more than Two Hundred Fifty Thousand Dollars (\$250,000).

(b) The Series 2010A Bonds shall also be subject to redemption, at the option of the Issuer upon the written request of the Lessee, in part in the event of partial condemnation or destruction of, or partial damage to, the Project from the net proceeds received by the Lessee as a result of such taking, destruction, or damage to the extent such net proceeds are not used for the restoration of the Project or for the acquisition of substitute property suitable for the Lessee's operations at the Project as such operations were conducted prior to such taking, damage or destruction if the Lessee furnishes to the Issuer and the Trustee (i) a certificate of a Consulting Architect stating (A) that the property forming a part of the Project that was taken, damaged, or destroyed is not essential to the Lessee's use or occupancy of the Project at substantially the same revenue-producing level prior to such taking, destruction or damage, or (B) that the Project has been restored to a condition substantially equivalent to its condition prior to the taking, damage or destruction, or (C) that the Lessee has acquired improvements that are substantially equivalent to the property forming a part of the Project that was taken, destroyed or damaged, or (ii) a written report of a Financial Consultant (as defined in Appendix A) that the Fixed Charges Coverage Ratio (as defined in Appendix A) for each of the two (2) Fiscal Years following the Fiscal Year following such taking, destruction, or damage will not be less than the lesser of (A)1.10 and (B) the average Fixed Charges Coverage Ratio for the two (2) most recent Fiscal Years prior to such taking, destruction or damage for which audited financial statements are available.

(c) If the Series 2010A Bonds are called for redemption upon the occurrence of any of the events described in the two immediately preceding subsections, the Series 2010A Bonds may be redeemed on any date for which the requisite notice of redemption can be given within 180 days of such event at a redemption price of 100% of the principal amount thereof plus interest accrued to the redemption date.

***Other Redemptions at Par.*** The Series 2010A Bonds shall also be subject to redemption prior to maturity in whole or in part, at any time and as expeditiously as reasonably possible, or in part, on any date, upon the deposit of moneys in the Redemption Fund required by the Loan Agreement or the Indenture as set forth below in a principal amount equal to such deposit and at a redemption price of 100% of such principal amount thereof plus interest accrued thereon to the redemption date from:

(a) any net proceeds of title insurance paid to the Trustee pursuant to the provisions of the Loan Agreement; or

(b) any proceeds of a sale or disposition of any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary Equipment paid to the Trustee pursuant to the provisions of the Loan Agreement; or

(c) any net proceeds of insurance received by the Lessee as a result of destruction of or damage to the Project transferred to the Redemption Fund pursuant to the provisions of the Loan Agreement; or

(d) any net proceeds received by the Lessee as a result of the taking of the Project or any part thereof under the exercise of the power of eminent domain transferred to the Redemption Fund pursuant to the provisions of the Loan Agreement; or

(e) any net proceeds received by the Lessee as a result of the release or subordination of a part of the Premises pursuant to the provisions of the Loan Agreement.

***Selection of Series 2010A Bonds To Be Redeemed.*** The Series 2010A Bonds shall be redeemed only in Authorized Denominations. The Trustee shall select the Series 2010A Bonds by lot, in such matter as the Trustee in its sole discretion shall determine to be redeemed in accordance with the terms and provisions of the Indenture. If less than all of the Series 2010A Bonds of any series or any maturity within a series are to be called for redemption, the Trustee shall select, in such manner as the Trustee in its sole discretion may determine, the Series 2010A Bonds or such series or maturity to be redeemed. If a book-entry system of evidence of transfer of ownership of Series 2010A Bonds is in effect with a Securities Depository as provided in the Indenture and less than all of the Series 2010A Bonds of any series or any maturity within a series are to be redeemed, then such Securities Depository shall determine by lot the amount of the interest of each direct participant in such Series 2010A Bonds to be redeemed. Notwithstanding the foregoing, if less than all of the Series 2010A Bonds of any series are called for redemption, the Lessee shall have the right to designate the maturity of such Series 2010A Bonds to be called for redemption.

***Election To Redeem and Notice to Trustee; Redemption Notice.*** In case of any optional redemption pursuant to the Indenture, the Lessee shall, at least 20 days prior to the date that notice of redemption is required to be given by the Trustee, notify the Trustee in writing of such redemption date and of the principal amount of Series 2010A Bonds to be redeemed.

At least 30 days and not more than 60 days before the redemption date of any Series 2010A Bonds, whether such redemption be in whole or in part, the Trustee shall cause a notice of such redemption signed by the Trustee to be mailed, first-class postage prepaid, to each Rating Agency then rating the Series 2010A Bonds, and to all Owners of Series 2010A Bonds to be redeemed in whole or in part at their addresses appearing upon the Bond Register; provided that any such notice to a Securities Depository Nominee shall be given by facsimile followed by certified or registered mail. Failure to mail any such notice to any Owner or any defect in any notice so mailed shall not affect the validity of the proceedings for the redemption of the Series 2010A Bonds of any other Owners to whom such notice was given as required hereby. The Trustee shall also give such notice of redemption, by certified or registered mail, to at least three securities depositories and at least two national information services which disseminate redemption information, but failure to mail such notice or any defect therein shall not affect the validity of any proceedings for the redemption of any Series 2010A Bonds. At least 15 days before the redemption date of Bonds, such redemption notice shall also be given by (i) registered or certified mail, postage prepaid, or (ii) overnight delivery service, to the Issuer.

Any notice of redemption may state that the redemption to be effected is conditioned upon the receipt by the Trustee on or prior to the redemption date of Available Moneys or Defeasance Obligations, or a combination of both, sufficient and legally available to pay the principal of and premium, if any, and interest on the Series 2010A Bonds to be redeemed and that if such Available Moneys or Defeasance Obligations are not so received or are not so legally available such notice shall be of no force or effect and such Series 2010A Bonds shall not be required to be redeemed. In the event that such notice contains such a condition and Available Moneys or Defeasance Obligations, or a combination of both, sufficient to pay the principal of and premium, if any, and interest on such Series 2010A Bonds are not received by the Trustee on or prior to the redemption date, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such Available Moneys or Defeasance Obligations were not so received.

***Effect of Calling for Redemption.*** On or before the date fixed for redemption, moneys or Defeasance Obligations shall be deposited with the Trustee sufficient to pay the Redemption Price of the Series 2010A Bonds or portions thereof called for redemption as well as the interest accruing thereon on the redemption date thereof.

On the date fixed for redemption, notice having been given in the manner and under the conditions provided in the Indenture (as described above), the Series 2010A Bonds or portions thereof called for redemption shall be due and payable at the Redemption Price provided therefor, plus accrued interest to such date. On such date, if money or Defeasance Obligations, or a combination of both, sufficient to pay the Redemption Price of the Series 2010A Bonds or portions thereof to be redeemed, plus accrued interest thereon to the date fixed for redemption, are held by the Trustee in trust for the Owners of Series 2010A Bonds or portions thereof to be redeemed, interest on the Series 2010A Bonds or portions thereof called for redemption shall cease to accrue; such Series 2010A Bonds or portions thereof shall cease to be entitled to any benefits or security under the Indenture or to be deemed Outstanding; and the Owners of such Series 2010A Bonds or portions thereof shall have no rights in respect thereof except to receive payment of the Redemption Price thereof, plus accrued interest to the date of redemption. Series 2010A Bonds and portions of Series 2010A Bonds for which irrevocable instructions to pay on one or more specified dates or to call for redemption at a redemption date have been given to the Trustee in form satisfactory to it shall not thereafter be deemed to be Outstanding under the Indenture and shall cease to be entitled to the security of or any rights under the Indenture, other than rights to receive payment of the Redemption Price thereof and accrued interest thereon to the date of redemption, to be given notice of redemption in the manner provided in the Indenture, and, to the extent hereinafter provided, to receive Series 2010A Bonds for any unredeemed portions of Series 2010A Bonds, if money or Defeasance Obligations, or a combination of both, sufficient to pay the Redemption Price of such Series 2010A Bonds or portions thereof, together with accrued interest thereon to the date upon which such Series 2010A Bonds or portions thereof are to be paid or redeemed, are held by the Trustee in trust for the Owners of such Series 2010A Bonds.

***Redemption of a Portion of a Bond.*** If a portion of an Outstanding Bond shall be selected for redemption, the Owner thereof or his, her, or its attorney or legal representative shall present and surrender such Bond to the Trustee for payment of the principal amount thereof so called for redemption and the redemption premium, if any, on such principal amount, and the Issuer shall cause to be executed and the Trustee shall authenticate and deliver to or upon the order of such Owner or his, her, or its legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds of the same form and maturity and of any Authorized Denominations; provided, however, that if the Owner is a Securities Depository Nominee, the Securities Depository, in its discretion, (a) may surrender such Bond to the Trustee and request that the Issuer cause to be executed and the Trustee authenticate and deliver a new Bond for the unredeemed portion of the principal amount of the Bond so surrendered or (b) shall make an appropriate notation on such Bond indicating the dates and amounts of such reduction in principal.

***Purchase in Lieu of Redemption.*** In lieu of redeeming Series 2010A Bonds, the Trustee, at the request of the Lessee, may use such funds otherwise available under the Indenture for redemption of Series 2010A Bonds to purchase Series 2010A Bonds in the open market at a price not exceeding the redemption price then applicable under the Indenture, such Series 2010A Bonds to be delivered to the Trustee for cancellation.

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

THE INFORMATION IN THIS SECTION CONCERNING DTC AND DTC'S BOOK-ENTRY SYSTEM HAS BEEN OBTAINED FROM DTC, BUT NEITHER THE ISSUER NOR THE LESSEE TAKES ANY RESPONSIBILITY FOR THE ACCURACY THEREOF.

The Indenture directs the Issuer, the Trustee, the Lessee and certain other persons to deem and treat the person in whose name any Series 2010A Bond is registered in accordance with the Indenture on the registration books maintained pursuant to the Indenture as the owner thereof for all purposes. Notwithstanding the above, so long as the Bonds are held under a book-entry system, transfers and exchanges of beneficial ownership of the Bonds will be effected on the books of The Depository Trust Company ("DTC"), New York, New York or its successor as securities depository for the Bonds, pursuant to its rules and procedures.

DTC will act as securities depository for the Series 2010A Bonds. The Series 2010A Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity for each issue of the Series 2010A Bonds, each in the aggregate principal amount of such issue, and will be deposited with DTC.

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

Purchases of Series 2010A Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2010A Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2010A Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2010A Bonds are to be accomplished by entries made on

the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2010A Bonds, except in the event that use of the book-entry system for the Series 2010A Bonds is discontinued.

To facilitate subsequent transfers, all Series 2010A Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2010A Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2010A Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2010A Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Series 2010A Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2010A Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond Documents. For example, Beneficial Owners of the Series 2010A Bonds may wish to ascertain that the nominee holding the Series 2010A Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2010A Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2010A Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on the Series 2010A Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC (nor its nominee), the Trustee, the Lessee or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2010A Bonds at any time by giving reasonable notice to the Issuer or the Trustee. Under such circumstances, in the



event that a successor depository is not obtained, bond certificates are required to be printed and delivered.

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

So long as Cede & Co., or any successor thereto, is the registered owner of the Series 2010A Bonds, as DTC's partnership nominee, references herein to the Bondholders or owners or registered owners of the Series 2010A Bonds shall mean DTC and shall not mean the Beneficial Owners of the Series 2010A Bonds. During such period, the Trustee and the Issuer will recognize DTC or its partnership nominee as the owner of all of the Series 2010A Bonds for all purposes, including the payment of the principal of, premium, if any, and interest on the Series 2010A Bonds, as well as the giving of notices and voting.

THE ISSUER, THE LESSEE AND THE TRUSTEE WILL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO ANY PARTICIPANT OR ANY BENEFICIAL OWNER OF THE SERIES 2010A BONDS WITH RESPECT TO: (1) THE SERIES 2010A BONDS; (2) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY PARTICIPANT; (3) THE PAYMENT OF ANY AMOUNT DUE TO ANY PARTICIPANT OR BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2010A BONDS; (4) THE DELIVERY BY DTC TO ANY DIRECT PARTICIPANT, OR BY ANY PARTICIPANT TO ANY BENEFICIAL OWNER OF ANY NOTICE WHICH IS REQUIRED OR PERMITTED UNDER THE TERMS OF THE SERIES 2010A BONDS TO BE GIVEN TO SERIES 2010A BOND OWNERS; (5) THE SELECTION OF BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE SERIES 2010A BONDS; OR (6) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER.

#### **SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2010A BONDS**

THE SERIES 2010A BONDS HAVE BEEN ISSUED UNDER THE PROVISIONS OF SECTIONS 103.200 THROUGH 103.285 OF THE KENTUCKY REVISED STATUTES AND DO NOT REPRESENT OR CONSTITUTE A DEBT OR PLEDGE OF THE FAITH AND CREDIT OR TAXING POWER OF THE ISSUER, THE COMMONWEALTH OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF. PRINCIPAL OF AND PREMIUM (IF ANY) AND INTEREST ON THE SERIES 2010A BONDS ARE PAYABLE SOLELY FROM THE REVENUES AND ASSETS PLEDGED PURSUANT TO THE INDENTURE.

#### **No Liability of the Commonwealth, Issuer's or Trustee's Officers**

No recourse under or upon any obligation, covenant or agreement contained in the Indenture, or in the Series 2010A Bonds, or for any claim based thereon, or under any judgment obtained against the Trustee, or by the enforcement of any assessment or penalty or otherwise or by any legal or equitable proceeding by virtue of any constitution, rule of law or equity, or statute or otherwise or under any other circumstances, under or independent hereof, shall be had against any incorporator, director, member or officer, as such, past, present or future, of the Trustee, or any incorporator, director, member or officer of any successor corporation, as such, either directly or through the Trustee or any successor corporation, or otherwise, for the payment to the Trustee as trustee for the Bondholders or otherwise, of any sum that may be due and unpaid by the Issuer upon the Series 2010A Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, director, member or officer, as such, to respond by reason of any act or omission on his part or otherwise, for the payment to the Trustee as trustee for the Bondholders or otherwise, of any sum

that may remain due and unpaid upon the Series 2010A Bonds, is expressly waived and released as a condition of and in consideration for the execution of the Indenture and the issuance of the Series 2010A Bonds.

All covenants, stipulations, obligations and agreements of the Issuer contained in the Indenture are and shall be deemed to be covenants, obligations and agreements of the Issuer to the full extent authorized by the Act and permitted by the Constitution of the Commonwealth. No covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Issuer or the Commonwealth shall be enforceable against such member, officer, agent or employee of the Issuer or the Commonwealth in anything other than that person's official capacity. Neither any official of the Commonwealth nor any official of the Issuer executing the Series 2010A Bonds, the Indenture, the Loan Agreement or any amendment or supplement hereto or thereto shall be liable personally on the Series 2010A Bonds or subject to any personal liability or accountability by reason of the issuance or execution hereof or thereof.

### **Pledge and Assignment of Trust Estate**

Pursuant to the Indenture, the Issuer will assign and grant a security interest to the Trustee, in order to secure the payment of the principal of, premium, if any, and interest on the Series 2010A Bonds according to their tenor and effect and to secure the performance and observance by the Issuer of the covenants expressed in the Indenture and in the Series 2010A Bonds, in and to the following (the "Trust Estate") which will consist of:

(a) all the right, title and interest of the Issuer in and to the Loan Agreement (except for Unassigned Rights), and any similar agreement between the Issuer and the Lessee and all extensions and renewals of the terms thereof, if any, and all amounts encumbered thereby, including, but without limitation, the present and continuing right to make claim for, collect, receive and make receipt for payments and other sums of money payable, receivable or to be held thereunder, to bring any actions and proceedings thereunder or for the enforcement thereof, and to do any and all other things that the Issuer is or may become entitled to do under the foregoing as long as no Event of Default has occurred and is continuing under the Indenture;

(b) all the right, title and interest of the Issuer in and to all cash proceeds and receipts arising out of or in connection with the sale of the Series 2010A Bonds, all payments received under the Guaranty, and all moneys held by the Trustee in the funds created under the Indenture (other than the Rebate Fund), including the Revenue Fund, the Bond Fund, the Redemption Fund relating to Additional Bonds, the Insurance Fund, the Condemnation Fund, the Issuance Cost Fund, the Operating Fund, the Repair and Replacement Fund, the 2010A Refunding Fund, the Debt Service Reserve Fund and the Budgeted Parties Annual Expense Fund created thereunder, and all moneys held by the Trustee as special trust funds derived from insurance proceeds, condemnation awards or from any other source;

(c) all the right, title and interest of the Issuer in and to all moneys and securities and interest earnings thereon from time to time delivered to and held by the Trustee under the terms of the Indenture, except for moneys and securities on deposit from time to time in the Rebate Fund, and all other rights of every name and nature and any and all other property from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred as and for additional security thereunder by the Issuer or by anyone on its behalf or with its written consent to the Trustee;

(d) all other property of every name and nature from time to time by delivery or by writing, mortgaged, pledged, delivered or hypothecated as and for additional security under the Indenture by the Issuer or anyone on its behalf or with its consent or by the Lessee in favor of the Trustee; and

(e) all right, title and interest of the Issuer in and to all proceeds (cash and noncash) of any or all of the foregoing, including without limitation all inventory, accounts, chattel paper, documents, equipment, instruments, farm products, consumer goods and general intangibles constituting proceeds acquired with cash proceeds of any or all of the foregoing.

Under the Indenture, upon the occurrence of an Event of Default, the rights of the owners of the Series 2010A Bonds to the Trust Estate, to the extent provided for, are subject to a prior lien to secure the payment of all fees and expenses of the Trustee, and the Trustee may apply moneys received by it pursuant to any action taken by it in accordance with the Indenture in connection with such Event of Default to the payment of the costs and expenses of the proceedings resulting on the collection of such moneys and to the payment of the expenses, liabilities and advances incurred or made by the Trustee prior to its applying such moneys to the payment of principal of, and premium, if any, and interest on, the Series 2010A Bonds.

Unless an Event of Default occurs and continues, the Lessee is permitted to possess and use the hereinafter defined Security (except cash, securities and other personal property deposited with the Trustee) and receive and use the revenues, issues, profits and other income of the Security (except cash, securities and other personal property required to be deposited with the Trustee).

The Trustee will also be the mortgagee under the Leasehold Mortgage.

### **Guaranty**

The Foundation will execute a document that will guarantee to the Trustee all of the Lessee's payment obligations under the Bond Documents (whether regularly scheduled or by prepayment) on or prior to the date by which the Lessee has fully satisfied all of its payment obligations that become due and payable under the Bond Documents.

At least eight (8) calendar days prior to an Interest Payment Date, the Trustee will determine whether there will be sufficient funds in the Funds and Accounts to pay the principal of or interest on the Series 2010A Bonds on such Interest Payment Date. If the Trustee determines that there will be insufficient funds in such Funds or Accounts, the Trustee shall notify the Foundation and make demand on the Foundation pursuant to the Guaranty. Such notice and demand shall specify the amount of the anticipated deficiency, the Series 2010A Bonds to which such deficiency is applicable and whether such Series 2010A Bonds will be deficient as to principal or interest or both. If the Trustee has not notified the Foundation at least eight (8) days prior to an Interest Payment Date, the Foundation will make payments of principal or interest due on the Series 2010A Bonds on or before the second (2nd) Business Day next following the date on which the Foundation shall have received notice of nonpayment from the Trustee.

See "SUMMARIES OF PRINCIPAL FINANCING DOCUMENTS—THE GUARANTY" in Appendix B hereto and "CERTAIN CONSOLIDATED FINANCIAL STATEMENTS OF THE FOUNDATION" in Appendix E hereto. Information concerning the Foundation can be found under the heading "THE FOUNDATION" herein.

## **Additional Bonds**

The Indenture permits the issuance of Additional Bonds secured on a parity with the Series 2010A Bonds. So long as there is no Event of Default under the Indenture, Additional Bonds may be issued by the Issuer upon the request of the Lessee to provide funds to pay any one or more of the following: (i) the costs of making such Additions or Alterations as the Lessee may deem necessary or desirable and as will not impair the nature of the Project as a student housing facility and as will be located on the Premises, (ii) to refund any Series 2010A Bonds, and (iii) in each such case, the costs of the issuance and sale of the Additional Bonds and capitalized or funded interest for such period and such other costs reasonably related to the financing as shall be agreed upon by the Lessee and the Issuer.

No Additional Bonds will be issued unless and until the Trustee receives (i) written confirmation from each Rating Agency then rating the Series 2010A Bonds that the issuance of such Additional Bonds will not result in a reduction, withdrawal or suspension of any then-existing rating and (ii) the written consent of the Guarantor, together with such amendments of the Guaranty as are necessary or appropriate to extend the coverage of the Guaranty to the Additional Bonds. Any such Additional Bonds will be issued pursuant to a Supplemental Indenture and constitute a distinct series.

Any Additional Bonds shall be equal, without preference or priority, to the lien and security interest provided for the Series 2010A Bonds.

## **CASH FLOW FORECAST**

A Cash Flow Forecast relating to the Project and the Lessee's ability to generate revenues from the operations of the Project sufficient to pay principal and interest on the Series 2010A Bonds for each of the academic years ending June 30 of the years 2010 through 2014 has been prepared by the Lessee. The Trustee, the Issuer and the Underwriter make no representations as to any aspect of the Cash Flow Forecast or the ability of the Lessee to pay amounts under the Loan Agreement sufficient to satisfy the principal, premium, if any, and interest due on the Series 2010A Bonds.

The Cash Flow Forecast assumes that the Series 2010A Bonds will be issued in the aggregate principal amount of \$22,020,000, bear interest at an average rate of 4.02% and that the Series 2010A Bonds will be payable by principal payments structured to produce approximately level debt service coverage after taking into account anticipated interest earnings from the Debt Service Reserve Fund at the rate of 2% per annum through 2029.

Rental Revenues estimated in the Cash Flow Forecast are based on monthly rents for each bed presented herein under the heading "THE PROJECT." The Cash Flow Forecast assumes that beds in the Project will be occupied for 9-month periods and, in some cases, generate revenue from summer rentals. The Cash Flow Forecast assumes an occupancy rate of 95%. In addition to regular estimated costs of operating the Project, the Cash Flow Forecast includes an annual replacement reserve deposit equal to 3.5% of rental revenues per year per bedroom. Income and expense estimates are escalated at an assumed rate of 3% per annum. The Lessee has covenanted in the Loan Agreement to operate the Project so as to achieve a minimum debt service coverage of 1.10.

IF ACTUAL INTEREST RATES, PRINCIPAL PAYMENTS AND FUNDING REQUIREMENTS DIFFER FROM THOSE ASSUMED IN THE FORECAST, THE FORECAST COULD BE ADVERSELY AFFECTED SOME ASSUMPTIONS WHICH SERVED AS A BASIS FOR THE FINANCIAL FORECAST INEVITABLY WILL NOT MATERIALIZE AND UNANTICIPATED EVENTS AND CIRCUMSTANCES MAY OCCUR; THEREFORE, THERE WILL USUALLY BE

DIFFERENCES BETWEEN FORECASTED AND ACTUAL RESULTS AND THOSE DIFFERENCES MAY BE MATERIAL.

The table below is a summary of the Cash Flow Forecast based upon the assumptions described above.

|  | <b>Summary of Cash Flow Forecast<sup>1</sup></b> |                    |                    |                    |                    |
|--|--|--------------------|--------------------|--------------------|--------------------|
|  | <b>For the academic years ending June 30,</b>    |                    |                    |                    |                    |
|  | <b>2010</b>                                      | <b>2011</b>        | <b>2012</b>        | <b>2013</b>        | <b>2014</b>        |
| Net Rental Revenues                      | \$2,613,690                                      | \$2,692,101        | \$2,772,864        | \$2,856,050        | \$2,941,731        |
| Other Income <sup>2</sup>                | 357,325  | 345,725            | 355,088            | 364,732            | 374,665            |
| Operating Expenses <sup>3</sup>          | <u>(1,152,224)</u>                               | <u>(1,186,491)</u> | <u>(1,221,785)</u> | <u>(1,258,139)</u> | <u>(1,295,583)</u> |
| Net Revenues Available for Fixed Charges | \$1,818,791                                      | \$1,851,335        | \$1,906,166        | \$1,962,642        | \$2,020,813        |
| Replacement Reserves                     | <u>(67,295)</u>                                  | <u>(69,265)</u>    | <u>(71,294)</u>    | <u>(73,383)</u>    | <u>(75,536)</u>    |
| Net Income After Reserves                | \$1,751,496                                      | \$1,782,070        | \$1,834,872        | \$1,889,259        | \$1,945,277        |
| Gross Debt Service and Fees              | (\$1,008,965)                                    | (\$1,568,188)      | (\$1,567,738)      | (\$1,557,088)      | (\$1,564,113)      |
| Debt Service Coverage Ratio              | 1.74   | 1.14               | 1.17               | 1.21               | 1.24               |
| Net Revenues After Debt Service          | \$742,531  | \$213,882          | \$267,135          | \$332,172          | \$381,165          |

<sup>1</sup>Some totals do not add due to rounding.

<sup>2</sup>Includes earnings on the Debt Service Reserve Fund.

<sup>3</sup>Excludes depreciation and non-cash expenses, and does not include subordinated management fees.

**ESTIMATED SOURCES AND USES OF FUNDS**

The schedule below contains the approximate sources and uses of funds resulting from the sale of the Series 2010A Bonds:

| <b>SOURCES OF FUNDS:</b>                      | <b>Series 2010A</b>           |
|---|-------------------------------|
| Par Amount of Series 2010A Bonds              | \$22,020,000.00               |
| Transfer from 2001A Debt Service Fund         | 46,202.74                     |
| Transfer from 2001A Debt Service Reserve Fund | 1,681,230.00                  |
| Net Premium                                   | <u>91,730.35</u>              |
| <b>TOTAL SOURCES OF FUNDS</b>                 | <b><u>\$23,839,163.09</u></b> |
|   |                               |
| <b>USES OF FUNDS:</b>                         |                               |
| Redemption of Series 2001A Bonds              | \$21,806,202.74               |
| Deposit to 2010A Debt Service Reserve Fund    | 1,681,230.00                  |
| Issuance Costs                                | <u>351,730.35</u>             |
| <b>TOTAL USES OF FUNDS</b>                    | <b><u>\$23,839,163.09</u></b> |

## CERTAIN BONDHOLDERS' RISKS

### General

**EACH INVESTOR SHOULD CONSIDER THE RISKS INVOLVED TO DETERMINE THE SUITABILITY OF INVESTING IN THE SERIES 2010A BONDS.** Each prospective investor should carefully examine this Official Statement and his or her own financial condition (including the diversification of his or her investment portfolio) in order to make a judgment as to whether the Series 2010A Bonds are an appropriate investment.

The Lessee has identified and summarized below certain “Bondholders’ Risks” that could adversely affect the operation of the Project and/or the Series 2010A Bonds which should be considered by prospective investors. The following discussion is not intended to be exhaustive, but includes certain major factors which should be considered along with other factors set forth elsewhere in this Official Statement, including the Appendices hereto.

If the Lessee is unable to generate sufficient revenues from the operation of the Project to pay its operating expenses and principal of and interest on the Series 2010A Bonds, an Event of Default may occur under the Bond Documents. Upon an Event of Default, the Series 2010A Bonds may be paid before maturity or applicable redemption dates and a forfeiture of purchase premiums, if any, may result. The Lessee’s ability to generate revenues and its overall financial condition may be adversely affected by a wide variety of future events and conditions including (i) a decline in the enrollment of the University, (ii) increased competition from other schools, (iii) loss of accreditation of the University’s programs, (iv) failure of the University to meet applicable federal guidelines or some other event which results in students of the University being ineligible for federal financial aid, and (v) cost overruns in connection with the Project or other capital improvements.

### Limited Obligations of the Issuer

The Series 2010A Bonds constitute limited obligations of the Issuer and have four potential sources of payment. The sources of payment are as follows:

(a) *Payments Received by the Trustee From the Lessee Pursuant to the Terms of the Indenture and the Loan Agreement.* The Issuer has no obligation to pay the Series 2010A Bonds except from the related Trust Estate, including Loan Payments derived from the Loan Agreement. The Series 2010A Bonds and the interest thereon shall not be deemed to constitute an indebtedness, liability or obligation, legal, moral or otherwise, of the Issuer, the Commonwealth or any political subdivision, agency or instrumentality of the Commonwealth or the Issuer, including, without limitation, the University, or a pledge of the faith and credit of the Commonwealth, the Issuer, or any other political subdivision, agency or instrumentality of the Commonwealth or the Issuer, including, without limitation, the University, within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability, nor shall there be a charge against the general credit or taxing powers, of the Issuer, the Commonwealth or any other political subdivision, agency or instrumentality of the Commonwealth or the Issuer, including, without limitation, the University, but shall be payable solely from the revenues and other amounts pledged to such payment under the Indenture. None of the Issuer, the Commonwealth or any other political subdivision, agency or instrumentality of the Commonwealth or the Issuer, including, without limitation, the University, shall be obligated to pay the Series 2010A Bonds or the interest thereon except from such sources, and neither the faith and credit nor the taxing power, if any, of the Issuer, the Commonwealth or any other political subdivision, agency or instrumentality of the Commonwealth or the Issuer, including,

without limitation, the University, is pledged to the payment of the principal of or the interest on the Series 2010A Bonds. Under the Loan Agreement, the Lessee will be required to make Loan Payments (the interest in which the Trustee has received by assignment from the Issuer) to the Trustee in amounts sufficient to enable the Trustee to pay the principal of, premium, if any, and interest on the Series 2010A Bonds. The Loan Payments are anticipated, however, to be derived solely from the operation of the Project, and the obligation to make Loan Payments is not a general obligation of the Lessee. Furthermore, the Lessee's ability to meet its obligations under the Loan Agreement will depend upon achieving and maintaining certain occupancy levels at the Project throughout the term of the Series 2010A Bonds. No assurance can be made that the Lessee will generate sufficient revenues from the Project to pay maturing principal of, premium, if any, and interest on the Series 2010A Bonds after payment of operating expenses of the Project.

(b) *Revenues Received From Operation of the Project by a Receiver Upon a Default Under the Indenture.* It has been the experience of lenders in recent years that attempts to have a receiver appointed to take charge of properties with respect to which loans have been made are frequently met with defensive measures such as the initiation of protracted litigation and the initiation of bankruptcy proceedings. Such defensive measures can prevent the appointment of a receiver or greatly increase the expense and time involved in having a receiver appointed. See "Enforceability of Remedies" herein. Accordingly, prospects for uninterrupted payment of principal and interest on the Series 2010A Bonds in accordance with their terms are largely dependent upon Loan Payments from the Lessee described in the preceding paragraph, which is wholly dependent upon the success of the Lessee in the operation of the Project.

(c) *Proceeds Realized From the Sale or Lease of the Issuer's and the Lessee's Interest in the Project to a Third Party by the Trustee at or Following Foreclosure by the Trustee of the Mortgage and Proceeds Realized From the Liquidation of Other Security for the Series 2010A Bonds.* Debtors frequently employ defensive measures, such as protracted litigation and bankruptcy proceedings, in response to lenders' efforts to foreclose on real property or otherwise to realize upon collateral to satisfy indebtedness which is in default. Such defensive measures can prevent, or greatly increase the expense and time involved in achieving, such foreclosure or other realization. In addition, the Trustee could experience difficulty in selling or leasing the real and personal property portion of the Project upon foreclosure due to the special purpose nature of the Project, and the proceeds of such sale may not be sufficient to pay fully the owners of the Series 2010A Bonds. See "Liquidation of Security May Not Be Sufficient in the Event of a Default" herein. Accordingly, prospects for uninterrupted payment of principal and interest on the Series 2010A Bonds in accordance with their terms are largely dependent upon the Loan Payments described in paragraph (a) above, which is wholly dependent upon the success of the Project. Even if the Project is operating in an efficient manner, other factors could affect the Lessee's ability to make Loan Payments under the Loan Agreement.

(d) *Proceeds Received from the Guaranty.* The Foundation may be unable or unwilling to make payments due under the Guaranty. If the Foundation fails to honor the Guaranty, the Trustee can take action to enforce the Guaranty. However, such attempts at enforcement may be frustrated by protracted litigation or bankruptcy. Even if the Trustee is successful in enforcing the Guaranty there can be no assurance that collection will be timely or that the Foundation will have assets sufficient to honor its obligation.

Moreover, subject to the terms of the Loan Agreement, the Lessee also may become engaged in other ventures in the future. If losses are experienced in such other future ventures, or in other ventures in which the Lessee is currently involved, the Lessee might default in payments under the Loan Agreement, regardless of the successful operation of the Project. The filing by, or against, the Lessee for relief under

the Bankruptcy Code in connection with any other project may have an adverse effect on the ability of the Trustee and Bondholders to enforce their claim or claims to the security granted by the Indenture and the other security which secures the Project, and their claim or claims to moneys owed them as unsecured claimants, if any. Such a filing would generally operate as an automatic stay of the commencement or continuation of any judicial or other proceeding against the Lessee and its property and as an automatic stay of any act or proceeding to enforce a lien against such property, which may include the Project even though the Project is not pledged to secure any other indebtedness. Further, once a bankruptcy court has acquired jurisdiction over the Lessee in connection with this Project or any other project or venture, such court would likely have the ability to exercise its jurisdiction generally in respect of the Lessee and its assets, including the Project and any other project.

### **Limited Resources of the Lessee; Limited Recourse**

Other than its ownership of the Project, no representation is made and no assurance can be given that the Lessee will have substantial revenues or assets which are not pledged for other contractual obligations of the Lessee. Furthermore, the Series 2010A Bonds are secured only by the operations and assets of the Project. Therefore, timely payment of principal of, premium, if any, and interest on the Series 2010A Bonds will be dependent upon the Lessee's ability to generate revenues from the Project sufficient to pay its operating expenses and Loan Payments under the Loan Agreement. If after payment of operating expenses, net revenues are insufficient to pay the debt service on the Series 2010A Bonds, the Lessee may not have money or assets other than the Project from which to make the payments required under the Loan Agreement, and is not obligated to use any such money or assets to make such payments. The Lessee's obligations under the Loan Agreement are limited to revenues generated by the Project.

### **Creditworthiness of the Foundation**

No representation can be made that the Foundation will be able to make payments when and as due under the Guaranty, or that the rating of the Foundation (and, potentially, the Series 2010A Bonds) will not be reduced or withdrawn.

### **No Recourse Against the Lessee, the Issuer, the University**

Notwithstanding anything in any of the Bond Documents to the contrary, the Lessee shall have no liability under the Loan Agreement, any other Bond Document or any other documents delivered in connection with the issuance of the Series 2010A Bonds, beyond its interest in the Project and any funds held therefor under the Indenture. The Issuer will agree not to enforce the liability and obligation of the Lessee to perform and observe the obligations contained in the Loan Agreement (other than obligations to pay costs of the Project in excess of the amount of the Loan and certain other obligations under the Loan Agreement) or any of the other Bond Documents in any action or proceeding wherein a money judgment shall be sought against the Lessee, except that the Trustee may bring a foreclosure action, or other appropriate action or proceeding to enable the Trustee to enforce and realize upon the Mortgage and the Issuer's interest in the property pledged under the Mortgage; provided, however, that any judgment in any such action or proceeding shall be enforceable against the Lessee only to the extent of the Lessee's interest in the Project.

The University will not be liable for the payment of the principal of, premium, if any, or interest on the Series 2010A Bonds, nor shall either be responsible or liable for any other obligations of the Lessee or the obligations of any other party in connection with the Series 2010A Bonds.



### **Liquidation of Security May Not Be Sufficient in the Event of a Default**

The Project is located on the campus of the University, and may not be suitable for uses other than as a Project. Furthermore, the Ground Lease significantly limits the uses to which the Project may be put. The number of entities that could be expected to purchase or lease the Lessee's interest in the Project is therefore limited, and thus the ability of the Trustee to realize funds from the sale or lease of such interest upon an event of default may be limited. Such value may be also limited by actual or alleged rights of residents. Any foreclosure proceeding may be subject to substantial delays. The ability of the Trustee to receive funds sufficient to pay the Series 2010A Bonds from any sale or foreclosure of the Issuer's interest in the Premises may be limited by a number of factors, including the limited operational use of the Project as a Project.

