

FINANCING AND DEVELOPMENT AGREEMENT

By and between

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

And

STATE UNIVERSITY OF NEW YORK

Dated as of May 15, 2013

TABLE OF CONTENTS

Page

ARTICLE I.

DEFINITIONS AND GENERAL PROVISIONS

SECTION 1.01.	Definitions	2
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ARTICLE II.

DORMITORY FACILITIES REVENUES

SECTION 2.01.	Assignment and Consideration	6
SECTION 2.02.	Conditions to the Issuance of Bonds	7
SECTION 2.03.	Establishment of Fees and Charges	10
SECTION 2.04.	Collection and Payment	10
SECTION 2.05.	Residual Dormitory Facilities Revenues	11

ARTICLE III.

ACQUISITION, CONSTRUCTION AND FINANCING

SECTION 3.01.	Acquisition; Conveyance and Lease	11
SECTION 3.02.	Construction of Facilities	12
SECTION 3.03.	Plans and Specifications	12
SECTION 3.04.	Letting of Contracts and Bonding	13
SECTION 3.05.	Adequacy, Sufficiency or Suitability	13
SECTION 3.06.	Payment of Costs of the Facilities	13
SECTION 3.07.	Completion Dates	14
SECTION 3.08.	Default in Contractors' Performance	14
SECTION 3.09.	Reports; Preservation and Inspection	15

ARTICLE IV.

OPERATION AND MAINTENANCE

SECTION 4.01.	Operation, Maintenance and Repair	15
SECTION 4.02.	Budget and Capital Plan	15
SECTION 4.03.	Utilities, Taxes and Governmental Charges	16
SECTION 4.04.	Additions, Enlargements and Improvements	16
SECTION 4.05.	Additional Rights of the State University	17
SECTION 4.06.	Insurance	17

ARTICLE V.

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 5.01.	Damage or Destruction.....	19
SECTION 5.02.	Condemnation.....	20

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES

SECTION 6.01.	Legal Entity	22
SECTION 6.02.	Legal Authority	22
SECTION 6.03.	Due Authorization	22
SECTION 6.04.	Validity And Enforceability	22
SECTION 6.05.	No Conflict	22
SECTION 6.06.	Consents and Approvals	22
SECTION 6.07.	No Defaults.....	23
SECTION 6.08.	No Litigation	23
SECTION 6.09.	Essentiality of Facilities	23
SECTION 6.10.	Prior Activities Concerning Hazardous Substances	23

ARTICLE VII.

SPECIAL COVENANTS

SECTION 7.01.	Compliance with Laws and Regulations	24
SECTION 7.02.	Right of Inspection	24
SECTION 7.03.	Use of Facilities.....	24
SECTION 7.04.	Covenant Not to Affect the Tax Exempt Status of the Bonds.....	25
SECTION 7.05.	Cooperation by the State University.....	25
SECTION 7.06.	Environmental Quality Review and Historic Preservation	25
SECTION 7.07.	Hazardous Substances	26
SECTION 7.08.	Compliance with Standards and Policies	27
SECTION 7.09.	Consultation with the State University.....	27
SECTION 7.10.	Creation of Liens	27
SECTION 7.11.	Rents, Fees and Charges.....	27
SECTION 7.12.	Indemnification.....	28
SECTION 7.13.	Covenant to Deliver Certificate Required by Resolution.....	29

ARTICLE VIII.

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.01.	Events of Default.....	29
SECTION 8.02.	Remedies	30
SECTION 8.03.	No Remedy Exclusive	30

SECTION 8.04.	Waiver and Non-Waiver	30
---------------	-----------------------------	----

ARTICLE IX.

MISCELLANEOUS

SECTION 9.01.	Successors and Assigns	30
SECTION 9.02.	Severability	30
SECTION 9.03.	Nature of Obligations of the State University	30
SECTION 9.04.	Nature of Obligations of the Authority	31
SECTION 9.05.	Amendments, Changes and Modifications	31
SECTION 9.06.	Amounts Remaining Under Bond Resolution	31
SECTION 9.07.	Compliance with Resolution	32
SECTION 9.08.	Investment of Money	32
SECTION 9.09.	Disclaimer of Personal Liability	32
SECTION 9.10.	Approvals Required	32
SECTION 9.11.	Actions by the Authority	32
SECTION 9.12.	Counterparts	32
SECTION 9.13.	Headings	32
SECTION 9.14.	Notices	32
SECTION 9.15.	Governing Laws	33

FINANCING AND DEVELOPMENT AGREEMENT

FINANCING AND DEVELOPMENT AND AGREEMENT, dated as of May 15, 2013 (as from time to time amended and supplemented, this "**Agreement**"), by and between the **DORMITORY AUTHORITY OF THE STATE OF NEW YORK**, a public benefit corporation of the State of New York, and the **STATE UNIVERSITY OF NEW YORK**, a corporation created in the Education Department of the State of New York and within the University of the State of New York.

WITNESSETH

WHEREAS, the Authority is authorized by §1680-q(2) of the Act to enter into agreements relating to, among other things, the acquisition of property or interests therein, the construction, reconstruction, rehabilitation, improvement, equipping and furnishing of Dormitory Facilities (as hereinafter defined), the operation and maintenance of Dormitory Facilities, and the billing, collection and disbursement of Dormitory Facilities Revenues (as hereinafter defined), the title to which is to be conveyed, assigned or otherwise transferred to the Authority pursuant hereto and to §355(2)(y) of the Education Law of the State; and

WHEREAS, upon such assignment and transfer all of the State University's rights, title and interest in and to the Dormitory Facilities Revenues will vest in the Authority and become the absolute property of the Authority, subject to rights of the State University to Dormitory Facilities Revenues remaining after provision has been made for (i) the payment of the principal of and interest on bonds of the Authority issued and outstanding in connection with Dormitory Facilities, (ii) the funding of certain reserves and (iii) the payment of the fees and expenses of the Authority, all as more particularly provided herein; and

WHEREAS, the Authority is further authorized by §1680-q(2) of the Act to issue Bonds for the purposes, among others, of financing Dormitory Facilities or refinancing notes or bonds issued previously in connection with Dormitory Facilities, including notes or bonds issued to pay costs incurred in connection with the issuance of such notes or bonds, to fund any reserve for the payment of debt service on such bonds, to fund any reserve established for the repairing, renovating or improving Dormitory Facilities, or to pay or provide for the payment of any note or bond previously issued for any such purpose; and

WHEREAS, the Authority and the State University desire to enter into this Agreement in order to provide for the acquisition of property or interests therein in connection with Dormitory Facilities, the construction, reconstruction, rehabilitation, improvement, equipping and furnishing of Dormitory Facilities, the operation and maintenance of Dormitory Facilities, the billing, collection and disbursement of Dormitory Facilities Revenues, the assignment by the State University to the Authority of the Dormitory Facilities Revenues, the rights of the State University in and to the Residual Dormitory Facilities Revenues (as hereinafter defined), and the issuance of Bonds for any one or more of the purposes for which Bonds are permitted to be issued under the Resolution; and

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

ARTICLE I.
DEFINITIONS AND GENERAL PROVISIONS

SECTION 1.01. Definitions. All terms which are defined in the Resolution which are not defined herein shall have the same meanings, respectively, herein as such terms are given in the Resolution. In addition, as used herein, unless a different meaning clearly appears from the context, the following terms shall have the respective meanings given to them below.

“Act” means the Dormitory Authority Act being Title 4 of Article 8 of the Public Authorities Law of the State, as amended, including without limitation by the Health Care Financing Construction Act, being Title 4-B of Article 8 of the Public Authorities Law of the State.

“Administrative Expenses” means for each Fiscal Year:

(i) a portion of the general administrative and overhead expenses of the Authority allocated in accordance with a formula established by the Authority for the services performed by the Authority in connection with the financing and refinancing of, or the design, construction, acquisition, reconstruction, rehabilitation, improvement or equipping of, Dormitory Facilities and matters related thereto;

(ii) expenses incurred by the Authority in carrying out its duties hereunder and under the Resolution and the 1995 Resolution, including, without limitation, amounts payable to the Commissioner for services provided pursuant to this Agreement, and accounting, administrative, consulting, financial advisory and legal expenses incurred in connection with the design, construction, acquisition, reconstruction, rehabilitation, improvement, equipping and financing or refinancing of Dormitory Facilities;

(iii) the fees and expenses of the Trustee, the 1995 Trustee, any Paying Agents or any other fiduciaries acting under the Resolution and the 1995 Resolution, and of any Provider of a Liquidity Facility, Credit Facility or Insurance Policy in connection with Bonds and 1995 Resolution Bonds;

(iv) the cost of providing insurance with respect to any Dormitory Facility;

(v) the amounts determined by the Authority to be required to be rebated to the Department of the Treasury of the United States of America pursuant to the Code, which amounts shall be payable to or upon the order of the Authority within five Business Days of receipt of notice thereof from the Authority;

(vi) the portion of the State “cost recovery fee” imposed pursuant to §2975 of the Public Authorities Law of the State allocable to Bonds;

(vii) the Costs of Issuance of Bonds not paid from the proceeds thereof;
and

(viii) expenditures to compel full and punctual performance of this Agreement in accordance with its terms.

