

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Bond Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds. See "TAX MATTERS."*

**\$6,070,000**  
**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS**  
**REVENUE BONDS**  
**(PATHWAYS HOME HEALTH AND HOSPICE), SERIES 2004**

**Dated:** Date of Delivery**Price:** 100%**Due:** October 1, 2034

The Bonds are being issued pursuant to an Indenture, dated as of October 1, 2004 (the "Indenture"), between the ABAG Finance Authority for Nonprofit Corporations (the "Authority") and Wells Fargo Bank, National Association, as trustee (the "Trustee"), for the benefit of Pathways Home Health and Hospice (the "Borrower"). The Authority will loan the proceeds of the Bonds to the Borrower pursuant to a Loan Agreement, dated as of October 1, 2004 (the "Loan Agreement"), between the Authority and the Borrower to: (i) finance costs of the acquisition, renovation and equipping of a facility to be used by the Borrower in connection with its provision of home health and hospice services and (ii) pay certain costs of issuance of the Bonds, all as more fully described herein. The Bonds are payable by the Trustee from the Revenues pledged under the Indenture as described herein, which generally consist of loan repayments required to be made by the Borrower under the Loan Agreement.

The Bonds will be issued as fully-registered bonds, registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), which will act as securities depository for the Bonds. Purchases and tenders of the Bonds may be made in book-entry form only, through brokers and dealers who are, or who act through, DTC Participants (as herein defined). Beneficial owners of the Bonds will not receive physical delivery of bond certificates. Payments of the principal and purchase price of, premium, if any, and interest on the Bonds will be made to DTC. Disbursement of payments to DTC Participants is the responsibility of DTC and disbursement of payments to the beneficial owners is the responsibility of DTC Participants. See APPENDIX B - "BOOK-ENTRY SYSTEM."

The Bonds will initially bear interest at a Weekly Rate and while in a Weekly Rate Period will be available in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof. During a Weekly Rate Period, interest is payable on the first Business Day of each month, commencing November 1, 2004. The Bonds may be converted to a different Rate Period as described herein. See "THE BONDS - Terms of the Bonds - Adjustment of Rate Periods."

**The Bonds are subject to optional and mandatory tender for purchase and optional and mandatory redemption prior to maturity as described herein.**

Payment of the principal of, interest on, and purchase price of, the Bonds bearing interest at a Weekly Rate pursuant to the Indenture is supported initially by an irrevocable direct-pay letter of credit (the "Initial Credit Facility"), being issued concurrently with the issuance of the Bonds by

**U. S. BANK NATIONAL ASSOCIATION**

(the "Initial Credit Provider). The Initial Credit Facility will expire on October 19, 2009 (the "Expiration Date"), unless extended or terminated prior thereto as described herein.

THE BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND THE PRINCIPAL THEREOF, AND PREMIUM, IF ANY, AND INTEREST THEREON, ARE PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE REVENUES AND THE OTHER AMOUNTS PLEDGED THEREFOR THEREUNDER, AND THE PURCHASE PRICE THEREOF IS PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE PROCEEDS OF THE REMARKETING OF THE BONDS, AMOUNTS MADE AVAILABLE UNDER THE INITIAL CREDIT FACILITY OR ANY ALTERNATE CREDIT FACILITY, AND AMOUNTS PROVIDED BY THE BORROWER, AT ITS SOLE OPTION, PURSUANT TO THE LOAN AGREEMENT. NEITHER THE AUTHORITY, THE ASSOCIATION OF BAY AREA GOVERNMENTS ("ABAG"), ANY OF THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE OF CALIFORNIA (THE "STATE"), NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER, AND NONE OF THE BONDS OR ANY OF THE AUTHORITY'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE AUTHORITY, ABAG, OR THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. NEITHER THE AUTHORITY NOR ABAG HAS ANY TAXING POWER.

This cover page contains certain information for ease of reference only. Potential investors are advised to read this entire Official Statement, including the Appendices, to obtain information essential to making an informed investment decision.

*The Bonds are offered when, as and if received by the Underwriter, subject to prior sale and to the approval of validity by Orrick, Herrington & Sutcliffe LLP, Bond Counsel. Certain legal matters will be passed upon for the Borrower by its counsel, Foley & Lardner LLP, San Francisco, California, for the Authority by Nixon Peabody LLP, San Francisco, California, and for the Initial Credit Provider by its counsel, Buchalter Nemer Fields & Younger, San Francisco, California. It is expected that the Bonds in definitive form will be available for delivery to the Underwriter via DTC on or about October 19, 2004.*

**CAIN BROTHERS**

Dated: October 14, 2004

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy the Bonds, nor shall there be any sale of the Bonds by any person in any state or other jurisdiction to any person to whom it is unlawful to make such offer, solicitation or sale in such state or jurisdiction. No dealer, broker, salesperson, or any other person has been authorized to give any information or to make any representation other than those contained herein in connection with the offering of the Bonds and, if given or made, such information or representation must not be relied upon.

The information set forth herein under the caption "THE AUTHORITY" and "ABSENCE OF MATERIAL LITIGATION–The Authority" has been obtained from the Authority; the information set forth herein under the caption "THE INITIAL CREDIT PROVIDER, THE INITIAL CREDIT FACILITY AND THE INITIAL CREDIT AGREEMENT" has been furnished by the Initial Credit Provider; and the information set forth in APPENDIX B–"BOOK-ENTRY SYSTEM" has been furnished by The Depository Trust Company. All other information set forth herein has been obtained from the Borrower, and other sources that are believed to be reliable, but such other information is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Authority.

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

The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale of the Bonds made hereunder shall, under any circumstances, create any indication that there has been no change in the affairs of the Authority, the Initial Credit Provider, the Borrower or DTC since the date hereof. This Official Statement, including any supplement or amendment hereto, is intended to be deposited with one or more repositories.

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

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF LAWS OF THE STATES IN WHICH BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

## TABLE OF CONTENTS

	Page
INTRODUCTORY STATEMENT .....	1
General .....	1
Application of Proceeds .....	1
The Initial Credit Facility .....	1
Investment Considerations .....	2
THE BONDS .....	2
Terms of the Bonds .....	2
Redemption .....	5
Optional Tender for Purchase.....	6
Mandatory Tender for Purchase .....	7
Payment of Purchase Price .....	7
Bonds Deemed Purchased .....	8
General Provisions Relating to Tenders .....	8
Remarketing of Bonds.....	9
OPTIONAL REDEMPTION SCHEDULE.....	9
ESTIMATED SOURCES AND USES OF FUNDS .....	10
SECURITY AND SOURCE OF PAYMENT .....	10
General .....	10
The Initial Credit Facility .....	11
Alternate Credit Facility .....	11
Revenues and Loan Repayments.....	11
THE INITIAL CREDIT PROVIDER, THE INITIAL CREDIT FACILITY AND THE INITIAL CREDIT AGREEMENT .....	12
The Initial Credit Provider .....	12
The Initial Credit Facility .....	13
The Initial Credit Agreement .....	13
THE BORROWER.....	17
THE PROJECT .....	17
THE AUTHORITY .....	17
INVESTMENT RISKS .....	18
Limitations of the Initial Credit Facility.....	18
Tax-Exempt Status of the Borrower.....	18
ABSENCE OF MATERIAL LITIGATION.....	19
The Authority .....	19
The Borrower .....	19
TAX MATTERS .....	19
LEGAL MATTERS .....	21
CONTINUING DISCLOSURE.....	21
RATING.....	21
UNDERWRITING .....	21
MISCELLANEOUS.....	21
APPENDIX A - DEFINITIONS AND SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL DOCUMENTS .....	A-1
APPENDIX B - BOOK-ENTRY SYSTEM.....	B-1
APPENDIX C - PROPOSED FORM OF OPINION OF BOND COUNSEL.....	C-1

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**OFFICIAL STATEMENT**  
**\$6,070,000**  
**ABAG Finance Authority for Nonprofit Corporations**  
**Revenue Bonds**  
**(Pathways Home Health and Hospice),**  
**Series 2004**

**INTRODUCTORY STATEMENT**

The following introductory statement is subject in all respects to the more complete information set forth elsewhere in this Official Statement. The descriptions and summaries of various documents hereinafter set forth do not purport to be comprehensive or definitive, and are qualified in their entirety by reference to such documents. All capitalized terms used in this Official Statement and not otherwise defined herein have the meanings assigned to such terms in APPENDIX A - "DEFINITIONS AND SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL DOCUMENTS – Definitions of Certain Terms" or, if not defined therein, in the Indenture or in the Initial Credit Agreement, each as hereinafter defined.

**General**

This Official Statement, including the cover page and Appendices hereto (the "Official Statement"), is provided to furnish information with respect to the sale and delivery of \$6,070,000 aggregate principal amount of ABAG Finance Authority for Nonprofit Corporations Revenue Bonds (Pathways Home Health and Hospice), Series 2004 (the "Bonds"), which are being issued by the ABAG Finance Authority for Nonprofit Corporations (the "Authority") for the benefit of Pathways Home Health and Hospice, a California nonprofit public benefit corporation (the "Borrower"), pursuant to an Indenture, dated as of October 1, 2004 (the "Indenture"), between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"). Wells Fargo Bank, National Association, is also acting as tender agent for the Bonds (the "Tender Agent"). The proceeds of the Bonds will be loaned to the Borrower by the Authority pursuant to a Loan Agreement, dated as of October 1, 2004 (the "Loan Agreement"), between the Authority and the Borrower.

**Application of Proceeds**

The proceeds of the Bonds will be applied (i) to finance costs of the acquisition, renovation and equipping of a facility to be used by the Borrower in connection with its provision of home health and hospice services and (ii) to pay certain costs of issuance of the Bonds. See "THE BORROWER" and "THE PROJECT" herein.

**The Initial Credit Facility**

The Bonds will be issued as variable rate bonds initially bearing interest at a Weekly Rate. While the Bonds are in a Weekly Rate Period, payment of the principal, Purchase Price of, and interest on the Bonds will be supported initially by an irrevocable, direct-pay letter of credit (the "Initial Credit Facility") being issued by U. S. Bank National Association (the "Initial Credit Provider") pursuant to and subject to the terms of a Letter of Credit and Reimbursement Agreement, dated as of October 19, 2004 (the "Initial Credit Agreement"), between the Borrower and the Initial Credit Provider. The Initial Credit Facility will permit the Trustee or the Tender Agent, as applicable, in accordance with the terms thereof, to draw an amount sufficient to pay (a) the principal amount of, or the portion of the Purchase Price constituting principal of, the Bonds, plus (b) the interest on, or the portion of the Purchase Price constituting interest on, the Bonds up to 51 days' interest at a maximum annual interest rate of 12% based on a 365-day year for the actual number of days elapsed. The Initial Credit Facility will expire on October 19, 2009, unless extended or earlier terminated pursuant to its provisions as more fully described herein and may, under certain circumstances, be replaced by an Alternate Credit Facility. See "SECURITY AND SOURCE OF PAYMENT FOR THE BONDS – The Initial Credit Facility" and "Alternate Credit Facility" and "THE INITIAL CREDIT PROVIDER, THE INITIAL CREDIT FACILITY AND THE INITIAL CREDIT AGREEMENT – The Initial Credit Facility.

So long as a Credit Facility is in effect, the Credit Provider providing such Credit Facility shall control the exercise of the rights and remedies of the Holders of the Bonds in the event of a default. See "THE INITIAL CREDIT PROVIDER, THE INITIAL CREDIT FACILITY AND THE INITIAL CREDIT AGREEMENT – The Initial Credit Agreement."

### **Investment Considerations**

**As indicated above, payment of the principal, Purchase Price and interest on the Bonds will be supported by the Initial Credit Facility. An investment decision to purchase the Bonds should be made solely on the basis of the creditworthiness of the Initial Credit Provider. This Official Statement does not contain any financial or operating information relating to the Borrower or its ability to make payments sufficient to pay the principal, Purchase Price or interest on the Bonds and prospective investors should not expect that the Borrower would be able to make payments sufficient to pay the principal, Purchase Price or interest on the Bonds. The Borrower is not required to provide funds to pay the Purchase Price of the Bonds.**

## **THE BONDS**

### **Terms of the Bonds**

The Bonds will be issued and delivered in the aggregate principal amount set forth on the cover page of this Official Statement, will be dated their date of initial delivery, will mature on October 1, 2034 and will be issued in fully registered form in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof. The Bonds will bear interest from and including the Date of Delivery thereof to but excluding the date of payment in full thereof (whether at maturity, upon redemption or acceleration or otherwise) and will initially bear interest at a Weekly Rate. While the Bonds bear interest at a Weekly Rate, interest will be calculated on the basis of a 365- or 366-day year, as applicable, for the number of days actually elapsed.

The Bonds will be transferable and exchangeable as set forth in the Indenture and, when delivered, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Bonds. See APPENDIX B - "BOOK-ENTRY SYSTEM." So long as Cede & Co. is the registered owner of the Bonds, principal and Purchase Price of, premium, if any, and interest on, the Bonds shall be payable by wire transfer to Cede & Co., as nominee for DTC, which, in turn, will remit such amounts to the DTC Participants (as such term is defined in APPENDIX B hereto) for subsequent disbursement to the Beneficial Owners. In addition, so long as Cede & Co. is the registered owner of the Bonds, the right of any Beneficial Owner to exercise its right to tender its interest in any Bond for purchase and receive payment therefor will be based only upon and subject to the procedures and limitations of the book-entry only system described in APPENDIX B - "BOOK-ENTRY SYSTEM."

***Determination of Interest Rate on Bonds.*** Interest on the Bonds will initially be calculated based on a Weekly Rate. The Weekly Rate shall be determined from time to time as provided in the Indenture; provided, that no Bond (other than a Credit Provider Bond which shall bear interest as provided in the applicable Credit Agreement) shall bear interest at a rate exceeding the Maximum Interest Rate.