### **Geographic Concentration**

The occupancy rates in the Project may be adversely affected by regional and local economic conditions, competitive conditions, applicable local laws and regulations, and general real estate market conditions, including the supply and proximity of apartment communities in such area.

### **Insurance and Legal Proceedings**

The Lessee will carry property and general liability insurance in amounts deemed adequate by management and consistent with industry practices. However, there can be no assurance that any current or future claims will not be covered by or exceed applicable insurance coverage. A claim against the Lessee not covered by, or in excess of, the Lessee's insurance could have a material adverse effect upon the Lessee.

### **Existing Operations and Possible Increased Competition**

The student housing industry is highly competitive. Such competition may inhibit the extent to which the Lessee will be able to raise charges and maintain or increase occupancy. Competing companies may offer newer or different projects or services and may thereby attract residents who are present or potential residents of the Project. The Lessee or the University may themselves acquire or develop additional student housing facilities which are competitive with the Project. Both the Lessee and the University currently operate student housing facilities which will compete with the Project.

### **Governmental Regulation**

The housing industry is significantly regulated by the federal and local government. Regulations and conditions affecting the acquisition, development and ownership of residential real estate, including local zoning and land use issues, environmental regulations, the Americans with Disabilities Act, the Fair Housing Amendments Act of 1988 and general conditions in the multifamily residential real estate market, could increase the operating expenses of the Project or could otherwise have a material adverse effect on the financial condition of the Lessee or the results of its operations.

### **Required Occupancy Levels and Rents**

In order for the Lessee to generate sufficient revenues to enable it to make the Payments in the amounts and at the times required under the Loan Agreement, the Project must meet certain assumed occupancy levels and achieve certain assumed rents during each Fiscal Year. There can be no assurance,

however, that the Project will be able to meet and maintain such required occupancy and rent levels during any Fiscal Year.

### **Enforceability of Remedies**

The Series 2010A Bonds are payable from the Trust Estate, including payments to be made under the Loan Agreement and the Indenture. Pursuant to the Indenture, the Series 2010A Bonds are secured by the Trust Estate. The practical realization of value upon any default will depend upon the exercise of various remedies specified by the Bond Documents. These and other remedies may, in many respects, require judicial actions, which are often subject to discretion and delay. Under existing law (including, particularly, federal bankruptcy law), the remedies specified by the Bond Documents may not be readily available or may be limited. A court may decide not to order the specific performance of the covenants contained in the Bond Documents. The various legal opinions to be delivered concurrently with the delivery of the Series 2010A Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by state and federal laws, rulings, and decisions affecting remedies, including judicial discretion in the application of the principles of equity, and by bankruptcy, reorganization, or other laws affecting the enforcement of creditors' rights generally.

### **Effect of Determination of Taxability**

The Lessee and the Issuer each will covenant not to take any action that would cause the Series 2010A Bonds to be arbitrage bonds or that would otherwise adversely affect the federal income tax status of interest on the Series 2010A Bonds. The Lessee has also made representations with respect to certain matters within its knowledge which have been relied on by Bond Counsel and which Bond Counsel has not independently verified. Failure to comply with such covenants could cause interest on the Series 2010A Bonds to become subject to federal income taxation retroactively from their date of issuance.

It is possible that a period of time may elapse between the occurrence of the event which causes interest to become taxable and the determination that such an event has occurred. In such a case, interest previously paid on the Series 2010A Bonds could become retroactively taxable from the date of their issuance. Additionally, certain owners of Series 2010A Bonds are subject to possible adverse tax consequences. See "TAX EXEMPTION" herein.

### **Actual Results May Differ From Cash Flow Forecast**

The Cash Flow Forecast and its forecast of future revenues and expenses with respect to the Project is based upon assumptions concerning future events, circumstances, and transactions. In addition, the Cash Flow Forecast contained herein only covers the approximate five-year period ending June 30, 2014, and consequently does not cover the entire period during which the Series 2010A Bonds may be Outstanding. The achievement of any financial forecast is dependent upon future events, the occurrence of which cannot be assured. Realization of the results forecasted will depend on the implementation by the Lessee of policies and procedures consistent with such assumptions. Future results will also be affected by events and circumstances beyond the control of the Lessee. For the reasons described above, it is likely that the actual results of the Project will be different from the results forecast in the Cash Flow Forecast and those differences may be material and adverse.

No representation or assurances can be made that revenues will be realized by the Lessee from the operation of the Project in amounts sufficient to pay maturing principal and interest on the Series 2010A Bonds. Future economic and other conditions, including demand for and services offered by the Project and the ability of the residents of the Project to meet their financial obligations, increased costs,

litigation, competition, lower than anticipated revenues, higher than anticipated operating expenses, changes in governmental regulation, loss of federal tax-exempt status, loss of state or local property tax exemption, changes in demographic trends, changes in the student housing industry and general economic conditions may adversely affect revenues and, consequently, payment of principal and interest. Factors such as increasing maintenance fees which could affect occupancy, differences in interest rates from those expected, competition from other institutions to host summer conferences, and construction costs are all items to which the forecast financial statements are highly sensitive.

The ability of the Lessee to pay debt service on the Series 2010A Bonds depends upon its ability to market the Project. The continued economic feasibility of the Project depends upon the ability of the Lessee to attract sufficient residents and to maintain substantial occupancy at projected rent levels of such Project throughout the term of the Series 2010A Bonds. There can be no assurance that the levels of occupancy assumed in the Cash Flow Forecast will be obtained or maintained.

### **Uncertainty of Investment Income**

The investment earnings of, and accumulations in, certain funds and accounts established by the Indenture have been estimated and are based on assumed earnings' rates. While these assumptions are believed to be reasonable in view of the rates of return presently available, there is no assurance that similar interest rates will be available on such investments in the future, nor is there any assurance that the potential accumulations assumed will be realized.

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

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

The Lessee has covenanted to remain eligible for such tax-exempt status and to avoid operating the Project as an unrelated trade or business (as determined by applying Section 512(a) of the Code). Failure of the Project to remain so qualified or of the Lessee so to operate the Project could affect the funds available to the Lessee for payments under the Loan Agreement by subjecting the Lessee to federal income taxation and could result in the loss of the excludability of interest on the Series 2010A Bonds from gross income for purposes of federal income taxation. See "Effect of Determination of Taxability" above.

### **Taxation of Series 2010A Bonds**

An opinion of Bond Counsel has been obtained as described under "TAX EXEMPTION" herein. Such an opinion is not binding on the Internal Revenue Service. Application for a ruling from the Internal Revenue Service regarding the status of the interest on the Series 2010A Bonds has not been made. The opinion of Bond Counsel contains certain exceptions and is based on certain assumptions described herein under the heading "TAX EXEMPTION." Failure by the Issuer or the Lessee to comply with certain provisions of the Code and covenants contained in the Indenture and the Loan Agreement

could result in interest on the Series 2010A Bonds becoming includible in gross income for federal tax purposes.

## THE FOUNDATION

Based on the audited consolidated financial statements, the consolidated financial position of the University of Louisville Foundation, Inc. and its affiliates (the “Foundation”) as of June 30, 2009, and June 30, 2008, was as follows:

|                               | 2009        | 2008        |
|-------------------------------|-------------|-------------|
| <b>Total Assets</b>           | 821,191,000 | 964,921,000 |
| <b>Liabilities</b>            | 175,555,000 | 141,173,000 |
| <b>Net Assets<sup>1</sup></b> | 645,636,000 | 823,748,000 |

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<sup>1</sup>Net Assets has been divided into three categories: unrestricted net assets which have no donor-imposed restrictions; temporarily restricted net assets which have donor-imposed restrictions that will expire in the future; and permanently restricted net assets which have donor-imposed restrictions which do not expire. Unrestricted net assets were \$270,315,000 and \$447,586,000 as of June 30, 2009, and June 30, 2008, respectively. Temporarily restricted net assets were \$43,577,000 and \$35,373,000 as of June 30, 2009 and 2008, respectively. Permanently restricted net assets were \$331,744,000 and \$340,789,000 as of June 30, 2009, and June 30, 2008, respectively.

## THE TRUSTEE

The Bank of New York Mellon Trust Company, N.A. serves as Trustee for the financing through its corporate trust office in Louisville, Kentucky.

Except for any information provided by the Trustee concerning the Trustee, the Trustee has no responsibility for any information in this Official Statement. Further the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Series 2010A Bonds.

## THE MANAGER AND THE MANAGEMENT AGREEMENT

### General

The Manager of the Project is Allen & O’Hara Education Services, Inc. (the “Manager”), a wholly owned subsidiary of Education Realty Trust, Inc. (“EDR”). EDR’s predecessor corporation was formed in 1952 and has been engaged in student housing management and development since 1962. As of the present date, the Manager has managed (or has been selected to manage) over 40,000 private beds of housing on or near 58 separate collegiate campuses (including the Project). The Manager’s corporate headquarters is in Memphis, Tennessee.

The Manager operates the Project pursuant to the terms of a Student Housing Management Agreement (the “Management Agreement”) between the Manager and the Lessee. The Management Agreement had an initial term of five years and has been renewed on an annual basis since the expiration of the initial term. It provides for an annual fee, payable monthly, for the Manager consisting of both a

fixed fee and a variable component. The most recent Management Agreement was effective July 1, 2009 and expires on June 30, 2010.

### **Key Personnel**

A brief description of the education and professional background of the officers of Allen & O'Hara having primary responsibility for the management of the Project is as follows:

***Paul O. Bower, Chairman of the Board, Education Realty Trust, Inc.*** Mr. Bower has been with Allen & O'Hara since 1969 and was President and CEO from 1998 to 2005. Mr. Bower holds the Certified Property Manager designation granted by the Institute of Real Estate Management and the Certified Hotel Administrator designation granted by the Educational Institute of the American Hotel and Motel Association. He graduated from Cornell University in 1965 with a B.S. from the School of Hotel Administration. He supervises the development and management operations of Allen & O'Hara and works with lenders and owners on all financial aspects of each of Allen & O'Hara's projects.

***Randall H. Brown, Executive Vice President and Chief Financial Officer.*** Mr. Brown joined Allen & O'Hara in June 1999 as Chief Financial Officer and Treasurer. Prior to joining Allen & O'Hara, Mr. Brown served as Director-Corporate Finance with Promus Hotel Corporation. He also served in various finance and development positions with Holiday Inns, Inc., International Paper and Price Waterhouse. Mr. Brown holds a Certified Public Accountant designation from the State of Tennessee. He graduated cum laude, with a B.S. in Sociology from the University of Tennessee, and cum laude, with a B.B.A. in accountancy from the University of Memphis. Mr. Brown oversees all financial activities for the company as well as strategic planning, corporate debt placement and lender relations.

***Susan B. Arrison, Vice President of Human Resources.*** Ms. Arrison joined Allen & O'Hara in 1996 as Vice President of Human Resources. She earned her B.A. in Education in 1971 and her M.A. in Information Services in 1976 from the University of Mississippi. Prior to joining Allen & O'Hara, she was Employment/Employee Relations Vice President of National Bank of Commerce in Memphis. She handles all matters relating to personnel management, including EEO, Affirmative Action and Wage and Salary Administration.

***William W. Harris, President of Development.*** Mr. Harris has been with Allen & O'Hara since 1982 and holds the MAI designation granted by the Appraisal Institute. He attended Duke University and graduated from Rhodes College in 1969 with a B.A. in Sociology and Psychology. Mr. Harris coordinates the development of student housing properties across the country and is knowledgeable about all aspects of the development process, including market analysis, design, financial analysis and project finance. Mr. Harris will be responsible for overseeing the Allen & O'Hara development team through completion of the Project.

***Thomas Trubiana, Chief Investment Officer.*** Mr. Trubiana began his career in collegiate student housing in 1972, amassing experience in development, management, financing and acquisitions. He has been directly involved in the development and/or management of over 50 student housing communities, housing over 40,000 students. Mr. Trubiana is the primary individual responsible for overseeing the successful design and completion of the Project.

***Thomas J. Hickey, Senior Vice President.*** Mr. Hickey has been with Allen & O'Hara since 1972 and holds the CPM designation from the Institute of Real Estate Management. He earned a B.S. in Liberal Arts in 1970, and a B.S. in Journalism in 1972 from the University of Kansas. Mr. Hickey has been involved in student housing management since joining the firm and was named Vice President of Management Services in 1988. He has extensive experience in the management of student apartments

and student residence halls. Mr. Hickey is the primary individual responsible for overseeing the successful management of the Project.

**Wallace L. Wilcox, Vice President of Construction.** Mr. Wilcox has been with Allen & O'Hara since 1980 and has served in various capacities in the areas of project management, maintenance and engineering. He earned an Associate's Degree in Industrial Engineering and Management from State Technical Institute at Memphis. During his career, Mr. Wilcox has supervised the construction of hotels, student housing facilities, student apartments, office buildings and churches. As Vice President of Construction, Mr. Wilcox serves as the liaison officer between the development team, architects, contractors and others. In addition to his other duties, Mr. Wilcox supervises the Allen & O'Hara Preventative Maintenance Program throughout the student housing portfolio and coordinates all capital improvement projects for Allen & O'Hara.

## THE UNIVERSITY

The University is a metropolitan research university which has had close historical and legal ties with the Metro. The University was founded in 1798 as the Jefferson Seminary, later known as Louisville College, and in 1846 became the University of Louisville by legislative charter. The University became a member of Kentucky's public higher education system on July 1, 1970 and amended its charter to reflect its status as a state institution, subject to the administration and control of the Board of Trustees (the "Board") which is constituted as a public body corporate.

Pursuant to the above mentioned powers, the Board has general supervision of all lands, buildings and other properties of the University and, subject to the statutes of the Commonwealth, control of all expenses therefore. The Board is composed of 17 members who are appointed by the Governor of Kentucky to staggered six-year terms, plus a member of the teaching faculty, a member of the permanent staff of the University and a student member, each serving one-year terms. The officers of the Board are elected by its members.

The University has established or designated as independent components the following divisions: the College of Arts and Sciences, School of Interdisciplinary and Graduate Studies, School of Dentistry, J.B. Speed School of Engineering, School of Music, School of Nursing, College of Business, School of Medicine, School of Public Health and Information Sciences, University Libraries, Brandeis School of Law, the College of Education and Human Development and Kent School of Social Work. The University as a whole is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools. It is also a member of the following agencies: The American Council on Education, the Association of American Colleges, the Association of Urban Universities and the Department of Education and the Commonwealth of Kentucky.

Individual program and school accreditation includes the following: The Art Therapy (expressive therapies) program is accredited by the American Art Therapy Association. The Audiology and Speech Pathology program is accredited by the American Speech-Language-Hearing Association. The College of Business (graduate and undergraduate business; Accountancy program) is accredited by the Association to Advance Collegiate Schools of Business (AACSB). The Chemistry program is accredited by the American Chemical Society (BS Degree only.) The School of Dentistry and the Dental Hygiene program are accredited by the Commission of Dental Accreditations of the American Dental Association. The College of Education and Human Development is accredited by the Education Professional Standards Board,, Commonwealth of Kentucky and National Council for Accreditations of Teacher Education.

The Chemical, Civil, Electrical, Industrial, Computer Engineering and Computer Science and Mechanical Engineering programs are accredited by the Accreditation Board for Engineering and

Technology. The Family Therapy program is accredited by the Commission on Accreditation for Marriage and Family Therapy. The Graduate Medicine (House Staff) program is accredited by the Accreditation Council for Graduate Medical Education, The Interior Design Program is accredited by the Council for Interior Design Accreditation (CIDA), The Brandeis School of Law is accredited by the Section of Legal Education and Admissions to the Bar of the American Bar Association and the Association of American Law Schools. The School of Medicine is accredited by the Liaison Committee on Medical Education, a joint committee of the American Medical Association and the Association of American Medical Colleges. The Music School is accredited by the National Association of Schools of Music. The School of Nursing is accredited by the Council on Collegiate Nursing Education. The Paralegal Studies program is accredited by the Section on Paralegal Education of the American Bar Association.

The Public Administration program is accredited by the National Association of Schools of Public Affairs and Administration. The Social Work program is accredited by the Commission on Accreditation of the Council on Social Work Education. The Clinical Psychology program is accredited by the American Psychological Association. The Sports Management program is accredited by the Sport Management Program Review Council of the National Association for Sport and Physical Education and North American Society for Sport Management. The Pathology and Laboratory Medicine Post Doctorate program is accredited by the Commission on Accreditation in Clinical Chemistry (COMACC). The Public Health program is accredited by the Council on Education for Public Health (CEPH). The Theatre Arts program is accredited by the National Association of Schools and Theatre (NAST).

The University, with its present enrollment of 21,761 graduate, professional and undergraduate students for the 2008-2009 academic year, is located in three campuses. This includes 2,049 house staff, post-doctorals and professionals in law, medicine and dentistry. The main Belknap Campus is located in south-central Louisville; the School of Medicine, the School of Nursing and the School of Dentistry are located in the downtown Health Sciences Center. The Belknap Campus has 70 academic and related buildings with a total net book value of \$241,306,747. The Shelby Campus (formerly the campus of Kentucky Southern College) is located on Shelbyville Road in Jefferson County, Kentucky, and contains four academic and related buildings, having a book value of \$30,587,753.

The downtown Health Sciences Campus with an approximate enrollment of 3,776 students contains 22 academic buildings, a parking deck and three buildings comprising the University Hospital, with a net book value of \$238,637,039. In the same area, the University owns a medical/dental apartment and residence hall.

The University plant includes buildings located on approximately 776.47 acres of land. In addition, the University owns the 212-acre Horner Wildlife Sanctuary, located in Oldham County, Kentucky.

## **Board and Administrative Officers**

***Governing Board.*** The Governing Body of the University is the Board of Trustees consisting of 17 members appointed by the Governor, one faculty member, one staff member and one student member. Pursuant to Section 164.830 of the Kentucky Revised Statutes, the Board is a body corporate with the corporate powers and immunities usually vested in corporations and, as such, subject to the statutes of the Commonwealth, has control and management of the University, together with the properties and funds thereof.

## BOARD OF TRUSTEES

|                               |                      |
|-------------------------------|----------------------|
| J. Chester Porter, Vice-Chair | Rebecca Jackson      |
| Owsley Frazier                | Melissa Laning       |
| Stephen Poe                   | Dr. Mark Lynn        |
| William A. Stone              | Frank Minnifield     |
| Jonathan Blue                 | Brucie Moore         |
| Ron Butt                      | OJ Oleka             |
| Dr. Kevin Cosby               | Debbie Scoppechio    |
| Brent Fryrear                 | Dr. William Selvidge |
| Dr. Salem M. George Sr.       | Phoebe Wood          |
| Dr. Robert Curtis Hughes      |                      |

### *Administrative Officers.*

*Dr. James R. Ramsey, President.* Dr. Ramsey became president of the University of Louisville on November 14, 2002, after serving as acting president since September 2, 2002. Prior to becoming president, he had served as senior policy advisor and state budget director for the Commonwealth as well as senior professor of economics and public policy at the University since 1999. Dr. Ramsey has held numerous academic positions, including serving as vice chancellor for finance and administration at both the University of North Carolina at Chapel Hill and Western Kentucky University. He has been associate dean, assistant dean and director of public administration in the College of Business Administration at Loyola University and a research associate for the University of Kentucky's Center for Public Affairs. He has served on the faculties of the University of North Carolina at Chapel Hill, Western Kentucky University, the University of Kentucky, Loyola University and Middle Tennessee State University in addition to the University. Dr. Ramsey also has held a number of positions in state government, including interim commissioner of the Office of the New Economy and special advisor to the chairman of the Kentucky Council on Postsecondary Education. Dr. Ramsey earned a bachelor's degree in business administration from Western Kentucky University and master's and doctoral degrees in economics from the University of Kentucky.

*Dr. Shirley C. Willihnganz.* Executive Vice President and University Provost. Dr. Shirley C. Willihnganz received a Ph.D. from the University of Illinois-Urbana in 1988. She received an M.A. in Speech Communication from Wayne State University in 1979 and a B.A. from Wayne State University in Journalism and Psychology in 1973. Dr. Willihnganz came to the University of Louisville in 1985 as Assistant Professor of Communication in the College of Arts and Sciences. In 1992, she was promoted to Associate Professor and she became a full Professor in 2002. From 1996-1999, she served as Associate Dean in the College of Arts and Sciences, and she was named Acting Dean of the College for 1999-2000. Dr. Willihnganz chaired the Department of Communication from 2001 to 2002. Dr. Willihnganz was named Acting Provost, effective June 2002. In May, 2004, Dr. Willihnganz was named Executive Vice President and University Provost.

*Dr. Larry N. Cook, Executive Vice President for Health Affairs.* Dr. Larry Cook was appointed by the University Board as Executive Vice President for Health Affairs in April, 2005, after serving in an interim capacity since August, 2004. He assumed the leadership of the University of Louisville's Health Sciences Center, located in downtown Louisville, which includes oversight of the Schools of Medicine, Nursing, Dentistry, and Public Health, as well as 17 centers and institutes. As EVPHA, Dr. Cook also



serves as a key member of President James Ramsey's leadership team. Dr. Cook joined the University faculty in 1974 after completing his pediatric residency at the University of Colorado Medical Center and his neonatology fellowship at the University. He was named chair of the pediatrics department and chief of staff at Kosair Children's Hospital in 1994, and is a practicing neonatologist, who is regarded as the architect of advanced technology neonatal intensive care in the region. He also is past president and chairman of the School of Medicine's practice plan board and the Medical School Practice Association. Dr. Cook has served as chairman of the board and been instrumental in the development of University Health Care Inc., a Medicaid managed-care HMO doing business as Passport, with responsibility for more than 135,000 lives in 15 counties. Dr. Cook obtained his B.S. and M.D. from the University of Louisville. He is a member of the Jefferson County Medical Society, American Academy of Pediatrics, American Medical Association, Kentucky Pediatric Society, Kentucky Medical Association, the American Pediatric Society and numerous other professional societies.

*Mr. Michael J. Curtin, Vice President for Finance.* Michael J. Curtin received a B.S. in Finance from Western Kentucky University, an M.B.A. from the University of Louisville in 1977, and an M.S.S. (*Master of Strategic Studies*) from the U.S. Army War College at Carlisle, Pa. in 1999. He has been Vice President for Finance at the University of Louisville since 2003. He was the Director of the Office for Planning and Budget from 1995 to 2003 and Director of Budget and Financial Planning from 1985 to 1995. From 1970 to 1974 he was Assistant to the Director, Office of Program Analysis for the Kentucky Department for Human Resources, specializing in financial systems. Mr. Curtin also is a reserve Brigadier General currently serving as Deputy Commander of the Kentucky Army National Guard.

*Dr. Tom Jackson, Jr., Vice President for Student Affairs* Dr. Jackson earned his Ed.D. in Educational Management from the University of La Verne in California, his M.S. in Counseling from Shippensburg University in Pennsylvania, his B.S. in Business-Human Resources from Southwest Minnesota State University, and his A.A. from Highline Community College in Seattle, Washington. Dr. Jackson has been Vice President for Student Affairs since January 2007. Prior to the University of Louisville Dr. Jackson served as the Assistant Director of Residence Life at St. Mary's University in San Antonio, TX, an Area Coordinator at the University of Southern California, the Academic Development Specialist in Residence Life at Cal Poly-San Luis Obispo, Director of the Student Activities Center at the University of Texas at El Paso, the Dean of Students at McMurry University (Texas), and the Vice President for Student Affairs at Texas A&M-Kingsville.

*Mr. Daniel Hall, Vice President for Community Engagement.* Mr. Daniel Hall received a B.A. in Psychology from Dartmouth College in 1973 and a J.D. from Harvard University School of Law in 1976. Mr. Hall has been the Vice President for Community Engagement since August 2009. Prior to that he served as Vice President for University Relations since November 1998. He was assistant to the President for University Relations at the University from 1985 to 1998. Before 1985, Mr. Hall served as Chief of Staff to U.S. Representative Romano Mazzoli from 1980 to 1985, was in private practice with two different Louisville law firms from 1979 to 1980, and from 1976 to 1977, and served as Chief Counsel to the House District of Columbia Subcommittee on Judiciary from 1977 to 1978. He also has teaching experience at the University.

*Dr. William Pierce, Interim Executive Vice President for Research.* Dr. William Pierce was named to his current position on September 1, 2009. Prior to that he was the Vice Provost for Graduate Affairs and interim Dean of the School of Graduate and Interdisciplinary Studies at the University of Louisville. Dr. William Pierce holds a doctoral degree in pharmacology and a bachelor's degree in chemistry from UofL. He was a postdoctoral scholar at Stanford University.

*Dr. Priscilla Hancock, Vice President for Information Technology and Chief Information Officer* Dr. Priscilla Hancock assumed her current position on September 1, 2007. Prior to that Dr. Hancock was

the vice chancellor for information technology for the University of Alabama system for 10 years. She formally began her information technology career at the University of Kansas as a statistical consultant and rose through the ranks at the University of Texas at Austin, Vanderbilt University and Western Michigan University before going to the University of Alabama. Dr. Hancock earned her master's degree and Ph.D. from the University of Kansas. She received her bachelor's degree from the University of Texas. All of her degrees are in experimental psychology.

*Mr. Larry L. Owsley, Vice President for Business Affairs.* Larry L. Owsley received a B.A. in History from Centre College in 1969, an M.P.A. from the University of Virginia in 1971 and an M.P.P. from the University of California at Berkeley in 1973. He has been the Chief Business Officer at the University of Louisville since 1983. He was Associate Director of the Kentucky Office for Policy Management from 1981 to 1983. From 1977 to 1981, he was Deputy Executive Director for Finance for the Kentucky Council on Higher Education. From 1974 to 1977 he was Assistant to the Director, Health and Medical Sciences Program, University of California - Berkeley. From 1973 to 1974, he was a Program Review Analyst for the California Department of Finance.

*Mr. Keith Inman, Vice President for University Advancement.* Mr. Keith Inman has been the Vice President for University Advancement since November 1, 2006. Prior to that he was Senior Vice President for External Relations for 12 years at Jewish Hospital and St. Mary's Healthcare in Louisville, Kentucky. He has held several posts at the University of Louisville. He was Assistant Vice President for Health Sciences Development for two years and also worked in the athletic department from 1985 to 1992, directing the Cardinal Athletic Fund from 1989 to 1992. He began his career in the University of Louisville's Alumni Office in 1979. Mr. Inman received his bachelor's degree from the University of Louisville's College of Arts and Sciences.

## **Operations of the University**

*Student Enrollment.* The following schedule indicates the Fall Semester head count and full-time-equivalent enrollment at the University for each of the last five academic years. The full-time enrollment calculation is made in accordance with the method used by the United States Department of Education. Unless otherwise noted, the source for all of the following information is the University.

| <b>Academic Year</b> | <b>Undergraduate</b> | <b>Graduate</b> | <b>First Professional</b> | <b>Total Head Count</b> | <b>Full-Time Equivalent*</b> |
|----------------------|----------------------|-----------------|---------------------------|-------------------------|------------------------------|
| 2008-09              | 15,495               | 4,305           | 1,961                     | 21,761                  | 17,540                       |
| 2007-08              | 15,125               | 4,618           | 1,946                     | 21,689                  | 17,214                       |
| 2006-07              | 15,103               | 4,800           | 1,938                     | 21,841                  | 16,483                       |
| 2005-06              | 15,057               | 4,793           | 1,910                     | 21,760                  | 16,246                       |
| 2004-05              | 14,933               | 4,926           | 1,866                     | 21,725                  | 16,053                       |

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\*Full-time and part-time enrollment equated to full-time enrollment.

Approximately 11% of the undergraduate students enrolled in the University are nonresidents of Kentucky, and it is anticipated that the percentage of nonresident enrollments will remain at this level in future years. Using regional and national surveys of future college age population and historic enrollment data, and taking into consideration the policies of the Kentucky Council for Postsecondary Education relating to enrollment requirements which limit enrollment, the University has projected that enrollment will remain at its current level through academic year 2010. Although enrollment is expected to be limited, the University does expect to increase the portion of those students who live in campus residences.

**Geographic Distribution.** The following table shows the place of origin, by region, of the full-time and part-time students as of September 2009:

| <b>Geographic Distribution</b> | <b>Percentage of Total</b> |
|--------------------------------|----------------------------|
| Mid-Atlantic                   | 0.99                       |
| South Atlantic                 | 2.40                       |
| New England                    | 0.35                       |
| Mountain                       | 0.59                       |
| Pacific                        | 0.69                       |
| East South Central             | 80.00                      |
| East North Central             | 8.90                       |
| West South Central             | 0.77                       |
| West North Central             | 0.60                       |
| International                  | 4.90                       |
| Total                          | 100.19/due to rounding     |

**Applications.** The following table shows the number of applications, acceptances and enrollments for the fall semester of each of the last five academic years for the freshman undergraduate class:

**Freshman Applications, Acceptances and Enrollments**

| <b>Academic Year</b> | <b>Applications Received</b> | <b>Accepted</b> | <b>Ratio of Acceptances to Applications</b> | <b>Enrolled</b> | <b>Ratio of Enrollments to Acceptances</b> |
|----------------------|------------------------------|-----------------|---|-----------------|--|
| 2008-09              | 7,861                        | 5,473           | 69.62%                                      | 2,609           | 47.67%                                     |
| 2007-08              | 7,280                        | 5,109           | 70.18%                                      | 2,569           | 50.28%                                     |
| 2006-07              | 6,323                        | 4,477           | 70.80%                                      | 2,443           | 54.57%                                     |
| 2005-06              | 5,712                        | 4,515           | 79.04%                                      | 2,318           | 51.34%                                     |
| 2004-05              | 5,335                        | 4,325           | 81.07%                                      | 2,358           | 54.52%                                     |

**American College Test.** The following table presents information on composite American College Test (“ACT”) scores of freshmen entering during the fall semester in each of the past five academic years and national mean ACT scores:

| <b>Academic Year</b> | <b>University of Louisville<br/>Freshman Mean ACT Scores*</b> | <b>Freshman National<br/>Mean ACT Scores</b> |
|----------------------|---|--|
| 2008-09              | 24.4  | 21.1   |
| 2007-08              | 24.3  | 21.1   |
| 2006-07              | 24.2  | 21.2   |
| 2005-06              | 23.9  | 21.1   |
| 2004-05              | 23.6  | 20.9   |

\*The maximum score possible on this test is 36.

The following table shows full-time undergraduate and graduate tuition for the 2004-2005 academic year and the previous four academic years:

#### **Undergraduate Tuition**

| <b>Academic<br/>Year</b> | <b>Resident</b>                      |   | <b>Non-Resident</b>                      |   |
|--------------------------|--------------------------------------|---|--|---|
|                          | <b>Resident<br/>Tuition and Fees</b> | <b>Annual<br/>Percentage<br/>Increase</b> | <b>Non-Resident<br/>Tuition and Fees</b> | <b>Annual<br/>Percentage<br/>Increase</b> |
| 2009                     | \$7,944                              | 5.0%                                      | \$19,272                                 | 5.0%                                      |
| 2008                     | 7,564                                | 9.0%                                      | 18,354                                   | 3.5%                                      |
| 2007                     | 6,940                                | 11.0%                                     | 17,734                                   | 10.3%                                     |
| 2006                     | 6,252                                | 13.0%                                     | 16,072                                   | 6.5%                                      |
| 2005                     | 5,532                                | 9.7%                                      | 15,092                                   | 9.7%                                      |

#### **Graduate Tuition**

| <b>Academic<br/>Year</b> | <b>Resident</b>                      |   | <b>Non-Resident</b>                      |   |
|--------------------------|--------------------------------------|---|--|---|
|                          | <b>Resident<br/>Tuition and Fees</b> | <b>Annual<br/>Percentage<br/>Increase</b> | <b>Non-Resident<br/>Tuition and Fees</b> | <b>Annual<br/>Percentage<br/>Increase</b> |
| 2009                     | \$8,622                              | 5.1%                                      | \$18,504                                 | 2.3%                                      |
| 2008                     | 8,206                                | 18.2%                                     | 18,090                                   | 0%  |
| 2007                     | 6,940                                | 2.3%                                      | 18,090                                   | 4.3%                                      |
| 2006                     | 6,786                                | 13.0%                                     | 17,348                                   | 4.8%                                      |
| 2005                     | 6,006                                | 9.7%                                      | 16,554                                   | 9.7%                                      |

### **University Housing**

The University currently offers the housing and apartment units described below (exclusive of the Project). The University's housing facilities as of fall 2009 consist of the following:

| <b>Building</b>                            | <b>Year Built</b> | <b>2009/2010<br/># of Beds/Units</b> |
|--|-------------------|--------------------------------------|
| <b><i>Traditional Residence Halls</i></b>  |                   |                                      |
| Miller Hall                                | 1964              | 288 beds                             |
| Unitas Tower                               | 1970              | 308 beds                             |
| Threlkeld Hall                             | 1962              | 243 beds                             |
| Louisville Hall                            | 1990              | 213 beds                             |
| Complex                                    | 1970              | 243 beds                             |
| <b><i>ULH, Inc. Affiliated Housing</i></b> |                   |                                      |
| Kurz Hall                                  | 2002              | 402 beds                             |
| Community Park                             | 2006              | 358 beds                             |
| Billy Minardi Hall                         | 2003              | 38 beds                              |
| <b><i>Apartments</i></b>                   |                   |                                      |
| University Tower                           | 1966              | 100 units                            |
| Medical/Dental Apartments                  | 1964              | 70 units                             |
| <br>                                       |                   |                                      |
| <b>Off campus Affiliated housing</b>       |                   |                                      |
| University Park Apartments                 |                   | 225 units                            |
| The Province apartment community           |                   | 858 beds                             |
| Total affiliated housing                   |                   | 1,083 beds/units                     |

The University's housing was 94% occupied in the spring of 2009.

Room and charges for University housing over the past five academic years are listed in the table below:

| <b>Room and Board Charges Per Month *</b> |                                  |                             |                             |                             |                          |                   |                        |                        |
|---|----------------------------------|-----------------------------|-----------------------------|-----------------------------|--------------------------|-------------------|------------------------|------------------------|
| <b>Academic<br/>Year</b>                  | <b>Traditional<br/>Dormitory</b> |                             | <b>Suite</b>                |                             |                          | <b>Apartments</b> |                        |                        |
|   | <b>Single<br/>Occupancy</b>      | <b>Double<br/>Occupancy</b> | <b>Single<br/>Occupancy</b> | <b>Double<br/>Occupancy</b> | <b>Double<br/>w/Bath</b> | <b>Efficiency</b> | <b>One<br/>Bedroom</b> | <b>Two<br/>Bedroom</b> |
| 2009                                      | \$680                            | \$534                       | \$576                       | \$562                       | \$622                    | \$675             | \$735                  | \$674                  |
| 2008                                      | \$680                            | \$508                       | \$650                       | \$558                       | \$555                    | \$663             | \$717                  | \$575                  |
| 2007                                      | \$657                            | \$467                       | \$614                       | \$542                       | \$551                    | \$650             | \$702                  | \$550                  |
| 2006                                      | \$620                            | \$425                       | \$606                       | \$492                       | \$525                    | \$630             | \$702                  | \$525                  |
| 2005                                      | \$594                            | \$396                       | \$570                       | \$458                       | \$515                    | \$588             | \$648                  | \$741                  |

\* Suite and dormitory rents payable by semester; apartment rents payable monthly (nine-month leases). Figures given are 12-month equivalents.

All first-year students residing in University housing must pay board (except those residing in the Project). Project residents, however, are eligible for board.

The Lessee operates four student housing facilities for the University of Louisville:

The Project, Bettie Johnson Hall, a four-story, Class A, apartment style student housing facility consisting of 225 apartments containing 492 beds; Bettie Johnson Hall is located on the northeast corner of the University's Belknap campus. The Phase I project was completed in August 2000. Monthly rental rates per bed in Bettie Johnson Hall range from \$599 to \$899 per bed based on a 9-month lease. Longer term leases are available for an additional per month rate. Initial occupancy for the academic year 2009-2010 was 99%.