"Agreement" means this Financing and Development Agreement, dated as of May 15, 2013, by and between the Authority and the State University, as the same may be amended, supplemented and restated from time to time in accordance with the provisions hereof and of the Resolution.

"Authority Facility" means a Dormitory Facility to be acquired, designed, constructed, reconstructed, rehabilitated, improved, furnished or equipped by the Authority pursuant to Section 3.03(a) hereof.

"Bond" means any bond of the Authority authorized and issued pursuant to the Resolution.

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

"Closing" shall have the meaning given to such term in Section 2.02 hereof.

"Commissioner" means the Commissioner of Taxation and Finance of the State and any successor or assign to the powers, functions and duties of the Commissioner of Taxation and Finance.

"Construction Account" means the account within the Construction Fund by that name established and created pursuant to the Resolution.

"Construction Fund" means the fund by that name established and created pursuant to the Resolution.

"Dormitory Facilities Revenue Fund" means the fund by that name established pursuant to §1680-q(3)(a) of the Act.

"Dormitory Facilities Revenues" means all money, including rents, fees and charges, derived from the use or occupancy of Dormitory Facilities.

"Dormitory Facility" means a "dormitory" as such term is defined in §1676(2)(a), including, without limitation, each "Facility" and "Defeased Facility" as such terms are defined in the Lease and Agreement, and each Authority Facility and University Facility as such terms are defined herein.

"Dormitory Income Account" means the account of the State University by that name established pursuant to Section 4.04 of the Lease and Agreement.

"Dormitory Income Account Reserve" shall have the meaning given to such term in the Lease and Agreement.

"Dormitory Income Account Reserve Requirement" shall have the meaning given to such term in the Lease and Agreement.

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

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

"Lease and Agreement" means that certain Lease and Agreement, by and between the Authority and the State University, dated as of September 20, 1995, as amended and restated as of September 24, 2003, and further amended by an Amendment of Lease, dated as of May 15, 2013, by and between the Authority and the State University.

"Leased Property" shall have the meaning given to such term in the Lease and Agreement.

"1995 Construction Fund" means the Construction Fund established pursuant to the 1995 Resolution.

"1995 Debt Service Fund" means the Debt Service Fund established pursuant to the 1995 Resolution.

"1995 Resolution" means the Lease Revenue Bond Resolution (State University Dormitory Facilities Issue), adopted by the Authority on September 20, 1995, as amended and restated in its entirety by a First Supplemental Resolution adopted on September 24, 2003, and further amended by a Second Supplemental Resolution adopted by the Authority on March 13, 2013, as may be amended, supplemented and restated from time to time in accordance with the provisions thereof.

"1995 Resolution Bond" means a bond of the Authority issued pursuant to the 1995 Resolution.

"1995 Trustee" means M&T Bank or any successors thereto.

"Official Statement" shall have the meaning given to such term in Section 2.02 hereof.

“Operation and Maintenance Reserve” means the reserve within the Dormitory Facilities Revenue Fund so designated and established in accordance with Section 7.13 of the Resolution.

“Operation and Maintenance Reserve Requirement” means as of the last day of each Fiscal Year, an amount equal to five percent (5%) of the amount disbursed from the Dormitory Income Account or the Dormitory Facilities Revenue Fund for operation and maintenance of the Dormitory Facilities during the Fiscal Year prior to the Fiscal Year of calculation.

“Outstanding” when used in connection with 1995 Resolution Bonds shall have the meaning given to such term in the 1995 Resolution, and, when used in connection with Bonds, shall have the meaning given to such term in the Resolution.

“Permitted Encumbrances” shall have the meaning given to such term in the Lease and Agreement.

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

“Repair and Rehabilitation Reserve” means the reserve within the Dormitory Facilities Revenue Fund so designated and established in accordance with Section 7.13 of the Resolution.

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

“Residual Dormitory Facilities Revenues” means, as of any particular date of calculation, the amount by which the amount then on deposit in the Dormitory Facilities Revenue Fund exceeds the amount, if any, required: (i) to pay the Rentals remaining to be paid during such Fiscal Year pursuant to the Lease and Agreement; (ii) to maintain the Dormitory Income Account Reserve at the Dormitory Income Account Reserve Requirement; (iii) to pay the principal of, whether payable at maturity or upon mandatory redemption, of and interest on Outstanding Bonds remaining to be paid on or prior to July 1 of the next succeeding Fiscal Year;

(iv) to maintain the Operation and Maintenance Reserve at the Operations and Maintenance Reserve Account Requirement; (v) to maintain the Repair and Rehabilitation Reserve at the Repair and Rehabilitation Reserve Requirement; and (vi) to pay the Administrative Expenses of the Authority remaining to be paid during such Fiscal Year.

“Resolution” means the State University Dormitories Facilities Revenue Bond Resolution, adopted by the Authority on May 15, 2013, as the same may be amended, supplemented and restated from time to time in accordance with the provisions thereof.

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

“University Facility” means a Dormitory Facility to be acquired, designed, constructed, reconstructed, rehabilitated, improved, furnished or equipped by the State University or for which the State University is to cause the acquisition, design, construction, reconstruction, rehabilitation, improvement, furnishing or equipping in accordance with an agreement by and between the Authority and the State University pursuant to Section 3.03(b) hereof.

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

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

ARTICLE II.

DORMITORY FACILITIES REVENUES

SECTION 2.01. Assignment and Consideration. The State University simultaneously with the execution of this Agreement shall execute and deliver to the Authority an assignment substantially in the form attached hereto as *Exhibit A* assigning to the Authority all of the State University’s rights, title and interest in and to the Dormitory Facilities Revenues and the State University’s right to receive the Dormitory Facilities Revenues. As consideration for such assignment, the State University shall be entitled to the continuing right to receive the Residual Dormitory Facilities Revenues as provided herein, and the Authority agrees to use its best efforts to sell and issue Bonds from time to time for the benefit of the State University and to apply the proceeds thereof for one or more of the purposes for which Bonds are permitted by the Resolution to be issued and to apply the proceeds thereof for such purposes. Notwithstanding the foregoing, the Authority shall not be obligated to issue Bonds and the failure of the Authority to issue Bonds shall not release the State University from any of the provisions hereof.

SECTION 2.02. Conditions to the Issuance of Bonds. Prior to or concurrently with the issuance, reissuance or remarketing and the delivery of Bonds to the underwriters or purchasers thereof (the “Closing”), the State University shall deliver to the Authority the following documents, in each case reasonably satisfactory in form and substance to the Authority and its counsel:

(a) A certificate, dated the date of Closing, of an appropriate officer of the State University to the effect that:

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

(ii) the representations and warranties of the State University contained in the Agreement are true and correct in all material respects on and as of the date of Closing as if such representations and warranties had been made on and as of such date;

(iii) the State University has complied with all of the terms of the Agreement to be complied with prior to or concurrently with the Closing;

(iv) as of the date of Closing, the information relating to the State University, the Dormitory Facilities, the Dormitory Facilities Revenues and the estimated sources and uses of funds contained in the Official Statement is not untrue or incorrect in any material respect and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading; and

(v) since the date of the Official Statement or the date of the most recent financial statements of the State University included or incorporated in the Official Statement, there has been no material adverse change, or development involving a prospective material change, in the condition (financial or otherwise), revenues, income or properties of the State University, whether or not arising in the ordinary course of business, except as set forth or contemplated in the Official Statement;

provided, however, that the Authorized Officer of the State University may qualify the statement required by clause (iv) of this Section 2.02(a) as to any information relating to the Dormitory Facilities, the Dormitory Facilities Revenues or the sources and uses of funds contained in the

Official Statement which was obtained from sources other than the State University, by a statement to the effect that such information was obtained from sources other than the State University, but that such Authorized Officer has no reason to believe, and does not believe, that such information is inaccurate or misleading in any material respect.