The interest rate on the Bonds for each Weekly Rate Period shall be determined by the remarketing agent appointed by the Borrower pursuant to the provisions of the Indenture. The Borrower has appointed Cain Brothers & Company, LLC to serve as the initial remarketing agent (together with any successor thereto, the "Remarketing Agent") for the Bonds and will enter into a Remarketing Agreement, dated as of October 1, 2004, with Cain Brothers & Company, LLC. During each Weekly Rate Period, the Bonds shall bear interest at the Weekly Rate, determined by the Remarketing Agent no later than the first day of such Weekly Rate Period and thereafter no later than Wednesday of each week during such Weekly Rate Period, unless any such Wednesday shall not be a Business Day, in which event the Weekly Rate shall be determined by the Remarketing Agent no later than the Business Day preceding such Wednesday. The Weekly Rate shall be the rate determined by the Remarketing Agent (based on the examination of Tax-Exempt obligations comparable to the Bonds known by such Remarketing Agent to have been priced or traded under then prevailing market conditions) to be the lowest rate which would enable the Remarketing Agent to sell such Bonds on the effective date of such rate at a price (without regarding accrued interest) equal to 100% of the principal amount thereof. If the Remarketing Agent shall not have determined a Weekly Rate for any

period, the Weekly Rate shall be the same as the Weekly Rate in effect for the immediately preceding Weekly Rate Period. In no event shall any Weekly Rate be greater than the Maximum Interest Rate. The first Weekly Rate determined for each Weekly Rate Period shall apply to the period commencing on the first day of such Rate Period and ending on the succeeding Wednesday. Thereafter, each Weekly Rate shall apply to the period commencing on each Thursday and ending on the succeeding Wednesday, unless such Weekly Rate Period shall end on a day other than Wednesday, in which event the last Weekly Rate for such Weekly Rate Period shall apply to the period commencing on the Thursday preceding the last day of such Weekly Rate Period and ending on such last day.

***Payment of Interest on Bonds During Weekly Rate Period.*** Interest on each Bond bearing interest at the Weekly Rate shall be payable on the first Business Day of each calendar month, commencing November 1, 2004, to the registered owner whose name appears on the registration books maintained by the Trustee as of the close of business on the applicable Record Date, which shall be the Business Day immediately preceding the Interest Payment Date during any Weekly Rate Period. Each Bond shall bear interest from the Interest Payment Date preceding the date of authentication thereof unless it is authenticated on or after a Record Date and on or prior to the related Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless it is registered and authenticated before the Record Date for the first Interest Payment Date, in which event it shall bear interest from the Date of Delivery; provided, however, that if, as shown by the records of the Trustee, interest on the Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for registration of transfer or exchange shall bear interest from the last date to which interest has been paid in full or duly provided for on the Bonds, or, if no interest has been paid or duly provided for on the Bonds, from the Date of Delivery. Payment of the interest on any Bond shall be made to the person appearing on the bond registration books of the Trustee as the Bondholder thereof on the Record Date, such interest to be paid by the Trustee to such Bondholder (i) by check mailed by first class mail on the Interest Payment Date, to such Bondholder's address as it appears on the registration books, or (ii) upon written request at least three (3) Business Days prior to the applicable Record Date of the Bondholder of Bonds aggregating not less than \$1,000,000 in principal amount, by wire transfer in immediately available funds at an account maintained in the United States at such wire address as such Bondholder shall specify in its written notice (any such written request shall remain in effect until rescinded in writing by such Bondholder); except, in each case, that, if and to the extent that there shall be a default in the payment of the interest due on such Interest Payment Date, such defaulted interest rate shall be the rate on the Bonds on the day before such default occurred, and such defaulted interest shall be paid to the Bondholder in whose name any such Bonds are registered at the close of business on the fifth Business Day next preceding the date of payment of such defaulted interest.

***Adjustment of Rate Periods.*** Pursuant to the provisions of the Indenture, from time to time, the Borrower may convert the Bonds from one Rate Period to a different Rate Period which may include a Daily Rate Period, a Term Rate Period, a Variable Term Rate Period and an Auction Rate Period.

Following is a discussion of adjustment of Bonds to other Rate Periods.

**Adjustment to Daily Rate.** By written notice to the Authority, the Trustee and any Credit Provider and Marketing Party, the Borrower may at any time elect that the Bonds bearing interest at a Weekly Rate be adjusted to bear interest at a Daily Rate. Such notice shall specify the effective date of such adjustment to a Daily Rate, which shall be a Business Day not earlier than the fifteenth day following the third Business Day after the date of receipt by the Trustee of such notice (or such shorter period after the date of such receipt as shall be acceptable to the Trustee); provided, however, that if prior to the Borrower's making such election, any Bonds shall have been called for redemption and such redemption shall not have theretofore been effected, the effective date of such Daily Rate Period shall not precede such redemption date. The Trustee shall give notice by mail of an adjustment to a Daily Rate Period to the Holders not less than fifteen (15) days prior to the effective date of such Daily Rate Period. Such notice shall state (1) that the interest rate on the Bonds will be adjusted to a Daily Rate, (2) the effective date of such Daily Rate Period, (3) that the Bonds are subject to mandatory tender for purchase on such effective date, (4) the procedures for such mandatory tender, and (5) that the Holders do not have the right to retain their Bonds on such effective date.

**Adjustment to or Continuation of Term Rate.** By written notice to the Authority, the Trustee and any Credit Provider and Marketing Party, the Borrower may at any time elect that the Bonds bearing interest at a Weekly Rate (in an amount which is an Authorized Denomination for the new Rate Period) be adjusted to bear interest at a Term Rate. Such notice shall specify the effective date of the Term Rate Period, which shall be a Business Day not

earlier than the thirtieth day following the seventh Business Day after the date of receipt by the Trustee of such notice (or such shorter period after the date of such receipt as shall be acceptable to the Trustee); provided, however, that if prior to the Borrower's making such election, any Bonds shall have been called for redemption and such redemption shall not have theretofore been effected, the effective date of such Term Rate Period shall not precede such redemption date.

Such notice of adjustment to a Term Rate Period (1) shall also specify the duration of the Term Rate Period selected and the last day of such Term Rate Period, (2) may specify two or more consecutive Term Rate Periods and the duration of each such Term Rate Period, (3) may elect that such Term Rate Period shall be automatically renewed for successive Term Rate Periods each having the same duration as the Term Rate Period so specified; provided, however that if the last day of any such successive Term Rate Period shall not be a day immediately preceding a Business Day, then such successive Term Rate Period shall end on the first day immediately preceding the Business Day succeeding such day, or if such day would be after the day preceding the maturity date of such Bonds, such succeeding Term Rate Period shall end on the day preceding the maturity date of the Bonds, and (4) subject to the compliance with the provisions of the Indenture, may specify for such Term Rate Period(s) optional redemption provisions, prices and periods different from those set out in the Indenture.

The notice of adjustment described in the immediately preceding paragraph shall be accompanied by an opinion of Bond Counsel to the effect that the adjustment to such Term Rate Period (a) is authorized or permitted by the Indenture, and (b) will not, in and of itself, adversely affect the tax-exempt status of interest on the Bonds. In addition, if the Borrower shall elect automatic renewals of the Term Rate Period as described in clause (3) of the preceding paragraph, the opinion of Bond Counsel described in the preceding sentence shall also contain an opinion to the effect that such continuing automatic renewals of such Term Rate Period (a) are authorized or permitted by the Indenture, and (b) will not, in and of themselves, adversely affect the tax-exempt status of interest on the Bonds. If the Borrower elects automatic renewals of the Term Rate Period as described in clause (3) of the immediately preceding paragraph, no opinion of Bond Counsel shall be required in connection with the commencement of each successive Term Rate Period determined in accordance with such election.

The Trustee shall give notice by mail of an adjustment to or continuation of a Term Rate Period to the Holders not less than thirty (30) days prior to the effective date of such Term Rate Period. Such notice shall state (1) that the interest rate on the Bonds will be adjusted to a Term Rate, (2) the effective date of the Term Rate Period, (3) that the Bonds shall be subject to mandatory tender for purchase on such effective date, (4) the procedures for such mandatory tender, and (5) that the Holders do not have the right to retain their Bonds on such effective date.

Adjustment to Variable Term Rates. By written notice to the Authority, the Trustee and any Credit Provider and Marketing Party, the Borrower may at any time elect that the Bonds bearing interest at a Weekly Rate shall be adjusted to bear interest at Variable Term Rates. Such notice (1) shall specify the effective date of the Variable Term Rate Period during which the Bonds shall bear interest at Variable Term Rates, which shall be a Business Day not earlier than the fifteenth day following the third Business Day after the date of receipt by the Trustee of such notice (or such shorter period after the date of such receipt as shall be acceptable to the Trustee); provided, however, that if prior to the Borrower making such election any of the Bonds shall have been called for redemption and such redemption shall not have theretofore been effected, the effective date of such Variable Term Rate Period for the Bonds shall not precede such redemption date and (2) shall be accompanied by an opinion of Bond Counsel to the effect that such adjustment (a) is authorized or permitted by the Indenture and (b) will not, in and of itself, adversely affect the tax-exempt status of interest on the Bonds.

The Trustee shall give notice by mail of an adjustment to a Variable Term Rate Period to the Holders not less than fifteen (15) days prior to the effective date of such Variable Term Rate Period. Such notice shall state (1) that the interest rate on the Bonds will be adjusted to Variable Term Rates, (2) the effective date of such Variable Term Rate Period, (3) that the Bonds are subject to mandatory tender for purchase on the effective date of such Variable Term Rate Period, (4) the procedures for such mandatory tender, and (5) that the Holders do not have the right to retain their Bonds on such effective date.

Adjustment to Auction Rate Period. At the option of the Borrower, the interest rate on the Bonds may be adjusted from a Weekly Rate Period to an Auction Rate Period. Any such adjustment shall be made as follows:

(1) In any such adjustment from a Weekly Rate Period, the Auction Rate Adjustment Date shall be a regularly scheduled Interest Payment Date on which interest is payable for the Weekly Rate Period from which the adjustment is to be made.

(2) Not later than 5:00 p.m., New York City time, on the date of determination of the Auction Rate, the Broker-Dealer shall notify the Trustee, the Borrower and the Auction Agent of the Auction Rate by telephone, promptly confirmed in writing.

(3) The Borrower may revoke its election to effect an adjustment of the interest rate on the Bonds to an Auction Rate by giving written notice of such revocation to the Trustee, the Authority and any Credit Provider and Marketing Party at any time prior to the setting of the Auction Rate by the Broker-Dealer.

(4) No Bonds may be converted to the Auction Rate when the Bonds are not held by a Securities Depository in book-entry form.

The Borrower shall give written notice of any adjustment to an Auction Rate to the Authority, the Trustee and any Credit Provider and Marketing Party, not less than seven (7) Business Days prior to the date on which the Trustee is required to notify the Holders of the adjustment pursuant to the provisions of the Indenture described in the paragraph below. Such notice shall specify the Auction Rate Adjustment Date and the length of the initial Auction Period. Together with such notice, the Borrower shall file with the Trustee an opinion of Bond Counsel to the effect that the adjustment of the Bonds to an Auction Rate Period (a) is authorized or permitted by the Indenture and (b) will not, in and of itself, adversely affect the tax-exempt status of interest on the Bonds. No such change to an Auction Rate Period shall become effective unless the Borrower shall also file with the Trustee an opinion of Bond Counsel to the same effect dated the Auction Rate Adjustment Date.

Not less than fifteen (15) days prior to the Auction Rate Adjustment Date, the Trustee shall mail a written notice of the adjustment to the Holders.

## **Redemption**

**General.** The Bonds shall be subject to redemption prior to their stated maturity in Authorized Denominations (solely with Available Moneys if the Credit Facility is in effect) upon the terms set forth below.

**Optional Redemption.** During any Weekly Rate Period, the Bonds shall be subject to redemption prior to the maturity thereof upon prepayment of the Loan Repayments at the option of the Borrower, in whole, or in part in Authorized Denominations, on any Business Day at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the date of redemption. See "OPTIONAL REDEMPTION SCHEDULE" below.

**Mandatory Redemption.** The Bonds shall be subject to redemption in whole not later than fifteen (15) days after receipt by the Trustee from the Credit Provider for such Bonds of notice of the occurrence of an event of default under the Credit Agreement and requesting that the Trustee give notice of mandatory redemption of the Bonds.

**Selection of Bonds for Redemption.** In the event of redemption upon optional prepayment by the Borrower of its Loan Repayments, the Trustee will call for redemption Bonds of the maturity directed by the Borrower. Whenever provision is made in the Indenture for the redemption of less than all of the Bonds of any Series and/or maturity, the Trustee shall select the Bonds to be redeemed from all Bonds of such Series and/or maturity or such given portion thereof not previously called for redemption in any manner which the Trustee in its sole discretion shall deem appropriate; provided, however, that Credit Provider Bonds shall be the first Bonds selected for redemption.

**Notice of Redemption.** Notice of optional redemption shall be mailed by first class mail not less than fifteen (15) days prior to such redemption date and notice of mandatory redemption shall be mailed by first class mail not less than five (5) days prior to the redemption date, to the respective Holders of any Bonds designated for redemption at their addresses on the registration books maintained by the Trustee. Each notice of redemption shall state the redemption date, the place or places of redemption, the CUSIP number(s), if less than all of the Bonds are to be redeemed, the distinctive number(s) of the Bonds to be redeemed, and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on said date there will become due and payable on each of said Bonds the principal thereof or of said specified portion of the principal thereof in the case of a Bond to be redeemed in part only, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered. Neither failure to receive such notice nor any defect therein shall affect the sufficiency of such redemption.

With respect to any notice of redemption of Bonds at the option of the Borrower, unless upon the giving of such notice such Bonds shall be deemed to have been paid within the meaning of the Indenture, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of amounts sufficient to pay the principal of and premium, if any, and interest on such Bonds to be redeemed, and that if such amounts shall not have been so received said notice shall be of no force and effect and the Authority shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such amounts are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, to the persons and in the manner in which the notice of redemption was given, that such amounts were not so received.

**Effect of Redemption.** Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds (or portions thereof) so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, except for payment of particular Bonds for which moneys are being held by the Trustee, which moneys shall be pledged to such payment, and the Holders of said Bonds shall have no rights in respect thereof except to receive payment of said principal and interest accrued to the date fixed for redemption.