Herman and Heddy Kurz Hall, a three-story, Class A, suite style student housing facility consisting of 131 rooms containing 402 beds; Herman and Heddy Kurz Hall is located on the northwest side of the University's Belknap campus. The Phase II project was completed in July 2003. Monthly rental rates per bed in Herman and Heddy Kurz Hall range from \$499 to \$799 per bed based on a 9-month lease. Initial occupancy for the academic year 2009-2010 was 99%.

Community Park is a four-story, Class A, suite style student housing facility consisting of 101 rooms containing 358 beds. Community Park is located on the northwest side of the University's Belknap campus. The Phase III project was completed in July 2006. Monthly rental rates per bed in Community Park range from \$499 to \$599 based on a 9-month lease. Initial occupancy for the academic year 2009-2010 was 99%.

Billy Minardi Hall is a two-story, Class A, suite style student housing facility consisting of 20 rooms containing 38 beds. Billy Minardi Hall is located on the northwest side of the University's Belknap campus. The project was completed in January 2003. Monthly rental rates per bed in Billy Minardi Hall are \$600 based on a 9-month lease. Initial occupancy for Billy Minardi Hall for the 2009-2010 academic year was 100%.

## **THE GROUND LEASE**

### **General**

The Ground Lease is dated as of July 1, 1999 and is between the University, as lessor (the "Ground Lessor" or the "Lessor") and Lessee. The term of the leasehold estate created by the Ground Lease commenced on July 1, 1999 (the "Commencement Date") and will expire on the day immediately preceding the fortieth anniversary of the Commencement Date unless otherwise extended or sooner expired or terminated in accordance with the terms of the Ground Lease or by operation of law. The Ground Lease is a "net lease," and the University is to receive all payments required to be made by the Lessee free from any setoffs, recoupments or deductions of any kind. The Lessee agrees to maintain and operate the Project as a student housing facility for the University.

### **Certain Definitions**

*It should be noted that the definitions set forth below pertain only to this section entitled "THE GROUND LEASE" and are not intended to replace the definitions set forth and used in any other section of this document.*

"Lease Year" means each 12-month period commencing on the first day of July of a given year and ending on the last day of June of the following year.

"Leasehold Estate" means the leasehold estate of the Lessee in the Property created under the Ground Lease.

“*Leasehold Mortgage*” means the initial Leasehold Mortgage to the Credit Facility Issuer and any Refinance Mortgage and any other encumbrance of the Lessee’s interest in the Ground Lease as security for any indebtedness Lessee or Lessee’s successors and assigns may incur, whether by mortgage or other security instrument.

“*Leasehold Mortgagee*” means the holder of the indebtedness secured by any Leasehold Mortgage or any agent or fiduciary therefor and any designee thereof for the purpose of taking title to Lessee’s interests in the Ground Lease or entering into a Leasehold Mortgage, including the Credit Facility Issuer and any assignee of the Credit Facility Issuer.

“*Net Available Cash Flow*” for each Lease Year means the amount transferred from time to time to the Lessee from the Surplus Fund created under the Indenture.

“*Refinance Mortgage*” means any Leasehold Mortgage which secures any indebtedness incurred to refinance the indebtedness initially secured by the Leasehold Mortgage.

“*Tax-Exempt Status*” means generally that the Lessee is a 501(c)(3) corporation and is exempt from federal income tax under Section 501(a) of the Code.

“*Total Reserves*” means, for any Lease Year, the amounts set aside in reserve for any and all reasonable purposes in connection with the maintenance and operation of the Project, including, but not limited to, reserves for repair and replacement of personality, reserves for maintenance and capital expenditures and such other reserves as may be approved by the Lessor, from time to time.

### **Calculation of Annual Rent**

The Lessee has agreed to pay to the Ground Lessor throughout the term of the Ground Lease annual rent (hereinafter referred to as the “Rent”) in the amount of Net Available Cash Flow for each Lease Year; provided, however, if the Net Available Cash Flow for any year is -0- or a negative amount, no Rent shall be paid to the Ground Lessor under the Ground Lease and it is understood that Lessee will be under no obligation, express or implied, to contribute or pay the Ground Lessor for any such deficit in Net Available Cash Flow.

### **Amendments and Modifications**

The Lessee or the Ground Lessor shall not cancel, surrender or modify the Ground Lease without the prior written consent of any Leasehold Mortgagee. There shall be no material modification in the Leasehold Mortgage or related documentation without the Ground Lessor’s prior written consent.

### **Operation and Management**

The Lessee is required to operate the Project as a student housing facility to serve resident students of the University. It should be noted that the Lessee, pursuant to the Loan Agreement, has agreed to rent the facilities of the Project only to students, faculty and staff of the University or of another college or university affiliated with the University by agreement or otherwise, and which is a 501(c)(3) corporation under the Code. In addition, the Project may be used for conferences sponsored by the University or Lessee on a short-term basis if and to the extent that some Units are not leased to Residents at the time of the conference.

The Lessee will enter into a management agreement for the Project with the Manager, and certain parameters are set forth for the provisions of a management agreement. Such parameters are consistent

with the provisions of the Management Agreement. (See “THE MANAGER AND THE MANAGEMENT AGREEMENT.”)

### **Commitment of the University**

As part of the Student Marketing Plan, the University has agreed to include the Project among its student housing offerings and information packages and will cooperate with the Lessee and the Manager, to proactively encourage students who are seeking housing to become residents of the Project. Pursuant to the terms of the Ground Lease, the University has agreed, subject to then-existing generally applicable University policy, to withhold transcripts and not permit the registration of any resident who is in default under his or her rental agreement. The University has further agreed that, prior to the acquisition, construction or operation of any additional student housing facilities, that its Board of Trustees (or any successor governing body) will make a reasonable finding that such acquisition, construction or operation of additional student housing will not negatively impact the occupancy of the Project during the term of the Ground Lease.

### **Environmental Indemnification**

Lessor acknowledged in the Ground Lease that any and all environmental conditions and contamination existing as of the effective date thereof (whether known or unknown) are the sole responsibility of the Lessor. The Lessor has released the Lessee, the Leasehold Mortgagee, anyone to whom the Leasehold Mortgage may convey the Lease, and all of then officers, employees, directors, and agents from any and all claims, demands, liabilities, costs or expenses (including reasonable attorneys fees) caused by, growing out of, or otherwise happening in connection with any such environmental condition existing as of the effective date of the Ground Lease. The Lessor will acknowledge that it will be solely responsible for the cost of all remediation of any such environmental condition, if any.

### **Required Insurance**

The Lessee has agreed to maintain certain insurance with respect to the Premises for the duration of the Loan Agreement. Such requirements are set forth in “APPENDIX B—SUMMARIES OF PRINCIPAL FINANCING DOCUMENTS—THE LOAN AGREEMENT—Insurance.”

### **Events of Default**

The following constitute Events of Default under the Ground Lease:

(a) the Lessee fails to perform, following notice and any opportunity to cure, any of its other obligations under the Ground Lease; or

(b)(i) if the Lessee is adjudicated a bankrupt; (ii) if a permanent receiver is appointed for the Lessee’s interest in the Project and such receiver is not removed within 90 days after notice from the Ground Lessor to the Lessee to obtain such removal; (iii) if the Lessee voluntarily or involuntarily takes advantage of any debtor relief proceedings under any present or future law whereby the Rent or any part thereof is reduced or payment thereof deferred and said proceedings are not dismissed within 90 days after notice from Lessor to the Lessee to obtain such dismissal; (iv) if the Lessee makes a general assignment for benefit of creditors; or (v) if the Project or the Lessee’s effects or interests therein are levied upon or attached under process against the Lessee, and the same is not satisfied or dissolved within 90 days after notice from Lessor to the Lessee either to (A) obtain satisfaction or dissolution thereof, or (B) take reasonable efforts to cure within 90 days and diligently pursue the dissolution or satisfaction thereof.



## **Remedies**

Subject to the provisions of the Ground Lease relating to the rights of the Leasehold Mortgagee, upon the occurrence of an Event of Default and the expiration of the applicable cure period, the Lessor may pursue any remedy available under the laws of the Commonwealth of Kentucky, including, without limitation, the following:

(i) Terminate the Ground Lease immediately upon written notice thereof to the Lessee, and thereafter, without legal process, enter upon and take possession and control of the Premises to the complete exclusion of the Lessee. The Lessor may also demand, collect and retain all rents due from tenants occupying the Premises and the Lessor may otherwise treat and occupy the Premises as if the Ground Lease had expired of its own limitation.

(ii) As the Lessee's legal representative, without terminating the Ground Lease, relet the Premises upon obtaining the written consent of the Leasehold Mortgagee.

## **Limitations on Termination Rights of Lessor**

The Ground Lease grants the Leasehold Mortgagee an additional 90 days to cure any Event of Default under the Ground Lease. If, following the expiration of all applicable cure periods, the Lessor elects to terminate the Ground Lease, the Leasehold Mortgagee will have the right to postpone and extend the date of termination as fixed by the provisions of the Ground Lease for a period of not more than six (6) months from the expiration of the ninety (90) day cure period described above, provided that the Leasehold Mortgagee shall pay the Rent and other charges required to be paid under the Ground Lease during such period, and provided further, that the Leasehold Mortgagee of the Ground Lease shall forthwith take steps necessary to acquire the Lessee's interest and estate in the Ground Lease by foreclosure of its Leasehold Mortgage, or otherwise, and shall prosecute such action to completion with due diligence. Such six (6) month period shall be extended for such period as shall be reasonably necessary to complete these steps with reasonable diligence and continuity.

## **Mortgagee Lease**

The Lessor has agreed that in the event of a termination of the Ground Lease by reason of any default by the Lessee, the Leasehold Mortgagee shall have the option, but not the obligation, to enter into a lease (hereinafter referred to as a "Mortgagee Lease") of the Project with the Lessor for the remainder of the term of the Ground Lease effective as of the date of termination, at the same Rent and upon the same terms, provisions, covenants and agreements as contained in the Ground Lease and subject to no additional exceptions or encumbrances other than the Permitted Exceptions (and any additional exceptions or encumbrances created or consented to by Lessor) and to the rights, if any, of the parties then in possession (actual or constructive) of any part of the Project.

## **Ownership of Project**

Title to the real estate upon which the Project is located is vested in the Lessor. Subject to the terms and conditions of the Ground Lease, the title to all Improvements, Furnishings and Equipment located on the Land shall be vested in the Lessee until termination of the Ground Lease, at which time all title to and ownership of them automatically and immediately shall vest in the Lessor.

## **Rental Agreements**

The Ground Lease incorporates the Student Marketing Plan which sets forth (a) the Lessee's obligation to enter into Rental Agreements only with students and faculty of the University, and other colleges and universities affiliated therewith which are 501(c)(3) corporations under the Code, (b) the form and content of the Rental Agreement to be used, (c) the permitted duration of the Rental Agreements, (d) the permitted rents to be charged under the Rental Agreements and (e) the Student Marketing Plan that the Lessee shall implement.

## **Parking License**

The Lessor will agree, in the Ground Lease, to grant to the Lessee a license for the term of the Ground Lease for a minimum of seven hundred fifty (750) parking spaces in the University parking area most immediately adjacent to the Project for the use of the occupants and staff of the Project. In the event the parking needs of the Project are less than the seven hundred fifty (750) spaces, the Lessee will temporarily release such spaces, from time to time, and the obligation of the Lessor to provide the maximum number of spaces to the Lessee shall renew on an annual basis at the beginning of each Lease Year.

## **TAX EXEMPTION**

### **Series 2010A Bonds**

In the opinion of Stites & Harbison, PLLC, Louisville, Kentucky, as Bond Counsel, under existing law, as presently enacted and construed, interest on the Series 2010A Bonds is excluded from the gross income for federal income tax purposes assuming the accuracy of the certifications of the Issuer and the Lessee and assuming continuing compliance by the Issuer and the Lessee with the requirements of the Code. Interest on the Series 2010A Bonds will not be an item of tax preference for purposes of determining alternative minimum taxable income for individuals and corporations, but interest on Series 2010A Bonds will be taken into account in determining the alternative minimum tax for certain corporations and in computing the environmental tax imposed on certain corporations. Interest on Series 2010A Bonds held by foreign corporations may be subject to the branch profits tax imposed by the Code.

Ownership of the Series 2010A Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry the Series 2010A Bonds. Prospective purchasers of the Series 2010A Bonds should consult their tax advisors as to collateral federal income tax consequences.

Under the laws of the Commonwealth as presently enacted and construed, the Series 2010A Bonds and the interest thereon are exempt from income and ad valorem taxation by the Commonwealth and any of its political subdivisions. The Series 2010A Bonds are not exempt from estate or inheritance taxes or any taxes on financial institutions measured by income or any other taxes not levied or assessed directly on the Series 2010A Bonds, the interest thereon, their transfer or the income therefrom.

### **Original Issue Premium**

"Acquisition Premium" is the excess of the cost of a bond over the stated redemption price of such bond at maturity or, for bonds that have one or more earlier call dates, the amount payable at the

next earliest call date. The Series 2010A Bonds that bear an interest rate that is higher than the yield (as shown on the inside cover page hereof), are being initially offered and sold to the public at an Acquisition Premium (the "Premium Bonds"). For federal income tax purposes, the amount of Acquisition Premium on each bond the interest on which is excludable from gross income for federal income tax purposes ("tax-exempt bonds") must be amortized and will reduce the bondholder's adjusted basis in that bond. However, no amount of amortized Acquisition Premium on tax-exempt bonds may be deducted in determining bondholder's taxable income for federal income tax purposes. The amount of any Acquisition Premium paid on the Premium Bonds, or on any of the Series 2010A Bonds, that must be amortized during any period will be based on the "constant yield" method, using the original bondholder's basis in such bonds and compounding semiannually. This amount is amortized ratably over that semiannual period on a daily basis.

Holders of any Series 2010A Bonds, including any Premium Bonds, purchased at an Acquisition Premium should consult their own tax advisors as to the actual effect of such Acquisition Premium with respect to their own tax situation and as to the treatment of Acquisition Premium for state tax purposes.

### **Original Issue Discount**

The Series 2010A Bonds having a yield that is higher than the interest rate (as shown on the inside cover page hereof) are being offered and sold to the public at an original issue discount ("OID") from the amounts payable at maturity thereon (the "Discount Bonds"). OID is the excess of the stated redemption price of a bond at maturity (the face amount) over the "issue price" of such bond. The issue price is the initial offering price to the public (other than to bond houses, brokers or similar persons acting in the capacity of underwriters or wholesalers) at which a substantial amount of bonds of the same maturity are sold pursuant to that initial offering. For federal income tax purposes, OID on each bond will accrue over the term of the bond, and for the Discount Bonds, the amount of accretion will be based on a single rate of interest, compounded semiannually (the "yield to maturity"). The amount of OID that accrues during each semi-annual period will do so ratably over that period on a daily basis. With respect to an initial purchaser of a Discount Bond at its issue price, the portion of OID that accrues during the period that such purchaser owns the Discount Bond is added to such purchaser's tax basis for purposes of determining gain or loss at the maturity, redemption, sale or other disposition of that Discount Bond and thus, in practical effect, is treated as stated interest, which is excludable from gross income for federal income tax purposes.

Holders of Discount Bonds should consult their own tax advisors as to the treatment of OID and the tax consequences of the purchase of such Discount Bonds other than at the issue price during the initial public offering and as to the treatment of OID for state tax purposes.

### **Bank Qualified**

Under Section 265(b)(3)(G), the Lessee has designated the Series 2010A Bonds as "qualified tax-exempt obligations on the basis that the Lessee does not reasonably anticipate issuing greater than \$30,000,000 of tax-exempt obligations in calendar year 2009. Accordingly, Bond Counsel is of the opinion that in the case of certain banks, thrift institutions or other financial institutions owning the Series 2010A Bonds, a deduction is allowed for 80% of that portion of such institutions' interest expense allocable to interest on the Series 2010A Bonds. Bond Counsel has expressed no opinion with respect to any deduction for federal tax law purposes of interest on indebtedness incurred or continued by a holder of the Series 2010A Bonds or a related person to purchase or carry the Series 2010A Bonds.

The form of Bond Counsel's approving opinion is included as Appendix C hereto.

## **LITIGATION**

There is no litigation now pending or threatened against the Issuer, of which the Issuer has knowledge, which restrains or enjoins the issuance or delivery of the Series 2010A Bonds or questions or affects the validity of the Series 2010A Bonds or the proceedings and authority under which they are to be issued. To the Issuer's knowledge, neither the creation, organization or existence of the Issuer, nor the title of the present members or other officers of the Issuer to their respective offices, is being contested or questioned. There is no litigation now pending or threatened against the Issuer, of which the Issuer has knowledge, which in any manner questions the right of the Issuer to enter into the Indenture or the Loan Agreement or to secure the Series 2010A Bonds in the manner provided in the Indenture. There is no litigation now pending or threatened against the Lessee, of which the Lessee has knowledge, which in any manner questions the right of the Lessee to enter into or perform its obligations under the Ground Lease, the Loan Agreement or the Leasehold Mortgage.

## **LEGAL MATTERS**

Certain legal matters pertaining to the Issuer and its authorization and issuance of the Series 2010A Bonds are subject to the approving opinion of Stites & Harbison, PLLC, Bond Counsel. The form of the approving opinion of Stites & Harbison, PLLC is included as Appendix C hereto. Certain legal matters will be passed upon for the Issuer by its counsel, James T. Carey, Esq., Assistant County Attorney; for the Lessee by its counsel, Stites & Harbison, PLLC, Louisville, Kentucky; for A&O by Martin, Tate, Morrow & Marston, P.C.; for the Foundation by its counsel, Stites & Harbison, PLLC and for the Underwriter by Kutak Rock LLP, Omaha, Nebraska. The fees of Bond Counsel and Underwriter's Counsel are contingent on issuance of the Series 2010A Bonds.

## **RATING OF THE SERIES 2010A BONDS**

S&P has assigned the Series 2010A Bonds a rating of "AA-." Moody's Investors Service ("Moody's") has assigned a rating of "Aa3" to the Series 2010A Bonds. An explanation of the significance of such ratings may be obtained from S&P or Moody's. Both S&P and Moody's were furnished with the information contained in a preliminary form of this Official Statement and other information. Generally, ratings agencies base their rating on such materials and information, as well as their own investigation, studies and assumptions. The ratings reflect only the views of S&P and Moody's and neither the Lessee, the Issuer, nor the Underwriter makes any representation as to the appropriateness of the ratings.

It should be noted that there is no assurance that such rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating agency, if in the judgment of such rating agency, circumstances warrant such action. Any such downward revision or withdrawal of such rating may have an adverse affect on the market price of the Series 2010A Bonds.

## **CONFLICTS OF INTEREST**

As indicated herein, Stites & Harbison, PLLC, Louisville, Kentucky, Bond Counsel, also is serving as counsel to the Foundation in connection with the delivery of its Guaranty and as counsel to the University and the Lessee.

## **UNDERWRITING**

Morgan Keegan & Company, Inc. (the "Underwriter"), has entered into a Bond Purchase Agreement with the Issuer and the Lessee, to purchase the Series 2010A Bonds at a purchase price of

\$21,882,854.35 which equals the principal amount thereof (\$22,020,000) plus the net reoffering premium (\$91,730.35), less the Underwriter's discount (\$228,876.00). The obligation of the Underwriter to purchase and to sell the Series 2010A Bonds will be subject to various conditions contained in the Bond Purchase Agreement.

The Underwriter is purchasing the Series 2010A Bonds and intends to offer the Series 2010A Bonds to the original purchasers thereof at the offering prices set forth on the cover page of this Official Statement, which offering price may subsequently be changed without any requirement of prior notice. The Underwriter has reserved the right to permit other securities dealers who are members of the National Association of Securities Dealers, Inc. to assist in selling the Series 2010A Bonds. The Underwriter may offer and sell Series 2010A Bonds to certain dealers at prices lower than the public offering price or otherwise allow concessions to such dealers who may re-allow concessions to other dealers. Any discounts and/or commissions that may be received by such dealers in connection with the sale of the Series 2010A Bonds will be deducted from the Underwriter's discount.

The Lessee has agreed to indemnify the Underwriter against certain civil liabilities, including certain liabilities under federal securities laws. Under existing statutes, regulations, and court decisions, the enforceability of such an agreement to indemnify is uncertain.

#### **CONTINUING DISCLOSURE**

It has been determined that no financial or operating data concerning the Issuer is material to any decision to purchase, hold or sell the Series 2010A Bonds, and the Issuer will not provide any such information. The Lessee has undertaken all responsibilities for any continuing disclosure to Bondholders as described below, and the Issuer shall have no liability to Bondholders or any other person with respect to such disclosures.

The Lessee has entered into a continuing disclosure agreement (the "Disclosure Agreement"), a form of which is attached as *Appendix D*, with the Trustee for the benefit of the holders and beneficial owners of the Series 2010A Bonds. Under the Disclosure Agreement, the Lessee will be obligated, while any Series 2010A Bonds remain outstanding, to provide certain updated financial information and operating data annually, and timely notice of specified material events, to the Electronic Municipal Market Access ("EMMA") system of the Municipal Securities Rulemaking Board. Information filed with EMMA may be obtained at [www.emma.msrb.org](http://www.emma.msrb.org).

The Lessee has never failed to comply in all material respects with any previous undertakings to provide annual reports or notices of material events.

In the event of any failure of the Lessee to provide the required continuing disclosure, any Bondholder may bring an action seeking specific performance of the Lessee's obligations to provide continuing disclosure. No assurance can be given as to the outcome of any such proceeding.

Failure by the Lessee to comply with the continuing disclosure obligations in the Continuing Disclosure Agreement will not be an "Event of Default" under the Leasehold Mortgage, the Loan Agreement, the Indenture or under any other Bond Document, and the sole and exclusive remedy for such failure shall be an action brought by or on behalf of the holders of the Series 2010A Bonds to compel specific performance of the Lessee's continuing disclosure obligations, as described above.

## MISCELLANEOUS

The Lessee has furnished all information herein relating to the Lessee under the headings "THE LESSEE" and "LITIGATION." The Manager has furnished all information herein relating to the Manager, the Management Agreement and the Project. To the extent previously indicated, the University furnished certain information related to the University. Any statements herein involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact, and no representation is made that any of such statements will be realized. Neither this Official Statement nor any statement which may have been made orally or in writing is to be construed as a contract with the Beneficial Owner of any Series 2010A Bond.

NEITHER THE TRUSTEE NOR ITS COUNSEL HAS PARTICIPATED IN THE PREPARATION OF THIS OFFICIAL STATEMENT, EXCEPT FOR CONFIRMING THE ACCURACY OF THE DESCRIPTION OF THE TRUSTEE CONTAINED HEREIN.

All of the summaries of the provisions of the Series 2010A Bonds, the Indenture, the Loan Agreement and the Ground Lease set forth herein (exclusive of financial and statistical data), and all other summaries and references to such other materials not purporting to be quoted in full, are only brief outlines of certain provisions thereof and are made subject to all of the detailed provisions thereof, to which reference is hereby made for further information, and do not purport to be complete statements of any or all such provisions of such documents.

All estimates and assumptions herein have been made on the best information available and are believed to be reliable. No representations whatsoever are made that such estimates or assumptions herein involve anything other than matters of opinion. Whether or not expressly so stated, they are intended to be opinions and not representations of fact.

The Issuer and the Lessee have duly authorized the use and distribution of this Official Statement in connection with the offering of the Series 2010A Bonds.

LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT

By /s/ Jerry E. Abramson  
Jerry E. Abramson, Mayor

ULH, INC., a Kentucky nonprofit corporation

By /s/ Michael J. Curtin  
Michael J. Curtin, Assistant Treasurer

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## APPENDIX A

### DEFINITIONS

*Certain words and terms used in this Official Statement are defined herein. In addition to the words and terms defined elsewhere herein, the following words and terms are defined terms in this Official Statement.*

“*Accountant*” means an independent certified public accountant or firm of independent certified public accountants (which may be the accountant or firm of accountants retained by the Lessee).

“*Accounts*” means, collectively, all of the accounts within the Funds created pursuant to the Indenture (each, an “Account”).

“*Act*” means Sections 103.200 through 103.285 of the Kentucky Revised Statutes, as amended, and as the same may be from time to time additionally supplemented and amended.

“*Additional Bonds*” means any additional parity Bonds authorized to be issued by the Issuer pursuant to the terms and conditions of the Indenture.

“*Additional Loan Payments*” means the Loan Payments payable by the Lessee to the Issuer pursuant to the Loan Agreement that are described under the subheading “Additional Loan Payments” in “SUMMARIES OF PRINCIPAL FINANCING DOCUMENTS—THE LOAN AGREEMENT” in Appendix B hereto.

“*Additions or Alterations*” means modifications, repairs, renewals, improvements, replacements, alterations, additions, enlargements or expansions in, on, or to the Project, including any and all machinery, furnishings and equipment therefor.

“*Affiliate*” means any Person (i) directly or indirectly controlling, controlled by, or under common control with the Lessee; or (ii) a majority of the members of the Directing Body of which are members of the Directing Body of the Lessee. For purposes of this definition, control means with respect to: (a) a corporation having stock, the ownership, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the directors of such corporation; (b) a nonprofit corporation not having stock, having the power to elect or appoint, directly or indirectly, a majority of the members of the Directing Body of such corporation; or (c) any other entity, the power to direct the management of such entity through the ownership of at least a majority of its voting securities or the right to designate or elect at least a majority of the members of its Directing Body, by contract or otherwise. For the purposes of this definition, “Directing Body” means with respect to: (x) a corporation having stock, such corporation’s board of directors and owners, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the directors of such corporation (both of which groups shall be considered a Directing Body); (y) a nonprofit corporation not having stock, such corporation’s members if the members have complete discretion to elect the corporation’s directors, or the corporation’s directors if the corporation’s members do not have such discretion; or (z) any other entity, its governing body or board. For the purposes of this definition, all references to directors and members shall be deemed to include all entities performing the function of directors or members however denominated.

“*Annual Budget*” means the annual budget of the Lessee required by the Loan Agreement.

“*Annual Debt Service*” means the amount required to pay all principal of and interest on a series of Bonds in any Bond Year.

“*Assignment of Rents and Leases*” means the Assignment of Rents and Leases dated as of January 1, 2010 from the Lessee to the Trustee, as the same may be amended and supplemented from time to time.

“*Audit Report*” means an audit report resulting from an audit conducted by an Accountant in conformity with generally accepted auditing standards prepared in accordance with GAAP.

“*Authorized Denominations*” means Five Thousand Dollars (\$5,000) and whole multiples thereof.

“*Authorized Issuer Representative*” means any person at the time designated to act on behalf of the Issuer by written certificate furnished to the Lessee and the Trustee, containing the specimen signature of such person and signed on behalf of the Issuer by the Mayor. Such certificate or any subsequent or supplemental certificate so executed may designate an alternate or alternates.

“*Authorized Lessee Representative*” means any person at the time designated to act on behalf of the Lessee by written certificate furnished to the Issuer and the Trustee, containing the specimen signature of such person and signed on behalf of the Lessee by the President or the Vice President of the Lessee. Such certificate or any subsequent or supplemental certificate so executed may designate an alternate or alternates.

“*Available Moneys*” means moneys that are (i) continuously on deposit with the Trustee in trust for the benefit of the Owners in a separate and segregated account in which only Available Moneys are held and that are (ii) proceeds of (a) the Bonds received contemporaneously with and directly from the initial issuance and sale of the Bonds, (b) payments made by the Issuer or the Lessee and on deposit in a separate and segregated account, if at the time of the deposit of such payments and for a period of at least 124 days thereafter no bankruptcy filing shall have occurred, (c) [intentionally omitted], (d) refunding bond proceeds or other amounts with respect to which the Trustee shall have received a written opinion of bankruptcy counsel to the effect that payment of such moneys to the Owner would not constitute an avoidable preference under §547, or recoverable under §550 of the Bankruptcy Code in the event the Issuer or the Lessee were to become a debtor under the Bankruptcy Code, or (e) income derived from the investment of the foregoing.

“*Bankruptcy Code*” means the Bankruptcy Reform Act of 1978, as amended (Title 11 of the United States Code, as amended).

“*Basic Loan Payments*” means the Loan Payments payable by the Lessee to the Issuer pursuant to the Loan Agreement that are described under the subheading “Basic Loan Payments” in “SUMMARIES OF PRINCIPAL FINANCING DOCUMENTS—THE LOAN AGREEMENT” in Appendix B hereto.

“*Bond Counsel*” means Independent Counsel nationally recognized as experienced in matters relating to Tax-Exempt Bonds and reasonably acceptable to the Issuer and the Trustee.

“*Bond Documents*” means, collectively, the Indenture, the Loan Agreement, the Tax Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Assignment of Rents and Leases, the Leasehold Mortgage, the Guaranty, the Management Agreement and the Ground Lease.

“*Bond Fund*” means the Fund created in the Indenture.

“*Bond Ordinance*” means the ordinance adopted by the Issuer authorizing the issuance and sale of the Series 2010A Bonds, the security therefore, and the execution, delivery and performance of the Issuer Documents.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement among the Issuer, the Lessee, and the Underwriter.

“*Bond Register*” means the books for the registration of the Bonds and for the registration of the transfer of the Bonds kept and maintained by the Trustee as bond registrar.

“*Bond Year*” means the twelve (12) month period beginning on October 1 of each calendar year and ending on September 30 of the immediately succeeding calendar year, provided the initial Bond Year shall begin on the date of issuance and delivery of the Series 2010A Bonds and end on September 30, 2010.

“*Bondholders,*” “*Bondowners,*” or “*Owners*” means the Persons in whose names any of the Bonds are registered on the Bond Register.

“*Bonds*” means the Series 2010A Bonds and all Additional Bonds.

“*Budgeted Parties Annual Expense Fund*” means the fund of such name created under the Indenture.

“*Building*” means those certain buildings and all other facilities and improvements constituting part of the Project and not constituting part of the Equipment that are or will be located on the Premises.

“*Business Day*” means any day other than a day on which banking institutions in the city in which the designated corporate trust office of the Trustee is located, or in the City of New York, New York, or Louisville/Jefferson County Metro, Kentucky, are required or authorized by law to remain closed, or other than a day on which the New York Stock Exchange is closed.

“*Clerk*” means the Metro Council Clerk of the Legislative Council of the Issuer.

“*Code*” means the Internal Revenue Code of 1986, as amended. Reference herein to any specific provision of the Code shall be deemed to include a reference to any successor provision or provisions to such provision and to any Regulations issued or proposed under or with respect to such provision or under or with respect to any predecessor provision of the Internal Revenue Code of 1954, as amended, to the extent any of the foregoing is applicable to the Bonds.

“*Commonwealth*” means the Commonwealth of Kentucky.

“*Consistent Basis*” means, in reference to the application of GAAP, that the accounting principles observed in the period referred to are comparable in all material respects to those applied in the preceding period, except as to any changes consented to by the Trustee.

“*Consulting Architect*” means the architect or architectural firm at the time employed by the Lessee and designated by written certificate furnished to the Trustee, containing the signature of such person or the signature of a partner or officer of such firm, and signed on behalf of the Lessee by the

Authorized Lessee Representative. The Consulting Architect shall be registered and qualified to practice under the laws of the Commonwealth and shall not be a full-time employee of the Issuer or the Lessee.

“*Continuing Disclosure Agreement*” means the Continuing Disclosure Agreement, dated as of January 1, 2010, by and between the Company and the Trustee, as Trustee and Dissemination Agent.

“*Debt Service*” means the principal of, premium, if any, and interest payable on the Bonds, whether by scheduled maturity, by optional or mandatory redemption, by acceleration or otherwise.

“*Debt Service Reserve Requirement*” (i) with respect to the Series 2010A Bonds and any Additional Bonds for which there shall be a Debt Service Reserve Requirement, at the time of determination, means the least of (a) ten percent (10%) of the stated principal amount thereof, (b) one hundred twenty-five percent (125%) of the average Annual Debt Service thereon, (c) the Maximum Annual Debt Service thereon, or (d) in the case of the Series 2010A Bonds and any Additional Bonds that are Tax-Exempt Bonds, such lesser sum as shall be required by the Code and the Regulations to ensure the exclusion of the interest thereon from the gross income of the Owners thereof for federal income tax purposes; and (ii) with respect to the Bonds, means the sum of the Debt Service Reserve Requirements for each series of Bonds Outstanding.

“*Defaulted Interest*” means any interest on any Bond that is due and payable, but that is not punctually paid or duly provided for on any Interest Payment Date.

“*Defeasance Obligations*” means (1) cash (insured at all times by the Federal Deposit Insurance Corporation); and (2) obligations of, or obligations guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States of America including:

- (i) U.S. Treasury Obligations;
- (ii) direct or fully guaranteed obligations;
- (iii) Farmers Home Administration;
- (iv) General Services Administration;
- (v) Guaranteed Title XI financing;
- (vi) Government National Mortgage Association (GNMA); and
- (vii) State and Local Government Series.

Any security used for defeasance must provide for the timely payment of principal and interest and cannot be callable or prepayable prior to maturity or earlier redemption of the rated debt (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date).

“*Determination of Taxability*” means:

- (i) the issuance of a statutory notice of deficiency by the IRS that holds in effect that an Event of Taxability has occurred,

(ii) the deposit by the Lessee with the Trustee of a certificate to the effect that an Event of Taxability has occurred or will occur,

(iii) the rendering of a final and unappealable decision, judgment, decree or other order by any court of competent jurisdiction to the effect that an Event of Taxability has occurred, or

(iv) the receipt by the Trustee of an opinion of Bond Counsel to the effect that an Event of Taxability has occurred.

Such a Determination of Taxability shall be deemed to have occurred on the date borne by said statutory notice of deficiency, certificate, judicial pronouncement or opinion. If the Lessee provides the Issuer with assurances reasonably satisfactory to the Issuer (such as a cash deposit or a bond) that the additional Basic Loan Payments that the Lessee is obligated under the Loan Agreement to pay will be paid if the pursuit of the hereinafter described remedies is unsuccessful, the issuance of a statutory notice of deficiency by the IRS shall not constitute a Determination of Taxability if the Lessee, within 30 days after it receives a copy of such statutory notice of deficiency, (a) makes written application for a private letter ruling or technical advice from the IRS or administrative appeal from such determination, or (b) obtains an unqualified opinion of Bond Counsel, which ruling or advice is sought on the grounds that, or which opinion states that, an Event of Taxability has not occurred as a result of the facts and circumstances recited in such statutory notice of deficiency; however, the failure of the Lessee to furnish the Trustee with a copy of such written application or opinion, and, if an application, the failure of the Lessee to deliver to the Trustee a copy of such private letter ruling or technical advice from the IRS, in either event, within 180 days after the date borne by such statutory notice of deficiency shall constitute the occurrence of a Determination of Taxability on the date that is 180 days after the date borne by such statutory notice of deficiency.

*“Equipment”* means the equipment, machinery, furnishings and other personal property described in Exhibit “B” attached to the Loan Agreement, and all replacements, substitutions and additions thereto.

*“Event of Default”* means each of the events specified as events of default under the relevant document as described in Appendix B hereto.

*“Event of Taxability,”* with respect to any series of Tax-Exempt Bonds, means the existence or absence of any circumstances that causes the interest thereon or on any portion thereof to become includable in the gross income of the Owner thereof for federal income tax purposes (except to the extent and under the circumstances set forth in the opinion of Bond Counsel delivered upon the issuance of such Tax-Exempt Bonds).

*“Excess Earnings”* means an amount equal to the sum of (i) plus (ii) where:

(i) is the excess of (a) the aggregate amount earned from the date of issuance of the Bonds on all nonpurpose investments in which gross proceeds of the Series 2010A Bonds are invested (other than investments attributable to an excess described in this clause (i)), over (b) the amount that would have been earned if such nonpurpose investments (other than amounts attributable to an excess described in this clause (i)) were invested at a rate equal to the yield on the Series 2010A Bonds; and

(ii) is any income attributable to the excess described in clause (i).

The sum of (i) plus (ii) shall be determined in accordance with Section 148(f) of the Code. As used herein, the terms “gross proceeds,” “nonpurpose investments” and “yield” have the meanings assigned to them for purposes of Section 148(f) of the Code. “Excess Earnings,” however, shall not include any amount earned on the Bond Fund during any Fiscal Year if the gross earnings on the Bond Fund for such Fiscal Year are less than \$100,000.