(b) The opinion of the chief legal officer of the State University or other counsel for the State University, dated the date of Closing, to the, effect that:

(i) the State University is a corporation of the State of New York, created in the Education Department of the State of New York and within the University of the State of New York;

(ii) the State University has the good right and lawful authority and power to execute and deliver the Agreement, to perform the obligations and covenants contained therein and to consummate the transactions contemplated thereby;

(iii) the State University has duly authorized by all necessary actions the execution and delivery of the Agreement and the performance of its obligations and covenants thereunder, and the consummation of the transactions contemplated thereby;

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

(v) the Agreement, the execution and delivery thereof and the consummation of the transactions contemplated thereby (A) do not and will not in any material respect conflict with, or constitute on the part of the State University a breach of or default under any existing law, administrative regulation, judgment, order, decree or ruling by or to which it or its revenues, properties or operations are bound or subject, or any agreement or other instrument to which the State University is a party or by which it or any of its revenues, properties or operations are bound or subject and (B) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, other than those permitted hereby, upon any of the State University's revenues, properties or operations;

(vi) all consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the State University of its obligations under the Agreement or the consummation of the transactions contemplated thereby have been duly obtained and are in full force and effect;

(vii) to the best knowledge of such counsel, after reasonable investigation, the State University is not in breach of or default under any agreement or other instrument to which the State University is a party or by or to which it or its revenues, properties or operations are bound or subject, or any existing administrative regulation, judgment, order, decree, ruling or other law by or to which it or its revenues, properties or operations are bound or subject, which breach or default is material to the transactions contemplated by the Agreement, and no event has occurred and is continuing that with the passage of time or the giving of notice, or both, would constitute, under any such agreement or instrument, such a breach or default material to such transactions;

(viii) except as disclosed in the Official Statement, no action, suit, proceeding or investigation, in equity or at law, before or by any court or governmental agency or body, is pending or, to the best knowledge of such counsel, after reasonable inquiry of responsible officials of the State University, threatened wherein an adverse decision, ruling or finding might adversely affect the transactions contemplated by the Agreement or the validity or enforceability of the Agreement or any agreement or instrument to which the State University is a party or any revenues or properties and which is used or is contemplated for use in the consummation of the transactions contemplated by the Agreement;

(ix) the State University has duly authorized inclusion in the Official Statement of the information contained therein relating to the State University, the Dormitory Facilities, the Dormitory Facilities Revenues and the estimated sources and uses of funds, and, after reasonable investigation, no information has come to such counsel's attention which would lead such counsel to believe that such information (except for financial and statistical information included therein, as to which no opinion is expressed) is untrue or incorrect or contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading; and

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

SECTION 2.03. Establishment of Fees and Charges. (a) The Authority hereby appoints the State University as its agent to establish and impose rents, charges and fees charged students and other persons for use and occupancy of each Dormitory Facility. The State University may designate the chief fiscal officer of each college or other institution, or such other officer or employee of such college or institution as the State University may designate, to establish and impose such rents, charges and fees. Subject to the rights of the Authority pursuant to Article X of the Lease and Agreement, the amounts, time and manner of payment of all rents, charges and fees charged students and other persons relating to Dormitory Facilities, including rentals charged students and other persons for occupancy of rooms in the Dormitory Facilities, shall be fixed by the State University; *provided, however*, that the amounts, time and manner of payment thereof shall comply with the provisions of Section 7.11 hereof.

(b) Notwithstanding the foregoing, the State University and the Authority, upon exercise by the Authority of the remedies provided in Section 8.02 of the Lease and Agreement or upon the termination of the Lease and Agreement pursuant to Section 9.01 thereof, each agree that:

(i) The Authority, upon thirty (30) days prior written notice to the State University, may revise the amount of any rents, charges and fees charged students and other persons for the use or occupancy of one or more Dormitory Facilities. The State University, at any time, shall have the right to consult with the Authority concerning the amounts fixed or to be fixed for such rents, charges and fees.

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

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

SECTION 2.04. Collection and Payment. The Authority hereby appoints the State University as its agent to collect, receive, remit and account for all Dormitory Facilities

Revenues. The State University may designate the chief fiscal officer of each college or other institution, or such other officer or employee of such college or institution as the State University may designate, to act on its behalf to collect, receive, remit and account for Dormitory Facilities Revenues. The State University hereby covenants to diligently collect and enforce the obligations of each student or other person using or occupying a Dormitory Facility to pay the rents, fees or charges imposed by the State University for such use and occupancy. All Dormitory Facilities Revenues, as collected by the State University, acting by and through the officers designated as its agents for collection, shall be paid to the Commissioner for deposit to the Dormitory Facilities Revenue Fund.

If required by the Authority, any such officer or employee designated by the State University to collect, receive, remit and account for Dormitory Facilities Revenues pursuant hereto, shall annually execute and file with the Authority a bond conditioned that such officer or employee will truly keep, pay over, and account for all Dormitory Facilities Revenues belonging to the Authority coming into the hands of such officer or employee as the Authority's agent. Such bond shall be in such form and such amount and issued by such sureties as the Authority may require and approve. The Authority at any time may require such agent to file a new bond for such bond with such sureties as the Authority may approve. Any expense occasioned by the execution of a bond required pursuant to this Section shall be paid by the Authority.

SECTION 2.05. Residual Dormitory Facilities Revenues. The Residual Dormitory Facilities Revenues on deposit in the Dormitory Facilities Revenue Fund during any Fiscal Year shall be paid to the State University at such times and in such amounts as the Authority and the State University shall direct by written direction to the Commissioner. The amounts so paid shall be free and clear of any pledge, lien or charge thereon created by the Resolution or the 1995 Resolution, and shall be the absolute property of the State University available to it for any lawful purpose of the State University, including, but not limited to, the costs of operating, maintaining, repairing and replacing Dormitory Facilities, and their fixtures furnishings and equipment. The Authority agrees to cooperate with the State University in determining the amount of Residual Dormitory Facilities Revenues that are on deposit in the Dormitory Facilities Revenue Fund from time to time, and to execute and deliver all documents and instruments, if any, as may be reasonably required by the Commissioner as a condition to payment of Residual Dormitory Facilities Revenues. Further, the Authority covenants and agrees to prepare and submit to the Commissioner, on or prior to June 1 of each Fiscal Year and in such form as the Commissioner may reasonably require, the certification required by Section 1680-q(3)(c) of the Act.

ARTICLE III.

ACQUISITION, CONSTRUCTION AND FINANCING

SECTION 3.01. Acquisition; Conveyance and Lease. Unless otherwise agreed by the State University and the Authority, the State University shall obtain as soon as practicable good and marketable title to the land on which each Dormitory Facility is to be located and the buildings and improvements thereon, free and clear of all liens, charges and encumbrances except for Permitted Encumbrances and the State University shall, pursuant to §355(2)(s) of the Education Law of the State, make such property available to the Authority as

the site of any Dormitory Facility, together with such rights in and over other lands adjacent thereto as may be required for temporary use during the period of construction for ingress and egress to the site on which the Dormitory Facility is to be constructed.

Each Dormitory Facility constructed on such property and financed in whole or in part with the proceeds of Bonds shall be leased by the Authority to the State University pursuant to the Lease and Agreement, such that said Dormitory Facilities and the land on which said Dormitory Facilities are located and the rights of the Authority with respect thereto shall become Leased Property under the Lease and Agreement and subject to the terms and conditions of the Lease and Agreement applicable to Leased Property thereunder.

SECTION 3.02. Construction of Facilities. The Authority, subject to the availability of money therefor in the Construction Account, shall acquire, design, construct, reconstruct, rehabilitate, improve, furnish and equip the Dormitory Facilities as provided herein; *except* that in the case of a Dormitory Facility that is a "Defeased Facility" within the meaning of the Lease and Agreement, the Authority shall acquire, design, construct, reconstruct, rehabilitate, improve, furnish and equip the Defeased Facilities as directed by the State University using only the money made available to it for such purpose.

Unless otherwise agreed by the Authority and the State University with respect to a Dormitory Facility as set forth in Section 3.03(b) below with respect to University Facilities, the Authority shall be responsible for the design, acquisition, construction, reconstruction, rehabilitation, improvement, furnishing and equipping of the Dormitory Facilities, supervision of construction, acceptance of a completed Dormitory Facility or part thereof, and all other matters incidental to performance of the duties and powers expressly granted herein to the Authority in connection with the acquisition, construction, reconstruction, rehabilitation, improvement, furnishing and equipping of the Dormitory Facilities.

SECTION 3.03. Plans and Specifications. (a) The Authority agrees that, subject to the limitations contained in this Section 3.03(a) hereof, it will prepare or cause to be prepared the Plans and Specifications for each Authority Facility and it will acquire, construct, reconstruct, rehabilitate and improve or cause to be acquired, constructed, reconstructed, rehabilitated and improved each Authority Facility substantially in accordance with the Plans and Specifications therefor. The Plans and Specifications and the cost estimates prepared by the Authority shall be approved in writing by an Authorized Officer of the State University prior to the Authority letting any contract for the construction, reconstruction, rehabilitation or improvement of an Authority Facility or part thereof. Each material modification of the Plans and Specifications for an Authority Facility shall also be approved in writing by an Authorized Officer of the State University. The Authority agrees that it will use its best efforts to cause such acquisition, construction, reconstruction, rehabilitation and improvement to be completed as soon as may be practicable, delays incident to strikes, riots, acts of God, the public enemy or any delay beyond its reasonable control only excepted; but if for any reason such acquisition, construction and installation is delayed there shall be no resulting liability on the part of the Authority.