### **Optional Tender for Purchase**

During any Weekly Rate Period, any Bond, or portion thereof in an Authorized Denomination, shall be purchased on any Business Day at the Purchase Price thereof, upon (i) delivery by the Holder thereof of an irrevocable notice in writing or by telephone confirmed in writing to the Tender Agent at its Principal Office, by no later than 5:00 p.m., New York City time, on any Business Day, which states the principal amount of such Bond to be tendered for purchase and the Purchase Date, which Purchase Date shall be a Business Day and shall not be prior to the seventh day succeeding the date of the delivery of such notice to the Tender Agent, and (ii) delivery of such Bond tendered for purchase to the Tender Agent at its Principal Office, accompanied by an instrument of transfer thereof, in a form satisfactory to the Tender Agent, executed in blank by the Holder thereof with the signature of such Holder guaranteed by a guarantor institution participating in a guarantee program acceptable to the Tender Agent, at or prior to 1:00 p.m., New York City time, on the Purchase Date. If any Bond is to be purchased in part, the amount so purchased and the amount not so purchased must each be an Authorized Denomination.

"Purchase Price" of any Bond means the principal amount thereof, plus accrued interest to, but not including, the Purchase Date; provided, however, that if the Purchase Date is an Interest Payment Date, the Purchase Price thereof shall be the principal amount thereof, and interest on such Bond shall be paid to the Holder of such Bond pursuant to the Indenture.

The Tender Agent shall accept any notice of optional tender pursuant to the provisions of the Indenture described under this subcaption from any beneficial owner of any Bond held in book-entry form, or any nominee of such beneficial owner, but shall make payment of the Purchase Price thereof only to the registered owner of such Bond.

Notwithstanding any other provision of the Indenture to the contrary, so long as any Bond in a Weekly Rate Period is held in book-entry form, such Bond need not be delivered in connection with any optional tender, and all references herein to physical delivery of Bonds shall be ineffective. In such case, payment of the Purchase Price in connection with such tender shall be made to the registered Holder of such Bonds on the date designated for such payment, without further action by the beneficial owner who delivered the tender notice, and transfer of beneficial ownership shall be made in accordance with the procedures of the Securities Depository.

### **Mandatory Tender for Purchase**

During any Weekly Rate Period, Bonds shall be subject to mandatory tender for purchase at the Purchase Price thereof, upon the occurrence of any of the events stated below:

- (A) as to any Bond, on the effective date of any change in a Rate Period for such Bond;
- (B) as to all Bonds, on the Business Day preceding the termination (by expiration or otherwise) of any Credit Facility with respect to such Bonds;
- (C) as to all Bonds, on the Business Day preceding the providing of any Credit Facility with respect to such Bonds;
- (D) as to all Bonds, not later than seven (7) days following receipt by the Trustee from the Credit Provider of notice to the effect that the Credit Provider has not been reimbursed for a drawing for interest on the Bonds and that the amount available to be drawn for interest has not been reinstated and requesting that the Trustee give notice of mandatory tender of the Bonds; and
- (E) as to all Bonds, not later than fifteen (15) days after receipt by the Trustee from the Credit Provider of notice of the occurrence of an event of default under the Credit Agreement and requesting the Trustee give notice of mandatory tender of the Bonds.

The Trustee shall give notice by mail to the Holders of the Bonds at their addresses shown on the registration books kept by the Trustee, of any mandatory tender of Bonds, (a) not less than fifteen (15) days prior to such required tender pursuant to clauses (A) through (C) above, (b) not less than three (3) days prior to such required tender pursuant to clause (D) above, and (c) not less than five (5) days prior to such required tender pursuant to clause (E) above, which notice shall in each case state the date of such mandatory tender and that the Bonds are required to be tendered for purchase on such date.

No Holder of any Bond subject to mandatory tender shall have the option to retain such Bond.

Notwithstanding any other provision of the Indenture to the contrary, so long as any Bond is held in book-entry form, such Bond need not be delivered in connection with any mandatory tender, and all references herein to physical delivery of Bonds shall be ineffective. In such case, payment of the Purchase Price in connection with such tender shall be made to the Holder of such Bonds on the date designated for such payment, without further action by the beneficial owner who delivered the tender notice, and transfer of beneficial ownership shall be made in accordance with the procedures of the Securities Depository.

### **Payment of Purchase Price**

If the Bonds to be purchased pursuant to an optional or mandatory tender are remarketed, the Tender Agent shall pay the Purchase Price of such Bonds by drawing upon the moneys deposited with it therefor. Payment of the purchase price of any Bonds held in book-entry form shall be made in immediately available funds by 2:30 p.m., New York City time.

**No representation is made herein as to the timely payment of principal and interest upon an optional or mandatory tender of beneficial interests in bonds under the book-entry system. Tenders of beneficial**

**interests in bonds under the book-entry system will be governed by the procedures of DTC and its participants in effect from time to time. See APPENDIX B - "BOOK-ENTRY SYSTEM."**

### **Bonds Deemed Purchased**

If moneys sufficient to pay the Purchase Price of Bonds to be purchased pursuant to the tender provision of the Indenture shall be held by the Tender Agent on the date such Bonds are to be purchased, such Bonds shall be deemed to have been purchased and shall be purchased, for all purposes of the Indenture, irrespective of whether or not such Bonds shall have been delivered to the Tender Agent, and the former Holder of such Bonds shall have no claim thereon, under the Indenture or otherwise, for any amount other than the Purchase Price thereof.

In the event any Bonds purchased as provided in the Indenture shall not be presented to the Tender Agent, the Tender Agent shall segregate and hold the moneys for the Purchase Price of such Bonds in trust, without liability for interest thereon, for the benefit of the former Holders of such Bonds, who shall, except as provided in the following sentence, thereafter be restricted exclusively to such moneys for the satisfaction of any claim for the Purchase Price of such Bonds. Any moneys which the Tender Agent shall segregate and hold in trust for the payment of the Purchase Price of any Bond and remaining unclaimed for two (2) years after the date of purchase shall, upon the Borrower's written request to the Tender Agent, be paid to the Borrower. After the payment of such unclaimed moneys to the Borrower, the former Holder of such Bond shall look only to the Borrower for the payment thereof.

### **General Provisions Relating to Tenders**

***Creation of Purchase Fund.*** Upon the issuance of the Bonds, there shall be created and established under the Indenture with the Tender Agent a fund to be designated the "Purchase Fund" to be held in trust only for the benefit of the Holders of tendered Bonds who shall thereafter be restricted exclusively to the moneys held in such fund for the satisfaction of any claim for the Purchase Price of such tendered Bonds.

There shall be created and designated the following accounts within the Purchase Fund: the "Remarketing Proceeds Account," the "Credit Facility Purchase Account" and the "Borrower Account." Moneys paid to the Tender Agent for the purchase of tendered or deemed tendered Bonds received from the Remarketing Agent shall be deposited in the Remarketing Proceeds Account and moneys received from drawings on the Initial Credit Facility or any Alternate Credit Facility shall be deposited in the Credit Facility Purchase Account. In the event remarketing proceeds and amounts drawn on such Credit Facility are not sufficient to pay the Purchase Price for tendered Bonds, the Borrower may, at its sole option, provide funds to purchase such tendered Bonds. In the event the Borrower shall, at its sole option, provide funds, such funds shall be deposited in the Borrower Account. Moneys provided from payments made under any Credit Facility not required to be used in connection with the purchase of tendered Bonds shall be returned to the Credit Provider. Moneys provided by the Borrower not required to be used in connection with the purchase of tendered Bonds shall be returned to the Borrower.

Moneys in the Remarketing Proceeds Account, the Credit Facility Purchase Account and the Borrower Account shall not be commingled with other funds held by the Tender Agent and shall remain uninvested. Neither the Borrower nor the Authority shall have any right, title or interest in any of the funds held on deposit in the Remarketing Proceeds Account nor any remarketing proceeds held for any period of time by the Remarketing Agent.

**Payment of Purchase Price.** Moneys delivered to the Tender Agent on a Purchase Date shall be applied at or before 2:30 p.m. (New York City time) on such Purchase Date to pay the Purchase Price of Purchased Bonds in immediately available funds as follows in the indicated order of application set forth below and, to the extent not so applied on such date, shall be held in the separate and segregated accounts of the Purchase Fund for the benefit of the Holders of the Purchased Bonds which were to have been purchased:

- FIRST: Moneys deposited in the Remarketing Proceeds Account with respect to such Bonds.
- SECOND: Moneys deposited in the Credit Facility Purchase Account with respect to such Bonds.
- THIRD: Moneys, if any, deposited in the Borrower Account with respect to such Bonds.

**Insufficient Funds for Tenders of Bonds for which a Credit Facility is in Place.** If sufficient funds are not available for the purchase of Bonds which Bonds are deemed tendered and required to be purchased on any Purchase Date in accordance with the provisions of the Indenture, all such Bonds shall be returned to their respective owners. Thereafter, the Tender Agent shall continue to take all such action available to it to obtain remarketing proceeds from the Remarketing Agent and sufficient other funds from the Credit Provider. Any obligation of the Remarketing Agent or such Credit Provider to cause the deposit of such funds from remarketing proceeds or proceeds of a draw on the Credit Facility, respectively, shall remain enforceable pursuant to the Indenture, and such obligation shall only be discharged at such time as funds are deposited with the Tender Agent in an amount sufficient to purchase all such tendered Credit Facility Supported Bonds, together with any interest which has accrued on such Bonds to the subsequent actual Purchase Date.

**Remarketing of Bonds**

Upon an optional or mandatory tender for purchase of Bonds, the Remarketing Agent shall offer for sale and use its best efforts to sell such Bonds, any such sale to be made on the date of such purchase in accordance with the provisions of the Indenture at a price equal to the principal amount thereof plus accrued interest, if any, thereon to the Purchase Date.

**OPTIONAL REDEMPTION SCHEDULE**

Pursuant to the Loan Agreement, the Borrower has covenanted to prepay Loan Repayments in such amount as is necessary to cause Bonds to be redeemed on October 1 of each year in such principal amount as is set forth below pursuant to the optional redemption provisions of the Indenture.

October 1	Amount	October 1	Amount
2007	\$ 110,000	2021	\$ 210,000
2008	115,000	2022	220,000
2009	120,000	2023	230,000
2010	125,000	2024	240,000
2011	135,000	2025	250,000
2012	140,000	2026	260,000
2013	145,000	2027	270,000
2014	150,000	2028	285,000
2015	160,000	2029	295,000
2016	165,000	2030	310,000
2017	175,000	2031	325,000
2018	180,000	2032	340,000
2019	190,000	2033	355,000
2020	200,000	2034	370,000

## ESTIMATED SOURCES AND USES OF FUNDS

The following table sets forth the estimated sources and uses of funds, including the proceeds to be received from the sale of the Bonds and the equity contribution of the Borrower:

Sources:	
Principal Amount of Bonds	\$6,070,000
Equity Contribution	<u>450,000</u>
Total Sources	<u>\$6,520,000</u>
Uses:	
Project Costs	\$6,172,890
Costs of Issuance <sup>(1)</sup>	<u>347,110</u>
Total Uses	<u>\$6,520,000</u>

<sup>(1)</sup> Includes underwriting fee, Authority fees, financial advisor, credit provider, legal, trustee and other expenses, including rating agency fees.

## SECURITY AND SOURCE OF PAYMENT

### General

The principal, premium, if any, and interest on the Bonds are payable solely from the Revenues received from the Borrower pursuant to the Loan Agreement and the other amounts pledged therefor under the Indenture. The Purchase Price of the Bonds tendered or deemed tendered for purchase pursuant to the Indenture is payable solely from the proceeds of the remarketing of such Bonds, draws on the Initial Credit Facility or any Alternate Credit Facility for such Bonds, and amounts provided by the Borrower, at its sole option, pursuant to the provisions of the Loan Agreement.

THE BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND THE PRINCIPAL THEREOF, AND PREMIUM, IF ANY, AND INTEREST THEREON, ARE PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE REVENUES AND THE OTHER AMOUNTS PLEDGED THEREFOR THEREUNDER, AND THE PURCHASE PRICE THEREOF IS PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE PROCEEDS OF THE REMARKETING OF THE BONDS, AMOUNTS MADE AVAILABLE UNDER THE INITIAL CREDIT FACILITY OR ANY ALTERNATE CREDIT FACILITY, AND AMOUNTS PROVIDED BY THE BORROWER, AT ITS SOLE OPTION, PURSUANT TO THE LOAN AGREEMENT. NEITHER THE AUTHORITY, THE ASSOCIATION OF BAY AREA GOVERNMENTS ("ABAG"), ANY OF THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER, AND NONE OF THE BONDS OR ANY OF THE AUTHORITY'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE AUTHORITY, ABAG, OR THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY CONSTITUTIONAL, OR STATUTORY PROVISION WHATSOEVER. NEITHER THE AUTHORITY NOR ABAG HAS ANY TAXING POWER.

As indicated above, payment of the principal, Purchase Price and interest on the Bonds will be supported by the Initial Credit Facility. An investment decision to purchase the Bonds should be made solely on the basis of the creditworthiness of the Initial Credit Provider. This Official Statement does not contain any financial or

operating information relating to the Borrower or its ability to make payments sufficient to pay the principal, Purchase Price or interest on the Bonds and prospective investors should not expect that the Borrower would be able to make payments sufficient to pay the principal, Purchase Price or interest on the Bonds. The Borrower is not required to provide funds to pay the Purchase Price of the Bonds.

### **The Initial Credit Facility**

The Initial Credit Facility will permit the Tender Agent, in accordance with the terms thereof, to draw an amount sufficient to pay (a) the principal amount of, or the portion of the purchase price constituting principal of, the Bonds, plus (b) the interest on, or the portion of the purchase price constituting interest on, the Bonds up to 51 days' interest at a maximum annual interest rate of 12% (computed on a 365-day year). The initial amount available under the Initial Credit Facility is \$6,171,776.44.

For a further description of information regarding the Initial Credit Provider, the Initial Credit Facility and the Initial Credit Agreement, see "THE INITIAL CREDIT PROVIDER, THE INITIAL CREDIT FACILITY AND THE INITIAL CREDIT AGREEMENT" herein.