“*Expenses*” means, for any period, the aggregate of all expenses relating to the Project calculated under GAAP, including necessary expenses incurred by the Lessee in connection with the inspection of the Project, collection and payment of arbitrage rebate as required by the Code and the Regulations, enforcement of the obligations of other parties to documents executed in connection with the Project, and the performance of any other obligations of the Lessee under the Bond Documents directly related to the Project, but excluding, (i) any extraordinary expenses (including without limitation losses on the sale of assets other than in the ordinary course of business and losses on the extinguishment of debt or termination of pension plans), (ii) any expenses resulting from a forgiveness of or the establishment of reserves against Indebtedness of an Affiliate that do not constitute extraordinary expense, (iii) losses resulting from any reappraisal, revaluation or write-down of assets, and (iv) for purposes of calculating the Fixed Charges Coverage Ratio, fees payable to the Manager and payments made to the Ground Lessor under the Ground Lease.

“*Extraordinary Services of the Trustee*” and “*Extraordinary Expenses of the Trustee*” mean all services rendered and all expenses incurred by the Trustee under the Indenture, including, without limitation, reasonable counsel fees and expenses, other than Ordinary Services of the Trustee and Ordinary Expenses of the Trustee.

“*Favorable Opinion of Bond Counsel*” means an opinion of Bond Counsel, addressed to the Issuer, the Lessee and the Trustee to the effect that the action proposed to be taken is authorized or permitted by the laws of the Commonwealth and the Indenture and will not adversely affect any exclusion from gross income for federal income tax purposes or any exemption from Commonwealth income taxes of interest on any Tax-Exempt Bonds.

“*Financial Consultant*” means a firm of Accountants and/or professional management, marketing or financial consultants having the skill and experience necessary to render the particular report required that is reasonably acceptable to the Trustee. Such firm(s) shall not be, and no member, stockholder, director, officer or employee of which shall be, an officer or employee of the Lessee or the University. The reports of the Financial Consultant showing forecast financial performances may be in the form of a forecast of the management of the Lessee that is accompanied by a statement of a Financial Consultant to the effect that such Financial Consultant has reviewed the underlying assumptions and procedures used by management and that such assumptions provide a reasonable basis for the forecast of management.

“*Fiscal Year*” means any period of 12 consecutive months adopted by the Lessee as its fiscal year for financial reporting purposes and shall initially mean the period beginning on July 1 of each calendar year and ending on June 30 of the immediately succeeding calendar year.

“*Fixed Charges*” means, for any period, the sum of all cash outflows related to the Project that the Lessee cannot avoid without violating long-term contractual or legal obligations (those obligations which extend for a period greater than one year), including, but not limited to, (i) interest on Indebtedness other than Short-Term Indebtedness, and (ii) scheduled payments of principal on Indebtedness other than Short-Term Indebtedness and including fees payable to the Manager. “Fixed Charges” do not include payments made to the Ground Lessor under the Ground Lease or principal and interest payable on any Indebtedness to the extent that such principal and interest are payable from the proceeds of such Indebtedness or amounts payable from the Repair and Replacement Fund.

“*Fixed Charges Coverage Ratio*” means, for any period, the ratio of Revenue Available for Fixed Charges to Fixed Charges.

“*Foundation*” means the University of Louisville Foundation, Inc., a Kentucky nonprofit corporation, its permitted successors and assigns.

“*Funds*” means, collectively, all of the funds and accounts created pursuant to the Indenture (each, a “Fund”).

“*GAAP*” means those principles of accounting set forth in pronouncements of the Financial Accounting Standards Board and its predecessors or pronouncements of the American Institute of Certified Public Accountants or those principles of accounting that have other substantial authoritative support and are applicable in the circumstances as of the date of application, as such principles are from time to time supplemented and amended.

“*General Revenues*” means the sum of (i) the gross receipts derived from the ownership or operation of the Project, plus (ii) other operating revenues derived from the ownership or operation of the Project, plus (iii) non-operating revenues derived from the ownership or operation of the Project (other than contributions and earnings on amounts that are irrevocably deposited in escrow to pay the principal of or interest on Indebtedness) plus (iv) Unrestricted Contributions, all as determined in accordance with GAAP.

“*Government Obligations*” means direct obligations of the United States of America or of an agency or instrumentality thereof, the payment of the principal of and interest on which when due are unconditionally guaranteed by the United States of America.

“*Ground Lease*” means the Ground Lease Agreement dated as of July 30, 1999, by and between the Commonwealth for the use and benefit of The University of Louisville, as lessor and Collegiate Housing Foundation, as lessee (the “Seller”), as amended and assigned to the Company pursuant to that certain Assignment, Assumption and Amendment of Ground Lease, dated as of June 1, 2001, by and among the Commonwealth, the Company and the Seller, as the same may be amended from time to time in accordance with the provisions thereof and hereof.

“*Ground Lessor*” means the Commonwealth of Kentucky for the use and benefit of the University of Louisville.

“*Guaranty*” means the Unconditional Guaranty dated as of January 1, 2010 by the Foundation for the benefit of the Trustee, as amended from time to time.

“*Indebtedness*” means, but only to the extent incurred in connection with the Project or secured by a lien on the Project or the General Revenues, (i) all indebtedness, whether or not represented by bonds, debentures, notes or other securities, for the repayment of money borrowed, (ii) all deferred indebtedness for the payment of the purchase price of properties or assets purchased, (iii) all guaranties, endorsements (other than endorsements in the ordinary course of business), assumptions and other contingent obligations in respect of, or to purchase or to otherwise acquire, indebtedness of others, (iv) all indebtedness secured by mortgage, pledge, security interest or lien existing on property owned that is subject to such mortgage, pledge, security interest or lien, whether or not the indebtedness secured thereby shall have been assumed, and (v) all capitalized lease obligations.

“*Independent Counsel*” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state of the United States or the District of Columbia and not in the full-time employment of the Issuer, the University or the Lessee.

“*Interest Payment Date*” means the date on which an installment of interest on the Bonds shall become due, which shall be each April 1 and October 1 commencing April 1, 2010.

“*Investment Grade Rating*” means a long-term debt rating of “Baa3” or higher by Moody’s or “BBB-” or higher by S&P.

“*IRS*” means the United States Internal Revenue Service or any successor agency or department.

“*Issuance Costs*” means:

(i) the initial or acceptance fee of the Trustee (which includes the administration fee for the first year), the fees and taxes for recording and filing the Leasehold Mortgage, the Assignment of Rents and Leases and any other security documents, the financing statements and any title curative documents that either the Trustee or Independent Counsel may reasonably deem desirable to file for record in order to perfect or protect the title of the Lessee to the Project or the lien or security interest created or granted by the Leasehold Mortgage, the Assignment of Rents and Leases and the reasonable fees and expenses in connection with any actions or proceedings that either the Trustee or Independent Counsel may reasonably deem desirable to bring in order to perfect or protect the lien or security interest created or granted by the Leasehold Mortgage, or the Assignment of Rents and Leases;

(ii) the costs of legal fees and expenses, underwriter’s spread, underwriting fees, financing costs, the Issuer’s fees and expenses, financial advisor’s fees, accounting fees and expenses, consulting fees, the Trustee’s fees, paying agent and certifying and authenticating agent fees, reasonable fees and expenses of counsel to the Trustee, publication costs, title insurance premiums, and printing and engraving costs incurred in connection with the authorization, sale, issuance and carrying of the Series 2010A Bonds and the preparation of the Bond Documents and all other documents in connection therewith; and

(iii) other costs in connection with the issuance of the Series 2010A Bonds permitted by the Act to be paid or reimbursed from Series 2010A Bond proceeds.

“*Issuer*” means the Louisville/Jefferson County Metro Government, a consolidated local government duly created and validly existing under the laws of the Commonwealth, and its successors and assigns.

“*Issuer Documents*” means, collectively, the Indenture, the Tax Agreement, the Loan Agreement and the Bond Purchase Agreement.

“*Leasehold Mortgage*” means the Leasehold Mortgage, Security Agreement and Fixture Financing Statement dated as of January 1, 2010 from the Lessee to the Trustee, as the same may be amended and supplemented from time to time.

“*Lessee Documents*” means the Loan Agreement, the Tax Agreement, the Continuing Disclosure Agreement, the Bond Purchase Agreement, the Ground Lease, the Management Agreement, the Leasehold Mortgage and the Assignment of Rents and Leases.



“*Loan*” means the loan by the Issuer to the Lessee pursuant to the Loan Agreement.

“*Loan Agreement*” means the Loan Agreement dated as of January 1, 2010 between the Issuer and the Lessee, as the same may be amended and/or supplemented from time to time in accordance with the provisions thereof.

“*Loan Payments*” means the Basic Loan Payments, the Additional Loan Payments and the Repair and Replacement Loan Payments.

“*Majority of the Bondholders*” means the Owners of more than 50% in aggregate principal amount of the Bonds then Outstanding.

“*Management Agreement*” means the Management Agreement effective July 1, 2009, by and between the Lessee and the Manager as the same may be amended and/or supplemented from time to time, and any management or similar agreement between the Lessee and any successor Manager relating to the management of the Project, as the same may be amended and/or supplemented from time to time.

“*Manager*” means, initially, Allen & O’Hara Education Services, Inc., a corporation organized under the laws of the State of Delaware, and thereafter, any other management company employed by the Lessee to manage the Project.

“*Mayor*” means the Mayor of the Issuer or any other person authorized by resolution or ordinance of the Issuer to act on behalf of the Issuer under or with respect to the Indenture and the Loan Agreement.

“*Moody’s*” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and if such corporation shall for any reason no longer perform the functions of a securities rating agency, “*Moody’s*” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Lessee. Whenever rating categories of Moody’s are specified in the Indenture, such categories shall be irrespective of gradations within a category.

“*Net Proceeds*,” when used with respect to any insurance or condemnation award or with respect to any other recovery on a contractual claim or claim for damage to or for taking of property, means the gross proceeds from the insurance or condemnation award or recovery remaining after payment of all expenses (including attorneys’ fees and any Extraordinary Expenses of the Trustee) incurred in the collection of such gross proceeds.

“*Office of the Trustee*” means the designated corporate trust office of the Trustee in Louisville/Jefferson County Metro, Kentucky, currently located at 614 West Main Street, Suite 2000, Louisville, Kentucky 40202, or such other location as may be designated by it to the Lessee and the Issuer in writing, or the designated corporate trust office of, or such other location as may be designated to the Lessee and the Issuer in writing by, any successor or temporary Trustee under the Indenture.

“*Operating Fund*” means the checking account maintained by the Lessee or by the Manager on behalf of the company from which the Lessee or the Manager on behalf of the Lessee shall pay Expenses.

“*Operations Office of the Trustee*” means the Office of the Trustee.

“*Ordinary Services of the Trustee*” and “*Ordinary Expenses of the Trustee*” mean those reasonable services rendered and those reasonable expenses incurred by the Trustee in the performance of

its duties under the Indenture of the type ordinarily performed by corporate trustees under like indentures, including, without limitation, reasonable counsel fees and expenses.

“*Outstanding Bonds*” or “*Bonds Outstanding*” means all Bonds that have been duly authenticated and delivered by the Trustee under the Indenture, except:

- (i) Bonds theretofore canceled or required to be canceled by the Trustee;
- (ii) Bonds that are deemed to have been paid in accordance with Article IX of the Indenture; and
- (iii) Bonds in substitution for which other Bonds have been authenticated and delivered under the Indenture.

If the Indenture shall be discharged pursuant to Article IX thereof, no Bonds shall be deemed to be Outstanding within the meaning of this definition.

“*Permitted Encumbrances*” means, as of any particular time, (i) liens for ad valorem taxes, special assessments, and other charges, if any, not then delinquent or for taxes, assessments and other charges being contested in accordance with the Loan Agreement, (ii) the Bond Documents, (iii) currently existing utility, access and other easements and rights of way and restrictions, (iv) inchoate mechanics’ and materialmen’s liens that arise by operation of law, but that have not been perfected by the required filing of record, for work done or materials delivered in connection with Additions or Alterations, (v) the mechanics’ and materialmen’s liens permitted by the Loan Agreement, (vi) the release and subordination permitted by the Loan Agreement, (vii) liens or encumbrances securing Additional Bonds permitted by the Indenture, (viii) the Ground Lease and (ix) security documents with respect to the Loan Agreement as set forth therein or in the Indenture.

“*Permitted Investments*” means any of the following securities to the extent permitted under Commonwealth law:

- (i) Defeasance Obligations;
- (ii) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:
  - Export-Import Bank;
  - Rural Economic Community Development Administration;
  - U.S. Maritime Administration;
  - Small Business Administration;
  - U.S. Department of Housing & Urban Development (PHAs);
  - Federal Housing Administration; and
  - Federal Financing Bank;
- (iii) Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:
  - Senior debt obligations issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC);
  - Obligations of the Resolution Funding Corporation (REFCORP); and
  - Senior debt obligations of the Federal Home Loan Bank System;

(iv) United States dollar denominated deposit accounts, certificates of deposit, including (a) those placed by a third party pursuant to an agreement between the Trustee and the Company, and (b) uncollateralized certificates of deposit issued by any bank or savings and loan institution, demand deposits, including interest bearing money market accounts, trust deposits, time deposits, federal funds and bankers' acceptances with domestic commercial banks (including the Trustee or any of its affiliates) which have a rating at the time of purchase on their short term certificates of deposit on the date of purchase of at least "P-1" by Moody's or "A-1" or "A-1+" by S&P and maturing not more than three hundred sixty (360) calendar days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);

(v) Commercial paper which is rated at the time of purchase in the single highest classification, "P-1" by Moody's and "A-1+" by S&P and which matures not more than 270 calendar days after the date of purchase;

(vi) Investments in a money market fund rated at the time of purchase "AAAm" or "AAAm-G" or better by S&P, including, without limitation, any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (a) the Trustee or an affiliate of the Trustee receives fees from such funds for services rendered, (b) the Trustee charges and collects fees for services rendered pursuant to the Trust Indenture, which fees are, separate from the fees received from such funds, and (c) services performed for such funds and pursuant to the Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates;

(vii) Pre-refunded Municipal Obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(A) which are rated at the time of purchase, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of Moody's or S&P or any successors thereto; or

(B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in Defeasance Obligations, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate; and

(viii) Municipal Obligations as defined in (vii) above rated at the time of purchase "Aaa/AAA" or general obligations of States with a rating of "A2/A" or higher by both Moody's and S&P.

“*Person*” means natural persons, firms, joint ventures, associations, trusts, partnerships, corporations, limited liability companies, public bodies and similar entities.

“*Premises*” means the real estate comprising the Project described in the Indenture.

“*Prime Rate*” means the prime rate charged corporate borrowers by the commercial lending department of the Trustee, if any, or, in the absence of such commercial lending department or rate, the rate designated the “Prime Rate” as published each Business Day in *The Wall Street Journal*.

“*Prior Indenture*” means that certain Trust Indenture dated as of June 1, 2001 by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as successor to Bank One, Kentucky, NA, as Trustee.

“*Rebate Amount*” means the amount (determinable as of the last day of the fifth Bond Year and upon retirement of the last Series 2010A Bond) of the arbitrage profits payable to the United States government at the times and in the amount specified in Section 148(f) of the Code, as set forth in the Tax Agreement and the Indenture.

“*Redemption Price*” means, with respect to Series 2010A Bonds or a portion thereof, the principal amount of such Series 2010A Bonds or portion thereof plus accrued interest, if any, plus the applicable premium, if any, payable on redemption thereof in the manner contemplated in accordance with its terms and the Indenture.

“*Regular Record Date*” means the fifteenth day of the month (whether or not such day is a Business Day) immediately preceding each Interest Payment Date.

“*Regulations*” means the applicable treasury regulations promulgated under the Code or under §103 of the Internal Revenue Code of 1986, as amended, whether at the time proposed, temporary, final, or otherwise. Reference herein to any specific provision of the Regulations shall be deemed to include a reference to any successor provision or provisions to such provision.

“*Repair and Replacement Fund Requirement*” means a monthly amount equal to 3.5% of the rental revenues received from occupants of the Project during the relevant month, as certified monthly to the Trustee by the Lessee.

“*Repair and Replacement Loan Payments*” means the loan payments payable by the Lessee described under the subheading “Repair and Replacement Loan Payments” in the Loan Agreement.

“*Requisite Number of Bondholders*” means the Owners of not less than two-thirds (2/3) in aggregate principal amount of the Bonds then Outstanding.

“*Responsible Officer*” means, when used with respect to the Trustee, any officer within the Corporate Trust Department (or any successor group of the Trustee) including, without limitation, any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Trustee designated by the Trustee and who are located at the Office of the Trustee.

“*Revenue Available for Fixed Charges*” means, for any period, the excess of Revenues over Expenses, plus amounts deducted in arriving at such excess of Revenues over Expenses for (i) interest on Indebtedness other than Short-Term Indebtedness, (ii) depreciation and (iii) amortization.

“*Revenues*” means, for any period, with respect to the Project (i) the sum of (a) the gross receipts, plus (b) other operating revenues, plus (c) non-operating revenues (other than contributions, income derived from the sale of assets not in the ordinary course of business or any gain from the extinguishment of debt, termination of pension plans, or other extraordinary items) plus (d) Unrestricted Contributions, all as determined in accordance with GAAP, but excluding in any event (ii) the sum of (a) any gains on the sale or other disposition of investments or fixed or capital assets not in the ordinary course of business, plus (b) earnings resulting from any reappraisal, revaluation, or write-up of assets, plus (c) contributions from any Affiliate.

“*S&P*” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, and if such corporation shall for any reason no longer perform the functions of a securities rating agency, “*S&P*” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Lessee. Whenever rating categories of S&P are specified in the Indenture, such categories shall be irrespective of gradations within a category.

“*Securities Depository*” means The Depository Trust Company, New York, New York or another recognized securities depository selected by the Issuer, which maintains a book-entry system in respect of the Bonds and agrees to follow the procedures required to be followed hereunder by a Securities Depository, and shall include any substitute for or successor to the securities depository initially acting as Securities Depository.

“*Securities Depository Nominee*” means, as to any Securities Depository, such Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Bond Register the Bond certificates to be delivered to and immobilized at such Securities Depository during the continuation with such Securities Depository of participation in its book-entry system.

“*Security*” means any of the property subject to the operation of the granting clauses contained in the Loan Agreement and the Indenture that is part of the Trust Estate and which serves as collateral for the Bonds and any of the property subject to the Leasehold Mortgage or the Assignment of Rents and Leases and as security for the Lessee’s obligations under the Loan Agreement.

“*Short-Term Indebtedness*” means any Indebtedness maturing not more than 365 days after it is incurred or that is payable on demand, except for any such Indebtedness that is renewable or extendable at the sole option of the debtor to a date more than 365 days after it is incurred, or any such Indebtedness that, although payable within 365 days, constitutes payments required to be made on account of Indebtedness expressed to mature more than 365 days after it was incurred.

“*Special Record Date*,” for the payment of any Defaulted Interest, means the date fixed by the Trustee pursuant to the provisions of the Indenture.

“*Tax Agreement*” means the Tax Compliance Agreement dated as of January 1, 2010 between the Issuer and the Lessee, as the same may be amended from time to time in accordance with the provisions thereof and of the Indenture.

“*Tax-Exempt Bonds*” means any Bonds the interest on which is intended to be excluded from the gross income of the Owners thereof for federal income tax purposes.

“*Trustee*” means the trustee and any co-trustee at the time serving as such under the Indenture. The Bank of New York Mellon Trust Company, N.A. is the initial Trustee.

“*Trust Estate*” means any and all property subject to the operation of the granting clauses of the Indenture.

“*Unassigned Rights*” means all of the rights of the Issuer to receive reimbursements and payments pursuant to the Loan Agreement, to approve substitute property pursuant to the Loan Agreement, to be held harmless and indemnified pursuant thereto, and to execute and deliver supplements to and amendments of the Loan Agreement pursuant thereto and to receive notices pursuant to the Bond Documents.

“*Underwriter*” means Morgan Keegan & Company, Inc., Memphis, Tennessee, and its successors and assigns.

“*University*” means the University of Louisville, Louisville/Jefferson County Metro, Kentucky.

“*Unrestricted Contributions*” means contributions that are not restricted in any way that would prevent their application to the payment of debt service on Indebtedness of the Person receiving such contributions.

## APPENDIX B

### SUMMARIES OF PRINCIPAL FINANCING DOCUMENTS

The following summaries of certain of the Bond Documents do not purport to be comprehensive or definitive statements of the provisions of such Bond Documents and prospective purchasers of the Series 2010A Bonds are referred to the complete texts of such documents, copies of which are available upon request from the Underwriter prior to the issuance and delivery of the Series 2010A Bonds and from the Trustee after the issuance and delivery of the Series 2010A Bonds.

#### THE LOAN AGREEMENT

##### Introduction

The Loan Agreement is an agreement that will provide for the loan of the Series 2010A Bond proceeds by the Issuer to the Lessee and for the payment by the Lessee of amounts calculated to be sufficient to pay, when due, the principal of, premium, if any, and interest on the Series 2010A Bonds.

##### Agreement To Issue Series 2010A Bonds and Refund the 2001A Bonds

The Issuer will issue the Series 2010A Bonds and loan the proceeds thereof to the Lessee to currently refund the Series 2001A Bonds.

##### Term of the Loan Agreement

The Loan Agreement becomes effective upon its execution and delivery and will be in full force and effect until payment of all amounts owing thereunder in full unless terminated prior thereto pursuant to the provisions of the Loan Agreement permitting earlier termination; provided, however, that the Loan Agreement will not terminate unless the principal of and premium, if any, and interest on the Bonds have been fully paid (or provision for such payment shall have been made in accordance with the Indenture); provided, further, that the covenants and obligations expressed in the Loan Agreement to so survive will survive the termination of the Loan Agreement.

##### Loan Payments and Other Amounts Payable

(a) **Basic Loan Payments.** Until the principal of, and premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Lessee will be required to pay to the Trustee for the account of the Issuer as Basic Loan Payments, in each case for deposit into the Bond Fund amounts sufficient to pay the principal (whether at maturity, by acceleration, call for redemption or otherwise) and premium, if any, and interest on, the Bonds as and when the same become due and all other sums payable under the terms of the Bonds. The Lessee will be required to pay to the Trustee for the account of the Issuer (after giving effect to all amounts otherwise available for such purposes under the Indenture):

(i) on or before the twentieth day of each month to and including the month immediately preceding the first Interest Payment Date, a sum equal to the interest to be due on such Series 2010A Bonds on such Interest Payment Date divided by the number of months (or fractions thereof) between the date of issuance of the Series 2010A Bonds and such Interest Payment Date and, thereafter, on the twentieth day of each month, a sum equal to one-sixth of the amount payable on the immediately succeeding Interest Payment Date, as interest on the Series

2010A Bonds, or, in each case, such lesser amount that, together with amounts already on deposit in the Bond Fund will be sufficient to pay interest on the Series 2010A Bonds to become due on such Interest Payment Date, as provided in the Indenture;

(ii) on or before March 20, 2010, and on or before the twentieth day of each month thereafter to and including September 20, 2010, a sum equal to one-seventh (1/7) of the principal due on the next succeeding October 1, 2010 that is a serial maturity date of the Series 2010A Bonds and thereafter one-twelfth (1/12) of the principal due on the next succeeding October 1 that is a serial maturity date of the Series 2010A Bonds;

(iii) on the dates set forth in any amendment or amendments hereto executed in connection with the issuance of Additional Bonds, the amount(s) set forth therein to be paid by the Lessee in respect of the principal of such Additional Bonds (whether at maturity or under any mandatory sinking fund or other similar redemption requirements of any supplemental indenture or indentures executed in connection with the issuance of Additional Bonds);

(iv) on the Business Day prior to any date on which the Series 2010A Bonds are to be redeemed pursuant to the mandatory redemption provisions of the Indenture or paid upon acceleration of maturity pursuant to the Indenture, an amount equal to the principal of, and premium, if any, and interest on, the Series 2010A Bonds to be redeemed (taking into account amounts then on deposit in the Bond Fund to be used for the payment of such Series 2010A Bonds to be redeemed); and

(v) on the Business Day prior to any date on which any Additional Bonds are to be redeemed pursuant to any mandatory redemption provisions of any supplemental indenture or indentures executed in connection with the issuance of Additional Bonds (other than mandatory sinking fund or other similar redemption pursuant to such supplemental indenture or indentures), an amount equal to the principal of, and premium, if any, and interest on, such Additional Bonds to be redeemed (taking into account amounts then on deposit in the Bond Fund to be used for the payment of such Additional Bonds to be redeemed).

Each payment under clause (a)(i) above shall in all events be sufficient, after giving credit for funds held in the Bond Fund and the Revenue Fund available for such purpose, to pay the total amount of interest payable on the Bonds on the next succeeding Interest Payment Date and each payment of Basic Loan Payments under clause (a)(ii) and (iii) above shall in all events be sufficient, after giving credit for funds held in the Bond Fund available for such purpose, to pay the total amount of principal payable in respect of the Bonds on the next October 1. Any Basic Loan Payments shall be reduced or need not be made to the extent that there are moneys on deposit in the Bond Fund in excess of scheduled payments of Basic Loan Payments plus the amount required for the payment of Bonds theretofore matured or called for redemption, the amount required for the payment of interest for which checks or drafts have been mailed by the Trustee, and past due interest in all cases where Bonds have not been presented for payment. Further, if the amount held by the Trustee in the Bond Fund and the Redemption Fund should be sufficient to pay at the times required the principal of and interest on the Bonds then remaining unpaid, the Lessee shall not be obligated to make any further payments of Basic Loan Payments under the above-described provisions. There shall also be a credit against remaining Basic Loan Payments for Bonds redeemed or canceled, as provided in the Indenture or in any supplemental indenture or indentures executed in connection with the issuance of Additional Bonds as provided therein. Amounts in the Surplus Fund shall be applied as provided in the Indenture.



The Lessee shall also furnish to the Trustee, on the date of original issuance of the Series 2010A Bonds, the Guaranty.

(b) **Additional Loan Payments.** The Lessee will be required (after giving effect to all amounts otherwise available for such purposes under the Indenture) to pay to the Trustee until the principal of, premium, if any, and interest on the Bonds shall have been fully paid (i) for deposit in the Repair and Replacement Fund on the twentieth day of each month an amount equal to 3.5% of the rental revenue received from the occupants of the Project in the preceding month as “Total Reserves,” and any and all additional amounts required to be deposited therein by any amendment or amendments to the Loan Agreement executed in connection with the issuance of Additional Bonds on the dates set forth therein, (ii) for deposit in any fund or funds created under the Indenture or any supplemental indenture or indentures executed in connection with the issuance of Additional Bonds other than the Repair and Replacement Fund and the Surplus Fund, any and all additional amounts required to be deposited in such fund or funds by any amendment or amendments to the Loan Agreement executed in connection with the issuance of Additional Bonds on the dates set forth therein, (iii) promptly upon request, an amount equal to the annual fee of the Trustee for the Ordinary Services of the Trustee rendered and the Ordinary Expenses of the Trustee incurred under the Indenture and any fees of the Trustee as Dissemination Agent pursuant to the Continuing Disclosure Agreement, as and when the same become due, (iv) promptly upon request, reasonable fees and charges of the Trustee, as bond registrar and paying agent, and of any other paying agents on the Bonds for acting as paying agents as provided in the Indenture, as and when the same become due, and (v) promptly upon request, (A) to the Trustee, the reasonable fees and charges of the Trustee for the Extraordinary Services of the Trustee rendered by it and Extraordinary Expenses of the Trustee incurred by it under the Indenture, as and when the same become due, provided that the Lessee may, without creating a default under the Loan Agreement, contest in good faith the reasonableness of any such Extraordinary Services of the Trustee and Extraordinary Expenses of the Trustee and the reasonableness of any such fees, charges or expenses and (B) to the Issuer an amount sufficient to reimburse the Issuer for all expenses reasonably incurred by the Issuer under the Loan Agreement in connection with the Project, including, but not limited to, the reasonable fees and expenses of counsel for the Issuer and Bond Counsel, and (vi) to the Manager, any management fees owed pursuant to the Management Agreement.

### **Agreement to Deposit General Revenues**

As security for its obligation to make the Loan Payments, the Lessee agrees in the Loan Agreement to deliver weekly on each Friday (or if any Friday is not a Business Day, the immediately preceding Business Day) to the Trustee, for deposit to the Revenue Fund, all General Revenues received by it; provided, however, that if an Event of Default shall have occurred and shall be continuing, the Lessee shall deliver all General Revenues daily.

### **Obligations of Lessee Unconditional**

Subject to the limited liability provisions of the Loan Agreement, the obligations of the Lessee to make the payments required pursuant to the Loan Agreement and to perform and observe any and all of the other covenants and agreements on its part contained in the Loan Agreement will be a general obligation of the Lessee and will be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Issuer or the Trustee. The Lessee will agree that it will not (a) suspend, abate, reduce, abrogate, diminish, postpone, modify or discontinue any payments described above under “Loan Payments and Other Amounts Payable,” (b) fail to observe any of its other agreements contained in the Lessee Documents, (c) terminate its obligations under any of the Lessee Documents (except as permitted if the Bonds are fully paid) for any contingency, act of God, event or cause whatsoever, including, without limiting the generality of the foregoing, failure of the

Lessee to occupy or to use the Project as contemplated in the Loan Agreement or otherwise, any change or delay in the time of availability of the Project, any acts or circumstances that may impair or preclude the use of the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Project or in the suitability of the Project for the Lessee's purposes or needs, failure of consideration, any declaration or finding that any of the Bonds are unenforceable or invalid, the invalidity of any provision of the Loan Agreement or any of the other Bond Documents, any acts or circumstances that may constitute an eviction or constructive eviction, destruction of or damage to the Project, the taking by eminent domain of title to or the use of all or any part of the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision or agency of either or in the rules or regulations of any governmental authority or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Loan Agreement. The rights of the Issuer to enforce the obligations of the Lessee will be limited as described herein under the heading "THE LESSEE—Non-Recourse Obligation of the Lessee."

### **Maintenance and Operation of Project; Additions or Alterations**

The Lessee will be required at its own expense to (a) keep the Project in as reasonably safe condition as its operations shall permit, (b) keep the Building and all other improvements forming a part of the Project in good repair and in good operating condition, making from time to time, subject to the requirements described below, all necessary and proper repairs thereto and renewals and replacements thereof, including external and structural repairs, renewals and replacements, and (c) use the Equipment in the regular course of its business only, within the normal capacity of the Equipment, without abuse, and in a manner contemplated by the manufacturer thereof, and cause the Equipment to be maintained in accordance with the manufacturer's then currently published standard maintenance contract and recommendations. The Lessee will be permitted, also at its own expense, from time to time to make any Additions or Alterations to the Project it may deem desirable for its business purposes that do not adversely affect the operation or value of the Project. Additions or Alterations to the Project so made by the Lessee will be on the Premises and will become a part of the Project and shall become subject to the lien of the Lessee Documents, if applicable. The Lessee will further agree that at all times during the construction of Additions or Alterations that cost in excess of \$500,000 it will maintain or cause to be maintained in full force and effect Builder's Risk Completed Value Form insurance to full insurable value of such Additions or Alterations.

The Lessee will not be permitted to, nor permit others under its control to, do any work in or about the Project or related to any repair, rebuilding, restoration, replacement, alteration of or addition to the Project, or any part thereof, unless the Lessee shall have first procured and paid for all requisite municipal and other governmental permits and authorizations. All such work will be required to be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements, rules, and regulations of all insurers under the policies required to be carried under the provisions of the Loan Agreement.

### **Removal of Equipment**

If no Event of Default under the Loan Agreement shall have occurred and be continuing, in any instance where the Lessee in its discretion shall determine that any items of Equipment or parts thereof shall have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Lessee will be permitted to remove such items of Equipment or parts thereof from the Premises and, on behalf of the

Issuer, sell, trade in, exchange or otherwise dispose of them (as a whole or in part), provided that the Lessee will be required either:

(a) to substitute and install anywhere in the Building or on the Premises items of replacement equipment or related property having equal or greater value or utility (but not necessarily having the same function) in the operation of the Project for the purpose for which it is intended, provided such removal and substitution will not impair the nature of the Project, all of which replacement equipment or related property will be free of all liens, security interests and encumbrances (other than Permitted Encumbrances), will become subject to the lien and security interest of the security documents described in the Loan Agreement or the Indenture on the same terms and conditions as the items originally constituting Equipment; or

(b) not to make any such substitution and installation, unless in the case of (i) the sale of any such Equipment, (ii) the trade-in of such Equipment for other machinery, furnishings, equipment or related property not to become part of the Equipment or to become subject to the lien and security interest of the security documents described in the Loan Agreement or the Indenture, or (iii) any other disposition thereof, the Lessee shall pay to the Trustee the proceeds of such sale or disposition or an amount equal to the credit received upon such trade-in for deposit into the Redemption Fund. In the case of the sale, trade-in or other disposition of any such Equipment to the Lessee or an Affiliate, the Lessee will be required to pay to the Trustee an amount equal to the greater of the amounts received therefor or the fair market value thereof at the time of such sale, trade-in or other disposition for deposit into the Redemption Fund.

In the event that prior to such removal and disposition of items of Equipment from the Buildings and the Premises, the Lessee, on behalf of the Issuer, shall have acquired and installed machinery, furnishings, equipment or related property with its own funds that becomes part of the Equipment and subject to the lien and security interest of the security documents described in the Loan Agreement or the Indenture and that has equal or greater utility, but not necessarily the same functions, as the Equipment to be removed, the Lessee may take credit to the extent of the amount so spent by it against the requirement that it either substitute and install other machinery and equipment having equal or greater value or that it make payment to the Trustee for deposit into the Redemption Fund.

The Lessee will be required to report to the Trustee promptly each such removal, substitution, sale or other disposition and will be required to pay to the Trustee such amounts as are described above under this subheading to be paid into the Redemption Fund promptly after the sale, trade-in or other disposition requiring such payment, provided that no such report and payment will be required to be made until the amount to be paid into the Redemption Fund on account of all such sales, trade-ins or other dispositions not previously reported equals, in the aggregate, at least \$50,000 in any Fiscal Year. Any funds deposited into the Redemption Fund in any of the circumstances described above will be required to be used by the Trustee to redeem Bonds pursuant to the optional redemption provisions described under “THE SERIES 2010A BONDS—Redemption of Series 2010A Bonds—Other Redemptions at Par” in the Official Statement.

### **Taxes and Utility Charges**

The Lessee will agree to pay, as the same become due, (a) all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment, furnishings or other property installed by the Lessee thereon that, if not paid, would become a lien on the Project or a charge on the General Revenues including all ad valorem taxes or payments in lieu of such taxes lawfully assessed upon the Project, (b) all utility and other charges incurred in the ownership, operation, maintenance, use, occupancy and upkeep of the

Project, and (c) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the term of the Loan Agreement.

If the Lessee shall first notify the Trustee of its intention so to do, the Lessee will be permitted, at its own expense and in good faith, to contest any such taxes, assessments or other charges and, in the event of any such contest, to permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided the Lessee shall furnish the Trustee with a bond or cash deposit equal to at least the amount so contested plus any interest or penalties that might be payable as a result of any late payment, which, in the case of cash, will be required to be placed into an account with the Trustee and held for the purposes described in this paragraph, and an opinion of Independent Counsel stating that by nonpayment of any such items the liens of the Lessee Documents will not be materially endangered and neither the Project nor any material part thereof will be subject to imminent loss or forfeiture. The proceeds of such bond or cash deposit may be used by the Trustee to satisfy the lien if action is taken to enforce the lien and such action is not stayed. Such bond or cash deposit will be returned to the Lessee if the taxes, assessments or charges are successfully contested. If the Lessee shall be unable or otherwise fail to obtain such a bond or provide such a cash deposit and an opinion of Independent Counsel, such taxes, assessments or charges will be required to be satisfied and discharged promptly by payment thereof.