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

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

The Plans and Specifications and the cost estimates for a University Facility shall be approved in writing by the Authority prior to any contract for the construction, reconstruction, rehabilitation or improvement of such University Facility or part thereof. Each material modification of the Plans and Specifications for a University Facility shall also be approved in writing by the Authority. The State University agrees that it will use its best efforts to cause such acquisition, construction, reconstruction, rehabilitation and improvement to be completed as soon as may be practicable, delays incident to strikes, riots, acts of God, the public enemy or any delay beyond its reasonable control only excepted.

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

SECTION 3.04. Letting of Contracts and Bonding. Contracts in connection with the acquisition, construction, reconstruction, rehabilitation or improvement of a Dormitory Facility shall be let in accordance with applicable law. The Authority with respect to Authority Facilities and the State University with respect to University Facilities shall require each contractor engaged in the acquisition, construction, reconstruction, rehabilitation or improvement of a Dormitory Facility to provide a performance bond in an amount equal to its contract price as security for the faithful performance of its contract and also a payment bond in an amount which is not less than one hundred per centum (100%) of its contract price as security for the payment of all persons performing labor or furnishing materials in connection with such contract.

SECTION 3.05. Adequacy, Sufficiency or Suitability. The Authority makes no warranties or representations and accepts no liabilities or responsibilities with respect to or for the adequacy, sufficiency or suitability of or defects in the Plans and Specifications or any contracts or agreements with respect to the acquisition, construction, reconstruction, rehabilitation or improvement of the Dormitory Facilities.

SECTION 3.06. Payment of Costs of the Facilities. (a) Costs of the Facilities shall be paid by the Authority from amounts held in the Construction Account established by the Resolution upon receipt:

(i) in the case of Authority Facilities, of a valid invoice or contractor requisition, approved in accordance with the Authority's policies and procedures, stating

the name of the payee, the purpose of the payment in terms sufficient for identification, and the amount of the payment; and

(ii) in the case of University Facilities, of a certificate executed by an Authorized Officer of the State University requesting payment or reimbursement for Costs of such Facilities, (A) identifying each of the University Facilities in connection with which payment or reimbursement is to be made, (B) describing in reasonable detail the vendor, the invoice(s) to be paid, the purpose or purposes for which such payment or reimbursement is to be made by the Authority, (C) stating that each such purpose constitutes a necessary part of the Costs of such Facilities, and (D) submitting with such certificate, a W-9 for each vendor as well as any of the information needed by the Authority to make any such payment.

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

SECTION 3.07. Completion Dates. A Dormitory Facility shall be deemed to be complete upon the filing in the offices of the Authority of a certificate or certificates of the Authority which, with respect to a University Facility, shall be substantiated by a certificate or certificates of an Authorized Officer of the State University, stating (i) that such Dormitory Facility has been completed substantially in accordance with the Plans and Specifications as evidenced by the issuance of a temporary or permanent certificate of occupancy pursuant to the New York State Building Construction Code, (ii) that such Dormitory Facility is ready for occupancy, (iii) the date of such completion and (iv) the amount, if any, required, in the opinion of such Authorized Officer, for the payment of any Costs relating to such Dormitory Facility and Costs of Issuance then unpaid. Notwithstanding the foregoing, such certificate shall be given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

SECTION 3.08. Default in Contractors' Performance. In the event of default of any contractor under any contract made in connection with a Dormitory Facility, the Authority with respect to an Authority Facility and the State University with respect to a University Facility will promptly proceed, either separately or in conjunction with others, to exhaust its remedies or the remedies of the other party hereto in its own behalf and as agent of the other party hereto, against the contractor so in default and against each surety for the performance of such contractor. The Authority and the State University each agrees to notify the other of the steps it intends to take in connection with any such default. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with a Dormitory Facility shall be paid or applied as follows:

(i) If 1995 Resolution Bonds are then Outstanding, paid to the 1995 Trustee for deposit either to the 1995 Construction Fund or the 1995 Debt Service Fund, or both, in the respective amounts determined by an Authorized Officer of the Authority, or applied to the redemption or purchase of 1995 Resolution Bonds or to make provision for the payment of 1995 Resolution Bonds in accordance with the 1995 Resolution.

(ii) If Bonds, but no 1995 Resolution Bonds, are then Outstanding, paid to the Trustee for deposit to either the Construction Account or the Debt Service Fund, or both, in the respective amounts determined by an Authorized Officer of the Authority, or applied to the redemption or purchase of Outstanding Bonds or to make provision for the payment of Outstanding Bonds in accordance with the Resolution.

(iii) If such Dormitory Facility is also a Defeased Facility within the meaning of the Lease and Agreement, paid into the fund or account from which the money used to pay such contractor had originated.

SECTION 3.09. Reports; Preservation and Inspection. The Authority shall, promptly upon request, provide the State University with a copy of each report regarding the status of the construction of the Authority Facilities as may be prepared from time to time by the Authority. The State University shall, promptly upon request, provide the Authority with a copy of each report regarding the status of the construction of the University Facilities as may be prepared from time to time. All documents and reports received or prepared by either the Authority or the State University relating to the construction of a Dormitory Facility shall be retained in its possession for at least seven (7) years after such Dormitory Facility is completed and shall be subject at all reasonable times to the inspection of the other party hereto and its agents and representatives.

ARTICLE IV.

OPERATION AND MAINTENANCE

SECTION 4.01. Operation, Maintenance and Repair. Except as otherwise provided in and subject to the provisions of Article X of the Lease and Agreement, the State University shall be responsible for, and pay all costs of, operating the Dormitory Facilities, maintaining them in good condition, and making all necessary repairs and replacements, interior and exterior, structural and non-structural; *provided, however*, that the State University shall not be obligated to pay the costs thereof paid by any person (other than the Authority) to whom a Dormitory Facility has been sublet in accordance with Section 8.02(a) of the Lease and Agreement.

SECTION 4.02. Budget and Capital Plan. The State University covenants that not less than thirty (30) days prior to the commencement of each Fiscal Year it will prepare and submit to the Authority, and thereafter implement: (i) a budget for the such Fiscal Year, which provides adequate funds for the operation and maintenance of each Dormitory Facility in good condition and for the making of all necessary repairs and replacements; (ii) a Capital Plan that will provide adequate resources for all necessary repairs and replacements of the Dormitory

Facilities; and (iii) a certification that the budget and capital plan submitted to the Authority complies with the requirements of this Section 4.02, and that the State University is in compliance with all other requirements of this Agreement and of the Lease and Agreement.

SECTION 4.03. Utilities, Taxes and Governmental Charges. The State University will pay or cause to be paid all charges for water, electricity, light, heat or power, sewage, telephone and other utility service, rendered or supplied upon or in connection with each Dormitory Facility; *provided, however*, that the State University shall not be obligated to pay the costs thereof paid by any person (other than the Authority) to whom a Facility has been leased, sublet or licensed in connection with any Permitted Encumbrance or has been sublet in accordance with Section 8.02(a) of the Lease and Agreement.

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

The Authority shall cooperate fully with the State University in the payment of taxes or assessments and in the handling and conduct of any prospective or pending litigation with respect to the levying of taxes or assessments on a Dormitory Facility and will, to the extent it may lawfully do so, permit the State University to litigate in any such proceeding in the name and behalf of the Authority.

SECTION 4.04. Additions, Enlargements and Improvements. The State University shall have the right at any time and from time to time, at its own cost and expense, to make such additions, enlargements, improvements and expansions to, or repairs, reconstruction and restorations of, a Dormitory Facility, as the State University shall deem necessary or desirable in connection with the use thereof; *provided, however*, that no addition to or enlargement, improvement, expansion, repair, reconstruction or restoration of, a Dormitory Facility which requires structural change of the Dormitory Facility, or which modifies or changes any aspect or feature thereof designed or intended to protect the life or provide for the safety of the occupants of the Dormitory Facility, shall be made by the State University without the prior

written consent of the Authority. All such additions, enlargements, improvements, expansions, repairs, reconstruction and restorations when completed shall be of such character as not to reduce or otherwise adversely affect the value of the Dormitory Facility or its use as a Dormitory Facility. The cost of any such additions, enlargements, improvements, expansions, repairs, reconstruction or restorations shall be promptly paid or discharged so that the Dormitory Facility shall at all times be free of liens for labor and materials supplied thereto other than Permitted Encumbrances. All additions, enlargements, improvements and expansions to, or repairs, reconstruction and restorations of, a Leased Property shall be and become a part of the Leased Property and be the property of the Authority.