The Initial Credit Facility provides both credit and liquidity support for the Bonds in accordance with its terms. The Indenture provides that, upon compliance with certain conditions, the Borrower may deliver an Alternate Credit Facility in substitution for the then-existing Credit Facility. In such event, the Bonds will be subject to mandatory tender for purchase as described under "THE BONDS – Mandatory Tender for Purchase."

### **Alternate Credit Facility**

At any time the Borrower may, at its option, provide for the delivery of an Alternate Credit Facility and the Borrower shall, in any event, cause to be delivered an Alternate Credit Facility at least twenty (20) days before the expiration date of any existing Credit Facility, unless otherwise permitted by the Indenture. As and to the extent applicable, taking into account the Rate Period to be applicable to the Bonds for which an Alternate Credit Facility is being provided, such Alternate Credit Facility shall be in all material respects the same as the Credit Facility it replaces; provided, that the expiration date of such Alternate Credit Facility shall be a date not earlier than three hundred sixty-four (364) days from its date of issuance, subject to earlier termination upon payment of the Bonds in full or provision for such payment in accordance with the defeasance provisions of the Indenture.

On or prior to the date of the delivery of an Alternate Credit Facility, the Borrower shall cause to be furnished (i) an opinion of counsel to the Credit Provider issuing such Alternate Credit Facility to the effect that such Alternate Credit Facility is enforceable in accordance with its terms (except to the extent that the enforceability thereof may be limited by bankruptcy, reorganization or similar laws limiting the enforceability of creditors' rights generally and except that no opinion need be expressed as to the availability of any discretionary equitable remedies) and (ii) written evidence from the Rating Agency then rating such Series of Bonds that the Bonds shall have a long-term rating of "A" (or equivalent) or higher or, if such Series of Bonds shall have only been assigned a short-term rating, such short-term rating shall be in one of the two highest short-term rating category (without regard to "+"s or "-"s).

### **Revenues and Loan Repayments**

The Authority is obligated to pay the principal of, premium, if any, and interest on the Bonds solely from the Revenues received from the Borrower under the Loan Agreement and the other amounts pledged therefor under the Indenture. Pursuant to the Indenture, the Authority has pledged to the Trustee for the benefit of the Bondholders all of the Revenues. "Revenues" means all amounts received by the Authority or the Trustee for the account of the Authority pursuant to the Loan Agreement or the Credit Facility (other than payments of the purchase price of any Bonds), including, without limiting the generality of the foregoing, Loan Repayments (including both timely and delinquent payments, any late charges, and paid from whatever source), prepayments, insurance proceeds, condemnation proceeds, and all interest, profits or other income derived from the investment of amounts in the funds and accounts established pursuant to the Indenture, but not including Additional Payments, or any moneys paid for deposit into the Rebate Fund or for the purchase of Bonds.

FOR A FURTHER DESCRIPTION OF THE PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT, INCLUDING COVENANTS WHICH SECURE THE BONDS, AND EVENTS OF DEFAULT, See APPENDIX A – "DEFINITIONS AND SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL DOCUMENTS."

## **THE INITIAL CREDIT PROVIDER, THE INITIAL CREDIT FACILITY AND THE INITIAL CREDIT AGREEMENT**

### **The Initial Credit Provider**

The information herein relates to and has been provided by U. S. Bank National Association for inclusion in this Official Statement. No other party has independently verified or assumes any responsibility for such information, and neither the Authority nor the Borrower nor the Underwriter makes any representation as to the accuracy or completeness of such information. The delivery of the Official Statement shall not create any implication that there has been no change in the affairs of U. S. Bank National Association since the date hereof, or that the information contained or incorporated by reference in this section is correct as of any time subsequent to its date.

***U. S. Bank National Association.*** U. S. Bank National Association (hereinafter referred to under this caption as "USBNA") is a national banking association organized under the laws of the United States and is the largest subsidiary of U. S. Bancorp. At June 30, 2004, USBNA had total assets of \$190 billion, total deposits of \$126 billion and total shareholders' equity of \$19 billion.

USBNA is engaged in the general banking business, principally in domestic markets. USBNA provides a wide range of products and services to individuals, businesses, institutional organizations, governmental entities and other financial institutions. Commercial and consumer lending services are principally offered to customers within the Company's domestic markets, to domestic customers with foreign operations and within certain niche national venues. Lending services include traditional credit products as well as credit card services, financing and import/export trade, asset-backed lending, agricultural finance and other products. Leasing products are offered through non-bank subsidiaries. Depository services include checking accounts, savings accounts and time certificate contracts. Ancillary services such as foreign exchange, treasury management and receivable lock-box collection are provided to corporate customers. USBNA provides a full range of asset management and fiduciary services for individuals, estates, foundations, business corporations and charitable organizations.

Banking and investment services are provided through a network of 2,315 banking offices principally operating in 24 states in the Midwest and West. USBNA operates a network of 4,565 automated teller machines ("ATMs") and provides 24-hour, seven day a week telephone customer service. Mortgage banking services are provided through banking offices and loan production offices throughout USBNA's markets.

U. S. Bancorp ("U. S. Bancorp") is a multi-state financial services holding company with \$190 billion in assets at June 30, 2004, headquartered in Minneapolis, Minnesota. U. S. Bancorp was incorporated in Delaware in 1929 and operates as a financial holding company and a bank holding company under the Bank Holding Company Act of 1956. Through its subsidiaries, U. S. Bancorp provides a full range of financial services, including lending and depository services, cash management, foreign exchange and trust and investment management services. It also engages in credit card services, merchant and ATM processing, mortgage banking, insurance, brokerage, leasing and investment banking. U. S. Bancorp is the parent company of USBNA.

U. S. Bancorp's common stock is traded on the New York Stock Exchange under the ticker symbol USB, and its principal executive offices are located at 800 Nicollet Mall, Minneapolis, Minnesota, 55402. The main office of USBNA is located at 425 Walnut Street, Cincinnati, Ohio, 45202.

***Available Information.*** The foregoing financial information regarding USBNA has been derived from and is qualified in its entirety by the unaudited financial information contained in the Federal Financial Institutions Examination Council report Form 031, Consolidated Report of Condition and Income for a Bank with Domestic and Foreign Offices ("Call Report"), for the quarter ended June 30, 2004. The publicly available portions of the

quarterly Call Reports with respect to USBNA are on file with, and available upon request from, the FDIC, 550 17th Street, NW, Washington, D.C., 20429 or by calling the FDIC at (877) 275-3342. This office is equipped with a TTY machine to receive inquiries from the hearing impaired at (800) 925-4618. The FDIC also maintains an Internet website at <http://www.fdic.gov> that contains reports and certain other information regarding depository institutions such as USBNA. Reports and other information about USBNA are available to the public at the offices of the Comptroller of the Currency at One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL, 60605.

U. S. Bancorp is subject to the informational requirements of the Securities Exchange Act of 1934, as amended, and, in accordance therewith, files reports and other information with the Securities and Exchange Commission (the "SEC"). Such reports and other information may be inspected without charge at the public reference facilities maintained by the SEC at 450 Fifth Street, NW, Washington, D.C., 20549. Members of the public who require assistance in obtaining copies, including certified copies, of public SEC records (such as corporate filings) may contact the Public Reference Room at (202) 942-8090. This office is equipped with a TTY machine to receive inquiries from the hearing impaired at (202) 942-7114. The SEC also maintains an Internet website at <http://www.sec.gov>, which contains most corporate disclosure documents filed since May 1996, such as reports, proxy statements and other information regarding companies such as U. S. Bancorp that file such materials electronically. General information is available to the public from the SEC Information Line at (202) 942-8088. U. S. Bancorp also maintains an Internet website at <http://www.usbank.com>. Information on U. S. Bancorp's website is not part of this document.

Except for the information set forth under this caption, USBNA and U. S. Bancorp assume no responsibility for the nature, contents, accuracy or completeness of the information set forth in this Official Statement.

### **The Initial Credit Facility**

At the request and for the account of the Borrower, the Initial Credit Provider has established in favor of the Trustee, for the benefit of the owners of the Bonds, the Initial Credit Facility in the form of an irrevocable direct-pay letter of credit. The Initial Credit Facility is an irrevocable, direct-pay obligation of the Initial Credit Provider to pay, in immediately available funds, within a specified period of time after presentation by the Trustee or the Tender Agent, as applicable, of specified certificates, an amount sufficient to pay (i) the principal amount of, or the portion of the purchase price constituting principal of, the Bonds, plus (ii) interest on, or the portion of the purchase price constituting interest on, the Bonds of up to 51 days' interest at a maximum annual interest rate of 12% based on a 365-day year for the actual number of days elapsed. The Initial Credit Facility is only available to pay principal amount of, or the portion of the purchase price constituting principal of, the Bonds, plus interest on, or the portion of the purchase price constituting interest on, the Bonds bearing interest at the Daily Rate or the Weekly Rate. Drawings on the Initial Credit Facility will be paid from funds of the Initial Credit Provider and not directly or indirectly from funds or collateral on deposit with or for the account of, or pledged with or for the account of, the Initial Credit Provider by the Borrower.

The Initial Credit Facility shall terminate on the date which is the earliest of (i) the honoring by the Initial Credit Provider of a final draft presented to it by the Trustee under the Initial Credit Facility; (ii) the date on which the Initial Credit Provider receives notice from the Trustee of the substitution of an Alternate Credit Facility; (iii) the date on which the Initial Credit Provider receives written notice from the Trustee that there are no longer any Bonds Outstanding; (iv) the honoring by the Initial Credit Provider of a draft presented to it in connection with a mandatory tender resulting from a change of the interest rate on the Bonds to a rate of interest other than the Daily Rate or the Weekly Rate; and (v) October 19, 2009 (as such date may be extended pursuant to the provisions of the Initial Credit Agreement, the "Stated Termination Date").

### **The Initial Credit Agreement**

Concurrently with the issuance of the Bonds, the Borrower and the Initial Credit Provider will execute and deliver the Initial Credit Agreement which, among other things, sets the terms and conditions whereby the Borrower is required to repay to the Initial Credit Provider any amounts drawn by the Trustee or the Tender Agent, as applicable, under the Initial Credit Facility. The Initial Credit Agreement also grants the Initial Credit Provider a security interest in Collateral of the Borrower as such term is defined in the Initial Credit Agreement and below.

The following is a summary of certain provisions of the Initial Credit Agreement. This summary is qualified by reference to the complete text of the Initial Credit Agreement. Capitalized terms used under this caption and not otherwise defined under this caption shall have the meanings assigned to such terms in the Initial Credit Agreement.

**Accounts** means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables.

**Change in Control** means any occurrence that results in El Camino Hospital and Sequoia Health Services ceasing to be the sole and equal members of the Borrower.

**Collateral** means: (i) all Accounts, including but not limited to all of the Borrower's gross revenues and rent receipts; (ii) all proceeds of the foregoing; and (iii) all books, correspondence, credit files, records, invoices, and other documents relating to any of the foregoing, including without limitation all tapes, cards, computer runs, ledgers and other papers and documents (in whatever medium stored) in the possession or control of such Person or any computer bureau from time to time acting for such Person.

**Controlled Group** means the Borrower and all Persons (whether or not incorporated) under common control or treated as a single employer with the Borrower pursuant to Section 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986 (the "Code").

**Disclosure Documents** means (i) this Official Statement, (ii) any and all other materials used in the original offering of the Bonds or thereafter in the remarketing of the Bonds, and (iii) any and all supplements and amendments to any of the foregoing.

**ERISA** means the Employee Retirement Income Security Act of 1974 and any regulation promulgated thereunder.

**ERISA Affiliate** means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b), 414(c) or 414(m) of the Code.

**Governmental Authority** means any national government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

**Material Adverse Effect** means a change, or announcement of a change, which could reasonably be expected, immediately or with the passage of time, to result in a material adverse change in, or a material adverse effect upon, any of: (i) the operations, business, Properties, condition (financial or otherwise) or prospects of the Borrower, or the rights of the Initial Credit Provider under the Initial Credit Agreement or any of the Related Documents; (ii) the ability of the Borrower to perform under the Initial Credit Agreement or any of the Related Documents; or (iii) the legality, validity, binding effect or enforceability of the Initial Credit Agreement or any of the Related Documents.

**Multiemployer Plan** means a "multiemployer plan" (within the meaning of Section 4001(a)(3) of ERISA) and to which any member of the Controlled Group makes, is making, or is obligated to make contributions or has made, or been obligated to make, contributions.

**Person** means a corporation, an association, a partnership, an organization, a business, an individual, a government (or a political subdivision thereof) or a governmental agency.

**Plan** means an employee benefit plan (as defined in Section 3(3) of ERISA) which the Borrower or any member of the Controlled Group sponsors or maintains or to which the Borrower or member of the Controlled Group makes or is obligated to make contributions, and includes any Multiemployer Plan or Qualified Plan.

**Property** means all types of real, personal, tangible, intangible or mixed property.

**Qualified Plan** means a pension plan (as defined in Section 3(2) of ERISA) intended to be tax-qualified under Section 401(a) of the Code and which any member of the Controlled Group sponsors, maintains, or to which it makes or is obligated to make contributions, or in the case of a multiple employer plan (as described in Section 4064(a) of ERISA) has made contributions at any time during the immediately preceding period covering at least five (5) plan years, but excluding any Multiemployer Plan.

**Related Documents** means the Indenture, the Loan Agreement, the Remarketing Agreement, the purchase contract providing for the purchase of the Bonds by Cain Brothers & Company, LLC, the contract providing for the purchase of the building which is being acquired with a portion of the proceeds of the Bonds, and every other agreement or instrument relating to the Initial Credit Facility or the Initial Credit Agreement (but not including any Disclosure Document).