## **Insurance**

The Lessee will agree to keep the Project or cause the same to be continuously insured against such risks as are customarily insured against with respect to facilities of like size and type, including, but not limited to, the following:

(a) insurance upon the repair or replacement basis in an amount of not less than 100% of the then actual cost of replacement (excluding costs of replacing excavations and foundations but without deduction for depreciation) of the Project (with deductible provisions not to exceed \$10,000 per casualty) against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke and such other risks as are now or hereafter included in the uniform standard extended coverage endorsement in common use for similar structures (including vandalism and malicious mischief);

(b) business interruption insurance (also referred to as “business income” or “loss of rents insurance”) covering loss of revenues and other income by the Lessee by reason of total or partial suspension of, or interruption in, the operation of the Project caused by damage or destruction of the Project in an amount not less than the Maximum Annual Debt Service on the Bonds;

(c) comprehensive general liability insurance providing insurance (with deductible provisions not to exceed \$10,000 per occurrence) covering all claims for bodily injury and property damage, including not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, to include personal and advertising injury, general aggregate, products and completed operations aggregate insurance, and contract liability to cover all insurable obligations in the Ground Lease;

(d) commencing on the date any vehicle is acquired or hired by the Lessee for use with respect to the Project, automobile liability insurance providing insurance (with deductible

provisions not to exceed \$10,000 per occurrence) to the extent of not less than a combined single limit of \$1,000,000 per accident covering liability out of the use of any Lessee vehicle for such vehicles used in conjunction with the Project, whether owned, nonowned or hired, and including personal injury protection and uninsured motorist protection in the minimum statutory limits where required by law;

(e) insurance under the Federal Flood Insurance Program is required to be maintained at all times within the minimum requirements and amounts required for federally financed or assisted loans under the Flood Disaster Protection Act of 1973, as amended, if the Project is eligible under such program;

(f) workers' compensation coverage or other similar coverage covering all of the Lessee's employees on the Premises, as required by the laws of the Commonwealth, including, with respect to workers' compensation insurance, the policy must include Coverage B—Employer's liability limits of: bodily injury by accident—\$500,000 each accident; and bodily injury by disease—\$500,000 each employee. The Lessee will be required to require all subcontractors performing work under the Ground Lease to obtain an insurance certificate showing proof of workers' compensation insurance;

(g) [Not Used.]

(h) to the extent that the Project contains a steam boiler, pressure vessels or pressure piping, boiler explosion insurance on steam boilers, if any, pressure vessels and pressure piping in an amount not less than 100% of the then actual cost of replacement (excluding costs of replacing excavations and foundations but without deduction for depreciation) of the Project (with deductible provisions not to exceed \$10,000 per occurrence), provided that such insurance need not be taken out until steam boilers, pressure vessels or pressure piping are installed in the Project;

(i) fidelity bonds or employee dishonesty insurance in an amount of not less than \$100,000 for all officers, agents and employees of the Lessee with the responsibility of handling General Revenues; and

(j) additional umbrella or all risk coverage in an amount of not less than \$20,000,000 in the aggregate, which shall include all coverages required by (c), (d) and (f) above.

Proceeds of insurance required by (a), (e), and (h) in excess of \$250,000 will be paid to the Trustee and disbursed by it. See "Destruction and Damage" herein. The Loan Agreement will require that all policies of insurance provide for payment to the Issuer, the Lessee and the Trustee as their respective interests may appear, the policies required by (c), (d) and (i) name the Trustee, the Issuer and Ground Lessor as additional insureds and that the policies required by (a), (e) and (h) name the Trustee as mortgagee and loss payee.

#### **Advances by the Issuer or the Trustee**

If the Lessee shall fail to make any payment or perform any act required of it under the Loan Agreement, the Issuer or the Trustee will be permitted (but shall be under no obligation), after notifying the Lessee of its intention to do so and at the expiration of any applicable cure period, to make such payment or perform such act. All amounts so paid by the Issuer or the Trustee and all costs, fees and expenses so incurred will be payable as an additional obligation under the Loan Agreement, together with interest thereon from the date of payment at the Prime Rate and the payment of which shall be secured as

applicable. Any remedy in the Loan Agreement vested in the Issuer or the Trustee for the collection of the Loan Payments will also be available to the Issuer and the Trustee for the collection of all such amounts so advanced. The Trustee will be under no obligation to make any such payment unless it shall be requested to do so by the owners of at least 25% in aggregate principal amount of all Bonds then Outstanding and shall be provided with adequate funds paid in cash to the Trustee (from a source or sources approved by the Trustee) for the purpose of such payment.

### **Destruction and Damage**

In the event that the Project shall be destroyed or damaged (in whole or in part) by fire or other casualty, the Lessee will, unless the Bonds are paid in full from the Net Proceeds of insurance resulting from such destruction or damage, be obligated to continue to make the Loan Payments and will not be entitled to any postponement, abatement or diminution thereof.

If such Net Proceeds of insurance shall be less than \$250,000, the Lessee shall notify the Trustee and all such insurance proceeds will be paid to the Lessee and the Lessee will be required to repair, replace, rebuild, restore and/or reequip the Project promptly to substantially the same condition thereof as existed prior to the event causing such destruction or damage with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair the value or the character of the Project. In the event the Net Proceeds shall not be sufficient to pay in full the costs of any such repair, replacement, rebuilding, restoration and reequipping, the Lessee will be required nonetheless to complete said work and to pay that portion of the costs thereof in excess of the amount of said Net Proceeds.

If such Net Proceeds of insurance shall be in excess of \$250,000, all such insurance proceeds will be paid to the Trustee and deposited and held in the Insurance Fund to be applied as fully as practicable in one or more of the following ways as shall be directed in writing by the Lessee within 60 days from the date of such deposit:

(a) such Net Proceeds may be applied to the restoration of the Project; or

(b) such Net Proceeds may be applied to the acquisition of other suitable land and the acquisition, by construction or otherwise, to the extent permitted by applicable law, of improvements consisting of a building or buildings, facilities, furnishings, machinery, equipment or other properties suitable for the Lessee's operations at the Project as conducted prior to such destruction or damage (which improvements will be deemed a part of the Project and available for use and occupancy by the Lessee without the payment of any Loan Payments other than as provided in the Loan Agreement to the same extent as if such improvements were specifically described therein and will be required to be acquired by the Lessee subject to no liens, security interests or encumbrances prior to or on a parity with the liens and security interest of the security documents described in the Loan Agreement or the Indenture, other than Permitted Encumbrances); or

(c) such Net Proceeds may be transferred to the Redemption Fund to be applied to the redemption of Bonds pursuant to the provisions of the Indenture described in the Official Statement under the heading "THE SERIES 2010A BONDS—Redemption of Series 2010A Bonds—Extraordinary Optional Redemption," provided that no part of such Net Proceeds may be applied to a redemption of the Bonds in whole unless the requirements of the Loan Agreement relating to prepayment in full upon destruction or damage described in this Appendix B under the heading "Option and Obligation To Prepay the Loan Payments" have been met; or

(d) such Net Proceeds may be applied in some combination permitted by the foregoing clauses (a), (b) and (c).

Any balance of such Net Proceeds remaining after application pursuant to the foregoing clause (c) will either (a) be transferred to the Redemption Fund to be applied to the redemption of Bonds that are Outstanding on the date of such transfer on a pro rata basis pursuant to the provisions of the Indenture described in the Official Statement under the heading “THE SERIES 2010A BONDS—Redemption of Series 2010A Bonds—Other Redemptions at Par,” or (b) if no Bonds then remain Outstanding, be paid to the Lessee.

### **Condemnation**

In the event that title to or the temporary use of the Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority, the Lessee will, unless the Bonds are paid in full from the award made in such eminent domain proceedings, be obligated to continue to make the Loan Payments specified in the Loan Agreement and shall not be entitled to any postponement, abatement or diminution thereof. Except for Net Proceeds received by the Lessee for the condemnation of property not included in the Project, the Issuer, the Lessee and the Trustee will be required to cause the Net Proceeds received by them or any of them from any award made in such eminent domain proceedings to be paid to the Trustee and held in the Condemnation Fund, to be applied as fully as practicable in one or more of the following ways as shall be directed in writing by the Lessee within 60 days from the date of any such deposit:

(a) to the restoration of the Project; or

(b) to the acquisition of other suitable land and the acquisition, by construction or otherwise, to the extent permitted by applicable law, of improvements consisting of a building or buildings, facilities, furnishings, machinery, equipment or other properties suitable for the Lessee’s operations at the Project as conducted prior to such taking (which improvements will be deemed a part of the Project and available for use and occupancy by the Lessee without the payment of any Loan Payments other than as provided in the Loan Agreement to the same extent as if such improvements were specifically described therein and will be required to be acquired by the Lessee subject to no liens, security interests, or encumbrances prior to or on a parity with the liens and security interest of the security documents described in the Loan Agreement, other than Permitted Encumbrances; or

(c) to the redemption of Bonds pursuant to the provisions of the Indenture described in the Official Statement under the heading “The Series 2010A Bonds—Redemption—Extraordinary Optional Redemption,” provided that no part of any such Net Proceeds may be applied to a redemption of the Bonds in whole unless the requirements of the Loan Agreement relating to prepayment in full upon condemnation in this Appendix B under the heading “THE LOAN AGREEMENT—Option and Obligation To Prepay the Loan Payments” have been met; or

(d) in some combination described in the foregoing paragraphs (a), (b) and (c).

Any balance of the Net Proceeds of the award in such eminent domain proceedings remaining after application pursuant to the immediately preceding paragraph will either (a) be transferred to the Redemption Fund to be applied to the redemption of Bonds that are Outstanding on the date of such transfer on a pro rata basis pursuant to the provisions of the Indenture described in the Official Statement

under the heading “THE SERIES 2010A BONDS—Redemption of Series 2010A Bonds—Other Redemptions at Par,” or (b) if no Bonds then remain Outstanding, be paid to the Lessee.

### **Option and Obligation To Prepay the Loan Payments**

The Lessee will have the option to prepay the Loan Payments in full or in part prior to the full payment of all of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) under the following circumstances:

(a) in full if the Project shall be destroyed or damaged to such an extent that, in the opinion of a Consulting Architect expressed in a certificate filed with the Issuer and the Trustee, (i) the Project cannot reasonably be restored within a period of 12 months to the condition thereof immediately preceding such destruction or damage, or (ii) Lessee is thereby prevented from carrying on its normal operations therein for a period of 12 consecutive months, or (iii) the cost of restoration or replacement would exceed the net proceeds of insurance payable in respect of such destruction or damage by more than \$250,000;

(b) in full if title to, or the temporary use of, a substantial portion of the Project shall be taken under the exercise of the power of eminent domain by any governmental authority or person, firm, or corporation acting under governmental authority to such extent that, in the opinion of a Consulting Architect expressed in a certificate filed with the Issuer and the Trustee, (i) the Project cannot be reasonably restored or replaced within a period of 12 months to substantially the condition thereof immediately preceding such taking, or (ii) in the Lessee being thereby prevented from carrying on its normal operations therein for a period of 12 consecutive months, or (iii) the cost of restoration or replacement would exceed the total amount of compensation for such taking by more than \$250,000; or

(c) in part in the event of partial condemnation or destruction of, or partial damage to, the Project from the Net Proceeds received by the Lessee as a result of such taking, damage, or destruction to the extent not used for the restoration of the Project or for the acquisition of substitute property suitable for the Lessee’s operations at the Project as were conducted prior to such taking, damage or destruction if the Lessee furnishes to the Issuer and the Trustee (i) a certificate of a Consulting Architect stating (A) that the property forming a part of the Project that was taken, damaged or destroyed is not essential to the Lessee’s use or occupancy of the Project at substantially the same revenue-producing level prior to such taking, destruction or damage, or (B) that the Project has been restored to a condition substantially equivalent to its condition prior to such taking, damage or destruction, or (C) that the Lessee has acquired other suitable land and has acquired, by construction or otherwise, improvements consisting of a building or buildings, facilities, furnishings, machinery, equipment or other properties that are substantially equivalent to the property forming a part of the Project that was taken, destroyed or damaged, or (ii) a written report of a Financial Consultant that the Fixed Charges Coverage Ratio for each of the two (2) Fiscal Years following the Fiscal Year following such taking, destruction, or damage will not be less than the lesser of (1) 1.10 and (2) the average Fixed Charges Coverage Ratio for the two (2) most recent Fiscal Years prior to such taking, destruction or damage for which audited financial statements are available.

In the case of the occurrence of any of the events described in the immediately preceding paragraph, the Lessee, if it exercises its option to prepay the Loan Payments, will be required to prepay the Loan Payments within 180 days after such event.



To exercise such option, the Lessee will be required, within 60 days following the event authorizing the exercise of such option, to give written notice of the exercise of such option to the Issuer and to the Trustee and to specify therein the date of tender of such prepayment, which date may not be less than 45 nor more than 120 days from the date such notice is mailed, and will be required make arrangements satisfactory to the Trustee for the giving of the required notice of redemption.

The amount payable by the Lessee in the event of its exercise of such option to prepay the Loan Payments in full will be the sum of the following:

(a) an amount of money that, when added to the amount then on deposit in the Bond Fund and the Redemption Fund, will be sufficient to retire and redeem all the then Outstanding Bonds on the applicable redemption date provided by the Indenture, including, without limitation, principal, all interest to accrue to said redemption date, and redemption expense, but without premium, plus

(b) an amount of money equal to the Trustee's and paying agents' fees and expenses, including reasonable attorneys' fees and expenses, under the Indenture accrued and to accrue until such final payment and redemption of the Bonds, plus

(c) an amount of money equal to the Issuer's reimbursable expenses under the Loan Agreement accrued and to accrue until such final payment and redemption of the Bonds.

The amount payable by the Lessee in the event of its exercise of such option to prepay the Loan Payments in part will be the sum of the following:

(a) an amount of money that, when added to the amount then on deposit in the Bond Fund and the Redemption Fund, will be sufficient to retire and redeem the Series 2010A Bonds that are to be redeemed on the applicable redemption date provided by the Indenture, including without limitation, principal, all interest to accrue to said redemption date, and redemption expense, but without premium, plus

(b) an amount of money equal to the Trustee's and paying agents' fees and expenses, including reasonable attorneys' fees and expenses relating to such redemption, plus

(c) an amount of money equal to the Issuer's reimbursable expenses under the Loan Agreement relating to such redemption.

## **Financial Statements**

While the Loan Agreement is in effect, the Lessee will be required to provide the Issuer and the Trustee annually, within 180 days after the end of each Fiscal Year beginning with the Fiscal Year ending June 30, 2010, the financial statements of the Lessee related to the Project, including its balance sheet, statement of revenue, expenses, and changes in fund balance (deficit), and statement of cash flow, for the year then ended in comparative form for the preceding Fiscal Year, which financial statements will be required to be accompanied by an Audit Report.

## **Covenants Regarding Maintenance of Lessee's Status**

The Lessee will be required (i) to maintain its legal existence as a nonprofit corporation organized under the laws of the Commonwealth, (ii) to maintain its legal existence as a Tax-Exempt Organization, (iii) (except as permitted below) not to consolidate with or merge into another entity or permit another

entity to consolidate with or merge into it, (iv) not to dissolve or otherwise dispose of all or substantially all of its assets, (v) to file all required reports and documents with the IRS so as to maintain its status as an organization described in Section 501(c)(3) of the Code, (vi) not to operate the Project in any manner nor to engage in any activities or take any action that might reasonably be expected to result in the Lessee's ceasing to be a "501(c)(3) organization," within the meaning of Section 145 of the Code, (vii) to notify the Trustee and the Issuer promptly of any loss of its status as a "501(c)(3) organization" or of any investigation, proceeding, or ruling that might result in such loss of status and (viii) preserve and keep in full force and effect all licenses and permits necessary to the proper conduct of its business. The Lessee will be permitted, without violating the covenant described above, to consolidate, merge, sell or otherwise transfer to another Person all or substantially all of its assets as an entirety (and may thereafter dissolve), provided (a) such consolidation, merger, sale or other transfer does not otherwise cause an Event of Default and (b) the surviving, resulting or transferee Person (i) shall be authorized to do business in the Commonwealth, (ii) shall be a domestic corporation, partnership or other entity, or if a natural person, is a resident of the United States of America, (iii) shall have the power to assume and shall assume in writing all of the obligations of the Lessee under the Bond Documents, (iv) shall obtain all licenses and permits required by law to operate the Project, (v) shall deliver to the Trustee an opinion of Independent Counsel to the effect that the Loan Agreement, as assumed by the surviving, resulting or transferee Person is a valid and enforceable obligation of such Person, subject only to expectations related to bankruptcy and other customary exceptions, (vi) shall deliver to the Trustee an opinion of Bond Counsel to the effect that such consolidation, merger, sale or transfer will not bring about an Event of Taxability, and (vii) shall have a fund balance or net worth, as the case may be, as reflected in the pro forma or prospective financial statements required to be furnished to the Underwriter and the Trustee pursuant to the Loan Agreement, not less than the fund balance or net worth, as the case may be, of the Lessee as reflected in the most recent audited balance sheet furnished to the Trustee pursuant to the Loan Agreement, and shall have a Fixed Charges Coverage Ratio not less than that of the Lessee for the two consecutive years prior to such consolidation, merger, sale or transfer, as determined from the surviving, resultant or transferee Person's financial statements on a pro forma basis that gives effect to such consolidation, merger, sale or transfer, which pro forma basis financial statements will be accompanied by an Audit Report and a certificate of the Accountant reporting on such historical pro forma basis financial statements stating the Fixed Charges Coverage Ratio for the periods reported on. The Lessee will covenant that it will not, and it will not permit, any of the Lessee's or its revenues, income or profits, whether realized or unrealized, will be distributed to any of its directors, or inure to the benefit of any private Person, other than for the lawful corporate purposes of the Lessee; provided, however, that the Lessee will be permitted to pay to any Person the value of any service or product performed for, or supplied to, the Lessee by such Person. The Lessee will be required to take such actions as are necessary or appropriate and within its control to take to comply with the provisions of the Code and the regulations promulgated thereunder in order to preserve the exclusion of the interest paid on the Series 2010A Bonds from the gross income of the Owners thereof for federal income tax purposes, will not be permitted to act or fail to act in any other manner that would adversely affect such exclusion, and will be obligated to preserve and keep in full force and effect all licenses and permits necessary to the proper conduct of its business.

### **Financial Covenants**

***Rate Covenant.*** The Lessee will be required to fix rental rates for the Project at levels sufficient to pay all Project expenses and debt service on the Series 2010A Bonds.

***Annual Budget.*** In the Loan Agreement, the Lessee will agree that it will, at least 30 days prior to the first day of each Fiscal Year commencing with the Fiscal Year beginning July 1, 2010, prepare an Annual Budget for the immediately succeeding Fiscal Year which shall include the monthly budgeted Expenses of the Project for such Fiscal Year. If the Lessee fails to prepare the Annual Budget for any

Fiscal Year, the Annual Budget for the immediately preceding Fiscal Year will continue in effect until the Annual Budget is prepared for the remainder of the applicable Fiscal Year.

To the extent that the Lessee deems it necessary at any time during any Fiscal Year, the Lessee will be required to submit a revised Annual Budget to the Issuer and the Trustee declaring that the revisions are necessary to operate or maintain the Project and setting forth the reasons therefor which revised Annual Budget will, for all purposes of the Loan Agreement, be deemed the Annual Budget for the remainder of the applicable Fiscal Year.

Promptly following preparation by the Lessee, a copy of each Annual Budget or revised Annual Budget will be furnished to the Issuer and the Trustee.

In the event the Lessee shall fail to provide such a certificate, a Financial Consultant will be employed by the Lessee to review and/or revise the Annual Budget and will certify to the Issuer and the Trustee that the Annual Budget, revised to reflect such recommendations or variations as may be presented in writing by the Financial Consultant, is reasonable.

### **Covenant Regarding Manager**

The Lessee will agree that during the Loan Agreement Term if the initial Manager shall cease to serve as manager, the Lessee will promptly employ and at all times thereafter employ a recognized manager of student housing facilities that manages, and has for the past five years managed, at least 5,000 beds of student housing facilities. Prior to entering into a contract with any successor manager, the Lessee will be required to deliver to the Trustee an opinion of Bond Counsel to the effect that the terms of the proposed management contract will not bring about an Event of Taxability. The Lessee will agree that each management contract relative to the Project will comply with the provisions of Revenue Procedure 97-13 under the Code.

### **Assignment and Subleasing; Restrictions on Encumbrances**

The Lessee will be permitted to enter into subleases with residents of the Project and with certain Exempt Persons as described below without complying with the provisions described below other than subparagraph (g). The rights and obligations of the Lessee under the Loan Agreement will be permitted to be assigned and delegated, and the Project will be permitted to be subleased, as a whole or in part, by the Lessee without the necessity of obtaining the consent of any of the Issuer or the Trustee, subject, however, to each of the following conditions:

(a) No assignment (other than in connection with a consolidation, merger, disposition, or transfer described above under the subheading “Covenants Regarding Maintenance of Lessee’s Status”) or sublease will relieve the Lessee from primary liability for any of its obligations under the Loan Agreement, and in the event of any such assignment or sublease, the Lessee will continue to remain primarily liable for payment of the Loan Payments and for the payment, performance and observance of the other obligations and agreements on its part in the Loan Agreement provided to be performed and observed by it.

(b) The assignee shall assume in writing the obligations of the Lessee under the Loan Agreement to the extent of the interest assigned.

(c) The Lessee shall furnish or cause to be furnished to the Issuer and the Trustee assurances reasonably satisfactory to the Issuer and the Trustee that the Project will continue to be operated as a “project,” within the meaning of the Act.

(d) No assignment or sublease with any Person may be entered into by the Lessee without the Lessee's first furnishing to the Trustee an opinion of Bond Counsel or a ruling from the Internal Revenue Service to the effect that such assignment or sublease will not bring about an Event of Taxability.

(e) No such assignment or sublease will give rise to a novation.

(f) The Lessee will be required, within 30 days after the execution thereof, to furnish or cause to be furnished to the Issuer and the Trustee, a true and complete copy of each such assignment or sublease, as the case may be.

(g) All subleases will be required to contain an attornment clause providing in effect that if at any time during the term of the sublease, the Trustee or the designee of the Trustee, shall become the owner of the Project, such sublessee agrees, at the election and upon demand of any owner of the Project, to attorn, from time to time, to any such owner upon the terms and conditions set forth in the sublease. Such sublessee will be required to agree, at the request of the party to whom it has attorned, to execute, acknowledge and deliver, without charge, from time to time, instruments acknowledging such attornment. The attornment clause will be required to provide that upon such attornment, the sublease shall continue in full force and effect as, or as if it were, a direct sublease between the successor and the sublessee, except that the successor landlord shall not (i) have any liability for any previous act or omission of a predecessor landlord under the sublease, (ii) be bound by any previous modification of the sublease, unless such modification or prepayment shall have been expressly approved in writing by the Issuer and the Trustee, or (iii) have any liability for refusal or failure to perform or complete landlord's work or otherwise prepare the demised premises for occupancy in accordance with the provisions of the sublease.

The Lessee will agree in the Loan Agreement that it will not directly, indirectly or beneficially sell, convey or otherwise dispose of any part of its interest in the Project during the Loan Agreement Term, permit any part of the Project or the Premises to become subject to any mortgage, lien, claim of title, encumbrance, security interest, conditional sale contract, title retention arrangement, finance sublease, or other charge of any kind, except for Permitted Encumbrances or except as otherwise permitted under the Loan Agreement, or assign, transfer or hypothecate (other than to the Trustee) any rent (or analogous payment) then due or to accrue in the future under any sublease of the Project or the Premises, except for Permitted Encumbrances or except as otherwise permitted under the Loan Agreement. See the heading "Covenants Regarding Maintenance of Lessee's Status" herein.

#### **Covenant Regarding Subleasing of Meeting Rooms**

The Lessee shall not enter into any sublease or any similar arrangement with, or otherwise permit the use of, the meeting rooms at the Project by any party other than and Exempt Person and will have submitted to it a copy of the applicable IRS Determination Letter evidencing the party's qualification as an Exempt Person.

#### **Qualified Tax-Exempt Obligations**

Pursuant to Section 265(b)(3)(G)(i) and (ii) of the Code, the Lessee has designated the Bonds "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code.

## Events of Default

The Loan Agreement provides that the occurrence of any one of the following will constitute an “Event of Default:”

(a) The Lessee’s failure to pay the Basic Loan Payments required to be paid under the Loan Agreement as described in clause (i) under the subheading “Loan Payments and Other Amounts Payable—(a) Basic Loan Payments” at the times specified therein and the continuation of such failure for a period of five (5) days after notice in the manner provided in the Loan Agreement, given to the Lessee by either the Trustee or the Issuer, that the payment referred to in such notice has not been received, or, without regard to notice, for a period of ten (10) days (eight (8) days in the case of Basic Loan Payments due in February) after any such amount becomes due, whichever occurs first.

(b) The Lessee’s failure to pay the Basic Loan Payments required to be paid under clause (ii) through (v) under the subheading “Loan Payments and Other Amounts Payable—(a) Basic Loan Payments” with respect to Additional Bonds at the times specified therein and the continuation of such failure for a period set forth in the amendment or amendments hereto executed in connection with the issuance of such Additional Bonds.

(c) Any representation or warranty made by the Lessee in any statement or certificate furnished to the Issuer or the Trustee or the purchaser of any Bonds, in connection with the sale of any Bonds or furnished by the Lessee pursuant to the Loan Agreement, shall prove inaccurate in any material respect as of the date of the issuance or making thereof and shall not be corrected within 30 days after written notice specifying such inaccuracy is given to the Lessee by the Issuer, the Trustee or such purchaser. In the case of any such inaccuracy that cannot with due diligence be corrected within such 30-day period, but can be wholly corrected within a period of time not materially detrimental to the rights of the Trustee, it will not constitute an Event of Default if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the inaccuracy is corrected in accordance with and subject to any directions or limitations of time established in writing by the Trustee.

(d) The Lessee’s failure to perform or cause to be performed any other covenant, condition or provision of the Loan Agreement, other than as referred to in (a), (b) or (c) above, and to correct such failure within 30 days after written notice specifying such is given to the Lessee by the Issuer or the Trustee. In the case of any such failure that cannot with due diligence be corrected within such 30-day period but can be wholly corrected within a period of time not materially detrimental to the rights of the Trustee, it shall not constitute an Event of Default if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the failure is corrected in accordance with and subject to any directions or limitations of time established in writing by the Trustee.

(e) The Lessee or the Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of it or of all or a substantial part of its property or of the Project, (ii) fail to promptly lift or bond (if legally permissible) any execution, garnishment, or attachment of such consequence as will impair the ability of the Lessee to carry on its operations at the Project, (iii) enter into an agreement of composition with its creditors, (iv) admit in writing its inability to pay its debts as such debts become due, (v) make a general assignment for the benefit of its creditors, (vi) commence a voluntary case under the federal bankruptcy law or any similar law in effect in a foreign jurisdiction (as now or hereafter in effect), (vii) file a petition or answer seeking to take advantage

of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (viii) fail to controvert in a timely or appropriate manner or acquiesce in writing to any petition filed against it in an involuntary case under such federal bankruptcy law or any similar law in effect in a foreign jurisdiction, or (ix) take any action for the purpose of effecting any of the foregoing.

(f) A proceeding or case shall be commenced, without the application of the Lessee, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts of the Lessee, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of the Lessee or of all or any substantial part of the assets of it, or (iii) similar relief in respect of the Lessee under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition and adjustment of debts, and such proceeding or case shall continue undismissed or an order, judgment or decree approving or ordering any of the foregoing shall be entered and shall continue unvacated and unstayed and in effect for a period of 90 days, whether consecutive or not.

(g) The occurrence of an event of default under any of the Bond Documents, as defined therein including any applicable cure periods.

## **Remedies**

Upon the occurrence and continuation of an Event of Default, the Issuer or the Trustee, as the assignee of the Issuer, may to the extent permitted by law:

(a) at its option declare all unpaid installments of Basic Loan Payments payable under the Loan Agreement for the remainder of the Loan Agreement Term to be immediately due and payable whereupon the same shall become immediately due and payable; or

(b) in the event any of the Bonds at the time shall be Outstanding and unpaid, to have access to, and to inspect, examine, and make copies of, the books and records and any and all accounts, similar data and income tax and other tax returns of the Lessee; or

(c) from time to time, to take whatever action at law or in equity or under the terms of the Bond Documents may appear necessary or desirable to collect the Loan Payments described in the Indenture under the subheading “Loan Payments and Other Amounts Payable” and other amounts due under the Loan Agreement (including, without limitation, by making claims under the Guaranty) or to enforce performance and observance of any obligation, agreement, or covenant of the Lessee under the Loan Agreement.

Any amounts collected pursuant to actions described above will be applied in accordance with the provisions of the Indenture, or if the Bonds shall have been fully paid (or provision for payment thereof shall have been made in accordance with the provisions of the Indenture) and the Lessee shall have paid the Issuer and the Trustee all other sums due and owing under the Loan Agreement, will be paid to the Lessee.

## **Amendments**

See the heading “THE INDENTURE—Amendment of Other Bond Documents” herein.

## **Rebate Payments**

The Lessee will covenant, in the Loan Agreement, to make any payments of rebate to the United States Treasury required to be made relative to the Series 2010A Bonds.

## **Indemnification**

The Lessee will indemnify the Issuer and the Trustee for certain losses incurred or damages suffered as a result of the Lessee's ownership and operation of the Project.

## **THE INDENTURE**

### **Introduction**

The Indenture will be a contract for the benefit of the Owners that will specify the terms and details of the Series 2010A Bonds and which will define the security therefor.

### **Establishment of Funds**

The following trust funds will be established with the Trustee under the Indenture:

Revenue Fund  
Bond Fund  
Redemption Fund  
Issuance Cost Fund  
2010A Refunding Fund  
Repair and Replacement Fund  
Insurance and Condemnation Funds  
Surplus Fund  
Rebate Fund  
Budgeted Parties Expense Fund  
Debt Service Reserve Fund

### **Revenue Fund**

In the Loan Agreement, the Lessee will agree, as security for its obligation to make Loan Payments thereunder, to deliver, or cause to be delivered, weekly on each Friday, (or if any Friday is not a Business Day, on the immediately preceding Business Day) to the Trustee, for deposit to the Revenue Fund, all General Revenues received by it; provided, however, that if an Event of Default shall have occurred, the Lessee shall deliver all General Revenues daily. The amounts deposited in the Revenue Fund will be disbursed by the Trustee on the twentieth day of each month (or the next succeeding Business Day if the twentieth day of a month is not a Business Day) and, to the extent necessary to make the transfers described in items (a) through (h) below, on the last Business Day of each month, in the following order:

(a) there will be transferred to the Budgeted Parties Expense Fund one-twelfth (1/12) of the amount budgeted therefor as Additional Loan Payments pursuant to the provisions of the Loan Agreement described under (C) through (E) under the heading "THE LOAN AGREEMENT—Loan Payments and Other Amounts Payable—(b) Additional Loan Payments" in this Appendix B;

(b) there will be paid to the Lessee for deposit to the Operating Fund an amount which, together with amounts already on deposit in the Operating Fund, is equal to the greater of (i) the amount budgeted in the Annual Budget for Expenses for the next succeeding two months (excluding any management fee or Lessee Fee) and (ii) any amount necessary to meet the minimum balance requirement, which will be an amount equal to 10% of the Expenses for the then-current Fiscal Year as shown in the then current Annual Budget (excluding any management fee or Lessee Fee). In order to accomplish the transfer contemplated in this subsection (b), the Lessee will deliver to the Trustee by the 17th day of each month (or the immediately succeeding Business Day if the 17<sup>th</sup> is not Business Day) a statement of the amounts already on deposit in the Operating Fund;

(c) there will be transferred to the Bond Fund the amount the Lessee is obligated to pay as the Basic Loan Payments pursuant to the provisions of the Loan Agreement described under the heading “THE LOAN AGREEMENT—Loan Payments and Other Amounts Payable—(a) Basic Loan Payments” in this Appendix B;

(d) there will be transferred to the Repair and Replacement Fund the amount the Lessee is obligated to deposit as an Additional Loan Payment pursuant to the provisions of the Loan Agreement described under (A) of item (i) under the heading “THE LOAN AGREEMENT—Loan Payments and Other Amounts Payable—(b) Additional Loan Payments” in this Appendix B;

(e) [intentionally omitted];

(f) within 30 days after the distribution of the Audit Report, there shall be transferred to the Operating Fund the amount budgeted in the then-current Annual Budget for the Lessee’s fee;

(g) there will be transferred to the appropriate fund or funds any amounts owed as an Additional Loan Payment pursuant to the provisions of the Loan Agreement described under (B) of item (i) under the heading “THE LOAN AGREEMENT—Loan Payments and Other Amounts Payable—(b) Additional Loan Payments” in this Appendix B;

(h) [reserved]; and

(i) if the Lessee is not in default under any Lessee Documents, any remaining amounts will be transferred to the Surplus Fund. If the Lessee is in default under any Lessee documents, any remaining amounts shall remain in the Revenue Fund.

## **Bond Fund**

The Bond Fund, the fund into which the monthly payments derived from the Loan Agreement, all amounts payable under the Guaranty and certain other amounts specified in the Indenture will be deposited, will be maintained with the Trustee. Except as otherwise provided in the Indenture, moneys on deposit in the Bond Fund will be required to be used solely to pay the principal and premium, if any, and interest on the Bonds. However, upon the occurrence of an Event of Default under the Indenture, the Trustee will be permitted to use moneys in the Bond Fund to pay the fees and expenses of the Trustee prior to making any payment to the Bondholders.



## **2010A Refunding Fund**

The Indenture provides for the establishment of the “2010A Refunding Fund,” which shall be used solely for the purpose of refunding the Series 2001A Bonds. A portion of the proceeds of the sale of the Series 2010A Bonds will be deposited into the 2010A Refunding Fund. Moneys in the 2010A Refunding Fund shall be disbursed into the Bond Fund of the Series 2001A Bonds for the purpose of reimbursing the 2002 Letter of Credit Bank under the Prior Indenture for the draw used to pay in full the outstanding Series 2001A Bonds.

## **Redemption Fund**

The Redemption Fund will be a trust fund into which moneys will be required to be deposited prior to being used to redeem or purchase Bonds in accordance with the provisions of the Indenture. Moneys in the Redemption Fund will be used only to pay the principal of Bonds described in the Official Statement under the heading “THE SERIES 2010A BONDS—Redemption of Series 2010A Bonds—Other Redemptions at Par.”

## **Issuance Cost Fund**

The Issuance Cost Fund will be a trust fund used to pay Issuance Costs and will be funded with proceeds of the sale of the Series 2010A Bonds an account designated as the “2010A Account.” See “ESTIMATED SOURCES AND USES OF FUNDS” in the Official Statement. The amounts held in the Issuance Cost Fund will be disbursed by the Trustee to pay Issuance Costs upon receipt of a requisition executed by the Lessee setting forth the nature of the Issuance Costs to be paid and the name of the payee and certifying that the amounts being paid are properly includable within the definition of Issuance Costs.

## **Repair and Replacement Fund**

The Repair and Replacement Fund will be a trust fund into which the Lessee will be required to make monthly deposits. See “THE LOAN AGREEMENT—Loan Payments and Other Amounts Payable” herein. The moneys in the Repair and Replacement Fund will be disbursed by the Trustee for the costs of the repair or replacement related to the Project or additions or alterations to the Project or transferred to the Bond Fund to the extent required to pay the principal of, premium, if any, and interest on the Bonds on any Interest Payment Date.

## **Debt Service Reserve Fund**

The Indenture provides for the creation of the Debt Service Reserve Fund and sets forth the Debt Service Reserve Requirement for the Series 2010A Bonds. The Trustee will deposit in the Debt Service Reserve Fund any funds paid to the Trustee under the Loan Agreement or the Indenture for credit or transfer to the Debt Service Reserve Fund and will provide notice to the Lessee if the amount held in the Debt Service Reserve Fund falls below the Debt Service Reserve Requirement. Amounts in the Debt Service Reserve Fund will be applied by the Trustee to the payment of the principal of, and interest and premium, if any, on the Series 2010A Bonds and on any Additional Bonds with respect for which there shall be a Debt Service Reserve Requirement to the extent that there are insufficient funds in the Bond Fund and the Redemption Fund therefor on the date such interest, principal, and premium is due, which authorization and direction the Trustee hereby accepts.