SECTION 4.05. Additional Rights of the State University. The Authority agrees that the State University shall have the right, option and privilege of erecting, installing and maintaining at its own cost and expense such standard office partitions, railings, doors, gates, counters, lighting fixtures, gasoline or natural gas storage tanks and pumps, signs and such other equipment in or upon a Dormitory Facility as may in State University's judgment be necessary for its purposes together with the non-exclusive rights, options and privileges with others in connection with Permitted Encumbrances, to erect towers (together with all necessary guy wires and anchors), antennas and associated communications equipment on the exterior portion of buildings. It is further understood and agreed that anything erected or installed under the provisions of this Section by the State University shall be and remain the personal property of the State University and shall not become part of the Leased Property, and may be removed, altered or otherwise changed, upon or before the termination hereof.

SECTION 4.06. Insurance. (a) At the times specified herein the Authority shall, to the extent reasonably obtainable, maintain or caused to be maintained with responsible insurers, approved by the Authority, for the benefit of the Authority and the State University, the following kinds and the following amounts of insurance with respect to each Dormitory Facility, with such variations as shall reasonably be required to conform to customary insurance practice and approved by the Authority:

(i) Builder's Risk Insurance which will protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, and vandalism and malicious mischief. The limits of liability shall be on a one hundred per centum (100%) completed value basis on the insurable value of such Facility, including materials connected therewith whether in or adjacent to the structure insured and materials in place or to be used as part of the permanent construction. Such insurance shall be maintained until the insurance required by subparagraph (iv) of this Section 4.06(a) has been obtained. All such policies required by this subparagraph shall name the Authority and the State University as named insured, as their respective interests may appear;

(ii) Comprehensive Boiler and Machinery Insurance under the customary form of policy in use in the State providing coverage in an amount and with such deductibles, if any, as may be acceptable to the Authority. Such insurance shall be maintained commencing on the date such Dormitory Facility is occupied or any object insured thereunder is accepted. All such policies required by this subparagraph shall name the Authority and the State University, as their

respective interests may appear, and shall contain standard clauses which provide for the net proceeds of any loss to be made payable, except as may otherwise be required by Section 5.01 hereof, directly to the Authority for use in accordance with Section 5.01 hereof;

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

(iv) Property Insurance in an amount not less than eighty per centum (80%) of the full replacement cost of the Dormitory Facility (meaning replacement cost without allowance for depreciation), exclusive of excavations, foundations and similar property customarily excluded under the standard coverage form in use in the State and providing for protection against loss resulting from fire, lightning, the standard extended coverage insurance perils, vandalism and malicious mischief. All such policies required by this subparagraph shall name the Authority and the State University as named insured, as their respective interest may appear and shall contain standard clauses which provide for the net proceeds of any loss to be made payable, except as may otherwise be required by Section 5.01 hereof, directly to the Authority for use in accordance with Section 5.01 hereof. Such insurance with respect to any building or improvement shall be maintained at all times after completion of construction thereof; and

(v) Business Interruption Insurance in an amount agreed to by the parties hereto during such time or times as the use of all or any of the Dormitory Facilities or any part thereof may be totally or partially interrupted as a result of damage or destruction resulting from perils insured against pursuant to Section 4.06(a)(iv) hereof. All such insurance shall be carried for the benefit of the Authority and shall name the Authority as the named insured. Each policy therefor, or contract thereof, shall contain a loss payable clause providing for the proceeds thereof to be payable to the Commissioner for deposit to the Dormitory Facilities Revenue Fund.

(b) In addition to the foregoing insurance to be obtained by the Authority, the State University shall provide Worker's Compensation and Employers Liability Insurance and each other form of insurance from injuries, sickness, disability or death of employees as the State University may be required by law to provide.

(c) All insurance policies obtained by the Authority hereunder shall be open to inspection by the State University, the 1995 Trustee and the Trustee at all reasonable times. A complete description of all such policies shall be furnished annually by the Authority to the State University, the 1995 Trustee and the Trustee, and if any change shall be made in any such insurance, a description and notice of such change shall be furnished by the Authority to the State University, the 1995 Trustee and the Trustee at the time of such change. If, after consultation with the State University, a loss deductible for insured property perils or liability is selected and incorporated into the Authority's property or liability coverages, the State University shall then be responsible for the amount of the deductible that the Authority shall incur from each loss for insured perils or liability.

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

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

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

ARTICLE V.

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 5.01. Damage or Destruction. The State University agrees to notify the Authority, the 1995 Trustee and the Trustee immediately in the case of damage to or destruction of a Dormitory Facility or any portion thereof in an amount exceeding \$100,000 resulting from fire or other casualty. In the event that the amount of any such damage or destruction does not exceed \$100,000, the State University will forthwith repair, reconstruct and restore the Dormitory Facility to substantially the same condition as it existed prior to the event causing such damage or destruction and will apply the net proceeds of any insurance relating such damage received by the State University to the payment or reimbursement of the costs of such repair, reconstruction and restoration. The Authority agrees that the net proceeds of any

insurance relating to such damage or destruction, not exceeding \$100,000, may be paid directly to the State University.

In the event a Dormitory Facility or any portion thereof is damaged or destroyed by fire or other casualty and the damage or destruction is estimated to exceed \$100,000, then the State University shall within ninety (90) days after such damage or destruction elect one of the following options by written notice of such election to the Authority, the 1995 Trustee and the Trustee:

(a) **Repair and Restoration.** The State University may elect to repair, reconstruct, restore and improve the Dormitory Facility. In such event the State University or, at the request of the State University, the Authority shall proceed forthwith to repair, reconstruct and restore the Dormitory Facility to substantially the same condition as it existed prior to the event causing such damage or destruction. So long as no Event of Default hereunder or an event of default under Section 8.01(a) of the Lease and Agreement, any net proceeds of insurance relating to such damage or destruction shall be deposited (i) if 1995 Resolution Bonds are then Outstanding, to the credit of the 1995 Construction Fund, or (ii) if no 1995 Resolution Bonds are then Outstanding, to the credit of the Construction Account, and, in either event, be applied to payment of the costs of such repair, reconstruction and restoration. The net proceeds deposited in the 1995 Construction Fund shall be disbursed in accordance with the provisions of the 1995 Resolution for the payment of Costs of the Project. The net proceeds deposited in the Construction Account shall be disbursed in accordance with the provisions of the Resolution for the payment of Costs of the Facilities.

It is further understood and agreed that in the event the State University shall elect to repair, reconstruct and restore the Dormitory Facility, the State University shall complete the repair, reconstruction and restoration of the Dormitory Facility, whether or not the net proceeds of insurance received by the State University for such purposes, together with any other money of the State University available therefor, are sufficient to pay for the same. If the State University requests the Authority to repair, reconstruct and restore the Dormitory Facility, the State University shall provide the Authority with any amounts required to pay the costs thereof in excess of any insurance proceeds available to the Authority therefor.

(b) **Prepayment.** The State University may elect to have the net proceeds of insurance payable as a result of such damage or destruction applied to the prepayment of Rentals payable under the Lease and Agreement. In such event, the State University shall, in its notice of election to the Authority, the 1995 Trustee and the Trustee, direct that such net proceeds, when and as received by the trustee under the 1995 Resolution be (i) deposited to the credit of the 1995 Debt Service Fund and applied to the redemption of Outstanding 1995 Resolution Bonds or be held in trust pursuant to the defeasance provisions of the 1995 Resolution for the payment of such bonds, and (ii) to the extent of any net proceeds in excess of the amount required to be paid pursuant to clause (i), paid to or at the direction of the Authority to provide for the redemption or purchase of, or to make provision for the redemption or payment of, Outstanding Bonds.

SECTION 5.02. Condemnation. The provisions of this Agreement shall terminate as to a Dormitory Facility or portion thereof and the Leased Property appertaining thereto condemned or taken by eminent domain when title thereto vests in the party condemning

or taking the same (hereinafter referred to as the "**termination date**"). The State University hereby irrevocably assigns to the Authority all right, title and interest of the State University in and to any net proceeds of any award, compensation or damages (hereinafter referred to as an "**award**"), payable in connection with any such condemnation or taking. Such net proceeds shall be initially paid, if 1995 Resolution Bonds are Outstanding under the 1995 Resolution, to the trustee under the 1995 Resolution, or, if no 1995 Resolution Bonds are then Outstanding, to the Trustee, in either event, for deposit and application as hereinafter provided.