**Events of Default.** Each of the following events, acts or occurrences constitutes an "Event of Default" under the Initial Credit Agreement:

(a) The Borrower shall fail to pay any amount payable to the Initial Credit Provider under the Initial Credit Agreement when due; or

(b) Any representation or warranty made by the Borrower in the Initial Credit Agreement or in any Related Document, or any statement or representation made in any certificate, report or opinion delivered in connection therewith, shall prove to have been incorrect or misleading in any material respect when made or repeated; or

(c) The Borrower shall fail to observe or perform in a timely manner any other term, covenant or agreement contained in the Initial Credit Agreement; or

(d) The Borrower shall fail to pay any of its obligations (other than trade payables incurred in the ordinary course of business) when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), or any other default or event under any agreement or instrument relating to any such obligation shall occur and shall continue after the applicable grace period (if any) specified in such agreement or instrument, or if the maturity of such obligation is accelerated, or any such obligation shall be declared to be due and payable, or required to be prepaid prior to the stated maturity thereof; or

(e) One or more judgments against the Borrower or attachments against its Property, which in the aggregate exceed two hundred thousand dollars (\$200,000.00) not covered by insurance, or the operation or result of which would interfere materially and adversely with the conduct of the business of the Borrower, remain unpaid, unstayed on appeal, undischarged, unbonded and undismissed for a period of thirty (30) days or more; or any Person shall have filed any suit, action or proceeding based in whole or in part on such allegation which in either event results in the granting of any form of injunction or restraining order, temporary or otherwise, the compliance with which would have a Material Adverse Effect, and which injunction or restraining order is not dissolved (or otherwise terminated) or modified within thirty (30) days so as to eliminate that portion of such injunction or restraining order which would have such Material Adverse Effect; or

(f) Any order, writ, warrant, garnishment or other process of any court attaching, garnishing, restraining or otherwise freezing assets of the Borrower in an amount equal to two hundred thousand dollars (\$200,000.00) or more in value in the aggregate for all such orders, writs, warrants, garnishments and such order, writ, warrant, garnishment, or other process remains unstayed on appeal, undischarged or undismissed for a period of thirty (30) days or more; or

(g) Any Material Adverse Effect occurs; or

(h) The Initial Credit Agreement or any Related Document ceases to be valid, binding and enforceable upon the Borrower, or the Borrower repudiates any of its material obligations under the Initial Credit Agreement or any Related Document; or

(i) The Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debts, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or the Borrower shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower any case, proceeding or other action of a nature referred to in clause (i) above and such case, proceeding or action shall not have been vacated, discharged or stayed within sixty (60) days from the entry thereof; or (iii) there shall be commenced against the Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets, which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Borrower shall consent to the institution of, or fail to controvert in a timely and appropriate manner, any case, proceeding or other action of a nature referred to above; or (v) the Borrower shall file an answer admitting the material allegations of a petition filed against it in any case, proceeding or other action of a nature referred to above; or (vi) the Borrower shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or (vii) the Borrower shall take corporate action for the purpose of effecting any of the foregoing; or

(j) The Borrower or an ERISA Affiliate shall fail to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under a Multiemployer Plan; (ii) the Borrower or an ERISA Affiliate shall fail to satisfy its contribution requirements under Section 412(c)(11) of the Code, whether or not it has sought a waiver under Section 412(d) of the Code; (iii) the Unfunded Pension Liabilities of the relevant Plan or Plans exceed two hundred thousand dollars (\$200,000.00); (iv) a Plan that is intended to be qualified under Section 401(a) of the Code shall lose its qualification, and the loss can reasonably be expected to impose on the Borrower or an ERISA Affiliate liability (for additional taxes, to Plan participants, or otherwise) in the aggregate amount of two hundred thousand dollars (\$200,000.00) or more; (v) the commencement or increase of contributions to, the adoption of, or the amendment of a Plan by the Borrower or an ERISA Affiliate shall result in a net increase in unfunded liabilities to the Borrower or an ERISA Affiliate in excess of two hundred thousand dollars (\$200,000.00); or (vi) the occurrence of any combination of events listed in clauses (iii) through (v) that involves a net increase in aggregate Unfunded Pension Liabilities and unfunded liabilities in excess of two hundred thousand dollars (\$200,000.00); or

(k) All, or such as in the opinion of the Initial Credit Provider constitutes substantially all, of the Property of the Borrower is condemned, seized or appropriated; or

(l) Any Governmental Authority shall revoke or fail to renew any license, permit or franchise of the Borrower, or the Borrower shall for any reason lose any license, permit or franchise, if such revocation, non-renewal or loss could have a Material Adverse Effect; or

(m) A Change in Control occurs; or

(n) Any default or event of default occurs under the Indenture or any Related Document.

**Remedies.** If any Event of Default shall have occurred and be continuing under the Initial Credit Agreement, the Initial Credit Provider may (i) give notice to the Trustee pursuant to the provisions of the Indenture of such Event of Default and request that the Trustee give notice of mandatory tender of the Bonds, (ii) give notice to the Trustee pursuant to the provisions of the Indenture of such Event of Default and request that the Trustee give notice of mandatory redemption of the Bonds, (iii) declare all obligations owing under the Initial Credit Agreement to be forthwith due and payable, whereupon such obligations shall become and be forthwith due and payable,

without presentment, demand, protest or further notice of any kind, all of which are expressly waived by the Borrower in the Initial Credit Agreement, and (iv) take or bring, in the name of the Initial Credit Provider or the Borrower, all steps, actions, suits or proceedings deemed by the Initial Credit Provider necessary or desirable to effect collection of or other realization upon any Collateral.

No failure on the part of the Initial Credit Provider to exercise, and no delay in exercising, any right under the Initial Credit Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under the Initial Credit Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Initial Credit Agreement are cumulative and not exclusive of any remedies provided by law.

The rights of the Initial Credit Provider provided for in the Initial Credit Agreement and the Related Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement.

### **THE BORROWER**

Pathways Home Health and Hospice (the "Borrower") is a California non-profit public benefit corporation, which provides home health and hospice services.

**As indicated above, payment of the principal, Purchase Price and interest on the Bonds will be supported by the Initial Credit Facility. An investment decision to purchase the Bonds should be made solely on the basis of the creditworthiness of the Initial Credit Provider. This Official Statement does not contain any financial or operating information relating to the Borrower or its ability to make payments sufficient to pay the principal, Purchase Price or interest on the Bonds and prospective investors should not expect that the Borrower would be able to make payments sufficient to pay the principal, Purchase Price or interest on the Bonds.**

### **THE PROJECT**

The Bonds are being issued to finance costs of the acquisition, renovation and equipping of a facility to be used by the Borrower in connection with its provision of home health and hospice services. A portion of the proceeds of the Bonds will also be applied to pay certain costs of issuance.

### **THE AUTHORITY**

The Authority is a joint powers agency duly organized and existing under the laws of the State of California. The Authority was formed pursuant to the terms of a Joint Powers Agreement, dated as of April 1, 1990, as amended as of September 18, 1990 and June 9, 1992, and the Joint Exercise of Powers Act of the State (constituting Chapter 5, commencing with Section 6500, of Division 7 of Title 1 of the California Government Code), in order to assist nonprofit corporations and other entities to obtain financing for projects located within the several jurisdictions of Authority members with purposes serving the public interest.

**THE BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND THE PRINCIPAL THEREOF, AND PREMIUM, IF ANY, AND INTEREST THEREON, ARE PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE REVENUES AND THE OTHER AMOUNTS PLEDGED THEREFOR THEREUNDER, AND THE PURCHASE PRICE THEREOF IS PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE PROCEEDS OF THE REMARKETING OF THE BONDS, AMOUNTS MADE AVAILABLE UNDER THE INITIAL CREDIT FACILITY OR ANY ALTERNATE CREDIT FACILITY, AND AMOUNTS PROVIDED BY THE BORROWER, AT ITS SOLE OPTION, PURSUANT TO THE LOAN AGREEMENT. NEITHER THE AUTHORITY, ABAG, ANY OF THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM**

(IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER, AND NONE OF THE BONDS OR ANY OF THE AUTHORITY'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE AUTHORITY, ABAG, OR THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY CONSTITUTIONAL, OR STATUTORY PROVISION WHATSOEVER. NEITHER THE AUTHORITY NOR ABAG HAS ANY TAXING POWER.

### **INVESTMENT RISKS**

The purchase of the Bonds involves certain investment considerations and risks that are discussed throughout this Official Statement. Accordingly, each prospective purchaser of the Bonds should make an independent evaluation of all of the information presented in this Official Statement in order to make an informed investment decision. Certain investment risks are described below.

#### **Limitations of the Initial Credit Facility**

The ratings on the Bonds could be downgraded or withdrawn if the Initial Credit Provider were to be downgraded, placed on credit watch or have its ratings suspended or withdrawn or were to refuse to perform under the Initial Credit Facility.

The ability to obtain funds under the Initial Credit Facility in accordance with its terms may be limited by federal or state law. Banks generally are required by law to honor letters of credit, even if a dispute were to develop between a bank and its borrower. The defenses allowed by law to the payment of draws on letters of credit are limited to specified circumstances. If one of those circumstances were to occur, however, it is possible that the Initial Credit Provider would fail to make a payment when due under the Initial Credit Facility.

#### **Tax-Exempt Status of the Borrower**

The tax-exempt status of the Bonds presently depends upon maintenance by the Borrower of its status as an organization described in section 501(c)(3) of the Code. The maintenance of such status is contingent on compliance with general rules promulgated in the Code and related regulations regarding the organization and operation of tax-exempt entities, including their operation for charitable and other permissible purposes and their avoidance of transactions that may cause their earnings or assets to inure to the benefit of private individuals. As these general principles were developed primarily for public charities that do not conduct technical operations and business activities, they often do not adequately address the operations and transactions entered into by providers of health care services, including providers of home health and hospice services, such as the Borrower. Many activities or categories of activities have not been addressed in any official opinion, interpretation or policy of the Internal Revenue Service (the "IRS").

In recent years, the IRS has increased the frequency and scope of its audit and other enforcement activity regarding tax-exempt health care organizations. If the IRS were to find that the Borrower has participated in activities in violation of certain regulations or rulings, the tax-exempt status of the Borrower could be in jeopardy. Although the IRS has not frequently revoked the 501(c)(3) tax-exempt status of nonprofit health care corporations, it could do so in the future. Loss of tax-exempt status by the Borrower potentially could result in loss of tax exemption of the Bonds and defaults in covenants regarding the Bonds likely would be triggered. Loss of tax-exempt status also could result in substantial tax liabilities on income of the Borrower. For these reasons, loss of tax-exempt status could have a material adverse effect on the financial condition of the Borrower.

In addition to revocation of exempt status, the IRS may impose penalty excise taxes on certain "excess benefit transactions" involving 501(c)(3) and 501(c)(4) organizations and "disqualified persons." An excess benefit transaction is one in which a disqualified person or entity receives more than fair market value from the exempt organization or pays the exempt organization less than fair market value for property or services, or shares the net revenues of the tax-exempt entity. A disqualified person is a person (or an entity) who is in a position to exercise

substantial influence over the affairs of the exempt organization during the five years preceding an excess benefit transaction. The statute imposes excise taxes on the disqualified person and any "organization manager" who knowingly participates in an excess benefit transaction. The intermediate sanctions rules do not penalize the exempt organization itself, so there would be no direct impact on the Borrower or the tax status of the Bonds if an excess benefit transaction were subject to IRS enforcement.

In recent years, state, county and local taxing authorities have been undertaking audits and reviews of the operations of tax-exempt health care providers with respect to their real property tax exemptions. In some cases, particularly where such authorities are dissatisfied with the amount of services provided to indigents, the real property tax-exempt status of the health care providers has been questioned. The real property of the Borrower is exempt from real property taxation. An investigation or audit could lead to a challenge that could ultimately affect the real property tax exemption of the Borrower.

It is not possible to predict the scope or effect of future legislative or regulatory actions with respect to taxation of nonprofit corporations. There can be no assurance that future changes in the laws and regulations of state or local governments will not materially adversely affect the operations and financial condition of the Borrower by requiring it to pay income or local property taxes.

In recent years, the IRS and state, county and local tax authorities have been undertaking audits and reviews of the operations of tax-exempt organizations with respect to their exempt activities and the generation of unrelated business taxable income ("UBTI"). To the extent that the Borrower participates in activities that may generate UBTI, an investigation or audit could lead to a challenge that could result in taxes, interest and penalties with respect to unreported UBTI and in some cases ultimately could affect the tax-exempt status of the Borrower, as well as the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds.

## **ABSENCE OF MATERIAL LITIGATION**

### **The Authority**

To the best knowledge of the Authority, there is no controversy of any nature now pending or threatened against the Authority which seeks to restrain or enjoin the sale or issuance of the Bonds or which in any way contests or affects the validity of the Bonds or any proceedings of the Authority taken with respect to the issuance or sale thereof, or the pledge or application of any moneys or security provided for the payment of the Bonds, the use of the Bonds proceeds or the existence or powers of the Authority relating to the issuance of the Bonds.

### **The Borrower**

There is no controversy or litigation of any nature now pending against the Borrower or, to the knowledge of its officers, threatened, restraining or enjoining the issuance of the Bonds or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Borrower taken concerning the issuance or sale thereof, or the collection of Revenues pledged under the Indenture.

There is no litigation, proceedings or investigations are pending or threatened against the Borrower before or by any court, administrative agency or arbitrator.

## **TAX MATTERS**

In the opinion of Orrick, Herrington & Sutcliffe LLP ("Bond Counsel"), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of California personal income taxes. Bond Counsel is of the further opinion that interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Bond Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. A complete copy of the proposed form of opinion of Bond Counsel is set forth in APPENDIX C hereto.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Bonds. The Authority and the Borrower have made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Bonds. The opinion of Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Bond Counsel's attention after the date of issuance of the Bonds may adversely affect the value of, or the tax status of interest on, the Bonds.

In addition, Bond Counsel has relied, among other things, on the opinion of Foley & Lardner LLP, Counsel to the Borrower, regarding the current qualification of the Borrower as an organization described in Section 501(c)(3) of the Code and the intended operation of the facilities to be financed by the Bonds as substantially related to the Borrower's charitable purpose under Section 513(a) of the Code. Such opinion is subject to a number of qualifications and limitations. Furthermore, Counsel to the Borrower cannot give and has not given any opinion or assurance about the future activities of the Borrower, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or changes in enforcement thereof by the Internal Revenue Service. Failure of the Borrower to be organized and operated in accordance with the Internal Revenue Service's requirements for the maintenance of its status as an organization described in Section 501(c)(3) of the Code, or to operate the facilities financed by the Bonds in a manner that is substantially related to the Borrower's charitable purpose under Section 513(a) of the Code, may result in interest payable with respect to the Bonds being included in federal gross income, possibly from the date of the original issuance of the Bonds.