If, as a result of the valuation of the investments held in the Debt Service Reserve Fund on June 30 and December 31 of each year pursuant to the Indenture, the balance of the Debt Service Reserve Fund is greater than the Debt Service Reserve Requirement for the Bonds, all amounts in the Debt Service

Reserve Fund in excess of the Debt Service Reserve Requirement for the Bonds shall be transferred to the Bond Fund.

### **Insurance and Condemnation Funds**

The Insurance Fund and the Condemnation Fund will be trust funds into which, under certain circumstances, Net Proceeds of insurance or condemnation awards, respectively, will be deposited and used to prepay Basic Loan Payments or to repair, rebuild, restore or replace the Project. See “THE LOAN AGREEMENT—Destruction and Damage” and “—Condemnation” herein.

### **Rebate Fund**

The Lessee shall be required to deposit to the Rebate Fund from time to time amounts required to be remitted to the United States Treasury pursuant to the Code. Amounts in the Rebate Fund are not pledged to payment of the Series 2010A Bonds.

### **Surplus Fund**

The Surplus Fund will be a trust fund into which moneys remaining in the Revenue Fund, after the disbursements described above under “Revenue Fund,” will be transferred. Amounts held in the Surplus Fund will be transferred to the Lessee and to the Ground Lessor within 30 days after the distribution of an Audit Report if accompanied by a certification from the Lessee that based on the Audit Report the Fixed Charges Coverage Ratio is at least 1.00, representing excess cash flow in the relevant Fiscal Year such amounts as shall be set forth in a written invoice approved by the Lessee and the Ground Lessor. Prior to such transfer, amounts in the Surplus Fund shall be used monthly to fund any shortfall in monthly deposits required to be made to the Revenue Fund.

### **Budgeted Parties Annual Expense Fund**

The Budgeted Parties Annual Expense Fund will be used to pay annual fees of the Trustee. The Trustee is authorized and directed to withdraw funds from the Budgeted Parties Annual Expense Fund to pay such fees as they become due.

### **Investments**

Moneys in the Revenue Fund, the Bond Fund, the Redemption Fund, the Issuance Cost Fund, the Repair and Replacement Fund, the Insurance Fund, the Budgeted Parties Annual Expense Fund, the Condemnation Fund, the Surplus Fund, the Rebate Fund, the 2010A Refunding Fund, the Debt Service Reserve Fund or trust funds derived from any other source will be invested by the Trustee at the direction of the Authorized Lessee Representative in Permitted Investments, subject to the restrictions set forth in the Indenture and the Loan Agreement. The Trustee may make any and all such investments through its own bond department. Moneys in the Revenue Fund, the Issuance Cost Fund, the Repair and Replacement Fund, the Insurance Fund, the Budgeted Parties Annual Expense Fund, the Condemnation Fund, the Surplus Fund, the 2010A Refunding Fund, the Debt Service Reserve Fund and any other accounts or funds will be invested only in Permitted Investments maturing or redeemable at the option of the holder in such amounts and on such dates as may be necessary to provide moneys to meet the payments from each such respective fund as may be specified by an Authorized Lessee Representative; moneys in the Bond Fund will be invested only in Permitted Investments maturing or redeemable at the option of the holder not later than the next-succeeding principal or Interest Payment Date of the Series 2010A Bonds; and moneys in the Redemption Fund will be invested only in Permitted Investments maturing or redeemable at the option of the holder not later than the next succeeding principal or Interest

Payment Date of the Bonds and at a yield that is not greater than the yield on the Tax-Exempt Bonds for the redemption of which such moneys have been deposited therein. Moneys in the Rebate Fund may be invested only in Government Obligations maturing, or subject to redemption by the holder at not less than the principal amount thereof or the cost of acquisition, whichever is lower, on or before the dates when the payments for such moneys are held are to become due.

### **Financial Statements**

Upon the written request of any Owner that owns at least \$1,000,000 in aggregate principal amount of Bonds then Outstanding, the Trustee, at the expense of such Owner, will be required under the terms of the Indenture to deliver to such Owner a copy of any of the financial statements and other operating data of the Lessee that are described herein under the heading “THE LOAN AGREEMENT—Financial Statements.”

### **Events of Default**

Each of the following will be an Event of Default within the meaning of the Indenture:

- (a) payment of any installment of interest on any Bond is not made by or on behalf of the Issuer when the same becomes due and payable;
- (b) payment of the principal or the redemption premium, if any, of any Bond is not made by or on behalf of the Issuer when the same becomes due and payable, whether at maturity or by proceedings for redemption or pursuant to a Sinking Fund Requirement or otherwise;
- (c) the failure to perform in a punctual manner any other of the covenants, conditions, agreements, or provisions contained in the Indenture or any agreement supplemental to the Indenture or thereto and the continuation of such failure for 30 days after receipt by the Issuer of a written notice from the Trustee specifying such default and requiring the same to be remedied; provided, however, that if such performance requires work to be done, action to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied, as the case may be, within such 30-day period or other period, no Event of Default shall be deemed to have occurred or to exist if, and so long as, the Issuer begins such performance within such period and diligently and continuously prosecutes the same to completion;
- (d) an “Event of Default” shall have occurred under the Loan Agreement, the Guaranty or the Ground Lease; or
- (e) a Determination of Taxability shall have occurred.

### **Acceleration of Maturities**

On the happening and continuance of any Event of Default specified in (a), (b) or (e) above, the Trustee immediately will be required, and on the happening and continuance of any other Event of Default specified above, the Trustee may, and on the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding will be required by notice in writing to the Issuer and the Lessee, declare the principal of all Series 2010A Bonds then Outstanding (if not then due and payable) to be due and payable immediately, and on such declaration the same will become and be immediately due and payable. Upon such declaration, interest on the Bonds shall cease to accrue, and the Trustee shall notify the Owners of the Bonds of such declaration and that interest on the Bonds shall have ceased to accrue on and as of the date of such declaration. If at any time after the principal of Bonds will

have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action, or proceeding instituted on account of such Event of Default, or before the completion of the enforcement of any other remedy under the Indenture, money has accumulated in the Bond Fund sufficient to pay the principal of all matured Bonds and all arrears of interest, if any, on all Bonds then Outstanding (except the principal of any Bonds not then due and payable by its terms and the interest accrued on such Bonds since the last interest payment date), and the charges, compensations, expenses, disbursements, advances, and liabilities of the Trustee and all other amounts then payable by the Issuer under the Indenture have been paid or a sum sufficient to pay the same has been deposited with the Trustee, and every other failure known to the Trustee in the observance or performance of any covenant, condition, or agreement contained in the Bonds or in the Indenture (other than a failure to pay of the principal of such Bonds then due only because of a declaration described in this paragraph) have been remedied to the satisfaction of the Trustee, then and in every such case the Trustee may, and on the written request of the Owners of not less than 25% in aggregate principal amount of Bonds not then due and payable by their terms (Bonds then due and payable only because of a declaration described in this paragraph will not be deemed to be due and payable by their terms), and then Outstanding will, by written notice to the Issuer, the Lessee, and the Owners of the Bonds, rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent Event of Default or impair any right consequent thereon. Upon any declaration of acceleration under the Indenture, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement to declare all payments thereunder to be immediately due and payable.

### **Remedies Upon the Occurrence of an Event of Default**

Whenever any Event of Default shall have occurred and be continuing, the Trustee may, and on the written request of the Owners of not less than 25% in principal amount of Bonds then Outstanding shall, proceed to protect and enforce its rights and the rights of the Owners under the laws of the Commonwealth or under the Bond Documents by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained in the Indenture or in aid or execution of any power granted in the Indenture or for the enforcement of any proper legal or equitable remedy, as the Trustee, being advised by counsel chosen by the Trustee, shall deem most effectual to protect and enforce such rights. The Trustee shall, without further direction, take all actions necessary to receive payment on the Guaranty.

### **Application of Moneys**

All money received by the Trustee pursuant to any right given or action taken under the Bond Documents will, after payment of the costs and expenses of the proceedings resulting in the collection of such money and the fees and expenses of the Trustee, be deposited in the Bond Fund and applied to the payment of the principal of, redemption premium, if any and interest then due and unpaid on the Bonds in accordance with the provisions of the Indenture. Anything in the Indenture to the contrary notwithstanding, if at any time the money in the Bond Fund is not sufficient to pay the interest on or the principal of Bonds as the same becomes due and payable (either by their terms or by acceleration of maturities), such money, together with any money then available or thereafter becoming available for such purpose, whether through the exercise of the remedies described under this heading or otherwise, shall be applied as follows:

- (a) If the principal of all Bonds shall not have become or shall not have been declared due and payable, all such money will be applied as follows:

FIRST: to the payment to the persons entitled thereto of all installments of interest on Bonds then due and payable in the order in which such installments became due and payable and, if the amount available is not sufficient to pay in full any particular installment, then to the payment, ratably according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in such Bonds;

SECOND: to the payment to the persons entitled thereto of the unpaid principal of any Bonds that have become due and payable (other than Bonds deemed to have been paid under the Indenture), in the order of their due dates, and, if the amount available is not sufficient to pay in full the principal of Bonds due and payable on any particular date, then to the payment ratably according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

THIRD: to the payment of the interest on and the principal of Bonds, to the purchase and retirement of Bonds, and to the redemption of Bonds, all in accordance with the Indenture.

(b) If the principal of all Bonds shall have become or shall have been declared due and payable, all such money will be applied to the payment of principal and interest then due on the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all Bonds shall have been declared due and payable and if such declaration thereafter shall have been rescinded and annulled, then, if the principal of all Bonds later becomes due and payable or is declared due and payable, the money then remaining in and thereafter accruing to the Bond Fund will be applied in accordance with the provisions of the Indenture described in subsection (a) of this section.

### **Discontinuance of Proceedings**

If any proceeding taken by the Trustee or Owners on account of any Event of Default has been discontinued or abandoned for any reason, then and in every such case, the Issuer, the Trustee and the Owners will be restored to their former positions and rights under the Indenture, respectively, and all rights, remedies, powers and duties of the Trustee will continue as though no proceeding had been taken.

### **Discharge of Lien**

If (i) the Bonds shall have become due and payable in accordance with their terms or otherwise as provided in the Indenture, and the whole amount of the principal and the interest and premium, if any, so due and payable on all Bonds is paid, and (ii) the Bonds shall not have become due and payable in accordance with their terms, and the Trustee holds sufficient Government Obligations, cash or a combination of both, the principal of and the interest on which, when due and payable, will provide sufficient money to pay the principal of, and the interest and redemption premium, if any, on all Bonds then Outstanding to the maturity date or dates of such Bonds or to the date or dates specified for the redemption thereof and the Issuer causes to be delivered to the Trustee a verification or other appropriate report to such effect issued by a nationally recognized firm of certified public accountants, and (iii) Bonds are to be called for redemption, and irrevocable instructions to call the Bonds for redemption have been given by the Issuer to the Trustee, and (iv) sufficient funds shall also have been provided or provision

made for paying all other obligations payable under the Indenture by the Issuer, then and in that case the right, title, and interest of the Trustee in the funds and accounts mentioned in the Indenture will then cease, determine and become void and, on demand of the Issuer and on being furnished with an opinion, in form and substance satisfactory to the Trustee, of counsel approved by the Trustee, to the effect that all conditions precedent to the release of the Indenture have been satisfied, the Trustee will release the Indenture and will execute such documents to evidence such release as may be reasonably required by the Issuer and will transfer to the Lessee any surplus in, and all balances remaining in, all funds and accounts.

### **Amendment of the Indenture**

The Issuer and the Trustee may, without the consent of or notice to any of the Owners, enter into an amendment to the Indenture or an indenture supplemental to the Indenture for any one or more of the following purposes:

- (a) to cure any error, ambiguity or formal defect or omission in, or to correct or supplement any defective provision of, the Indenture;
- (b) to add to the covenants and agreements of, and limitations and restrictions upon, the Issuer in the Indenture other covenants, agreements, limitations and restrictions to be observed by the Issuer for the protection of the Owners;
- (c) to evidence the appointment of a separate trustee or a co-trustee or the succession of a new trustee or the appointment of a new or additional paying agent or bond registrar;
- (d) to grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers, benefits, security, liabilities, duties or authority that may lawfully be granted to or conferred or imposed upon the Owners or the Trustee or either of them;
- (e) to subject to the lien and security interest of the Indenture additional revenues, properties or collateral;
- (f) to modify, amend or supplement the Indenture or any indenture supplemental to the Indenture in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any state and, if they so determine, to add to the Indenture or any indenture supplemental to the Indenture such other terms, conditions and provisions as may be permitted by the Trust Indenture Act of 1939, as amended, or any similar federal statute;
- (g) to modify, amend or supplement the Indenture in such manner as to assure the continued exclusion of interest on any Tax-Exempt Bonds from gross income of the Owners thereof for federal income tax purposes;
- (h) to comply with any provisions of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any rules or regulations promulgated thereunder;
- (i) to reflect a change in applicable law, provided that the Trustee shall determine that such amendment or supplemental indenture does not prejudice the rights of Owners; or

(j) in connection with any other change that, in the judgment of the Trustee (which may be in reliance upon an opinion of counsel), does not prejudice or materially adversely affect the Owners or impair the Security.

The Issuer and the Trustee will be required, without the consent of or notice to any of the Owners, to enter into an amendment to the Indenture or an indenture supplemental to the Indenture (a) in connection with the issuance of any Additional Bonds in accordance with the Indenture and the inclusion of additional Security in connection therewith, (b) to the extent necessary with respect to the land and interests in land, buildings, furnishings, machinery, equipment and all other real and personal property that may form a part of the Project, so as to identify the same more precisely or to substitute or add additional land or interests in land, buildings, furnishings, machinery, equipment or real or personal property as Security or (c) with respect to any changes required to be made in the description of the Security in order to conform with similar changes made in the Loan Agreement.

Exclusive of indentures supplemental to the Indenture described above under this heading "Amendment of the Indenture," the Owners of not less than two-thirds in aggregate principal amount of the Bonds then Outstanding will have the right, from time to time, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental thereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Indenture or in any supplemental indenture; provided, however, that nothing contained in the Indenture shall permit, or be construed as permitting, (a) a change of the stated maturity or reduction in the principal amount of, or a reduction in the rate or an extension of the time of payment of interest on, or a reduction of any premium payable on the redemption of, any Bonds, without the consent of every Owner of such Bonds, (b) the creation of any lien or security interest (other than any Permitted Encumbrances) prior to or on a parity with the lien and security interest of the Indenture without the consent of the Owners of all the Bonds at the time Outstanding that would be affected by the action to be taken, (c) [reserved], (d) a reduction in the aforesaid aggregate principal amount of Bonds the Owners of which are required to consent to any such amendment or supplemental indenture, without the consent of the Owners of all the Bonds at the time Outstanding that would be affected by the action to be taken, (e) the modification of the trusts, powers, obligations, remedies, privileges, rights, duties or immunities of the Trustee, without the written consent of the Trustee, (f) a privilege or priority of any Bond or Bonds over any other Bond or Bonds or (g) the release of or requirements for the release of the Indenture, without the consent of the Owners of all of the Bonds at the time Outstanding that would be affected by the action to be taken. Any amendment pursuant to this paragraph is also subject to the prior written consent of the Ground Lessor.

The Trustee will give written notice of any amendment to the Indenture or to any indenture supplemental to the Indenture to each Rating Agency, if any, then rating any series of Bonds.

#### **Amendment of Other Bond Documents**

The Issuer and the Trustee will be required, without the consent of or notice to the Owners, to consent to any amendment, change or modification of the Bond Documents other than the Indenture as may be required (a) by the provisions of the Loan Agreement and the Indenture, (b) in connection with the issuance of Additional Bonds, (c) for the purpose of curing any error, ambiguity or formal defect or omission therein or to correct or supplement any defective provision thereof, (d) in connection with the land and interests in land, buildings, machinery, equipment and other real or personal property described in the Loan Agreement and the Leasehold Mortgage so as to identify more precisely the same or to substitute or add additional land or interests in land, buildings, machinery, equipment or other real or personal property, (e) so as to add additional rights acquired in accordance with the provisions of the Bond Documents, (f) to substitute a new lessee under the Loan Agreement as provided therein, (g) to

comply with any provisions of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any rules or regulations promulgated thereunder or (h) in connection with any other change therein that, in the judgment of the Trustee, does not prejudice the Trustee or materially adversely affect the Owners.

Except for the amendments, changes or modifications described in the preceding paragraph, neither the Issuer nor the Trustee may consent to any other amendment, change or modification of the Bond Documents other than the Indenture without giving notice to and obtaining the written approval or consent of the Owners of not less than two-thirds in aggregate principal amount of the Bonds then Outstanding; provided, however, that nothing in the Indenture permits or is to be construed as permitting (a) an extension of the time for payment of any amounts payable under the Loan Agreement or a reduction in the amount of any payment or in the total amount due under the Loan Agreement, without the consent of every Owner affected thereby, or (b) a reduction in the aforesaid aggregate principal amount of Bonds the Owners of which are required to consent to any such amendment, change or modification of such other Bond Documents, without the consent of the Owners of all the Bonds at the time Outstanding that would be affected by the action to be taken.

The Trustee will give written notice of any amendment, change or modification of the Bond Documents other than the Indenture to each Rating Agency, if any, then rating any series of Bonds.

### **Trustee's Fees and Expenses**

Under the Indenture, upon the occurrence of an Event of Default, the Trustee may apply moneys received by it pursuant to any action taken by it in accordance with the Indenture in connection with such Event of Default to the payment of the costs and expenses of the proceedings resulting on the collection of such moneys and to the payment of the expenses, liabilities and advances incurred or made by the Trustee prior to its applying such moneys to the payment of principal of, premium, if any, and interest on, the Bonds.

### **The Trustee**

***Duties of the Trustee.*** The Trustee, prior to the occurrence of an Event of Default and after the waiving or curing of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in the Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by the Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

***Right of Trustee To Perform Duties Through Others.*** The Trustee may execute any of the trusts or powers under the Indenture and perform any of its duties by or through attorneys, accountants, agents, receivers or employees, shall not be responsible for the acts of any attorneys, accountants, agents or receivers appointed by it in good faith and without negligence, will be entitled to advice of counsel concerning all matters of trusts of the Indenture and the duties thereunder and may in all cases pay such reasonable compensation to all such attorneys, accountants, agents, receivers and employees as may be reasonably employed in connection with the trusts of the Indenture. The Trustee may act upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Issuer or the Lessee) approved by the Trustee in the exercise of reasonable care. The Trustee will not be responsible for any loss or damage resulting from any action or nonaction taken in good faith in reliance upon such opinion or advice.



**Reliance on Notices, Requests, Etc.** The Trustee will be protected in acting in good faith upon any notice, request, resolution, consent, certificate, order, affidavit, letter, telegram or other paper or document, or oral communication or direction, reasonably believed to be genuine and correct and to have been signed or sent or given by the proper person or persons. As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceedings, the Trustee will be entitled to rely upon a certificate signed on behalf of the Issuer by the Authorized Issuer Representative or by the Mayor and attested by the Clerk and upon a certificate signed on behalf of the Lessee by the Authorized Lessee Representative or by its President or Vice President and attested by its Secretary as sufficient evidence of the facts therein contained and, prior to the occurrence of a default of which the Trustee shall have been notified or of which it shall be deemed to have notice as provided in the Indenture, will also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may, at its discretion, secure such further evidence deemed necessary or advisable, but will in no case be bound to secure the same.

**Notice of Default.** The Trustee is not required to take notice or be deemed to have notice of any default by the Issuer under the Indenture or the Lessee under the Loan Agreement except (a) failure by the Issuer to cause to be made any of the payments to the Trustee required to be made by the provisions of the Indenture described herein under the headings "Revenue Fund," "Bond Fund," "Redemption Fund," "Issuance Cost Fund," "Repair and Replacement Fund," "Insurance and Condemnation Funds," and "Surplus Fund" and (b) failure by the Lessee to make any of the Loan Payments to the Trustee, unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the Owners of at least 25% in aggregate principal amount of all Bonds then Outstanding. Notwithstanding any other provision of the Indenture, no right of the Trustee to indemnification will relieve the Trustee from responsibility for making payments on the Bonds when due from money available to it from making claims on the Guaranty or accelerating the Bonds as required by the Indenture.

**Notice to Bondowners if Default Occurs.** If a failure to comply occurs of which the Trustee is required to take notice or if notice of a failure to comply is given to the Trustee as provided in the provisions of the Indenture described in the preceding paragraph, the Trustee will be required to give written notice thereof to the Lessee and the Issuer as is specified in the Indenture and will be required to give written notice thereof by first-class mail, within 15 days (unless such failure to comply is cured or waived), to the Owners of all Bonds then Outstanding shown by the Bond Register, provided that, except in the case of a default in the payment of the principal of, premium, if any, or interest on any Bond, the Trustee may withhold such notice to the Bondowners if and so long as the board of directors, the executive committee or a trust committee of directors or responsible officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Bondowners.

**Resignation by the Trustee.** The Trustee and any successor trustee may at any time resign from the trusts created by the Indenture by giving 30 days' written notice to the Issuer, to the Lessee, to each Rating Agency, if any, then rating any series of Bonds and, by first class (postage prepaid), to each Bondowner shown on the Bond Register, and such resignation will only take effect at the appointment of a successor trustee pursuant to the provisions of the Indenture and acceptance by the successor trustee of such trusts. If no successor trustee shall have been so appointed by the Bondholders pursuant to the Indenture within 30 days after delivery of such notices, a temporary trustee may be appointed by the Issuer pursuant to the Indenture. In the event that no successor trustee is appointed and has accepted appointment within 30 days of the giving of written notice by the resigning trustee as aforesaid, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee.

**Removal of the Trustee.** The Trustee may be removed at any time (a) by the Issuer for any breach of the trusts set forth in the Indenture or for failure or refusal to act as trustee or (b) by an

instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by a Majority of the Bondholders or (c) by an instrument in writing delivered to the Trustee and the Issuer and signed by the Lessee, provided no Event of Default under the Indenture or the Loan Agreement shall have occurred and be continuing. Removal of the Trustee pursuant to (b) or (c) above will not be effective until the Trustee is paid for all Ordinary Services and Extraordinary Services of the Trustee rendered under the Indenture and for all Ordinary Expenses and Extraordinary Expenses of the Trustee incurred under the Indenture. The Issuer, or the Lessee on behalf of the Issuer, will give written notice of removal of the Trustee in accordance with the provisions of the Indenture described in this paragraph to each Rating Agency, if any, then rating any series of Bonds.

***Appointment of Successor Trustee; Temporary Trustee.*** In case the Trustee shall (a) resign or be removed or (b) be dissolved or shall be in the course of dissolution or liquidation, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court or otherwise become incapable of acting under the Indenture, a successor may be appointed by an instrument executed and signed by the Mayor and attested by the Clerk under its seal and executed by an officer of the Lessee, provided that if a successor trustee is not so appointed within 10 days after notice of resignation is mailed or an instrument of removal is delivered as provided by the provisions of the Indenture described in the preceding paragraph, respectively, or within 10 days of the Issuer's knowledge of any of the events described in (b) hereinabove, then the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing signed by or on behalf of such Owners, delivered personally or sent by registered mail to the Issuer and the Lessee, may designate a successor trustee. Until a successor trustee shall be appointed by the Bondowners in the manner described above, the Issuer, by resolution or ordinance and upon written notice to the Lessee, will be required to appoint a temporary trustee to fill such vacancy, and any such temporary trustee so appointed by the Issuer will immediately and without further act be superseded by the successor trustee so appointed by the Bondowners. Notice of the appointment of a successor trustee will be given in the same manner as with respect to the resignation of the Trustee. Every such successor trustee or temporary trustee is required to be a trust company or bank organized under the laws of the United States of America or any state thereof that is in good standing within or outside the State, is eligible to serve as trustee, bond registrar and paying agent under applicable law, is duly authorized to exercise trust powers and subject to examination by federal or state authority, shall have a reported combined capital and surplus of not less than \$75,000,000 and is an institution willing, qualified and able to accept the trusteeship upon the terms and conditions of the Indenture.

In case at any time the Trustee shall resign and no appointment of a successor trustee shall be made pursuant to the foregoing provisions of the Indenture prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the Owner of any Bond or the resigning Trustee may apply to any court of competent jurisdiction to appoint a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper, appoint a successor trustee.

Notwithstanding any other provision of the Indenture, no removal, resignation or termination of the Trustee (or any paying agent) shall take effect until a successor shall be appointed.

### **Payments Due on Non-Business Days**

In any case where a payment is due on any Series 2010A Bond on a date that is not a Business Day, such payment may be made on the immediately succeeding Business Day with the same force and effect as if made on the scheduled payment date.

## THE GUARANTY

### **Obligation Guaranteed**

The Foundation, in the Guaranty, unconditionally guaranties to the Trustee all of the Lessee's payment obligations under the Bond Documents (whether regularly scheduled or by prepayment) (such obligations of the Lessee are referred to in the Guaranty as the "Obligations") on or prior to the Termination Time (as defined below). The Guaranty is a guaranty of payment and not of collection.

The obligations of the Foundation under the Guaranty are independent, absolute, irrevocable and unconditional and shall remain in full force and effect until the Lessee has fully satisfied all of the Obligations (such time being the "Termination Time").

***Guaranty Payments.*** If on the date (the "Bond Fund Assessment Date") eight calendar days prior to any date on which any payment is required to be made from the Bond Fund (as defined in the Indenture) there are insufficient moneys on deposit therein, to make such payment, the Trustee shall immediately make demand on the Guaranty to the Foundation for payment of an amount sufficient to fully pay all amounts then due for principal, premium, if any, and interest on the Series 2010A Bonds. The Trustee shall give telephonic (promptly confirmed in writing) or telegraphic notice to the Foundation by the close of business on the Bond Fund Assessment Date, which claim for payment shall provide that the Foundation is required to make payment to the Trustee by no later than 2:00 p.m., Louisville, Kentucky time, on the second Business Day (as defined in the Indenture) following such claim.

***Limitation on Liability.*** Notwithstanding any of the terms and provisions of the Guaranty, the maximum amount guaranteed under the Guaranty shall not exceed aggregate debt service due on the Series 2010A Bonds; provided, however, in no event shall the Foundation be liable thereunder in any Bond Year (as defined in the Indenture) for an amount greater than maximum annual debt service on the Series 2010A Bonds.

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**APPENDIX C**

**FORM OF BOND COUNSEL OPINION**

February 23, 2010

ULH, Inc.  
Louisville, Kentucky

The Bank of New York Mellon Trust Company, N.A., as  
Trustee  
Louisville, Kentucky

Louisville/Jefferson County Metro Government  
Louisville, Kentucky

Morgan Keegan & Company, Inc.  
Memphis, Tennessee

Re: \$22,020,000 Louisville/Jefferson County Metro Government Student Housing Industrial Building Refunding Revenue Bonds (ULH, Inc. – Bettie Johnson Hall Project), Series 2010A

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by the Louisville/Jefferson County Metro Government (the “Issuer”), a consolidated local government of the Commonwealth of Kentucky (the “Commonwealth”) of its \$22,020,000 Louisville/Jefferson County Metro Government Student Housing Industrial Building Refunding Revenue Bonds (ULH, Inc. – Bettie Johnson Hall Project), Series 2010A (the “Bonds”).

We have examined the law and such certified proceedings and other papers as we have deemed necessary to render this opinion. The scope of our engagement as bond counsel extends solely to an examination of the facts and law incident to rendering the opinions specifically expressed herein. This opinion is dated as of the date of issuance and delivery of the Bonds.

Unless the context clearly indicates otherwise or as otherwise defined herein, each capitalized term used in this opinion shall have the same meaning as set forth in the Trust Indenture (the “Indenture”) dated as of January 1, 2010 by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as Trustee.

The Issuer is issuing the Bonds pursuant to the Indenture and at the request of ULH, Inc. (the “Company”), a nonprofit corporation organized and existing under the laws of the Commonwealth, to (i) refund the \$24,080,000 County of Jefferson, Kentucky Variable Rate Demand Student Housing Industrial Building Revenue Bonds (ULH, Inc. – University of Louisville Project), Series 2001A and (ii) pay the costs of issuing the Bonds. The Issuer is loaning the proceeds from the issuance of the Bonds to the Company pursuant to the Loan Agreement (the “Loan Agreement”) dated as of January 1, 2010 by and between the Issuer and the Company. The Company is required to make payments under the Loan

Agreement in amounts sufficient to pay, among other things, the principal, premium, if any, and interest on the Bonds.

The Issuer is selling the Bonds through the Bond Purchase Agreement (the "Bond Purchase Agreement") dated January 21, 2010, by and among the Issuer, the Company and Morgan Keegan & Company, Inc.

We refer you to the Bonds and to the Indenture for a description of the security for the Bonds, the manner in which and times at which the principal of and interest on the Bonds are payable, the interest rate payable on the Bonds, the provisions under which the Bonds may be redeemed prior to their stated maturity, and all other details of the Bonds.

As to questions of fact material to our opinion, without undertaking to verify the same by independent investigation, we have relied upon representations of the Company and the Issuer contained in the Loan Agreement and the Indenture, the certified proceedings of the Issuer and certifications by the officers, employees and representatives of the Company and the Issuer.

The Company has represented in the Tax Compliance Agreement (the "Tax Agreement"), dated as of February 23, 2010 from the Issuer and the Company, that the Company is (a) an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), (b) not a "private foundation" within the meaning of Section 509(a) of the Code, and (c) exempt from federal income taxation under Section 501(a) of the Code, except for unrelated business income subject to taxation under Section 511 of the Code. The Company has covenanted that throughout the term of the Loan Agreement it will not carry on or permit to be carried on, in any property now or hereafter owned by it, any trade or business if the conduct of such trade or business would adversely affect the validity of the Bonds or cause the interest paid by the Issuer on the Bonds to be includable in gross income for purposes of federal income tax.

The Code sets forth certain other requirements which must be met subsequent to the issuance and delivery of the Bonds for interest thereon to remain excludable from the gross income of the owners of the Bonds for federal income tax purposes as qualified 501(c)(3) bonds under the Code. The Issuer and the Company have covenanted to comply with such requirements in the Indenture, the Loan Agreement and the Tax Agreement. Noncompliance with such requirements may cause the interest on the Bonds to be includable in the gross income of the owners of the Bonds for federal income tax purposes, retroactive to the date of issue of the Bonds or as of some later date.

Reference is made to the accompanying opinion of Stites & Harbison, PLLC, counsel to the Company, with respect to certain matters pertaining to the Company and the Bond Documents executed and delivered by the Company.

Reference is made to the opinion of the Jefferson County Attorney, counsel to the Issuer, with respect to certain matters pertaining to the Issuer and the Bond Documents executed and delivered by the Issuer, upon which opinion we have relied exclusively as to the matters set forth therein.

In connection with this opinion, we have not reviewed or examined any financial information or other information with respect to the Issuer or the Company or any offering material relating to the Issuer or the Company, and we express no opinion herein with respect thereto. In addition, we express no opinion herein as to the accuracy, adequacy or completeness of the Official Statement relating to the Bonds.

This opinion does not constitute or imply a recommendation of the market or financial value of the Bonds or an assessment of the strength or appropriateness of the covenants by any of the parties to any of the Bond Documents, the possibility of default (other than on account of the invalidity of the Bonds), the eligibility or suitability of the Bonds as an investment, or any other legal or financial aspect of the Bonds not expressly addressed herein.

We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the conformity to original documents of all documents submitted to us as certified or photostatic copies and the authenticity of the originals of such latter documents.

Based upon, and subject to, the foregoing, and on the basis of existing law, it is our opinion, as of the date hereof, that:

1. The Issuer is a validly created and existing consolidated local government of the Commonwealth with full power and authority under the laws of the Commonwealth, including the Act, to issue and sell the Bonds and to enter into and perform its obligations under the Indenture.

2. The Bonds (a) have been duly and properly authorized, executed and delivered by the Issuer, (b) constitute the valid and legally binding, special limited obligations of the Issuer, (c) are enforceable against the Issuer in accordance with their terms and (d) are entitled to the benefit and security of the Indenture to the extent provided therein.

3. Each of the Indenture, the Loan Agreement, the Tax Agreement and the Bond Purchase Agreement has been duly and properly authorized, executed and delivered by the Issuer, and, assuming the due and proper authorization, execution and delivery thereof by the parties thereto other than the Issuer, constitutes the valid and legally binding obligation of the Issuer and is enforceable against the Issuer in accordance with its terms.

4. Pursuant to the Indenture, the Issuer has effectively pledged and assigned the Trust Estate to the Trustee for the benefit of the owners of the Bonds (subject to the Unassigned Rights of the Issuer).

5. Under existing law, as presently enacted and construed, interest on the Bonds is excluded from gross income for federal income tax purposes, assuming the accuracy of certifications of the Issuer and the Company and assuming continuing compliance by the Issuer and the Company with the requirements of the Code. Interest on the Bonds will not be an item of tax preference for purposes of determining alternative minimum taxable income for individuals or corporations, but such interest will be taken into account in determining the alternative minimum tax for certain corporations and the foreign branch profits tax. Interest on the Bonds held by foreign corporations may be subject to the branch profits tax imposed by the Code.

6. Under the laws of the Commonwealth as presently enacted and construed, the Bonds and the interest thereon are exempt from income and ad valorem taxation by the Commonwealth and any of its political subdivisions. The Bonds are not exempt from estate or inheritance taxes, or any taxes on financial institutions measured by income, or any other taxes not levied or assessed directly on the Bonds, the interest thereon, their transfer or the income therefrom.

7. The Company has designated the Bonds as qualified tax-exempt obligations under Section 265(b)(3)(G) of the Code.

Ownership of Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies,

individual recipients of Social Security or Railroad Retirement benefits, certain S corporations, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry the Bonds. We express no opinion as to such collateral tax consequences.

We call your attention to the fact that the Bonds, and the interest thereon, are special limited obligations of the Issuer, payable solely from the assets pledged under the Indenture for the payment thereof. The Bonds have been issued under the provisions of the Act and do not represent or constitute a debt or pledge of the faith and credit or taxing power of the Issuer, the Commonwealth or any political subdivision thereof. Principal of, premium (if any) and interest on the Bonds are payable solely from the revenues pledged pursuant to the Indenture.

The rights of any purchaser of the Bonds and the enforceability of the Bonds, the Indenture, the Loan Agreement, the Tax Agreement, the Bond Purchase Agreement and any other agreements or obligations referred to herein are subject to (i) the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or a court of equity), including judicial limitations on rights to specific performance; (ii) the valid exercise of the constitutional powers of the United States of America and of the sovereign police and taxing powers of state or other governmental units having jurisdiction; and (iii) bankruptcy, insolvency, reorganization, moratorium or other similar laws heretofore or hereafter in effect affecting creditors' rights, to the extent constitutionally applicable.