In the event of any such condemnation or taking, the State University shall within ninety (90) days after the termination date therefor elect one of the following options by written notice of such election to the Authority, the 1995 Trustee and the Trustee:

(a) **Repairs and Improvements.** The State University may elect to repair, reconstruct, restore and improve the Dormitory Facility. In such event the State University or, upon the request of the State University, the Authority shall proceed forthwith to repair, reconstruct and restore the Dormitory Facility to substantially the same condition as it existed prior to such condemnation or taking. So long as no Event of Default hereunder or an event of default under Section 8.01(a) of the Lease and Agreement, any net proceeds of any award, compensation or damages shall be deposited (i) if 1995 Resolution Bonds are then Outstanding, to the credit of the 1995 Construction Fund, or (ii) if no 1995 Resolution Bonds are then Outstanding, to the credit of the Construction Account, and, in either event, be applied to payment of the costs of such repair, reconstruction and restoration. The net proceeds deposited in the 1995 Construction Fund shall be disbursed in accordance with the provisions of the 1995 Resolution for the payment of Costs of the Project. The net proceeds deposited in the Construction Account shall be disbursed in accordance with the provisions of the Resolution for the payment of Costs of the Facilities.

It is further understood and agreed that in the event the State University shall elect to repair, reconstruct and restore the Dormitory Facility, the State University shall complete the repair, reconstruction and restoration of the Dormitory Facility, whether or not the net proceeds of any award, compensation or damages received by the State University or the Authority for such purposes, together with any other money of the State University available therefor, are sufficient to pay for the same. If the State University requests the Authority to repair, reconstruct and restore the Dormitory Facility, the State University shall provide the Authority with any amounts required to pay the costs thereof in excess of the proceeds of any award available to the Authority therefor.

(b) **Prepayment.** The State University may elect to have the net proceeds as a result of a condemnation applied to the prepayment of Rentals payable under the Lease and Agreement. In such event, the State University shall, in its notice of election to the Authority, the 1995 Trustee and the Trustee, direct that such net proceeds, when and as received by the trustee under the 1995 Resolution, be (i) deposited to the credit of the 1995 Debt Service Fund and applied to the redemption of Outstanding 1995 Resolution Bonds or be held in trust pursuant to the defeasance provisions of the 1995 Resolution for the payment of such bonds, and (ii) to the extent of any net proceeds in excess of the amount required to be paid pursuant to clause (i), paid to or at the direction of the Authority to provide for the redemption or purchase of, or to make provision for the redemption or payment of, Outstanding Bonds.

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

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES

The State University hereby represents and warrants as follows:

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

SECTION 6.02. Legal Authority. The State University has the good right and lawful authority and power to execute and deliver this Agreement, to perform the obligations and covenants contained herein, and to consummate the transactions.

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

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

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

SECTION 6.06. Consents and Approvals. All consents, approvals, authorizations or orders of, or filings, registrations or declarations with any court, governmental authority, legislative body, board, agency or commission which are required for the due authorization of, which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by the State University of its obligations

hereunder or the consummation of the transactions contemplated hereby have been duly obtained and are in full force and effect.

SECTION 6.07. No Defaults. The State University is not in breach of or default under any agreement or other instrument to which the State University is a party or by or to which it or its revenues, properties or operations are bound or subject, or any existing administrative regulation, judgment, order, decree, ruling or other law by or to which it or its revenues, properties or operations are bound or subject, which breach or default is material to the transactions contemplated hereby; and no event has occurred and is continuing that with the passage of time or the giving of notice, or both, would constitute, under any such agreement or instrument, such a breach or default material to such transactions.

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

SECTION 6.09. Essentiality of Facilities. The Dormitory Facilities are essential to the proper administration of the State University and to meet the essential needs of the State University, and it is contemplated that the Dormitory Facilities shall be essential to such administration and to meet such needs through the period any Bonds are Outstanding.

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

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

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

(d) During the State University's ownership of any of the Dormitory Facilities or the land on which a Dormitory Facility is located and to the best knowledge of the State University as to periods prior thereto, none of the real property owned or occupied by the State University and located in the State, including, but not limited to, the Dormitory Facilities and the land on which a Dormitory Facility is located, has ever been used by it or the present or a previous owner or operator to generate, manufacture, refine, transport, treat, store, handle or dispose of Hazardous Substances and the State University does not intend in the future to use any of its real property for such purposes.

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

ARTICLE VII.

SPECIAL COVENANTS

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

SECTION 7.01. Compliance with Laws and Regulations. The State University will, at its own cost and expense, promptly comply with, or cause to be complied with, all laws, rules, regulations and other governmental requirements, whether or not the same require structural repairs or alterations, which may be applicable to each Dormitory Facility or the use or manner of use thereof, including but not limited to the provisions of the Act, the Education Law of the State and the rules and regulations promulgated thereunder; *provided, however,* that the State University's obligation to comply with any such law, rule, regulation or governmental requirement shall be suspended during any contest thereof in good faith by the State University, which contest is being diligently prosecuted. The State University will also observe and comply with the requirements of all policies and arrangements of insurance at any time in force with respect to a Dormitory Facility.

SECTION 7.02. Right of Inspection. The State University will, upon prior written notice from the Authority, permit the Authority and its authorized agents to inspect the books and records of the State University related to the establishment, collection and payment of Dormitory Facilities Revenues.

SECTION 7.03. Use of Facilities. The State University will not sell, sublease or otherwise dispose of, encumber or permit the use of a Dormitory Facility if the same would adversely affect the exclusion of interest on any of the Bonds issued under the Resolution from gross income for purposes of federal income taxation. Prior to permitting any use other than by the State University in furtherance of its educational purposes or entering into any lease or

sublease or disposing of any Dormitory Facility, the State University shall give not less than thirty (30) days prior written notice thereof to the Authority.

SECTION 7.04. Covenant Not to Affect the Tax Exempt Status of the Bonds. The State University (i) will take no action, or permit any action to be taken, with respect to a Dormitory Facility which will impair the exclusion of interest on any Bond from gross income for purposes of federal income taxation; (ii) invest or otherwise use the proceeds of any Bonds in a manner which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code, and any proposed or final regulations thereunder as are applicable to any Bond; or (iii) purchase or permit the purchase by any "related person," as defined in Section 147(a) (2) of the Code, pursuant to an arrangement, formal or informal, of any Bonds in an amount related to the amount of any obligation to be acquired by the Authority from the State University. In addition, the State University shall keep detailed records relating to (i) the use of the proceeds of the Bonds paid to the State University for payment of Costs of each State University Facility sufficient to identify the amount of proceeds from each Series of Bonds have been expended for Costs of such University Facilities, and (ii) the non-governmental use and occupancy of each Dormitory Facility and the period of time over which such use continued.

SECTION 7.05. Cooperation by the State University. The State University, whenever requested by the Authority, will provide and certify, or cause to be provided and certified, in form satisfactory to the Authority, such information concerning the State University and the Dormitory Facilities, the operations and finances of the State University and such other matters that the Authority considers necessary to enable it to complete and publish an Official Statements, or to enable the Authority to make any reports required by law or regulations of any governmental authority or by the Resolution, including, but not limited to, the information necessary to prepare the annual report required by Section 1680-q(4) of the Public Authorities Law of the State.

SECTION 7.06. Environmental Quality Review and Historic Preservation. The State University shall comply, and shall assist the Authority in complying, with the provisions of the State Environmental Quality Review Act ("SEQRA"), codified in Article 8 of the Environmental Conservation Law, the State Smart Growth Public Infrastructure Policy Act, codified in Article 6 of the Environmental Conservation Law, Article 14 of the Parks, Recreation, and Historic Preservation Law, and any other applicable laws relating to the protection of the environment in connection with the construction, reconstruction, alteration, expansion or other modification of each Dormitory Facility. Unless otherwise agreed by the State University and the Authority, the Authority shall assume primary responsibility or lead agency status under such laws and shall take such actions as may be required to be taken by the lead agency or agency with primary responsibility thereunder. The State University acknowledges that in order to assure full and timely compliance with laws, rules and regulations applicable to the construction, reconstruction, alteration, expansion or other modification of Dormitory Facilities, the Authority requires prompt notification and disclosure by the State University of the State University's plans and intentions with respect the same. The State University and the Authority each agree to cooperate with and provide assistance to the lead agency or the agency with primary responsibility under such laws, including the preparation and provision of such documents as may be reasonably requested of the State University or the Authority in order to enable the lead agency or the agency with primary responsibility to comply

with such laws. Except for paying the costs of studies, plans or designs, no money in the Construction Account shall be spent on a Dormitory Facility until the provisions of this Section have been complied with.

SECTION 7.07. Hazardous Substances. (a) The State University will not cause or permit to exist, as a result of an intentional or unintentional action or omission on its part, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of a Hazardous Substance where damage may result to the lands, waters, fish, shellfish, wildlife, biota, air and other resources owned, managed, held in trust or otherwise controlled by the State unless said release, spill, leak, etc., is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, State or local governmental authorities.