The interest rate period and certain requirements and procedures contained or referred to in the Indenture, the Loan Agreement and the Tax Certificate, and other relevant documents may be changed and certain actions (including, without limitation, defeasance of the Bonds) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. Bond Counsel expresses no opinion as to any Bond or the interest thereon if any such change occurs or action is taken or omitted upon the advice or approval of bond counsel other than Orrick, Herrington & Sutcliffe LLP.

Although Bond Counsel is of the opinion that interest on the Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may otherwise affect a Beneficial Owner's federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the Beneficial Owner or the Beneficial Owner's other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

Future legislation, if enacted into law, or clarification of the Code may cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent Beneficial Owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such future legislation or clarification of the Code may also affect the market price for, or marketability of, the Bonds. Prospective purchasers of the Bonds should consult their own tax advisers regarding any pending or proposed federal tax legislation, as to which Bond Counsel expresses no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the Bonds for federal income tax purposes. It is not binding on the IRS or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the Authority or the Borrower, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The Authority and the Borrower have covenanted, however, to comply with the requirements of the Code.

Bond Counsel's engagement with respect to the Bonds ends with the issuance of the Bonds, and, unless separately engaged, Bond Counsel is not obligated to defend the Authority, the Borrower or the Beneficial Owners regarding the tax-exempt status of the Bonds in the event of an audit examination by the IRS. Under current

procedures, parties other than the Authority, the Borrower and their appointed counsel, including the Beneficial Owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the Authority or the Borrower legitimately disagrees, may not be practicable. Any action of the IRS, including but not limited to selection of the Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the Bonds, and may cause the Authority, the Borrower or the Beneficial Owners to incur significant expense.

### **LEGAL MATTERS**

Certain legal matters incident to the issuance of the Bonds are subject to the approving opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel. A complete copy of the proposed form of opinion of Bond Counsel is attached hereto as APPENDIX C. Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement. Certain legal matters will be passed upon for the Borrower by its counsel, Foley & Lardner LLP, San Francisco, California, for the Authority by Nixon Peabody LLP, San Francisco, California, and for the Initial Credit Provider by its counsel, Buchalter Nemer Fields & Younger, San Francisco, California.

### **CONTINUING DISCLOSURE**

Upon adjustment of the interest rate on the Bonds to an Auction Rate, a Term Rate or a Variable Term Rate, pursuant to the Loan Agreement, the Borrower has agreed to comply with the applicable requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission.

### **RATING**

Moody's Investors Service ("Moody's") is expected to assign a rating of "Aa2/VMIG 1" to the Bonds based upon the delivery of the Initial Credit Facility. Any explanation of the significance of such rating may only be obtained from Moody's. Generally, rating agencies base their ratings on such information and materials and on investigations, studies and assumptions made by the rating agencies themselves. There is no assurance that the rating mentioned above will remain in effect for any given period of time or that it might not be lowered or withdrawn entirely by the rating agency, if in its judgment circumstances so warrant. The Borrower and the Underwriter have undertaken no responsibility either to bring to the attention of the Holders of the Bonds any proposed change in or withdrawal of any rating or to oppose any such proposed revision or withdrawal. Any such downward change in or withdrawal of any rating might have an adverse effect on the market price or marketability of the Bonds.

### **UNDERWRITING**

Cain Brothers & Company, LLC (the "Underwriter"), will purchase the Bonds pursuant to a purchase contract (the "Purchase Contract") to be entered into with the Authority and the Borrower. Pursuant to the Purchase Contract, the Underwriter will receive an underwriting fee of \$69,805. The Purchase Contract provides that the Underwriter will purchase all of the Bonds, if any are purchased, and contains the agreements of the Borrower to indemnify the Underwriter and the Authority against certain liabilities.

### **MISCELLANEOUS**

The foregoing and subsequent summaries and descriptions of provisions of the Bonds, the Indenture, the Loan Agreement and the Initial Credit Agreement, and all references to other materials not purporting to be quoted in full, are only brief outlines of some of the provisions thereof and do not purport to summarize or describe all of the provisions thereof, and reference is made to said documents for full and complete statements of their provisions. The appendices attached hereto are a part of this Official Statement. Copies, in reasonable quantity, of the Indenture, the Loan Agreement and the Initial Credit Agreement may be obtained during the offering period upon request directed to Cain Brothers & Company, LLC, 601 California Street, Suite 1505, San Francisco, California 94108.



## APPENDIX A

### DEFINITIONS AND SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL DOCUMENTS

The following is a summary of certain provisions of the Indenture, dated as of October 1, 2004, including the Multi-Mode Annex attached as Exhibit D thereto (hereinafter collectively referred to as the "Indenture"), between the ABAG Finance Authority for Nonprofit Corporations (the "Authority") and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and the Loan Agreement, dated as of October 1, 2004 (the "Loan Agreement"), between the Authority and Pathways Home Health and Hospice (the "Borrower"). Such summary does not purport to be complete or definitive, is supplemental to the summary of other provisions of the Indenture and the Loan Agreement contained elsewhere in this Official Statement, and is qualified in its entirety by reference to the full terms of the Indenture and the Loan Agreement. All capitalized terms used and not otherwise defined in this Official Statement shall have the meanings assigned to such terms in the Indenture.

#### DEFINITIONS OF CERTAIN TERMS

**Accountant** means any firm of independent certified public accountants selected by the Borrower.

**Act** means the Joint Exercise of Powers Act, constituting Articles 1 through 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State.

**Act of Bankruptcy** means with respect to any entity: (i) the entry of an order or decree, by a court having jurisdiction in the premises, for relief against such entity in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect which remains not discharged, bonded or stayed for at least ninety (90) days, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for a substantial part of such entity's property which remains not discharged, bonded or stayed for at least ninety (90) days, or ordering the winding up or liquidation of such entity's affairs; or (ii) the institution or commencement by such entity of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or (iii) the consent by such entity to the entry of an order for relief against it in any involuntary case under any such law, or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for a substantial part of such entity's property; or (iv) the making by such entity of a general assignment of substantially all of its assets for the benefit of creditors; or (v) the failure of such entity generally to pay its debts as they become due, or the admission by such entity in writing of such failure.

**Additional Bonds** means any Bonds issued pursuant to the Indenture subsequent to the Series 2004 Bonds.

**Additional Payments** means the payments so designated and required to be made by the Borrower pursuant to the Loan Agreement described below under the caption "The Loan Agreement - Loan of Bond Proceeds - Additional Payments."

**Agreement** or **Loan Agreement** means that certain loan agreement, dated as of October 1, 2004, between the Authority and the Borrower, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of the Indenture.

**Alternate Credit Facility** means any substitute for any Credit Facility theretofore in effect delivered to the Trustee pursuant to the provisions of the Loan Agreement.

**Approving Opinion** means an opinion of Bond Counsel addressed to the Trustee to the effect that an action being taken (i) is authorized by the Indenture and (ii) will not result, in and of itself, in interest on the Bonds being included in gross income for federal income tax purposes.

**Auction Bond** with respect to the Series 2004 Bonds means the Series 2004 Bonds bearing interest at an Auction Rate.

**Auction Period** with respect to the Series 2004 Bonds means a period within an Auction Rate Period during which an Auction Rate is in effect with respect to the Series 2004 Bonds.

**Auction Rate Period** with respect to the Series 2004 Bonds means each period during which an Auction Rate is in effect with respect to the Series 2004 Bonds.

**Auction Rate** with respect to the Series 2004 Bonds means the rate of interest to be borne by the Series 2004 Bonds during each Auction Period within an Auction Rate Period determined in accordance with the provisions set forth in Exhibit D to the Indenture.

**Authority** means the ABAG Finance Authority for Nonprofit Corporations, a joint exercise of powers authority organized and existing under the laws of the State or its successors and assigns.

**Authorized Denomination** means : (a) with respect to Series 2004 Bonds during any Term Rate Period, \$5,000 or any integral multiple thereof; (b) with respect to Series 2004 Bonds during any Daily Rate Period, any Weekly Rate Period or any Variable Term Rate Period, \$100,000 or any integral multiple of \$5,000 in excess of \$100,000; and (c) with respect to Series 2004 Bonds during any Auction Rate Period, \$25,000 or any integral multiple of \$5,000 in excess of \$25,000.

**Authorized Denomination** with respect to any other Series of Bonds shall have the meaning specified in the related Series Indenture.

**Authorized Representative** means: with respect to the Borrower, the chief executive officer, the chief operating officer, the chief financial officer, the director of human resources or any other person who may be designated to act on behalf of the Borrower by a written certificate signed by the chief executive officer or the chief financial officer of the Borrower, furnished to the Trustee, each Credit Provider and the Authority, containing the specimen signature of each such person; and with respect to the Authority, the Chair, the Vice Chair, the Chief Financial Officer, the Secretary of the Authority or any person who may be designated to act on behalf of the Authority by a written certificate signed by the Chair, the Vice Chair, the Chief Financial Officer, or the Secretary of the Authority, furnished to the Trustee and the Borrower, containing the specimen signature of each such person.

**Available Moneys** means with respect to a Series of Bonds (a) during any period in which Outstanding Bonds of such Series are secured by a Credit Facility: (i) funds received by the Trustee pursuant to such Credit Facility; (ii) moneys which have been continuously on deposit with the Trustee (A) held in any separate and segregated fund, account or subaccount established under the Indenture in which no moneys which are not Available Moneys are held, and (B) which have so been on deposit with the Trustee for at least one hundred twenty-three (123) consecutive days from their receipt by the Trustee and not commingled with any moneys so held for less than said period and during and prior to which period, and as of the date of the application thereof to the payment of Bonds, no Act of Bankruptcy of the Borrower or the Authority has occurred; (iii) proceeds from the issuance and sale or remarketing of bonds, notes or other evidences of indebtedness of the Authority or other issuer of Tax-Exempt obligations received by the Trustee directly and contemporaneously with the issuance and sale or remarketing of such bonds, notes or other evidences of indebtedness, if there is delivered to the Trustee at the time such moneys are deposited with the Trustee an opinion of counsel (which may assume that no Holder of Bonds is an "insider" within the meaning of the Bankruptcy Code) from a firm experienced in bankruptcy matters to the effect that the use of such moneys to pay amounts due on the Bonds would not be recoverable from the Bondholders pursuant to Section 550 of the Bankruptcy Code as avoidable preferential payments under Section 547 of the Bankruptcy Code in the event of the occurrence of an Act of Bankruptcy of the Borrower or the Authority; (iv) any other moneys if there is delivered to the Trustee at the time such moneys are deposited with the Trustee an opinion of counsel as described in (iii) above; or (v) proceeds of the investment of funds qualifying as Available Moneys under the foregoing clauses; and (b) during any period in which Outstanding Bonds are not secured by a Credit Facility, any moneys deposited with the Trustee.

**Bankruptcy Code** means Title 11 of the United States Code, as amended.

**Beneficial Owners** means those individuals, partnerships, corporations or other entities for whom the Direct Participants have caused DTC to hold Book-Entry Bonds.

**Bond** or **Bonds** means the Series 2004 Bonds and any Additional Bonds authorized by, and at any time Outstanding pursuant to, the Indenture.

**Bondholder** or **Holder** or **Owner**, whenever used in the Indenture with respect to a Bond, means the person in whose name such Bond is registered.

**Bond Counsel** means any attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America, but shall not include counsel for the Borrower.

**Bond Payment Date** means each Interest Payment Date, Principal Payment Date, redemption date or other date on which amounts are required to be paid on the Bonds, whether upon maturity, redemption, acceleration or otherwise.

**Book-Entry Bonds** means Bonds registered in the name of the nominee of DTC, or any successor securities depository for such Bonds, as the registered owner thereof pursuant to the terms and provisions of the Indenture.

**Borrower** means Pathways Home Health and Hospice, a nonprofit public benefit corporation duly organized and existing under the laws of the State or any entity which is the surviving, resulting or transferee entity in any merger, consolidation or transfer of assets permitted under the Loan Agreement, but does not mean any affiliate of the Borrower.

**Borrower Account** with respect to the Series 2004 Bonds means the account by that name established in the Purchase Fund.

**Borrower Documents** means the Loan Agreement, the Tax Certificate and all other documents and instruments executed by the Borrower in connection with the Bonds and the transactions relating to the Bonds.

**Business Day** means any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banks in New York, New York, or the city or cities in which the Corporate Trust Office of the Trustee or the principal office of the Tender Agent or the office of each Credit Provider at which demands for payment under its Credit Facility are to be presented are authorized or required by law to close or (iii) a day on which the New York Stock Exchange is closed.

**Certificate, Order, Request, Requisition** or **Statement** of the Authority or the Borrower mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the Authority by an Authorized Representative of the Authority, or in the name of the Borrower by an Authorized Representative of the Borrower.

**Code** means the Internal Revenue Code of 1986, as amended and supplemented from time to time.

**Completion Date** means the date of completion of any Project as that date shall be certified as provided in the Loan Agreement.

**Construction Fund** means a fund by that name established pursuant to the Indenture.

**Corporate Trust Office** means, with respect to the Trustee, the corporate trust office of the Trustee in San Francisco, California, or such other office designated by the Trustee from time to time.

**Costs of Issuance** means all items of expense directly or indirectly payable by or reimbursable to the Authority or the Borrower and related to the authorization, issuance, sale and delivery of Bonds, including but not limited to costs of preparation and reproduction of documents, fees and expenses of the Authority, printing expenses, filing and recording fees, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, including fees and charges of counsel to the Authority, the Trustee, the initial Credit Provider for each Series of Bonds and Bond Counsel, rating agency fees, fees and charges for preparation, execution and safekeeping of the Bonds and any other cost, charge or fee in connection with the original issuance of the Bonds.

**Costs of Issuance Fund** means a fund by that name established pursuant to the Indenture.

**Costs of the Project or Costs of any Project** mean the costs of any Project authorized to be paid with the proceeds of a Series of Bonds, including the reimbursement to the Borrower of amounts expended for such costs to the extent permitted by the Tax Certificate executed and delivered in connection with such Series of Bonds, but shall not include any Costs of Issuance.