Very truly yours,

STITES & HARBISON, PLLC



## APPENDIX D

### FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement, dated as of January 1, 2010 (the “**Disclosure Agreement**”), is executed and delivered by ULH, Inc., a Kentucky nonprofit corporation (the “**Borrower**”), on behalf of itself and University Of Louisville Foundation, Inc., a Kentucky nonprofit corporation (the “**Foundation**”, and together with the Borrower, the “**Obligor**”), and The Bank of New York Mellon Trust Company, N.A. (the “**Trustee**”) in connection with the issuance by the Louisville/Jefferson County Metro Government (the “**Issuer**”) of \$22,020,000, Louisville/Jefferson County Metro Government, Student Housing Industrial Building Refunding Revenue Bonds, (ULH, Inc. – Bettie Johnson Hall Project), Series 2010A (the “**Bonds**”). The Bonds are being issued by the Issuer pursuant to a Trust Indenture (the “**Indenture**”) dated as of January 1, 2010, between the Issuer and The Bank of New York Mellon Trust Company, N.A., Louisville, Kentucky, as trustee (the “**Trustee**”), to finance a portion of the costs of issuing the Series 2010A Bonds and to refund the outstanding principal amount of the \$24,080,000 County of Jefferson, Kentucky Variable Rate Demand Student Housing Industrial Building Revenue Bonds (ULH, Inc. – University of Louisville Project), Series 2001A (the “**Series 2001A Bonds**”). The proceeds of the Series 2001A Bonds were used to (i) finance the cost of the acquisition of a four-story, approximately 224 apartment student housing facility with 493 beds on leased property located on one-half city block bounded by South Fourth Street and West Cardinal Boulevard, in Louisville, Jefferson County, Kentucky (the “**Project**”), (ii) fund the Debt Service Reserve Fund, (iii) provide working capital; and (iv) pay a portion of the costs of issuing the Series 2001A Bonds. The Borrower and the Trustee hereby covenant and agree as follows:

**Section 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the Borrower and the Trustee for the benefit of the registered owners of Bonds and in order to assist the Participating Underwriter in complying with the Rule (defined below). The Borrower and the Trustee acknowledge that the Issuer has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Agreement, and has no liability to any person, including any registered owner of the Bonds, with respect to any such reports, notices or disclosures.

**Section 2. Definitions.** In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“**Annual Report**” shall mean any Annual Report provided by the Borrower pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“**Beneficial Owner**” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“**Disclosure Representative**” shall mean any manager of the Borrower or his or her designee, or such other person as the Borrower shall designate from time to time.

“**Dissemination Agent**” shall mean the Trustee, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Borrower and which has filed with the Trustee a written acceptance of such designation.

“**Listed Events**” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“**MSRB**” means the Municipal Securities Rulemaking Board. Reference is made to Commission Release No. 34-59062, December 8, 2008 (the “Release”) relating to the MSRB’s Electronic Municipal Market Access (“**EMMA**”) system for municipal securities disclosure that became effective on July 1, 2009. To the extent applicable to this Disclosure Agreement, the Borrower shall comply with the Release and with EMMA.

“**Participating Underwriter**” shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“**Rule**” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

### **Section 3. Provision of Annual Reports.**

(a) The Borrower shall, or shall cause the Dissemination Agent to, as soon as available, but in any event not later than February 1 of each year, commencing February 1, 2010 provide to the MSRB an Annual Report in an electronic format accompanied by identifying information as prescribed by the MSRB which is consistent with the requirements of Section 4 of this Disclosure Agreement. Not later than fifteen (15) Business Days prior to said date, the Borrower shall provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement, provided that the audited financial statements of the Borrower may be submitted separately from the balance of the Annual Report.

(b) If by fifteen (15) Business Days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, the Trustee has not received a copy of the Annual Report, the Trustee shall contact the Borrower and the Dissemination Agent to determine if the Borrower is otherwise in compliance with subsection (a).

(c) If the Trustee is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Trustee shall send a notice to the MSRB of such failure to provide in substantially the form attached as **Exhibit A**.

(d) The Dissemination Agent shall file a report with the Borrower, and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided.

**Section 4. Content of Annual Reports.** The Borrower’s Annual Report shall contain or incorporate by reference the following:

(a) The audited financial statements of the Obligor, which may be consolidated, for the most recent fiscal year, prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board, and certified as to accuracy and completeness in all material respects by a financial officer of the Borrower or any manager.

(b) To the extent not included in the financial statements referred to in paragraph (a) hereof, financial, operating and other statistical information set forth under the caption “THE PROJECT” in the Official Statement relating to the Bonds, which information may be unaudited, but is to be certified as to accuracy and completeness in all material respects by the financial officer of the Borrower or any manager to the best of his or her knowledge, which certification may be based on the reliability of information obtained from governmental or other third party sources.

Notwithstanding paragraph (a) above, if the audited financial statements are not available by the date specified, the Borrower shall provide on or before such date unaudited financial statements in the format required for the audited financial statements as part of the Annual Report and the Borrower shall provide the audited financial statements promptly when available, provided that the Borrower shall not be required by the provisions of this Agreement to obtain an audit, but is required to file the audit as herein contemplated if one is otherwise prepared.

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues of the Borrower or related public entities, which have been submitted to each of the MSRB or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Borrower shall clearly identify each such other document so incorporated by reference.

#### **Section 5. Reporting of Significant Events.**

(a) This Section 5 shall govern the giving of notices of the occurrence of any of the following applicable events:

- (i) Principal and interest payment delinquencies;
- (ii) Nonpayment related defaults;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions or events affecting the tax-exempt status of the Bonds;
- (vii) Modifications to rights of Bondholders;
- (viii) Bond calls other than for a scheduled sinking fund redemption;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the Bonds; and
- (xi) Rating changes.

(b) The Trustee shall, within one (1) Business Day of obtaining actual knowledge of the occurrence of any of the Listed Events contact the Disclosure Representative, inform such person of the

event, and request that the Borrower promptly notify the Trustee in writing whether or not to report the event pursuant to subsection (f).

(c) Whenever the Borrower obtains actual knowledge of the occurrence of a Listed Event, because of a notice from the Trustee pursuant to subsection (b) or otherwise, the Borrower shall as soon as possible determine if such event would constitute material information for Holders of Bonds.

(d) If the Borrower has determined that knowledge of the occurrence of a Listed Event would be material information for owners of Bonds, the Borrower shall promptly notify the Trustee in writing. Such notice shall instruct the Trustee to report the occurrence pursuant to subsection (f).

(e) If in response to a request under subsection (b), the Borrower determines that the Listed Event would not be material information for owners of Bonds, the Borrower shall so notify the Trustee in writing and instruct the Trustee not to report the occurrence pursuant to subsection (f).

(f) If the Trustee has been instructed by the Borrower to report the occurrence of a Listed Event, the Trustee shall file a notice of such occurrence with the MSRB. Notwithstanding the foregoing:

(i) notice of Listed Events described in subsections (a)(viii) and (ix) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to the registered owners of affected Bonds; and

(ii) notice of the occurrence of a Listed Event described in subsections (a)(i), (viii) or (ix) shall be given by the Trustee unless the Borrower gives the Trustee affirmative instructions not to disclose such occurrence.

**Section 6. Termination of Reporting Obligation.** The Borrower's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If the Borrower's obligations under the Loan Agreement are assumed in full by some other entity, such person shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the Borrower, and the original Borrower shall have no further responsibility hereunder.

**Section 7. Dissemination Agent.** The Borrower may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement and may discharge any Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Trustee shall be the Dissemination Agent.

**Section 8. Default.** In the event of a failure of the Borrower or the Trustee to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of any Participating Underwriter or the registered owners of at least 25% aggregate principal amount of Outstanding Bonds shall), or any registered owner and any beneficial owner of Bonds may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Borrower or the Trustee to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an event of default under the Indenture or the Loan Agreement, and the sole remedy under this Disclosure Agreement in the event of any failure of the Borrower or the Trustee to comply with this Disclosure Agreement shall be an action to compel performance.

**Section 9. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Agreement, the Borrower and the Trustee may amend this Disclosure Agreement (and the Trustee shall agree to any amendment so requested by the Borrower) and any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to both the Borrower and the Trustee to the effect that such amendment or waiver would not, in and of itself, cause the agreements herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

**Section 10. Additional Information.** Nothing in this Disclosure Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any annual report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Borrower chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the Borrower shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**Section 11. Duties, Immunities and Liabilities of Trustee and Dissemination Agent.** Article XI of the Indenture is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Indenture. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Borrower agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Borrower under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

**Section 12. Beneficiaries.** This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Borrower, the Trustee, the Participating Underwriter, and Holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

**Section 13. Counterparts.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

ULH, INC.

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

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.

By: \_\_\_\_\_  
Its Authorized Trust Officer

**EXHIBIT A**

**Notice of  
Failure to File Annual Report**

Name of Issuer: \_\_\_\_\_

Name of Bond Issue: \_\_\_\_\_

\_\_\_\_\_

Name of Obligated Person: \_\_\_\_\_

Date of Issuance: \_\_\_\_\_

NOTICE IS HEREBY GIVEN that the Borrower has not provided an Annual Report with respect to the above-named Bonds as required by Section 3 of the Continuing Disclosure Agreement delivered in connection with the issuance of the Bonds. The Borrower anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Trustee on behalf of the Borrower

By \_\_\_\_\_

cc: Borrower

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**APPENDIX E**

**CERTAIN CONSOLIDATED FINANCIAL STATEMENTS OF THE FOUNDATION**

**UNIVERSITY OF LOUISVILLE  
FOUNDATION, INC. AND AFFILIATES**

**Accountants' Report and Consolidated Financial Statements  
June 30, 2009 and 2008**

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**UNIVERSITY OF LOUISVILLE  
FOUNDATION, INC. AND AFFILIATES**

**Accountants' Report and Consolidated Financial Statements**

**June 30, 2009 and 2008**

## University of Louisville Foundation, Inc. and Affiliates

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## Independent Accountants' Report

Board of Directors  
University of Louisville Foundation, Inc.  
and Affiliates  
Louisville, Kentucky

We have audited the accompanying consolidated statements of financial position of the University of Louisville Foundation, Inc. and Affiliates (Foundation) as of June 30, 2009 and 2008, and the related consolidated statements of activities and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Foundation's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Foundation as of June 30, 2009 and 2008, and the changes in its net assets and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 7, in 2009 the Foundation changed its method of accounting for fair value measurements in accordance with Financial Accounting Standards Statement No. 157.

As more fully discussed in Note 22, in 2009 the Foundation included in its consolidated financial statements certain affiliates which are controlled by the Foundation and were transferred to it during the year in accordance with Financial Accounting Standards Statement No. 154.

*BKD, LLP*

September 30, 2009

**University of Louisville Foundation, Inc. and Affiliates**  
**Consolidated Statements of Financial Position**  
**June 30, 2009 and 2008**  
(In Thousands)

|   | <b>2009</b> | <b>2008</b> |
|---|-------------|-------------|
| <b>ASSETS</b>   |             |             |
| Cash and cash equivalents   | \$ 13,152   | \$ 8,135    |
| Accounts, notes, and accrued interest receivable                                | 4,470       | 4,861       |
| Loan receivable from the University of Louisville<br>Athletic Association, Inc. | 2,705       | 3,205       |
| Prepaid expenses and other  | 2,084       | 2,373       |
| Contributions receivable  | 39,198      | 24,708      |
| Investments   | 599,040     | 714,988     |
| Restricted cash   | 5,259       | 81,036      |
| Funds held in trust by others   | 34,847      | 46,822      |
| Restricted investments  | 5,570       | 5,023       |
| Other assets  | 536         | 254         |
| Capital assets, net   | 114,330     | 73,516      |
| Total assets  | \$ 821,191  | \$ 964,921  |
| <br><b>LIABILITIES AND NET ASSETS</b>   |             |             |
| Liabilities:  |             |             |
| Accounts payable  | \$ 5,789    | \$ 4,787    |
| Funds held in trust for others  | 41,518      | 58,554      |
| Bonds and notes payable   | 83,940      | 57,428      |
| Other   | 14,472      | 11,585      |
| Due to University of Louisville   | 29,836      | 8,819       |
| Total liabilities   | 175,555     | 141,173     |
| Net assets:   |             |             |
| Unrestricted:   |             |             |
| Unrestricted - designated   | 249,758     | 418,874     |
| Unrestricted - undesignated   | 20,557      | 28,712      |
| Total unrestricted  | 270,315     | 447,586     |
| Temporarily restricted  | 43,577      | 35,373      |
| Permanently restricted  | 331,744     | 340,789     |
| Total net assets  | 645,636     | 823,748     |
| Total liabilities and net assets  | \$ 821,191  | \$ 964,921  |

See notes to consolidated financial statements

**University of Louisville Foundation, Inc. and Affiliates**  
**Consolidated Statements of Activities**  
**Years Ended June 30, 2009 and 2008**  
(In Thousands)

|   | <u>Unrestricted</u> |                   | <u>Temporarily restricted</u> |                  | <u>Permanently restricted</u> |                   | <u>Totals</u>     |                   |
|---|---------------------|-------------------|-------------------------------|------------------|-------------------------------|-------------------|-------------------|-------------------|
|   | <u>2009</u>         | <u>2008</u>       | <u>2009</u>                   | <u>2008</u>      | <u>2009</u>                   | <u>2008</u>       | <u>2009</u>       | <u>2008</u>       |
| <b>REVENUES, GAINS AND OTHER SUPPORT</b>                      |                     |                   |                               |                  |                               |                   |                   |                   |
| Gifts   | \$ 26,265           | \$ 23,689         | \$ 14,687                     | \$ 2,880         | \$ 8,037                      | \$ 9,629          | \$ 48,989         | \$ 36,198         |
| Research Challenge Trust Fund                                 | -                   | -                 | -                             | -                | -                             | 2,154             | -                 | 2,154             |
| Investment income   | 1,838               | 2,899             | -                             | -                | -                             | -                 | 1,838             | 2,899             |
| Endowment income  | 7,275               | 10,543            | 241                           | 507              | -                             | 3                 | 7,516             | 11,053            |
| Net realized and unrealized loss on investments               | (144,291)           | (15,274)          | (6,865)                       | (3,093)          | (11,974)                      | (1,978)           | (163,130)         | (20,345)          |
| Residence hall income   | 6,373               | 6,166             | -                             | -                | -                             | -                 | 6,373             | 6,166             |
| Real estate income  | 986                 | 434               | -                             | -                | -                             | -                 | 986               | 434               |
| Actuarial gain/(loss) on annuity and trust obligations        | -                   | -                 | 1,812                         | (1,126)          | -                             | -                 | 1,812             | (1,126)           |
| Change in fair value of interest rate swap agreements         | -                   | (2)               | -                             | -                | -                             | -                 | -                 | (2)               |
| Other   | 4,171               | 3,522             | -                             | -                | -                             | -                 | 4,171             | 3,522             |
| Net assets released from restrictions:                        |                     |                   |                               |                  |                               |                   |                   |                   |
| Satisfaction of program restrictions                          | 1,595               | 1,429             | (1,595)                       | (1,429)          | -                             | -                 | -                 | -                 |
| Reclassifications   | 5,184               | (926)             | (76)                          | (330)            | (5,108)                       | 1,256             | -                 | -                 |
| Expiration of time restrictions                               | -                   | 5,890             | -                             | (5,890)          | -                             | -                 | -                 | -                 |
| Total revenues, gains and other support                       | <u>(90,604)</u>     | <u>38,370</u>     | <u>8,204</u>                  | <u>(8,481)</u>   | <u>(9,045)</u>                | <u>11,064</u>     | <u>(91,445)</u>   | <u>40,953</u>     |
| <b>EXPENSES</b>   |                     |                   |                               |                  |                               |                   |                   |                   |
| Contributions to various University of Louisville departments | 2,298               | 2,067             | -                             | -                | -                             | -                 | 2,298             | 2,067             |
| Payments on behalf of the University of Louisville for:       |                     |                   |                               |                  |                               |                   |                   |                   |
| Instruction   | 5,331               | 4,451             | -                             | -                | -                             | -                 | 5,331             | 4,451             |
| Research  | 23,250              | 18,704            | -                             | -                | -                             | -                 | 23,250            | 18,704            |
| Public service  | 3,028               | 2,367             | -                             | -                | -                             | -                 | 3,028             | 2,367             |
| Academic support  | 11,559              | 12,452            | -                             | -                | -                             | -                 | 11,559            | 12,452            |
| Student services  | 183                 | 229               | -                             | -                | -                             | -                 | 183               | 229               |
| Institutional support   | 11,026              | 10,796            | -                             | -                | -                             | -                 | 11,026            | 10,796            |
| Operation and maintenance of plant                            | 1,107               | 3,488             | -                             | -                | -                             | -                 | 1,107             | 3,488             |
| Scholarships/fellowships                                      | 7,833               | 6,947             | -                             | -                | -                             | -                 | 7,833             | 6,947             |
| Interest expense  | 2,724               | 2,342             | -                             | -                | -                             | -                 | 2,724             | 2,342             |
| Residence hall operations, including depreciation             | 5,513               | 5,560             | -                             | -                | -                             | -                 | 5,513             | 5,560             |
| Real estate operations, including depreciation                | 3,730               | 2,043             | -                             | -                | -                             | -                 | 3,730             | 2,043             |
| General and administrative, including fundraising             | 9,085               | 7,383             | -                             | -                | -                             | -                 | 9,085             | 7,383             |
| Total expenses  | <u>86,667</u>       | <u>78,829</u>     | <u>-</u>                      | <u>-</u>         | <u>-</u>                      | <u>-</u>          | <u>86,667</u>     | <u>78,829</u>     |
| Net change in assets  | <u>(177,271)</u>    | <u>(40,459)</u>   | <u>8,204</u>                  | <u>(8,481)</u>   | <u>(9,045)</u>                | <u>11,064</u>     | <u>(178,112)</u>  | <u>(37,876)</u>   |
| <b>Net assets at beginning of year</b>                        | <u>447,586</u>      | <u>488,045</u>    | <u>35,373</u>                 | <u>43,854</u>    | <u>340,789</u>                | <u>329,725</u>    | <u>823,748</u>    | <u>861,624</u>    |
| <b>Net assets at end of year</b>                              | <u>\$ 270,315</u>   | <u>\$ 447,586</u> | <u>\$ 43,577</u>              | <u>\$ 35,373</u> | <u>\$ 331,744</u>             | <u>\$ 340,789</u> | <u>\$ 645,636</u> | <u>\$ 823,748</u> |

See notes to consolidated financial statements

**University of Louisville Foundation, Inc. and Affiliates**  
**Consolidated Statements of Cash Flows**  
**Years Ended June 30, 2009 and 2008**  
**(In Thousands)**

|  | <u>2009</u>      | <u>2008</u>      |
|--|------------------|------------------|
| <b>CASH FLOWS FROM OPERATING ACTIVITIES</b>  |                  |                  |
| Decrease in net assets   | \$ (178,112)     | \$ (37,876)      |
| Adjustments to reconcile decrease in net assets to<br>net cash used in operating activities:     |                  |                  |
| Net realized and unrealized losses on investments  | 163,130          | 20,345           |
| Depreciation and amortization expense  | 4,182            | 3,999            |
| Change in fair value of interest rate swap agreements  | -                | 2                |
| Convertible note payable   | (400)            | -                |
| Loss on disposals of capital assets  | 24               | 24               |
| Transfer of capital assets to affiliates   | 262              | 44               |
| Contributions restricted for long-term investment  | (8,037)          | (11,783)         |
| Net (deductions) additions to annuitant & unitrust funds   | 100              | 1,636            |
| Change in present value of annuitant & unitrust payments   | (1,911)          | (510)            |
| Change in assets and liabilities:  |                  |                  |
| Accounts, notes, and accrued interest receivable   | 391              | (3,973)          |
| Prepaid expenses and other   | 221              | (539)            |
| Contributions receivable   | (14,490)         | 5,881            |
| Other assets   | (282)            | (45)             |
| Accounts payable   | 1,002            | 604              |
| Funds held in trust for others   | (4,727)          | 1,039            |
| Other liabilities  | 5,465            | 264              |
| Due to/from University of Louisville   | 21,017           | 10,570           |
| Net cash used in operating activities  | <u>(12,165)</u>  | <u>(10,318)</u>  |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES</b>  |                  |                  |
| Purchases of investments   | (171,851)        | (248,283)        |
| Sales of investments   | 123,787          | 315,025          |
| Purchases of capital assets  | (45,228)         | (6,249)          |
| Payments received on loan receivable from University of Louisville<br>Athletic Association, Inc. | 500              | 500              |
| Net cash (used in)/provided by investing activities  | <u>(92,792)</u>  | <u>60,993</u>    |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES</b>  |                  |                  |
| Proceeds from contributions restricted for investment in endowment                               | 8,037            | 11,783           |
| Payments to annuitants   | (767)            | (898)            |
| Proceeds from issuance of notes payable  | 27,692           | 400              |
| Principal payments of bonds and notes payable  | (765)            | (1,696)          |
| Net cash provided by financing activities  | <u>34,197</u>    | <u>9,589</u>     |
| Net (decrease)/increase in cash and cash equivalents   | (70,760)         | 60,264           |
| Cash and cash equivalents at beginning of year   | 89,171           | 28,907           |
| Cash and cash equivalents at end of year   | <u>\$ 18,411</u> | <u>\$ 89,171</u> |
| Supplemental cash flow data:   |                  |                  |
| Cash paid for interest   | <u>\$ 2,799</u>  | <u>\$ 2,320</u>  |

See notes to consolidated financial statements



**University of Louisville Foundation, Inc. and Affiliates**

**Notes to Consolidated Financial Statements**

**June 30, 2009 and 2008**

1. Organization and Summary of Significant Accounting Policies

a. Organization

The accompanying consolidated financial statements include the balances and transactions of the University of Louisville Foundation, Inc. (ULF), ULH, Inc. (ULH), University Holdings, Inc. (UHI), University of Louisville Development Corporation, LLC (ULDC), Nucleus: Kentucky's Life Science and Innovation Center, LLC (Nucleus), AAF-Louisville, LLC (AAF), MetaCyte Business Labs, LLC. (MetaCyte), KYT-Louisville, LLC (KYT), and Phoenix Place – Louisville, LLC (PPL) (collectively "Foundation"). All material intercompany balances and transactions have been eliminated in consolidation. ULF has been designated by the University of Louisville (the University) to receive funds derived from gifts and other sources, including funds held in trust by others. The Foundation is presented in the financial statements of the University as a discretely presented component unit.

As directed by its Board of Directors, the Foundation transfers funds to the University in satisfaction of donor restrictions. In addition, a portion of the unrestricted resources of the Foundation provides support for a variety of University activities.

ULH began operations on April 23, 2001 and is affiliated with ULF through certain common management and trustees. ULH leases land and issues revenue bonds for student housing purposes and receives, retains and disposes of real estate, and manages and operates the student housing properties it owns.

UHI (originally named Cardinal Real Estate, Inc.) is a non-stock, non-profit corporation created in September 2007 for the benefit of and to carry out the purposes of ULF. UHI provides oversight and management support to various affiliated entities. UHI is affiliated with ULF through certain common management and directors.

ULDC is a limited liability company formed in September 2007, whose sole member is ULF. Its purpose is to develop and manage the real estate operations of the Shelby Campus of the University. UHI is the Manager of ULDC.

Nucleus Healthcare, LLC was formed in February 2008 and subsequently renamed Nucleus: Kentucky's Life Sciences and Innovation Center, LLC (Nucleus). Its purpose is to integrate University resources, including life sciences, with those of the region, specifically as it relates to building and maintaining a research park in downtown Louisville. ULF is the sole member of Nucleus and UHI is the Manager.

In October 2008, ULF assumed substantially all of the assets and liabilities of the Louisville Medical Center Development Corporation (LMCDC) and subsequently sold them to Nucleus for no consideration. LMCDC was a discretely presented component unit of the University.

The activity of Nucleus is included in the consolidated statements of financial position as of June 30, 2009 and 2008 and in the consolidated statements of activity and consolidated statements of cash flows for the years ended June 30, 2009 and 2008.

MetaCyte is a limited liability company formed in October 2008. Its purpose is to identify and support commercially promising health science discoveries in the region. Metacyte was a former subsidiary of LMCDC. However, during the transfer of assets and liabilities between ULF and Nucleus, the assets and liabilities related to MetaCyte were segregated into a separate company. ULF is the sole member of MetaCyte and UHI is the Manager.

MetaCyte Equity Holdings, LLC is a limited liability company formed in February 2006. Its purpose is to hold the equity shares obtained by MetaCyte through development with start-up corporations. As of June 30, 2009 no equities have been transferred and MetaCyte Equity Holdings, LLC has had no activity since inception.

AAF is a limited liability company formed in February 2008, whose sole member is ULF. Its purpose is to develop and manage the real estate operations of Cardinal Station. UHI is the Manager of AAF.

KYT is a limited liability company formed in November 2008, whose sole member is ULF. Its purpose is to develop and manage the real estate purchase and development of property adjacent to the University. UHI is the Manager of KYT.

PPL is a limited liability company formed in April 2009, whose sole member is ULF. Its purpose is to develop and manage the real estate purchase and development of property near the health sciences campus of the University. UHI is the Manager of PPL.

b. Cash and Cash Equivalents

The Foundation considers all liquid investments (not held for long-term purposes) with original maturities of three months or less to be cash equivalents. At June 30, 2009 and 2008, cash equivalents consisted primarily of money market funds.

The financial institutions holding the Foundation's cash accounts are participating in the FDIC's Transaction Account Guarantee Program. Under that program, through June 30, 2010, all noninterest-bearing transaction accounts are fully guaranteed by the FDIC for the entire amount.

Effective October 3, 2008, the FDIC's insurance limits increased to \$250,000. The increase in federally insured limits is currently set to expire December 31, 2013. At June 30, 2009, the Foundation's interest-bearing cash accounts exceeded federally insured limits by approximately \$3.1 million.

c. Restricted Cash

The Foundation classifies all cash held by investment managers of the Combined Endowment Fund as restricted cash. The majority of this cash typically results from the liquidation of investments due to a change in investment managers and is reinvested within seven days. Other amounts result from the receipt of new endowment gifts or cash distributions from the investments and are reinvested in accordance with the investment policy.

d. Investments and Investment Return

Investments in marketable debt and equity securities are stated at current market value. Investments in real estate through limited partnerships are stated at appraised market values, while other real estate investments are stated at cost on the date of acquisition or fair market value at date of receipt in the case of gifts. Securities not publicly traded are stated at cost, which approximates market. The net realized and unrealized appreciation (depreciation) in market value of investments is reflected in the consolidated statements of activities.

Investment return that is initially restricted by donor stipulation and for which the restriction will be satisfied in the same year is included in unrestricted net assets. Other investment return is reflected in the statements of activities as unrestricted, temporarily restricted or permanently restricted based upon the existence and nature of any donor or legally imposed restrictions.

e. Capital Assets

Capital assets are stated at cost or estimated market value at date of receipt from donors. The provision for depreciation on capital assets is calculated using the straight-line method based on their estimated useful lives.

The Foundation has elected to capitalize collections which include art, rare books, photographs, letters, journals, manuscripts, and musical instruments. These items are capitalized at cost, or if a gift, at the fair market value on the date of the gift.

ULH capitalizes interest costs as a component of construction in progress, based on interest costs of borrowing specifically for the project, net of interest earned on investments acquired with the proceeds of the borrowing. During the years ended June 30, 2009 and 2008, ULH did not capitalize any interest.

f. Deferred Revenue

Deferred revenue consists of revenue related to a lease of land by the Foundation, and is recognized evenly over the life of the lease.

g. Unrestricted Net Assets

Net appreciation on endowment funds is reported as unrestricted net assets, unless such net appreciation has been restricted by the donor or by law. Market appreciation on unrestricted endowment funds is included in unrestricted net assets in the accompanying consolidated financial statements. In those cases where a donor has placed restrictions on the use of endowment income, any related net appreciation is also subject to the same restriction and is reported as such.

h. Temporarily and Permanently Restricted Net Assets

Temporarily restricted net assets are those which have donor-imposed restrictions that will expire in the future, when either the time restriction or purpose restriction has been met, and permanently restricted net assets are those which have donor-imposed restrictions which do not expire.

The expiration of a donor-imposed restriction on a contribution or on endowment income is recognized in the period in which the restriction expires and at that time the related resources are reclassified to unrestricted net assets. A restriction expires when the stipulated time has elapsed, when the stipulated purpose for which the resource was restricted has been fulfilled, or both.

Donor-imposed restricted contributions and endowment income are reported as unrestricted support if the restrictions are met in the same period as the funds are received.

i. Unrestricted Bequests

The Foundation follows the policy of designating all unrestricted bequests of \$25,000 or greater as funds functioning as endowments.

j. Use of Estimates

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

k. Market Risk and Uncertainties

The Foundation invests in various corporate debt, equity and mutual fund securities, among other investments. Investment securities, in general, are exposed to various risks, such as interest rates, credit and overall market volatility. Due to the level of risk associated with certain investment securities, it is reasonably possible that changes in the values of investment securities will occur in the near term and that those changes could materially affect the amounts reported in the consolidated financial statements.

l. In-Kind Contributions

In addition to receiving cash contributions, the Foundation receives in-kind contributions of library materials and other educational equipment and supplies from various donors. It is the policy of the Foundation to record the estimated fair value of certain in-kind donations as an expense in its consolidated financial statements, and similarly increase gift revenue by a like amount. The Foundation received approximately \$1.3 million and \$0.9 million of in-kind gifts for the years ended June 30, 2009 and 2008, respectively.

m. Functional Allocation of Expenses

The costs of supporting the various programs and other activities have been summarized on a functional basis in the consolidated statements of activities. Certain costs have been allocated among the instruction, research, public service, academic support, student services, institutional support, operation and maintenance of plant and scholarships/fellowships categories based on donor intent and other methods.

n. Subsequent Events

Subsequent events have been evaluated through September 30, 2009, which is the date the consolidated financial statements were available to be issued.

o. Reclassifications

Certain reclassifications have been made in the 2008 consolidated financial statements to conform to the 2009 presentation. These reclassifications had no effect on the change in total net assets.

p. Tax Status

The University of Louisville Foundation, Inc. and ULH have received favorable determination letters from the Internal Revenue Service exempting them from federal income taxes under §501(c)(3) of the Internal Revenue Code and a similar provision of state law. UHI is a non-profit corporation. While no tax determination request has been filed for UHI, one is expected to be filed within the applicable period.

ULDC, Nucleus, AAF, MetaCyte, KYT, and PPL are single-member limited liability corporations of the Foundation, who are considered disregarded entities for tax purposes.

In accordance with Financial Accounting Standards Board (FASB) Staff Position No. FIN 48-3, the Foundation has elected to defer the effective date of FASB Interpretation No. 48 (FIN 48), *Accounting for Uncertainty in Income Taxes*, until its fiscal year ended June 30, 2010. The Foundation has continued to account for any uncertain tax positions in accordance with literature that was authoritative immediately prior to the effective date of FIN 48, such as FASB Statement No. 109, *Accounting for Income Taxes*, and FASB Statement No. 5, *Accounting for Contingencies*.

2. Due to the University

In accordance with the Foundation's agency agreement with the University, the University receives and disburses monies on behalf of the Foundation. The net amount of these receipts and disbursements is recorded as a due to or from the University in the consolidated statements of financial position. Generally, the receivable or payable is cleared within the subsequent month; however, no formal agreement governs the time period in which payments are to be made.

Additionally, in July 2001, the University of Louisville Athletic Association, Inc. (Association) obtained a \$347,000 unsecured, noninterest bearing loan from the Foundation for the refurbishing of the Cardinal Basketball offices. The outstanding loan balance is approximately \$316,000 for each of the years ended June 30, 2009 and 2008 and is included in Due to the University in the consolidated statements of financial position.

3. Loan Receivable from the Association

In January, 1999, the Foundation made an \$8.5 million unsecured, noninterest bearing loan to the Association for the construction of Cardinal Park, due upon collection of contributions. The Association's intent is to repay the \$8.5 million loan with future contributions and gifts. For each of the years ended June 30, 2009 and 2008, the Association repaid \$500,000 leaving an

outstanding loan balance of approximately \$2.7 million and \$3.2 million as of June 30, 2009 and 2008, respectively.

#### 4. Contributions Receivable

Contributions receivable are discounted, using rates on risk-free obligations ranging from 1.2% to 5.9% for 2009 and 2008. Contributions receivable, which are all temporarily restricted, as of June 30, 2009 and 2008 are as follows (in thousands):

|                                 | <u>2009</u>      | <u>2008</u>      |
|---------------------------------|------------------|------------------|
| Less than one year              | \$ 20,101        | \$ 12,131        |
| One to four years               | 28,996           | 16,691           |
| Greater than four years         | 5,450            | 7,394            |
| Allowance for doubtful accounts | (11,068)         | (8,482)          |
| Unamortized discount            | <u>(4,281)</u>   | <u>(3,026)</u>   |
| Net contributions receivable    | <u>\$ 39,198</u> | <u>\$ 24,708</u> |

Conditional promises of gifts depend on the occurrence of a specific and uncertain event. The Foundation has not recorded these types of gifts in the consolidated financial statements. As of June 30, 2009 and 2008 the approximate fair market value of these conditional gifts is as follows (in thousands):

|          | <u>2009</u>      | <u>2008</u>      |
|----------|------------------|------------------|
| Bequests | \$ 78,391        | \$ 58,697        |
| Other    | 3,050            | 9,744            |
| Total    | <u>\$ 81,441</u> | <u>\$ 68,441</u> |

#### 5. Endowments

The Foundation's endowment consists of approximately 1,200 individual funds established for a variety of purposes. The endowment includes both donor-restricted endowment funds and funds designated by the board of directors to function as endowments (board-designated endowment funds). As required by accounting principles generally accepted in the United States of America (GAAP), net assets associated with endowment funds, including board-designated endowment funds, are classified and reported based on the existence or absence of donor-imposed restrictions.

The Foundation's board of directors has interpreted the Uniform Management of Institutional Funds Act (UMIFA), adopted in Kentucky in 1976 and located at KRS 273.510 to 273.590 as requiring preservation of the "historic dollar value" of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. As a result of this interpretation, the Foundation classifies as permanently restricted net assets (a) the original value of gifts donated to the permanent endowment, (b) the original value of subsequent gifts to the permanent endowment and (c) accumulations to the permanent endowment made in accordance with the direction of the applicable donor gift instrument at the time the accumulation is added to the fund. The remaining portion of donor-restricted endowment funds is classified as unrestricted or temporarily restricted net assets, depending on donor stipulations.

The composition of net assets by type of endowment fund at June 30, 2009 and 2008 was (in thousands):

| <b>FY 2009</b>                   |                     |                               |                               |                   |
|----------------------------------|---------------------|-------------------------------|-------------------------------|-------------------|
|                                  | <u>Unrestricted</u> | <u>Temporarily Restricted</u> | <u>Permanently Restricted</u> | <u>Total</u>      |
| Donor-restricted endowment funds | \$ 129,860          | \$ 5,218                      | \$ 331,744                    | \$ 466,822        |
| Board-designated endowment funds | 105,514             | -                             | -                             | 105,514           |
|                                  | <u>\$ 235,374</u>   | <u>\$ 5,218</u>               | <u>\$ 331,744</u>             | <u>\$ 572,336</u> |
| <b>FY 2008</b>                   |                     |                               |                               |                   |
|                                  | <u>Unrestricted</u> | <u>Temporarily Restricted</u> | <u>Permanently Restricted</u> | <u>Total</u>      |
| Donor-restricted endowment funds | \$ 304,721          | \$ 10,399                     | \$ 340,789                    | \$ 655,909        |
| Board-designated endowment funds | 107,355             | -                             | -                             | 107,355           |
|                                  | <u>\$ 412,076</u>   | <u>\$ 10,399</u>              | <u>\$ 340,789</u>             | <u>\$ 763,264</u> |

Changes in endowment net assets for the years ended June 30, 2009 and 2008 were (in thousands):

| <b>FY 2009</b>                                     |                     |                               |                               |                   |
|--|---------------------|-------------------------------|-------------------------------|-------------------|
|  | <u>Unrestricted</u> | <u>Temporarily Restricted</u> | <u>Permanently Restricted</u> | <u>Total</u>      |
| Endowment net assets, beginning of year            | \$ 412,076          | \$ 10,399                     | \$ 340,789                    | \$ 763,264        |
| Investment return:                                 |                     |                               |                               |                   |
| Investment and endowment income                    | 7,974               | 198                           | -                             | 8,172             |
| Net depreciation                                   | (155,116)           | (5,320)                       | (11,974)                      | (172,410)         |
| Total investment return                            | (147,142)           | (5,122)                       | (11,974)                      | (164,238)         |
| Contributions                                      | 807                 | 3                             | 8,037                         | 8,847             |
| Appropriation of endowment assets for expenditures | (31,555)            | 11                            | -                             | (31,544)          |
| Other changes                                      | 1,188               | (73)                          | (5,108)                       | (3,993)           |
| Endowment net assets, end of year                  | <u>\$ 235,374</u>   | <u>\$ 5,218</u>               | <u>\$ 331,744</u>             | <u>\$ 572,336</u> |

|  | <b>FY 2008</b>    |                           |                           |                   |
|--|-------------------|---------------------------|---------------------------|-------------------|
|  | Unrestricted      | Temporarily<br>Restricted | Permanently<br>Restricted | Total             |
| Endowment net assets,<br>beginning of year               | \$ 457,117        | \$ 13,760                 | \$ 329,725                | \$ 800,602        |
| Investment return  |                   |                           |                           |                   |
| Investment and<br>endowment income                       | 11,234            | 426                       | 3                         | 11,663            |
| Net depreciation   | (22,187)          | (2,734)                   | (1,978)                   | (26,899)          |
| Total investment<br>return                               | (10,953)          | (2,308)                   | (1,975)                   | (15,236)          |
| Contributions  | 791               | 77                        | 11,783                    | 12,651            |
| Appropriation of<br>endowment assets<br>for expenditures | (31,672)          | (1,242)                   | -                         | (32,914)          |
| Other changes  | (3,207)           | 112                       | 1,256                     | (1,839)           |
| Endowment net assets,<br>end of year                     | <u>\$ 412,076</u> | <u>\$ 10,399</u>          | <u>\$ 340,789</u>         | <u>\$ 763,264</u> |

Amounts of donor-restricted endowment funds classified as permanently and temporarily restricted net assets at June 30, 2009 and 2008 consisted of (in thousands):

|  | <u>2009</u>       | <u>2008</u>       |
|--|-------------------|-------------------|
| Permanently restricted net assets - portion of perpetual endowment funds required to be retained permanently by explicit donor stipulations or UMIFA | <u>\$ 331,744</u> | <u>\$ 340,789</u> |
| Temporarily restricted net assets - term endowment funds   | <u>\$ 5,218</u>   | <u>\$ 10,399</u>  |

From time to time, the fair value of assets associated with individual donor-restricted endowment funds may fall below the "historic dollar value" level that the Foundation is required to retain as a fund of perpetual duration pursuant to donor stipulation or UMIFA. In accordance with GAAP, deficiencies of this nature are reported in unrestricted net assets and aggregated \$13.2 million and \$0.2 million at June 30, 2009 and 2008, respectively. These deficiencies resulted from unfavorable market fluctuations that occurred after investment of permanently restricted contributions.