(b) In the event that a lien is filed against a Dormitory Facility or the land on which it is located or any part thereof by any federal, State or local authority charged with the enforcement of an environmental protection law or regulation, then the State University will immediately notify the Authority and, within thirty (30) days after the date that the State University is given notice that the lien has been placed against such Dormitory Facility or land or a part thereof, or sooner if the lienor has commenced steps to cause the same to be sold pursuant to such lien, shall pay the claim and remove the lien from such Dormitory Facility or land or part thereof or commence and diligently prosecute an action or proceeding contesting such lien or the claim out of which the lien arose; *provided, however*, that during the pendency of such action or proceeding the State University will furnish a bond satisfactory to the Authority in the amount of the claim out of which the lien arose or furnish other reasonable security satisfactory to the Authority in an amount which, in the reasonable judgment of the Authority, is sufficient to discharge the claim out of which the lien arose; *provided, further*, that, if at any time during the pendency of such action or proceeding, failure to have removed said lien or to have paid the claim out of which such lien arose will not prevent the foreclosure of such lien or loss of title to such Dormitory Facility or land thereto, the State University will promptly pay said claim.

(c) In the event that any federal, State or local agency charged with the enforcement of an environmental protection law or regulation serves upon the State University a directive to remove or arrange for the removal or discharge of any Hazardous Substances on or in a Dormitory Facility or the land on which it is located or part thereof, the State University will comply with the directive within thirty (30) days from its date or such shorter period prescribed therein to the satisfaction of such agency or (i) if such directive cannot be complied with within such period, the State University promptly commence and diligently prosecute all actions necessary to comply with said directive or (ii) within such period, commence and thereafter diligently prosecute an action or proceeding contesting such directive; provided that so long as such directive is not complied with or during the pendency of such action, the State University shall furnish a bond, cash or other reasonable security satisfactory to the Authority in an amount which, in the reasonable judgment of the Authority, is sufficient to pay the costs of taking the actions required by said directive.

(d) Except as otherwise provided in this Section, the State University promptly will comply with all applicable laws, rules, regulations, orders and directives relating to Hazardous Waste or otherwise concerning environmental conditions upon or applicable to the Dormitory Facilities or the land on which they are located and shall immediately notify the

Authority in writing of the discovery, discharge or release of any Hazardous Substance at such Dormitory Facility or land for which the State University is in any way responsible under any federal, State or local environmental protection law or regulation.

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

SECTION 7.08. Compliance with Standards and Policies. The State University will take, through officers and employees subject to its jurisdiction, all appropriate actions to require compliance with all rules and regulations adopted by it relating to the use and occupancy of the Dormitory Facilities and the payment of rents, fees and charges therefor.

SECTION 7.09. Consultation with the State University. The Authority will consult with an Authorized Officer of the State University on the terms and timing of proposed sales of Bonds and the contents of all resolutions, certificates, applications, contracts, official statements, prospectuses, placement memoranda or other similar document relating to the sale of Bonds, notices of sale, advertisements, and other documents relating to financing of the Dormitory Facilities.

SECTION 7.10. Creation of Liens. The State University shall not create, cause to be created or suffer or permit the creation of any lien or charge on the Dormitory Facilities Revenues.

SECTION 7.11. Rents, Fees and Charges. The State University covenants that the rents, fees and charges established and imposed by it and payable during each Fiscal Year for the use and occupancy of Dormitory Facilities shall be at least sufficient at all times: (i) to pay when due the Rentals payable by the State University during such Fiscal Year pursuant to the Lease and Agreement, (ii) to pay when due, interest on Outstanding Bonds payable during such Fiscal Year and the principal or Sinking Fund Installments of all Outstanding Bonds payable on or prior to July 1 of the next succeeding Fiscal Year; (iii) to pay the costs of operation, maintenance, repair and replacement of the Dormitory Facilities budgeted by the State University for such Fiscal Year; (iv) to maintain the Dormitory Income Account Reserve at the Dormitory Income Account Reserve Requirement; (v) to maintain the Operation and Maintenance Reserve and the Repair and Rehabilitation Reserve at their respective requirements; and (vi) to pay the Administrative Expenses for such Fiscal Year. For the purpose of the preceding sentence, the amounts referred to in (i), (ii), (iv), (v) and (vi) above for a Fiscal Year

shall be the amounts set forth in the certification made by the Authority and delivered to the Commissioner and the State University on or before June 1 immediately preceding such Fiscal Year pursuant to §1680-q(3)(c) of the Act.

SECTION 7.12. Indemnification. Both during the term of this Agreement and thereafter, the State University, to the extent authorized by the New York State Court of Claims Act and to the extent not otherwise prohibited by State law and decisions thereunder, shall hold the Authority and any member, officer and employee of the Authority harmless from and against any and all liability, loss, cost, damage, claim, suit or judgment and any and all costs and expenses including, but not limited to, reasonable counsel fees and disbursements, if assessed by a court of competent jurisdiction, of any and all kinds or nature and however arising, imposed by law, which it or any of them may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, or upon or arising out of the financing, design, construction, reconstruction, acquisition, rehabilitation, improvement, occupancy, or use of the facilities, pursuant hereto, or upon or arising out of the allegation that an official statement, prospectus, placement memorandum or other offering document prepared in connection with the sale and issuance of obligations contained an untrue or misleading statement of a material fact relating to the State University, the Dormitory Facilities, the Dormitory Facilities Revenues or the estimated sources and uses of funds, or omitted to state a material fact relating to the State University, the Dormitory Facilities, the Dormitory Facilities Revenues or the estimated sources and uses of funds necessary in order to make the statements made therein in light of the circumstances under which they were made not misleading; provided, however, that such liability, loss, cost, damage, claim, suit or judgment resulted from the negligence of State University or its employees while acting within the scope of such employees University employment duties, and is not contributed to, caused by or resulted from the intentional wrong doing of the Authority, its members, officers or employees.

The provisions of this Section 7.12 shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided herein from its obligation to defend or indemnify the State University, the Authority and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy. It is the intention of the parties hereto that any such insurance shall be primary, and shall take precedence over the obligations provided by the State University hereunder.

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

The Authority and each member, officer or employee shall be entitled to employ separate counsel in any action or proceeding and to participate in the defense thereof; **provided, however,** that the State University shall not be liable for attorneys' fees of separate counsel so retained or any other expenses incurred in connection with its participation in the defense of such action or proceeding, other than the reasonable costs of investigation thereof, unless the State University shall have consented thereto or unless, (i) in the reasonable judgment of the Authority

(A) it or any member, officer or employee's interests and the interests of the State University therein are adverse or (B) it or any member, officer or employee may have a defense available to it which is not available to the State University or (ii) the State University does not provide for legal representation.

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

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

SECTION 7.13. Covenant to Deliver Certificate Required by Resolution.

Upon request of the Authority, the State University shall deliver to the Authority a certificate, as required by Section 2.02(g) of the Resolution in connection with the issuance by the Authority of additional bonds under the Resolution, detailing the Operating Expenses of the State University for each of the two immediately preceding Fiscal Years.

ARTICLE VIII.

EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

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

SECTION 8.02. Remedies. Whenever any event of default referred to in Section 8.01 hereof shall have happened and be continuing, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the State University hereunder.

SECTION 8.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 8.04. Waiver and Non-Waiver. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE IX.

MISCELLANEOUS

SECTION 9.01. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the State University, the Authority and their respective successors and assigns.

SECTION 9.02. Severability. In the event any one or more of the covenants, stipulations, promises, obligations and agreements herein on the part of the Authority or the State University to be performed should be contrary to law, then such covenant or covenants, stipulation or stipulations, promise or promises, obligation or obligations, or agreement or agreements shall be null and void, shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, obligations and agreements herein contained and shall in no way affect the validity or enforceability of the other provisions hereof.

SECTION 9.03. Nature of Obligations of the State University. Except as hereinafter provided in this Section, the obligation of the State University to assign, and as agent of the Authority, to collect and pay over to the Commissioner, Dormitory Facilities Revenues, and to perform its obligations hereunder shall be general, legal, valid and binding obligations of the State University, and such Dormitory Facilities Revenues shall be assigned, collected and

paid over without any rights of set-off, recoupment or counterclaim it might have against the Authority, the Trustee or any other person and whether or not the Dormitory Facilities are used or occupied by the State University or available for use or occupancy by the State University; provided, however, that the State University shall receive a credit against the Dormitory Facilities Revenues to the extent of the proceeds of any use and occupancy insurance received by the Authority and available for application to the payment of the Dormitory Facilities Revenues. If the State University shall have paid assigned, collected and paid over all amounts required hereby to be assigned, collected and paid over and continues to do so in accordance herewith, it shall not be precluded from bringing any action it may otherwise have against the Authority.

Notwithstanding anything herein to the contrary, the cost and expense of the performance by the State University of its obligations hereunder and the incurrence of any liabilities of the State University hereunder shall be deemed executory to the extent of money legally available to the State University for such purpose.

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

SECTION 9.04. Nature of Obligations of the Authority. The cost and expense of the performance by the Authority of any of its obligations hereunder shall be limited to the availability of the proceeds of Bonds issued for such purposes or from other funds received by the Authority hereunder and available for such purposes.