**Credit Agreement** means any agreement pursuant to which a Credit Facility is provided, as the same may be amended or supplemented from time to time, or any other similar agreement entered into in connection with the provision of any Alternate Credit Facility.

**Credit Facility** means, as applicable, (i) any letter of credit, bond insurance policy, line of credit, standby bond purchase agreement or other facility provided in connection with any Series of Bonds, and (ii) in the event of delivery of an Alternate Credit Facility, such Alternate Credit Facility.

**Credit Facility Account** means the account by that name in the Revenue Fund established pursuant to the Indenture.

**Credit Facility Purchase Account** with respect to the Series 2004 Bonds means the account by that name established in the Purchase Fund.

**Credit Provider** means the provider of any Credit Facility.

**Credit Provider Bonds** means any Bonds pledged or assigned to or otherwise held for the benefit of a Credit Provider as a result of a payment under its Credit Facility.

**Daily Rate** with respect to the Series 2004 Bonds means the variable interest rate on the Series 2004 Bonds established in accordance with the provisions set forth in Exhibit D to the Indenture.

**Daily Rate Adjustment Date** with respect to the Series 2004 Bonds means a date on which the Series 2004 Bonds begin to bear interest at a Daily Rate.

**Daily Rate Period** with respect to the Series 2004 Bonds means each period during which a Daily Rate is in effect.

**Date of Delivery** means the date of initial issuance and delivery of any Series of Bonds.

**Direct Participants** means those broker-dealers, banks and other financial institutions from time to time for which DTC holds the Bonds as securities depository.

**DTC** means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the New York Banking Law, or any successor securities depository for the Bonds.

**Environmental Regulation** means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances, chemical waste, materials or substances.

**Event of Default** means any of the events specified as such in the Indenture and described below under the caption "The Indenture - Events of Default and Remedies of Bondholders."

**Facilities** means any facilities of the Borrower financed with Bonds issued under the Indenture, including, without limitation, the Series 2004 Facilities.

**Fiscal Year** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month, or fifty-two week, period hereafter selected and designated as the official fiscal year period of the Borrower.

**Hazardous Substances** means: (a) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Facilities or to persons on or about the Facilities or (ii) cause the Facilities to be in violation of any Environmental Regulation; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) any chemical, material or substance defined as or included in the definition of "waste," "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any Environmental Regulation, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC §§ 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.; the California Hazardous Waste Control Law ("HWCL"), Cal. Health & Safety §§ 25100 et seq.; the Hazardous Substance Account Act ("HSAA"), Cal. Health & Safety Code §§ 25300 et seq.; the Underground Storage of Hazardous Substances Act, Cal. Health & Safety §§ 25280 et seq.; the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), Cal. Water Code §§ 13000 et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or agency or may or could pose a hazard to the health and safety of the occupants of the Facilities or the owners and/or occupants of property adjacent to or surrounding the Facilities, or any other person coming upon the Facilities or adjacent property; or (e) any other chemical, materials or substance which may or could pose a hazard to the environment.

**Holder or Bondholder or Owner**, whenever used in the Indenture with respect to a Bond, means the person in whose name such Bond is registered.

**Indenture** means the Indenture, dated as of October 1, 2004, between the Authority and the Trustee, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture.

**Information Services** means Financial Information, Inc.'s "Daily Called Bond Service," 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services "Called Bond Service," 65 Broadway, 16th Floor, New York, New York 10006; Mergent Inc., 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28271, Attention: Called Bonds Department; and Standard and Poor's "Called Bond Record," 25 Broadway, 3rd Floor, New York, New York 10004; or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other services providing information with respect to called bonds, or no such services, as the Borrower may indicate in a Certificate of the Borrower delivered to the Trustee.

**Interest Payment Date** means: (a) with respect to the Series 2004 Bonds in a Daily or Weekly Rate Period, the first Business Day of each calendar month; (b) with respect to the Series 2004 Bonds in any Term Rate Period, the first day of the sixth month following the commencement of the Term Rate Period and the first day of each sixth month period thereafter; (c) with respect to the Series 2004 Bonds in any Variable Term Segment, the Business Day succeeding the last day of such Variable Term Segment; and (d) with respect to the Series 2004 Bonds which are Auction Bonds, (i) when used with respect to any Auction Period other than a daily Auction Period or a Special Auction Period, the Business Day immediately following such Auction Period, (ii) when used with respect to a daily Auction Period, the first Business Day of the month immediately succeeding such Auction Period, (iii) when used with respect to a Special Auction Period of (i) seven or more but fewer than one hundred eighty-three

(183) days, the Business Day immediately following such Special Auction Period, or (ii) more than one hundred eighty-two (182) days, each October 1 and April 1 and on the Business Day immediately following such Special Auction Period.

**Interest Payment Date** with respect to any other Series of Bonds shall have the meaning specified in the related Series Indenture.

**Investment Securities** means any of the following:

(1) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America) or obligations the timely payment of the principal of and interest on which are fully guaranteed by the United States of America;

(2) obligations, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following: Federal Home Loan Bank System, Export-Import Bank of the United States, Federal Financing Bank, Government National Mortgage Association, Farmer's Home Administration, Federal Home Loan Mortgage Corporation or Federal Housing Administration; or by any agency, department or instrumentality of the United States if such obligations are rated in one of the two highest rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds;

(3) obligations of, or obligations fully guaranteed by, any state of the United States of America, or political subdivision, agency, instrumentality or authority thereof which obligations, at the time of purchase, are rated by at least one nationally recognized rating agency in one of its three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned by such rating agency to obligations of that nature;

(4) bonds of the State of California or of any other state or commonwealth of the United States or of any county, city and county or city of the State of California or of any other state or commonwealth of the United States or corporate bonds, in each case, rated in one of the two highest rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds;

(5) commercial paper of finance companies and banking institutions rated in one of the two highest rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds;

(6) repurchase agreements fully secured by collateral security, as evidenced by an Opinion of Counsel, described in clauses (1) or (2) of this definition, which collateral (a) is held by the Trustee or a third party agent during the term of such repurchase agreement, (b) is not, pursuant to the terms of such agreement, subject to liens or claims of third parties, and (c) has a market value (determined at least once every fourteen (14) days) at least equal to the amount so invested;

(7) long-term investment agreements (with maturity dates in excess of one (1) year) with financial institutions (including, without limitation, banks and insurance companies) the debt obligations or long-term claims paying ability of such financial institutions or of a related guarantor of any such financial institution are rated in one of the two highest rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds, or short-term investment agreements with financial institutions or any related guarantor of any such financial institution the long- or short-term debt obligations of which are rated in one of the two highest long- or short-term, as the case may be, rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds, provided that if such rating falls below the two highest rating categories, the investment agreement shall permit assignment of such investment agreement to a financial institution which meets the ratings requirement specified in this clause (7) or shall provide for the invested securities to be fully collateralized by investments described in clause (1) of this definition and, provided further, that if so collateralized, that the Trustee has a perfected first security lien on the collateral, as evidenced by an Opinion of Counsel, and such collateral is held by the Trustee;

(8) banker's acceptances or certificates of deposit of, or time deposits in, any bank (including the Trustee or any of its affiliates) or savings and loan association (a) the debt obligations of which (or in the case of the principal

bank of a bank holding company, the debt obligations of the bank holding company of which) are rated in one of the two highest rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds or (b) which certificates of deposit or time deposits are fully insured by the Federal Deposit Insurance Corporation or (c) which certificates of deposit or time deposits are secured at all times, in the manner and to the extent provided by law, by collateral security (described in clauses (1) or (2) of this definition) with a market value (valued at least quarterly) of no less than the original amount of moneys so invested;

(9) money market instruments rated in the highest rating category by either Moody's or S&P and/or money market instruments restricted to investments described in clause (1), (2) and (6) of this definition, including in each case any money market instruments for which the Trustee or any of its affiliates provides investment advisory or management services;

(10) Tax-Exempt obligations and money market mutual funds whose portfolios are restricted to such obligations, which obligations or mutual funds are rated in one of the two highest rating categories (without regard to gradations within such category) by each Rating Agency then rating the Bonds;

(11) Tax-Exempt obligations, the timely payment of the principal of and interest on which is fully provided for by the deposit in trust or escrow of cash or obligations described in paragraph (1) of this definition; and

(12) forward agreements with respect to obligations listed in clauses (1), (2), (3), (4), or (5) of this definition with any financial institution which (or the guarantor of which ) has a long-term debt, claims paying ability or financial program strength ratings in one of the three highest rating categories (without regard to gradations within such category) assigned by at least one nationally recognized rating agency, which forward agreement provides that the financial institution entering into such forward agreement with the Trustee has a continual obligation to deliver or purchase the obligations at an agreed upon price or yield.

**Loan Agreement or Agreement** means that certain loan agreement, dated as of October 1, 2004, between the Authority and the Borrower, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of the Indenture.

**Loan Default Event** means any one or more of the events specified as such in the Loan Agreement and described below under the caption "The Loan Agreement - Loan Default Events and Remedies."

**Loan Repayments** means the payments so designated and required to be made by the Borrower pursuant to the Loan Agreement and described below under the caption "The Loan Agreement - Loan of Bond Proceeds - Repayment Provisions."

**Marketing Party** means any Tender Agent, Remarketing Agent, auction agent, market agent, broker-dealer or other agent participating in the pricing and marketing of a Series of Bonds after the Date of Delivery thereof.

**Maximum Interest Rate** with respect to the Series 2004 Bonds means twelve percent (12%) or such lesser annual rate of interest that is specified in the Credit Facility that supports a Series of Bonds, if any, that is used to determine the amount of interest that may be drawn under such Credit Facility; provided, however, that the Maximum Interest Rate shall not exceed the maximum interest rate permitted by law from time to time.

**Moody's** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, or, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Borrower, by notice to the Authority, each Credit Provider, each Marketing Party and the Trustee.

**Notice by Mail** with respect to the Series 2004 Bonds or "notice" of any action or condition "by Mail" shall mean a written notice mailed by first-class mail to the Holders of specified Series 2004 Bonds, at the addresses shown on the registration books maintained by the Trustee.

**Opinion of Counsel** means a written opinion of counsel (who may be counsel for the Authority) acceptable to the Authority and the Borrower. If and to the extent required by the provisions of the Indenture, each Opinion of Counsel shall include the statements provided for in the Indenture.

**Owner or Bondholder or Holder**, whenever used in the Indenture with respect to a Bond, means the person in whose name such Bond is registered.

**Outstanding**, when used as of any particular time with reference to Bonds, means (subject to the provisions of the Indenture) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except: (1) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which liability of the Authority shall have been discharged in accordance with the provisions of the Indenture; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the provisions of the Indenture.

**Person** means an individual, corporation, firm, association, limited liability company, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**Principal Office** with respect to the Series 2004 Bonds means for any Marketing Party the office so designated in writing by such Marketing Party to the Authority, the Trustee, the Borrower, and the other Marketing Parties.

**Principal Payment Date** means, with respect to the Series 2004 Bonds, October 1 of each year in which principal is payable, and with respect to any Series of Additional Bonds, the dates specified in the Series Indenture for such Series of Bonds.

**Project** means the acquisition, construction, improvement and equipping of any facilities by the Borrower with the proceeds of Bonds issued under the Indenture.

**Purchase Date** with respect to the Series 2004 Bonds means any date on which any Series 2004 Bond is required to be purchased pursuant to the provisions of the Indenture described in the front portion of this Official Statement and with respect to any other Series of Bonds shall have the meaning specified in the Series Indenture for such Series of Bonds.

**Purchase Fund** with respect to the Series 2004 Bonds means the fund by that name created pursuant to Exhibit D of the Indenture.

**Purchase Price** with respect to the Series 2004 Bonds means the principal amount thereof plus accrued interest to, but not including, the Purchase Date; provided, however, that if the Purchase Date is an Interest Payment Date, the Purchase Price thereof shall be the principal amount thereof, and interest on such Series 2004 Bond shall be paid to the Holder of such Series 2004 Bond pursuant to the Indenture; and provided further that in the case of any mandatory tender of Series 2004 Bonds due to the termination of a Term Rate Period prior to the day originally established as the last day of such Term Rate Period, the Purchase Price shall be equal to the principal amount thereof, plus an amount equal to any premium which would have been payable on such day had the Borrower directed redemption of such Series 2004 Bonds pursuant to the provisions of the Indenture, plus, if applicable, accrued interest to such date.

**Purchase Price** with respect to any other Series of Bonds shall have the meaning specified in the Series Indenture for such Series of Bonds.

**Qualified Newspaper** means *The Wall Street Journal* or *The Bond Buyer* or any other newspaper or journal containing financial news, printed in the English language and customarily published on each Business Day, of general circulation in New York, New York, and selected by the Trustee, whose decision shall be final and conclusive.

**Rate Period** with respect to the Series 2004 Bonds means any Auction Rate Period, Daily Rate Period, Weekly Rate Period, Variable Term Rate Period or Term Rate Period.

**Rating Agency** means at any time any rating agency then rating any Series of Bonds at the request of the Borrower.

**Rebate Fund** means the fund by that name created pursuant to the Indenture.

**Rebate Requirement** means any amount required by a Tax Certificate to be paid to the United States government.

**Record Date** with respect to the Series 2004 Bonds means: (i) with respect to any Interest Payment Date in respect of any Daily Rate Period, Weekly Rate Period, Auction Rate Period or Variable Term Segment, the Business Day preceding such Interest Payment Date; and (ii) with respect to any Interest Payment Date in respect of any Term Rate Period, the fifteenth day of the month preceding such Interest Payment Date.

**Record Date** with respect to any other Series of Bonds shall have the meaning specified in the Series Indenture for such Series of Bonds.

**Remarketing Agent** with respect to the Series 2004 Bonds means each remarketing agent appointed in accordance with Exhibit D to the Indenture. Cain Brothers & Company, LLC shall serve as initial Remarketing Agent for the Series 2004 Bonds.

**Remarketing Proceeds Account** with respect to the Series 2004 Bonds means the account by that name established in the Purchase Fund pursuant to Exhibit D of the Indenture.