The Foundation has adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of funding to programs and other items supported by its endowment while seeking to maintain the purchasing power of the endowment. Endowment assets include those assets of donor-restricted endowment funds that the Foundation must hold in perpetuity or for donor-specified periods, as well as those of board-designated endowment funds.



Under the Foundation's policies, endowment assets are invested in a manner that is intended to produce results that achieves a minimum net total return which is equal to the Foundation's spending rate plus inflation without the assumption of excessive investment risk. To satisfy its long-term rate of return objectives, the Foundation relies on a total return strategy in which investment returns are achieved through both current yield (investment income such as dividends and interest) and capital appreciation (both realized and unrealized). The Foundation targets a diversified asset allocation that places a greater emphasis on equity-based investments to achieve its long-term return objectives within acceptable risk constraints.

The Foundation has a policy (the spending policy) of appropriating for expenditure each year 5.5% of its endowment fund's average fair value over the prior three years through the calendar year end preceding the year in which expenditure is planned. In establishing this policy, the Foundation considered the long-term expected return on its endowment. The Foundation has adopted an investment objective whereby the average annual return over the long term should equal the rate of inflation (measured by the three-year moving average of the Gross Domestic Product (GDP) Deflator) plus the average level of spending from the Combined Endowment Fund. The average annual return for the Combined Endowment Fund was -22.2% and -1.4% in 2009 and 2008, respectively.

The amount available for spending under the policy was approximately \$34.2 million and \$32.0 million for the years ended June 30, 2009 and 2008, respectively, of which approximately \$31.2 million and \$21.5 million was actually expended for the years then ended.

This is consistent with the Foundation's objective to maintain the purchasing power of endowment assets held in perpetuity or for a specified term, as well as to provide additional real growth through new gifts and investment return.

#### 6. Investments and Investment Income

Investments as of June 30, 2009 and 2008 are as follows (in thousands):

|                            | <b>2009</b>       | <b>2008</b>       |
|----------------------------|-------------------|-------------------|
| Investment in partnerships | \$ 299,274        | \$ 279,770        |
| Mutual funds               | 79,975            | 121,326           |
| Marketable alternatives    | 92,429            | 111,251           |
| Preferred and common stock | 83,956            | 142,477           |
| Corporate bonds            | 24,679            | 25,273            |
| U.S. government securities | 9,579             | 21,027            |
| Real estate                | -                 | 11,654            |
| Certificate of deposit     | 7,000             | -                 |
| Land and buildings         | 1,543             | 1,606             |
| Annuities                  | 605               | 604               |
| Total investments          | <u>\$ 599,040</u> | <u>\$ 714,988</u> |

The Foundation invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market and credit risks. Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of

investment securities will occur in the near term and that such changes could materially affect the investment amounts reported in the consolidated statements of financial position.

The Foundation's investments do not have a significant concentration of credit risk within any industry or specific institution.

The market risk inherent in certain of the Foundation's investments is primarily the potential loss arising from adverse changes in quoted market prices on equity securities and in interest rates on fixed income securities. In an effort to mitigate this market risk, the Foundation has adopted a policy of maintaining a diverse investment pool through the use of target asset allocation guidelines. These guidelines require that the Foundation's investment pool be made up of a mix of publicly traded fixed income and equity securities, private equities and other nonmarketable securities, and real estate investments.

The major portion of long-term investments is pooled in the Combined Endowment Fund, which is the general endowment pool for the Foundation. The Combined Endowment Fund is pooled using a market value basis, with each individual fund subscribing to, or disposing of, units on the basis of the market value per unit at the end of the prior calendar month during which the transaction takes place. The investment objectives of the Foundation are to preserve the principal of the endowment funds in both absolute and real terms while maximizing, over the long-term, the total rate of return (yield and appreciation) within reasonable risk parameters.

At June 30, 2009, the Foundation had the following commitments under contracts with limited partnership investment managers to fund capital calls. These capital calls will occur over the term of the respective agreements, which is generally a four-year period (in thousands):

|                                       | <b>Total<br/>Commitment</b> | <b>Contributed<br/>to Date</b> | <b>Remaining<br/>Commitment</b> |
|---------------------------------------|-----------------------------|--------------------------------|---------------------------------|
| Endowment Private Equity Partner IV   | \$ 5,000                    | \$ 4,855                       | \$ 145                          |
| Endowment Venture Partners III, LP    | 7,715                       | 7,638                          | 77                              |
| Endowment Venture Partners IV, LP     | 10,000                      | 9,725                          | 275                             |
| Endowment Venture Partners V, LP      | 4,400                       | 4,132                          | 268                             |
| Capital Venture Partners VI, LP       | 2,100                       | 1,654                          | 446                             |
| Capital Private Equity Partners V, LP | 3,000                       | 2,550                          | 450                             |
| Chrysalis Ventures II, LP             | 2,500                       | 2,418                          | 82                              |
| Triathlon Medical Ventures            | 2,500                       | 1,705                          | 795                             |
| International Private Equity V, LP    | 3,000                       | 2,171                          | 829                             |
| Private Equity Partners VI            | 3,000                       | 1,838                          | 1,162                           |
| Capital Venture Partners VII          | 2,000                       | 1,106                          | 894                             |
| Kentucky Seed Fund                    | 1,050                       | 536                            | 514                             |
| Chrysalis Ventures III, LP            | 5,000                       | 2,303                          | 2,697                           |
| Capital Int'l Partners VI, LP         | 3,000                       | 630                            | 2,370                           |
| Private Equity Partners VII           | 4,000                       | 524                            | 3,476                           |
| Capital Venture Partners VIII, LP     | 3,000                       | 548                            | 2,452                           |
| Capital South Fund III                | 2,500                       | 1,000                          | 1,500                           |
| Asia Alternatives Capital Partners II | 5,000                       | 493                            | 4,507                           |
| Crow Holdings Realty Partners IV      | 5,000                       | 4,078                          | 922                             |
| Crow Holdings Realty Partners V       | 5,000                       | 82                             | 4,918                           |
| EnCap Oil & Gas                       | 2,790                       | 2,092                          | 698                             |
| Enervest Energy XI-B                  | 3,000                       | 1,637                          | 1,363                           |
| Lone Star                             | 10,000                      | 9,523                          | 477                             |
| Värde Partners IX, LP                 | 5,000                       | 4,250                          | 750                             |
| Lone Star VI                          | 10,000                      | 7,734                          | 2,266                           |
| Lone Star Real Estate                 | 5,000                       | 2,553                          | 2,447                           |
|                                       | <u>\$ 114,555</u>           | <u>\$ 77,775</u>               | <u>\$ 36,780</u>                |

## 7. Disclosures About Fair Value of Assets and Liabilities

Effective July 1, 2008, the Foundation adopted the Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* (FAS 157). FAS 157 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. FAS 157 has been applied prospectively as of the beginning of the year.

FAS 157 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. FAS 157 also establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The standard describes three levels of inputs that may be used to measure fair value:

**Level 1** Quoted prices in active markets for identical assets or liabilities

**Level 2** Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities

**Level 3** Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities

Following is a description of the inputs and valuation methodologies used for assets and liabilities measured at fair value on a recurring basis and recognized in the accompanying consolidated statements of financial position, as well as the general classification of such assets and liabilities pursuant to the valuation hierarchy.

a. Money Market Mutual Funds

Where quoted market prices are available in an active market, securities are classified within Level 1 of the valuation hierarchy. Level 1 securities include money market mutual funds.

b. Investments

Level 1 securities include preferred and common stock and mutual funds. If quoted market prices are not available, then fair values are estimated by a third party pricing service using pricing models, quoted prices of securities with similar characteristics or discounted cash flows.

For investments, other than marketable alternatives and investments in partnerships, the inputs used by the pricing service to determine fair value may include one, or a combination of, observable inputs such as benchmark yields, reported trades, broker/dealer quotes, issuer spreads, two-sided markets, benchmark securities, bids, offers and reference data market research publications and are classified within Level 2 of the valuation hierarchy. For marketable alternatives and investments in partnerships that have sufficient activity or liquidity within the fund, fair value is determined using the net asset value (or its equivalent) provided by the fund and are classified within Level 2 of the valuation hierarchy. Level 2 securities include corporate bonds, U.S. government securities, certain investments in partnerships and certain marketable alternative investments.

For marketable alternatives and investments in partnerships that do not have sufficient activity or liquidity within the fund, the net asset value (or its equivalent) provided by the fund is utilized, as a practical expedient, to determine fair value and are classified within Level 3 of the valuation hierarchy.

c. Funds Held in Trust By Others

Fair value is determined at the market value of the securities held in the beneficial trusts at June 30, 2009. The value is determined based on the proportional beneficial interest held in the trust, with the Foundation the sole beneficiary of the majority of the trusts. Due to the nature of the valuation inputs, the interest is classified within Level 2 of the hierarchy.

d. Restricted Investments

Level 1 securities include money market accounts, which are based on quoted market prices in an active market and Level 2 securities include U.S. agency obligations. The Level 2 securities are based on quoted market prices and are based on a pricing service and use inputs as described above.

The following table presents the fair value measurements of assets and liabilities recognized in the accompanying consolidated statements of financial position measured at fair value on a recurring basis and the level within the FAS 157 fair value hierarchy in which the fair value measurements fall at June 30, 2009 (in thousands):

|                               | <b>Fair Value</b> | <b>Quoted Prices in<br/>Active Markets<br/>for Identical<br/>Assets<br/>(Level 1)</b> | <b>Significant<br/>Other<br/>Observable<br/>Inputs<br/>(Level 2)</b> | <b>Significant<br/>Unobservable<br/>Inputs<br/>(Level 3)</b> |
|-------------------------------|-------------------|---|--|--|
| Money market mutual funds     | \$ 13,442         | \$ 13,442   |  |  |
| Investments                   |                   |   |  |  |
| Preferred and common stock    | 83,956            | 83,956  |  |  |
| Corporate bonds               | 24,679            | -   | \$ 24,679  |  |
| Mutual funds                  | 79,825            | 79,825  | -  |  |
| Investment in partnerships    | 299,174           | -   | 188,346  | \$ 110,828   |
| U.S. government securities    | 9,579             | -   | 9,579  | -  |
| Marketable alternatives       | 92,429            | -   | 13,703   | 78,726   |
| Funds held in trust by others | 34,847            | -   | 34,847   | -  |
| Restricted investments        |                   |   |  |  |
| U.S. treasury money markets   | 2,736             | 2,736   | -  | -  |
| U.S. agency obligations       | 1,682             | -   | 1,682  | -  |

The following is a reconciliation of the beginning and ending balances of recurring fair value measurements recognized in the accompanying consolidated statement of financial position using significant unobservable (Level 3) inputs (in thousands):

|   | <u>Investment in<br/>partnerships</u> | <u>Marketable<br/>alternatives</u> |
|---|---------------------------------------|------------------------------------|
| Balance, July 1, 2008   | \$ 94,439                             | \$ 95,953                          |
| Total realized and unrealized<br>gains and losses   | (12,772)                              | (9,611)                            |
| Purchases, issuances and settlements  | 31,754                                | 5,000                              |
| Transfers in and/or out of Level 3  | (2,593)                               | (12,616)                           |
| Balance, June 30, 2009  | <u>\$ 110,828</u>                     | <u>\$ 78,726</u>                   |
| Total gains or losses for the period<br>included in change in net assets<br>attributable to the change in<br>unrealized gains or losses related to<br>assets still held at the reporting date | <u>\$ (12,772)</u>                    | <u>\$ (8,291)</u>                  |

Realized and unrealized gains and losses included in change in net assets for the period from July 1, 2008, through June 30, 2009, are reported in the consolidated statement of activities as follows (in thousands):

|   | <u>2009</u> |
|---|-------------|
| Total losses  | \$ (22,383) |
| Change in unrealized gains or losses relating to<br>assets still held at the consolidated statement<br>of financial position date | \$ (21,063) |

The following methods were used to estimate the fair value of all other financial instruments recognized in the accompanying consolidated statements of financial position at amounts other than fair value.

**Cash and Cash Equivalents:**

The carrying amount approximates fair value.

**Loan Receivable:**

The carrying amount approximates fair value.

**Notes Receivable:**

Carrying amount is a reasonable estimate of fair value.

Contributions Receivable:  
Fair value is estimated using a discounted cash flow model.

Restricted Cash:  
The carrying amount approximates fair value.

Bonds and Notes Payable:  
Fair value is estimated based on the borrowing rates currently available to the Foundation for bank loans with similar terms and maturities. The carrying value of \$83.9 million and \$57.4 million as of June 30, 2009 and 2008, respectively, approximates fair value.

Funds held in Trust for Others:  
The carrying amount approximates fair value.

Annuities and Trusts Payable:  
Fair values of the annuity and trust obligations are based on a calculation of discounted cash flows of the annuity payments under such obligations.

8. Funds Held in Trust by Others

The Foundation has been designated by the University as the income beneficiary of various trusts and financial entities which are held and controlled by others. One of these is a perpetual and irrevocable trust known as the University of Louisville Trust (Trust). It was created in 1983 to receive, administer, and invest assets which result from gifts to the Trust. The market value of the Trust was approximately \$14.7 million and \$19.2 million as of June 30, 2009 and 2008, respectively. The Foundation's portion of the market value of the remaining trusts was approximately \$20.1 million and \$27.7 million as of June 30, 2009 and 2008, respectively. These funds are invested in various equities and income producing assets. For the years ended June 30, 2009 and 2008, the Foundation received income of approximately \$1.5 million and \$1.8 million, respectively, from these trusts. These receipts are included in endowment income.

9. Restricted Investments

Restricted investments consist of money market accounts, agency securities, and a guaranteed investment contract of approximately \$5.6 million and \$5.0 million at June 30, 2009 and 2008, respectively. These investments are restricted by bond indenture for payment of debt service, and repairs and replacement.

|                                | <u>2009</u>     | <u>2008</u>     |
|--------------------------------|-----------------|-----------------|
| U.S. treasury money market     | \$ 2,736        | \$ 1,644        |
| U.S. agency obligations        | 1,682           | 2,227           |
| Guaranteed investment contract | 1,152           | 1,152           |
|                                | <u>\$ 5,570</u> | <u>\$ 5,023</u> |

## 10. Capital Assets

Capital assets as of June 30, 2009 and 2008 are as follows (in thousands):

|                            | <u>2009</u>              | <u>2008</u>             |
|----------------------------|--------------------------|-------------------------|
| Residence halls:           |                          |                         |
| Buildings                  | \$ 50,629                | \$ 50,437               |
| Furniture and fixtures     | 3,460                    | 3,310                   |
| Construction in process    | 83                       | 26                      |
| Accumulated depreciation   | <u>(10,590)</u>          | <u>(8,785)</u>          |
| Net                        | <u>43,582</u>            | <u>44,988</u>           |
| Other:                     |                          |                         |
| Land                       | 19,743                   | 3,205                   |
| Land held for construction | 7,555                    | 7,555                   |
| Buildings                  | 30,622                   | 11,707                  |
| Other plant assets         | 15,820                   | 14,173                  |
| Construction in process    | 9,409                    | 2,005                   |
| Accumulated depreciation   | <u>(12,401)</u>          | <u>(10,117)</u>         |
| Net                        | <u>70,748</u>            | <u>28,528</u>           |
| Total - net                | <u><u>\$ 114,330</u></u> | <u><u>\$ 73,516</u></u> |

Pursuant to the lease agreement, ULH agreed to pay the University annual ground rental equal to available excess cash flow, as defined in the agreement. For the years ended June 30, 2009 and 2008, ULH recognized ground rental expense of approximately \$928,000 and \$758,000, respectively.

## 11. Funds Held in Trust for Others

The Foundation is the custodian of funds owned by the Association. The Association is a separate corporation organized for the purpose of promoting the intercollegiate athletic activities of the University. The Foundation serves in an agency capacity and invests funds on behalf of the Association based on a formal trust agreement. As of June 30, 2009 and 2008, the Foundation held approximately \$29.7 million and \$39.2 million, respectively, for the Association's investment purposes.

During the year ended June 30, 2004, the Foundation entered into an agreement with the University Medical Center (UMC) whereby the Foundation served in an agency capacity to invest funds on behalf of the UMC. The UMC is a separate corporation organized for the purpose of providing clinical services, instruction, and research activities for University faculty and students. In 2009, UMC directed the Foundation to liquidate and return the funds held at the Foundation. At June 30, 2008, the Foundation held approximately \$3.8 million for the UMC's investment purposes.

During the year ended June 30, 2005, the Foundation entered into an agreement with Jewish Hospital & St. Mary's Healthcare, Inc. (Jewish Hospital) whereby the Foundation serves in an agency capacity to invest funds on behalf of Jewish Hospital. Jewish Hospital is a separate corporation organized for the purpose of providing healthcare services. As of June 30, 2009 and



2008, the Foundation held approximately \$8.4 million and \$11.1 million, respectively, for Jewish Hospital's investment purposes.

During the year ended June 30, 2007, the Foundation entered into an agreement with the University of Louisville Research Foundation, Inc. on behalf of the School of Dentistry, whereby the Foundation serves in an agency capacity to invest funds on behalf of the University of Louisville Research Foundation, Inc. As of June 30, 2009 and 2008, the Foundation held approximately \$3.4 million and \$4.5 million, respectively, for the University of Louisville Research Foundation, Inc.'s investment purposes.

The Foundation, acting in an agent capacity, does not reflect earnings on investments held in trust for others in the consolidated statements of activities as these earnings are distributed to the owners of the funds.

## 12. Bonds and Notes Payable

Bonds and notes payable consist of the following at June 30, 2009 and 2008 (in thousands):

|                               | <u>Description</u>   | <u>Fiscal Year<br/>of Maturity</u> | <u>2009</u>      | <u>2008</u>      |
|-------------------------------|--|------------------------------------|------------------|------------------|
| Series 2001A<br>(non taxable) | Variable rate demand bonds with principal payments of \$115 to \$2,935 are due annually through maturity, and interest is due monthly at variable rates up to 12% (0.31% and 1.59% as of June 30, 2009 and 2008, respectively) | 2029                               | \$ 22,295        | \$ 22,760        |
| Series 2002A<br>(non taxable) | Variable rate demand bonds with principal payments of \$25 to \$985 are due annually through maturity, and interest is due monthly at variable rates up to 12% (3.10% and 1.55% as of June 30, 2009 and 2008, respectively)    | 2032                               | 13,835           | 14,000           |
| Series 2005A<br>(non taxable) | Principal payments of \$270 to \$1,060 are due annually beginning 6/1/16 through maturity, and interest is due monthly at fixed rates from 4% to 5%.   | Ranging from<br>2016 to 2035       | 13,910           | 13,910           |
| Series 2005B<br>(taxable)     | Principal payments of \$55 to \$390 are due annually through maturity, and interest is due monthly at a fixed rate of 4.91%.   | 2016                               | 1,820            | 1,955            |
| Note Payable -<br>AAF, Inc.   | Fixed rate of 5.99% with principal payment at end of note  | 2012                               | 2,200            | -                |
| Note Payable -<br>AAF, Inc.   | Fixed rate of 1.80% with principal payment at end of note  | 2012                               | 5,992            | -                |
| Note Payable -<br>KYT         | Fixed rate of 4.96% with principal payment at end of note  | 2014                               | 7,000            | -                |
| Note Payable -<br>KYT         | Fixed rate of 6.46% with principal payment at end of note  | 2014                               | 12,500           | -                |
| Line of Credit -<br>Nucleus   | Variable rate, 2.19% and 3.21% as of June 30, 2009 and 2008, respectively - unsecured  | 2010                               | 4,120            | 4,120            |
| Convertible<br>Note Payable   | Fixed rate of 8.00%, convertible into one-third of the available units of MetaCyte Equity Holdings, LLC  | N/A                                | -                | 400              |
| Total bonds and notes payable |  |                                    | <u>83,672</u>    | <u>57,145</u>    |
| Plus unamortized premium      |  |                                    | <u>268</u>       | <u>283</u>       |
| Bonds and notes payable, net  |  |                                    | <u>\$ 83,940</u> | <u>\$ 57,428</u> |

Bonds are secured by deposits with the bond trustee, which are reported in restricted investments in the consolidated statements of financial position as of June 30, 2009 and 2008.

a. Convertible Note Payable

In July 2007, MetaCyte entered into an agreement with the Louisville/Jefferson County Metro Government (Metro Government) to borrow up to \$388,000 in the form of a convertible note. The note interest rate was 8% per annum, and was able to be converted, at the option of Metro government into one-third of the units issued by MetaCyte Equity Holdings, LLC during the twelve month period ending June 30, 2008. The total convertible note, including interest, as of June 30, 2008 was \$400,000. In July 2008, the note was converted; however, there were no units issued during the stated period. The resulting revenue is recognized as a gift in the consolidated statement of activities for the year ended June 30, 2009.

b. Notes Payable - AAF

In July 2008, AAF entered into a note payable with a financial institution to borrow \$6.0 million in relation to the purchase of Cardinal Station. The note bears an interest rate of 1.8% per annum, payable monthly. The principal is due in full January 2012.

In November 2008, AAF entered into a note payable with a financial institution to borrow \$2.2 million. The note bears an interest rate of 5.99% per annum, payable monthly. The principal is due in full in January 2012.

These notes are collateralized by mortgages on AAF property and pledges of lease and rent revenue.

c. Notes Payable - KYT

In November 2008, KYT entered into a note payable with a financial institution to borrow \$12.5 million in relation to the purchase of property adjacent to the University. The note bears an interest rate of 6.46% per annum, payable monthly. The principal is due in full November 2013.

In November 2008, KYT entered into a note payable with a financial institution to borrow \$7.0 million in relation to the purchase of property adjacent to the University. The note bears an interest rate of 4.96% per annum, payable monthly. The principal is due in full November 2013.

These notes are collateralized by mortgages on KYT property and pledges of lease and rent revenue.

d. Line of Credit – Nucleus

In July 1999, Nucleus entered into a \$5.0 million line of credit agreement with a financial institution, which matures on July 15, 2009. The line is unsecured and guaranteed by the Foundation. There was approximately \$880,000 unused and available on the line of credit at June 30, 2009 and 2008.

Principal payments on the above obligations due in the next five years and thereafter are as follows (in thousands):

| For the Year Ended June 30, | <b>Principal<br/>Due</b> |
|-----------------------------|--------------------------|
| 2009                        | \$ 5,025                 |
| 2010                        | 1,055                    |
| 2011                        | 9,357                    |
| 2012                        | 1,275                    |
| 2013                        | 20,910                   |
| Thereafter                  | 46,050                   |
| Total                       | <u>\$ 83,672</u>         |

13. Guarantees

a. Bonds Payable

ULF, as guarantor of the ULH debt, has obtained a \$24.6 million letter of credit and a \$14.7 million letter of credit securing all principal and interest payments on the Series 2001 and 2002 bonds payable. The provisions of the letters of credit require that, should the bonds fail to be remarketed, and therefore, the letter of credit is drawn upon, such amounts drawn against the letter of credit will be due in sixty equal monthly installments beginning ninety days after the draw.

Amounts payable under the guaranty are limited as follows (in thousands):

| <u>Residence Hall</u> | <u>Aggregate<br/>limit</u> | <u>Annual limit</u>                                 |
|-----------------------|----------------------------|---|
| Bettie Johnson Hall   | \$ 30,000                  | Lesser of \$1.5 million, or<br>annual debt service. |
| Kurz Hall             | 14,460                     | \$1,037   |
| Community Park        | 31,308                     | 1,121   |

b. Notes Payable and Line of Credit

ULF is the guarantor of the AAF and KYT note payables and the Nucleus line of credit. As of June 30, 2009 and 2008, the outstanding principal related to these guarantees was \$31.8 million and \$4.1 million, respectively.

c. Student Organization Loans

During the fiscal year ended June 30, 2008, ULF became the guarantor on two construction loans for University affiliated student organizations. If the student organization does not meet their scheduled payments, ULF could be called upon to make the payments, as well as collection expenses and costs. The total amount approved for loans was approximately \$1.0 million, with \$1.0 million and \$0.8 million outstanding, as of June 30, 2009 and 2008, respectively.

d. Association Mortgage Revenue Bonds

In July 2008, the Louisville Metro Government issued \$39.8 million of Mortgage Revenue Bonds 2008 Series A and \$43.5 million of Mortgage Revenue Bonds 2008 Series B (Mortgage Revenue Bonds) at a combined net interest cost of 4.2 percent, the proceeds of which were loaned to the Association. The bond proceeds were used on September 1, 2008 to retire the Association's outstanding County of Jefferson Kentucky Government Lease Revenue Bonds, Series 1997, the proceeds of which financed the acquisition, construction, installation and equipping of the sports stadium known as University of Louisville Papa John's Cardinal Stadium (Stadium). Excess funds will be used to finance a portion of the costs of acquisition, construction, installation and equipping of an expansion to the Stadium.

The Foundation is the guarantor of the Mortgage Revenue Bonds, and as such has agreed to maintain a balance of available cash sufficient enough to cover the next debt service payment. In exchange for the Foundation's willingness to serve as guarantor, the Association has agreed to pay the Foundation a credit enhancement fee and to exonerate and indemnify the Foundation from all liability in connection with the Mortgage Revenue Bonds, the obligations of the Association under the Loan Agreement and Mortgage, and any and all payments made by the Foundation as guarantor.

e. Lease Guarantee

In December 2006, the Foundation became the guarantor of payments due to University Faculty Office Building, LLC (UFOB) under the Master Lease agreement between the Medical School Practice Association, Inc. (MSPA) and UFOB. The Foundation has guaranteed the full and prompt payment of all amounts due to UFOB including any damages for default and payments to reimburse UFOB for any costs and expenses incurred by UFOB to cure any default by MSPA. The initial lease term is 15 years, beginning in July 2008. The annual lease payments due from MSPA to UFOB are approximately \$3.5 million, with an annual inflation of 3 percent.

14. Other Liabilities

Other liabilities, as of June 30, 2009 and 2008 are as follows (in thousands):

|                                  | <u>2009</u>      | <u>2008</u>      |
|----------------------------------|------------------|------------------|
| Unitrust and annuity obligations | \$ 3,798         | \$ 6,375         |
| Deferred revenue                 | 5,147            | -                |
| Grawemeyer awards                | 1,893            | 1,894            |
| Deferred compensation            | 2,797            | 2,297            |
| Miscellaneous                    | 552              | 734              |
| Asset retirement obligation      | 285              | 285              |
| Total                            | <u>\$ 14,472</u> | <u>\$ 11,585</u> |

#### 15. Annuities and Trusts Payable

The Foundation has been the recipient of several gift annuities which require future payments to the donor or their named beneficiaries. The assets received from the donor are recorded at fair value. The Foundation has recorded a liability at June 30, 2009 and 2008 of approximately \$1.9 million and \$1.7 million, respectively, which represents the present value of the future annuity obligations. The liability has been determined using discounts rates ranging from 2.60% to 7.78%.

The Foundation administers various charitable remainder trusts. A charitable remainder trust provides for the payment of distributions to the grantor or other designated beneficiaries over the trust's term (usually the designated beneficiary's lifetime). At the end of the trust's term, the remaining assets are available for the Foundation's use. The portion of the trusts attributable to the future interest of the Foundation is recorded in the consolidated statements of activities as temporarily restricted contributions in the period the trust is established. Assets held in the charitable remainder trusts are recorded at fair value in the Foundation's consolidated statements of financial position. On an annual basis, the Foundation revalues the liability to make distributions to the designated beneficiaries based on actuarial assumptions. The Foundation has recorded a liability at June 30, 2009 and 2008 of approximately \$1.9 million and \$4.7 million, respectively, which represents the present value of the future obligations. The liability has been determined using discount rates ranging from 4.10% to 8.75%, a rate of return of 4.3%, and applicable mortality tables.

#### 16. Research Challenge Trust Fund

The Research Challenge Trust Fund (RCTF) was created with the passage of the Postsecondary Education Improvement Act of 1997 (HB 1). The objectives of RCTF stated in the bill are to, among other things, support efforts by the University to become a premier, nationally recognized metropolitan university. During the 1998 session of the Kentucky General Assembly, a \$100 million (\$33.3 million to the University) endowment was appropriated from the General Fund Surplus Expenditure Plan of House Bill 321 in support of the research universities' (i.e. the University and other state supported colleges and universities) missions.

The University irrevocably contributed these RCTF funds to the Foundation, although earnings from these funds are designated for the University in perpetuity.

State government will provide endowment funds with the provision that the universities match them dollar-for-dollar with donations received to establish endowments for research activities.

17. Expenses

Expenses by natural classification for the years ended June 30, 2009 and 2008 were approximately (in thousands):

|   | <u>2009</u>      | <u>2008</u>      |
|---|------------------|------------------|
| Personal service costs  | \$ 40,456        | \$ 34,360        |
| Services  | 32,504           | 32,076           |
| Equipment repairs   | 1,636            | 1,610            |
| Supplies  | 2,780            | 2,284            |
| Depreciation and amortization (including depreciation on buildings held as investments) | 4,269            | 4,090            |
| Interest  | 2,724            | 2,342            |
| Contributions to various University departments   | 2,298            | 2,067            |
|   | <u>\$ 86,667</u> | <u>\$ 78,829</u> |

18. Fundraising Expenses

Fundraising expenses were approximately \$7.8 million and \$6.5 million for the years ended June 30, 2009 and 2008, respectively.

19. Net Assets

Net assets of the Foundation are segregated into classes of unrestricted, temporarily restricted, and permanently restricted assets. The following tables describe the functional classifications of temporarily and permanently restricted net assets as to purpose based upon the intent of donors (in thousands) as of June 30, 2009 and 2008:

June 30, 2009:

|                              | <u>Temporarily<br/>Restricted</u> | <u>Permanently<br/>Restricted</u> |
|------------------------------|-----------------------------------|-----------------------------------|
| Instruction                  | \$ 980                            | \$ 22,655                         |
| Research                     | 366                               | 167,889                           |
| Public service               | -                                 | 1,949                             |
| Academic support             | 423                               | 53,339                            |
| Student services             | -                                 | 169                               |
| Institutional support        | 41,156                            | 5,317                             |
| Scholarships/fellowships     | 652                               | 80,199                            |
| Auxiliary operations & other | -                                 | 227                               |
| Total                        | <u>\$ 43,577</u>                  | <u>\$ 331,744</u>                 |

June 30, 2008:

|                              | <b>Temporarily<br/>Restricted</b> | <b>Permanently<br/>Restricted</b> |
|------------------------------|-----------------------------------|-----------------------------------|
| Instruction                  | \$ 980                            | \$ 22,456                         |
| Research                     | 401                               | 172,669                           |
| Public service               | -                                 | 2,051                             |
| Academic support             | 371                               | 55,248                            |
| Student services             | -                                 | 178                               |
| Institutional support        | 24,609                            | 5,598                             |
| Scholarships/fellowships     | 9,012                             | 82,350                            |
| Auxiliary operations & other | -                                 | 239                               |
| Total                        | \$ 35,373                         | \$ 340,789                        |

Donor imposed restrictions expired on temporarily restricted net assets during the years ended June 30, 2009 and 2008 as follows (in thousands):

|   | <b>2009</b> | <b>2008</b> |
|---|-------------|-------------|
| Temporarily restricted contributions for:   |             |             |
| Research                                    | \$ 291      | \$ 185      |
| Academic support                            | 497         | 486         |
| Scholarships/fellowships                    | 807         | 767         |
| Net decrease in contributions receivable    | -           | 5,881       |
| Total net assets released from restrictions | \$ 1,595    | \$ 7,319    |

## 20. Commitments and Contingencies

### a. Commitments

At June 30, 2009, the Foundation had approximately \$761,000 in encumbrances outstanding for future expenditures.

## 21. Risks and Uncertainties

### a. Current Economic Conditions

The current economic environment presents not-for profit organizations with unprecedented circumstances and challenges, which in some cases have resulted in large declines in the fair value of investments and other assets, constraints on liquidity and difficulty obtaining financing. The consolidated financial statements have been prepared using values and information currently available to the Foundation.

In addition, given the volatility of current economic conditions, the values of assets and liabilities recorded in the consolidated financial statements could change rapidly, resulting in material future adjustments in investment values that could negatively impact the Foundation's ability to meet debt covenants or maintain sufficient liquidity.



b. Bond Remarket Failure

The Foundation is subject to remarketing agreements associated with the ULH bonds payable. The bonds are backed by letters of credit which contain provisions for draws upon remarketing failures. The 2001 and 2002 series bonds had remarketing failures during the year ended June 30, 2009; however, these bonds were successfully remarketed as of June 30, 2009.

Due to the uncertainty in the credit markets and the financial strength of the bank issuing the letter of credit, it is at least reasonably possible that the cost of borrowing to the Foundation will increase and the potential for ongoing failed remarketings will continue.

22. Change in Reporting Entity

As discussed in note 1, during 2009, ULF assumed substantially all of the assets and liabilities of LMCDC, an affiliate of the University. These assets and liabilities were transferred to ULF, and ULF sold them to Nucleus and MetaCyte for no consideration. This change in reporting entity, as a result of these related-party transactions, resulted in the balances and transactions of Nucleus and MetaCyte being reported through retrospective application as of July 1, 2007. The decrease in net assets for the Foundation, prior to the inclusion of Nucleus and MetaCyte for the fiscal years ended June 30, 2009 and 2008 was \$177.0 million and \$39.3 million, respectively. For the fiscal year ended June 30, 2009 and 2008, Nucleus and MetaCyte had a change in net assets of (\$1.1) million and \$1.4 million, respectively; resulting in the currently reported decrease in net assets of \$178.1 million and \$37.9 million for the years ended June 30, 2009 and 2008, respectively, in the accompanying consolidated statements of activities.

23. Subsequent Events

a. Nucleus Line of Credit

In August 2009, the line of credit held by Nucleus was extended to July 15, 2010. The guarantee by ULF was extended until July 15, 2011.

b. Land Purchase

In September 2009, ULF purchased land for approximately \$2.2 million. The purchase was financed with a loan from a financial institution.

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