SECTION 9.05. Amendments, Changes and Modifications. This Agreement may be amended, changed or modified in any respect or any provision hereof waived; *provided, however,* that no such amendment, change, modification or waiver shall be made other than pursuant to a written instrument signed by the Authority and the State University; *provided, further,* that no amendment, change or modification shall take effect unless and until (i) if the consent of Holders of Outstanding Bonds is required by the Resolution, there shall have been filed with the Trustee the written consents of the Holders of the percentages of Outstanding Bonds specified in the Resolution, (ii) if the consent of the Trustee is required by the Resolution, the Trustee shall have consented thereto, (iii) approved by the Attorney General of the State and the Office of the State Comptroller, and (iv) an executed copy of such amendment, change or modification, certified by an Authorized Officer of the Authority, shall have been filed with the Trustee.

SECTION 9.06. Amounts Remaining Under Bond Resolution. It is agreed by the parties hereto that any amounts remaining in any fund or account created under the Resolution, upon expiration or sooner termination of the Lease Term, as provided herein, after payment in full of the Bonds (or provision for payment thereof having been made in accordance

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with the provisions of the Resolution) and the fees, charges and expenses of the Trustee and paying agents and the Authority in accordance herewith and with the Resolution, shall belong to and be paid to the State University.

SECTION 9.07. Compliance with Resolution. The State University hereby approves of and agrees to the provisions of the Resolution. The State University agrees to do all things within its power in order to enable the Authority to comply with all requirements and to fulfill all covenants of the Resolution which require the State University to comply with requests or obligations so that the Authority will not be in default in the performance of any covenant, condition, agreement or provision of the Resolution.

SECTION 9.08. Investment of Money. The State University hereby acknowledges that the Authority may in its sole discretion invest or direct the investment of certain money held under the Resolution, including money held by the Authority in the Construction Account, as provided in the Resolution and that no representation or warranty has been made by the Authority with respect to interest rates on, or the amount to be earned as a result of, any such investment. Neither the Authority nor the Trustee shall have any liability arising out of or in connection with the making of any investment authorized by the provisions of Article VI of the Resolution in the manner provided therein, for any depreciation in value of any investment or for any loss, direct or indirect, resulting from any such investment.

SECTION 9.09. Disclaimer of Personal Liability. No recourse shall be had against or liability incurred by any member of the Authority or any officer or employee of the Authority or of the State University, or any person executing this Agreement for any covenants and provisions hereof or for any claims based thereon.

SECTION 9.10. Approvals Required. This Agreement shall not become effective until and unless it is approved by the Attorney General of the State and the Comptroller of the State. An approval by an authorized deputy of any such officers shall be deemed the approval of such officer..

SECTION 9.11. Actions by the Authority. Whenever this Agreement permits or directs the Authority to act or permits or requires the Authority to direct or request that action be taken by another, such action, direction or request may be taken or made by an Authorized Officer of the Authority. Any certificate required hereby or by any other agreement executed in connection with the Dormitory Facilities, the Dormitory Facilities Revenue Fund or Dormitory Facilities Revenues may be executed by an Authorized Officer of the Authority.

SECTION 9.12. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9.13. Headings. The headings preceding the text of the several Articles and Sections hereof and exhibits appended hereto and any table of contents appended to copies hereof shall be solely for convenience of reference and shall not constitute a part hereof nor shall they affect its meaning, construction or effect.

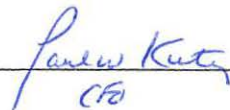
SECTION 9.14. Notices. Any notices or other instruments required to be given or delivered pursuant hereto shall be in writing and shall be delivered by hand against the written receipt therefor or sent by registered or certified mail, in the case of the Authority, addressed to it to the attention of the Authority's Executive Director with a copy to the Authority's General Counsel, at 515 Broadway, Albany, New York 12207-2964; in the case of the State University, addressed to it to the attention of the Chancellor of the State University, with a copy to the State University's General Counsel and Controller, at State University Plaza, Albany, New York 12246; in the case of the Trustee, addressed to it at the principal corporate trust office of the Trustee at the addresses of such principal corporate trust office; or, in each case, to such other individual and at such other address as the person to be notified shall have specified by notice to the other persons.

SECTION 9.15. Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State.

[Remainder of this page intentionally left blank]

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

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

By: 
Title: CEO

STATE UNIVERSITY OF NEW YORK

By: 
Title: Vice Chancellor

The foregoing Financing and Development Agreement dated as of May 15, 2013, by and between the Dormitory Authority of the State of New York and the State University of New York is hereby approved:

**COMPTROLLER OF THE
STATE OF NEW YORK**

APPROVED DEPT. OF AUDIT & CONTROL Title: Date: JUN 01 2013 <i>Charlotte E. Bruyere</i> FOR THE STATE COMPTROLLER	APPROVED AS TO FORM NYS ATTORNEY GENERAL JUN 27 2013 <i>Lorraine I. Remo</i> LORRAINE I. REMO PRINCIPAL ATTORNEY
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**ATTORNEY GENERAL OF THE
STATE OF NEW YORK**

By: _____
Name:
Title:
Dated:

EXHIBIT A

FORM OF ASSIGNMENT

ASSIGNMENT

This **ASSIGNMENT** is made as of May 15, 2013, by and between the **STATE UNIVERSITY OF NEW YORK** (the "**Assignor**"), a corporation created in the Education Department of the State of New York and within the University of the State of New York, having its principal corporate headquarters at State University Plaza, Broadway, Albany, New York 12201, and the **DORMITORY AUTHORITY OF THE STATE OF NEW YORK** ("**Assignee**"), a public benefit corporation of the State of New York, having its principal place of business at 515 Broadway, Albany, New York 12207.

SECTION 1. Definitions. Capitalized terms used in this Assignment and not defined in this Assignment are defined in, and shall have the meanings given to those terms in, the Financing and Development Agreement (the "**Agreement**"), dated as of May 15, 2013, by and between the Assignor and the Assignee.

SECTION 2. Assignment. Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby absolutely and irrevocably assign, transfer, convey and deliver to Assignee, and its respective successors and assigns, all of its rights, title and interests in and to the following (collectively, the "**Dormitory Facilities Revenues**"): (a) all rents, fees and charges derived from the use and occupancy of Dormitory Facilities, and the right to receive the same and the proceeds of such right, and (b) the present and continuing right to make claim for, collect and receive the Dormitory Facilities Revenues, and the right to bring actions and receive proceeds for the enforcement of such payments.

SECTION 3. Representations and Warranties. The Assignor represents and warrants to the Assignee as of the date hereof as follows:

- (a) The Dormitory Facilities Revenues so assigned are free and clear of liens;
- (b) The Agreement remains unmodified and all of the provisions thereof are in full force and effect; and
- (c) The Assignor does not have any existing defenses against the enforcement of the Agreement.

SECTION 4. No Other Encumbrances. The Assignor covenants that, except as otherwise provided in the Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any of the Dormitory Facilities Revenues.

SECTION 5. Further Assurances. The Assignor covenants that it will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such additional and supplemental agreements, instruments and documents, and make such further transfers as may be necessary to effectuate the assignment and transfers contemplated by the Agreement.

SECTION 6. Headings. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 7. Governing Law. This Assignment shall be construed in accordance with the laws of the State of New York, without reference to its conflict of law provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

SECTION 8. Successors and Assigns. The provisions of this Assignment are solely for the benefit of the Assignor, the Assignee, Manufacturers and Traders Trust Company, as trustee (the "1995 Trustee") under that certain Lease Revenue Bond Resolution (State University Dormitory Facilities Issue), adopted by the Authority on September 20, 1995, as amended and restated in its entirety by a First Supplemental Resolution adopted on September 24, 2003, and further amended by a Second Supplemental Resolution adopted by the Authority on March 13, 2013, and a Third Supplemental Resolution adopted by the Authority on April 10, 2013 and the trustee to be appointed, as trustee (the "2013 Trustee"), under the State University Dormitory Facilities Revenue Bond Resolution adopted by the Authority on May 15, 2013; *provided, however*, that this Assignment may not be assigned by any party hereto without the prior written consent of the other parties hereto, *except* that the Assignee may assign this Assignment to the 1995 Trustee and the 2013 Trustee without the consent of any other party hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed by their respective officers as of the day and year first above written.

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

By: _____
Authorized Officer

STATE UNIVERSITY OF NEW YORK

By: _____
Title:

The foregoing Assignment, dated as of May 15, 2013, by and between the Dormitory Authority of the State of New York and the State University of New York is hereby approved:

**COMPTROLLER OF THE
STATE OF NEW YORK**

By: _____
Name:
Title:
Dated:

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

By: _____
Name:
Title:
Dated:

(Signature Page to Assignment)