**Reserve Fund** means any fund by that name created with respect to one or more Series of Bonds pursuant to a Supplemental Indenture.

**Reserve Fund Requirement** with respect to a Series of Bonds for which the Authority and the Borrower shall have established a Reserve Fund shall have the meaning specified in the Supplemental Indenture establishing the terms and provisions of such Reserve Fund.

**Reserved Rights** means those certain rights of the Authority under the Loan Agreement to indemnification and to payment or reimbursement of fees and expenses of the Authority, its right to enforce the Loan Agreement pursuant to the terms thereof, its right to inspect and audit the books, records and premises of the Borrower, including any Project, its right to collect attorneys' fees and related expenses, its right to enforce the Borrower's covenant to comply with applicable federal tax law and State law (including the Act and the rules of the Authority, if any), its right to receive notices and to grant or withhold consents or waivers under the Loan Agreement and the Indenture, and its right to amend the Indenture and the Loan Agreement in accordance with the provisions of the Indenture and the Loan Agreement.

**Revenue Fund** means the fund by that name established pursuant to the Indenture.

**Revenues** means all amounts received by the Authority or the Trustee for the account of the Authority pursuant or with respect to the Loan Agreement or a Credit Facility (other than payments of the Purchase Price of any Bonds), including, without limiting the generality of the foregoing, Loan Repayments (including both timely and delinquent payments, any late charges, and paid from whatever source), prepayments, insurance proceeds, condemnation proceeds, and all interest, profits or other income derived from the investment of amounts in the funds and accounts established pursuant to the Indenture, but not including Additional Payments, or any moneys paid for deposit into the Rebate Fund or for the purchase of Bonds.

**Rule 15c2-12** means Securities and Exchange Commission Rule 15c2-12, as supplemented and amended from time to time.

**S&P** means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., its successors and their assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating designated by the Borrower, by notice to the Authority, each Credit Provider, each Marketing Party and the Trustee.

**Securities Depository** means The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax (516) 227-4039 or 4190; or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depository, or no such depositories, as the Authority may indicate in a certificate of the Authority delivered to the Trustee.

**Series** means any series of Bonds issued under the Indenture.

**Series 2004 Bonds** means the ABAG Finance Authority for Nonprofit Corporations Revenue Bonds (Pathways Home Health and Hospice), Series 2004 authorized by, and at any time Outstanding pursuant to, the Indenture.

**Series Indenture** means any Supplemental Indenture providing for the issuance of any Additional Bonds.

**Series 2004 Facilities** means the Borrower's facilities located at 585 North Mary Avenue, Sunnyvale, California, as more fully described in Exhibit A to the Loan Agreement.

**Series 2004 Project** means the acquisition, construction, improvement and equipping of the Series 2004 Facilities.

**Sinking Fund Installment** means the amount required by the Indenture to be paid by the Authority on any single date for the redemption of Bonds.

**State** means the State of California.

**Supplemental Indenture** means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending the Indenture, including any Series Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized under the Indenture.

**Tax Certificate** means with respect to the Series 2004 Bonds, the Tax Certificate and Agreement of the Borrower and the Authority dated the Date of Delivery of the Series 2004 Bonds, and with respect to any other Series of Bonds, the Tax Certificate and Agreement of the Borrower and the Authority dated the Date of Delivery of such Series of Bonds.

**Tax-Exempt** means, with respect to interest on any obligations, including the Bonds, that such interest is excluded from gross income for federal income tax purposes, whether or not such interest is includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating other tax liabilities, including any alternative minimum tax or environmental tax under the Code.

**Tender Agent** with respect to the Series 2004 Bonds means the tender agent appointed in accordance with the provisions set forth in Exhibit D to the Indenture. The initial Tender Agent with respect to the Series 2004 Bonds is Wells Fargo Bank, National Association.

**Term Rate** with respect to the Series 2004 Bonds means a non-variable interest rate borne by the Series 2004 Bonds for a Term Rate Period in accordance with the provisions set forth in Exhibit D to the Indenture.

**Term Rate Adjustment Date** with respect to the Series 2004 Bonds means the date on which the Series 2004 Bonds begin to bear interest at a Term Rate.

**Term Rate Period** with respect to the Series 2004 Bonds means each period during which a Term Rate is in effect.

**Trustee** means Wells Fargo Bank, National Association, or its successor as Trustee thereunder as provided in the Indenture.

**Variable Term Rate** with respect to the Series 2004 Bonds means a non-variable rate borne by any Series 2004 Bond for a Variable Term Segment in accordance with the provisions set forth in Exhibit D to the Indenture.

**Variable Term Rate Adjustment Date** with respect to the Series 2004 Bonds means the date on which Series 2004 Bonds begin to bear interest at a Variable Term Rate.

**Variable Term Rate Period** with respect to the Series 2004 Bonds means each period comprised of Variable Term Segments during which Variable Term Rates are in effect.

**Variable Term Segment** means, with respect to each Series 2004 Bond bearing interest at a Variable Term Rate, the period established in accordance with the provisions set forth in Exhibit D to the Indenture.

**Weekly Rate** with respect to the Series 2004 Bonds means a variable interest rate on any Series 2004 Bonds established in accordance with the provisions set forth in Exhibit D to the Indenture.

**Weekly Rate Adjustment Date** with respect to the Series 2004 Bonds means the date on which Series 2004 Bonds begin to bear interest at a Weekly Rate.

**Weekly Rate Period** with respect to the Series 2004 Bonds means each period during which a Weekly Rate is in effect.

## THE INDENTURE

The Indenture sets forth the terms of the Bonds, including the Series 2004 Bonds, the nature and extent of security, various rights of the Bondholders, rights, duties and immunities of the Trustee and the rights and obligations of the Authority. The summary of the provisions of the Indenture set forth below does not purport to be complete or definitive, is supplemental to the summary of other provisions of the Indenture set forth elsewhere in this Official Statement, and is qualified in its entirety by reference to the full terms of the Indenture.

### **Pledge and Assignment; Revenue Fund; Allocation of Revenues**

**Pledge and Assignment.** Subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture, all of the Revenues and any other amounts (including proceeds of the sale of Bonds) held in any fund or account established pursuant to the Indenture (except the Rebate Fund and funds held to pay the Purchase Price of any Bonds) are pledged to secure the full payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms and the provisions of the Indenture and thereafter to secure full payment of amounts owed under any Credit Agreement. Said pledge shall constitute a lien on and security interest in such assets and shall attach, be perfected and be valid and binding from and after delivery by the Trustee of the initial Series of Bonds under the Indenture, without any physical delivery thereof or further act.

Pursuant to the provisions of the Indenture, the Authority transfers in trust, and assigns to the Trustee, for the benefit of the Holders from time to time of the Bonds and the Credit Providers, to the extent of its interest therein, all of the Revenues and other assets pledged pursuant to the provisions of the Indenture described in the paragraph above and all of the right, title and interest of the Authority in the Loan Agreement (except for its Reserved Rights). The Trustee shall be entitled to and shall collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee also shall be entitled to and, subject to the provisions of the Indenture, shall take all steps, actions and proceedings reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the Borrower under the Loan Agreement.

**Revenue Fund.** All Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the Revenue Fund which the Trustee shall establish, maintain and hold in trust as provided in the Indenture. All Revenues deposited with the Trustee shall be held, disbursed, allocated and applied by the Trustee only as provided in the Indenture.

**Allocation of Revenues.** Subject to the provisions of the Indenture described below under the caption "Order of Priority of Payment," on or before each Interest Payment Date and Principal Payment Date, the Trustee shall apply funds in the Revenue Fund for the following purposes, in the following amounts and in the following order of priority:

First: for the payment of the aggregate amount of interest becoming due and payable on such Interest Payment Date or date of redemption of all Bonds then Outstanding, or for the reimbursement of any Credit Provider for any amount received from such Credit Provider and applied to the payment of such interest;

Second: for the payment of the aggregate amount of principal, including the aggregate amount of Sinking Fund Installment payments, required to be paid on such Principal Payment Date, or for the reimbursement of any Credit Provider for any amount received from such Credit Provider and applied to the payment of such principal; and

Third: for the payment of the redemption price payable upon any redemption of Bonds permitted under the Indenture, or for the reimbursement of any Credit Provider for any amount received from such Credit Provider and applied to the payment of such redemption price.

#### **Credit Facility for the Series 2004 Bonds; Credit Facilities; Credit Facility Account; Order of Priority of Payment**

**Credit Facility for the Series 2004 Bonds.** The Borrower shall provide a Credit Facility meeting the requirements specified in the provisions of the Loan Agreement described below under the caption "The Loan Agreement - Particular Covenants of the Borrower - Credit Facilities" at any time the Series 2004 Bonds bear interest at a rate other than a Term Rate and may provide a Credit Facility for the Series 2004 Bonds at any time, including, without limitation, during a Term Rate Period. The Trustee acknowledges the right of the Borrower to terminate any Credit Facility provided by the Borrower with respect to the Series 2004 Bonds and to substitute an Alternate Credit Facility for any Credit Facility then in effect with respect to the Series 2004 Bonds; provided that no such termination and substitution may be made with respect to any Series 2004 Bond during any Variable Term Segment with respect to such Series 2004 Bond and if the Borrower shall have provided a Credit Facility to enhance the Series 2004 Bonds during any Term Rate Period, no such termination and substitution may be made during any Term Rate Period.

**Credit Facilities.** The Trustee shall hold and maintain each Credit Facility for the benefit of the Bondholders to which such Credit Facility relates until such Credit Facility expires in accordance with its terms. Subject to the provisions of the Indenture, the Trustee shall enforce all terms, covenants and conditions of each Credit Facility, including payment when due of all requests for payment under the Indenture, and will not consent to, agree to or permit any amendment or modification of any Credit Facility which would materially adversely affect the rights or security of the Holders of the Bonds to which such Credit Facility relates.

The Trustee shall request payments under each Credit Facility in accordance with the terms thereof in an amount necessary to make timely payments of principal of, premium, if any, and interest on the Bonds to which such Credit Facility relates, other than Bonds owned by or for the account of the Borrower or any Credit Provider, when due whether at maturity, interest payment date, redemption, acceleration or otherwise. In addition, the Trustee or the Tender Agent, as applicable, shall request payments under each Credit Facility in accordance with the terms thereof to the extent necessary to make timely payments required to purchase any Bonds to which such Credit Facility relates in accordance with the provisions of such Credit Facility.

Immediately after a payment is received under a Credit Facility, the Trustee shall reimburse the applicable Credit Provider for the amount of such payment from moneys then on deposit in the Revenue Fund.

If at any time during the term of any Credit Facility any successor Trustee shall be appointed and qualified under the Indenture, the resigning or removed Trustee shall request that each Credit Provider transfer its Credit Facility to the successor Trustee. If the resigning or removed Trustee fails to make this request, the successor Trustee shall do so before accepting appointment.

When a Credit Facility expires in accordance with its terms or is replaced by an Alternate Credit Facility, the Trustee shall immediately surrender such Credit Facility to the applicable Credit Provider; provided, however, that the Trustee shall not surrender any Credit Facility until all draws thereunder shall have been honored. All provisions in the Indenture relating to the rights of any Credit Provider shall be of no force and effect if there is no Credit Facility or Alternate Credit Facility in effect and there are no Credit Provider Bonds and all amounts owing to such Credit Provider under the Indenture and under the Credit Agreement have been paid.

**Credit Facility Account.** The Trustee shall create within the Revenue Fund a separate account called the "Credit Facility Account" (with such subaccounts as may be required to segregate amounts related to different Credit Facilities) into which all moneys received by the Trustee under any Credit Facility to pay principal, interest, or redemption price of the Bonds shall be deposited and disbursed. Neither the Borrower nor the Authority shall have any rights to or interest in the Credit Facility Account nor any subaccounts established therein. The Credit Facility Account and each subaccount therein shall be established and maintained by the Trustee and held in trust apart from all other moneys and securities held under the Indenture or otherwise, and over which the Trustee shall have the exclusive and sole right of withdrawal for the exclusive benefit of the Holders of the Bonds with respect to which such drawing on a Credit Facility was made. No moneys from any Credit Facility Account nor any subaccount therein may in any circumstance be used to pay principal or interest on any Credit Provider Bonds or any Bonds owned by or for the account of the Borrower.

**Order of Priority of Payment.** Funds for the payment of the principal or redemption price of and interest on each Series of Bonds shall be derived from the following sources in the order of priority specified in the Indenture and described below; provided however, that amounts in the Revenue Fund shall be used to pay when due (whether upon Interest Payment Date, maturity, redemption, acceleration or otherwise) the principal or redemption price of and interest on the Bonds held by Holders other than any Credit Provider or the Borrower prior to the payment of the principal and interest on the Bonds held by any Credit Provider or the Borrower:

- (i) moneys paid into the Credit Facility Account or any subaccount established therein from a payment under the applicable Credit Facility;
- (ii) moneys paid into the Revenue Fund pursuant to the provisions of the Indenture described below under the caption "The Indenture – Defeasance – Discharge of Indenture" and proceeds from the investment thereof, which constitute Available Moneys;
- (iii) any other moneys (other than from draws on a Credit Facility enhancing the Bonds) paid into the Revenue Fund and deposited in the Revenue Fund and proceeds from the investment thereof, which constitute Available Moneys; and
- (iv) any other moneys paid into the Revenue Fund and deposited in the Revenue Fund and proceeds from the investment thereof, which are not Available Moneys.

#### **Other Funds and Accounts**

**Construction Fund.** If so specified in the Request of the Authority delivered in connection with the issuance of a Series of Bonds, the Trustee shall establish a Construction Fund (each a "Construction Fund"). The moneys in each Construction Fund shall be held by the Trustee in trust and applied to the payment of the Costs of the Project financed with the proceeds of the Series of Bonds to which such Construction Fund relates.

Before each payment is made from a Construction Fund by the Trustee, there shall be filed with the Trustee a requisition, such requisition to be substantially in the form attached as a exhibit to the Indenture. Each such requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. Upon receipt of each such requisition complying with the provisions under the Indenture, the Trustee shall pay the amount set forth therein as directed by the terms thereof. The Trustee may conclusively rely on such requisition received as complete authorization to disburse funds in accordance with the Indenture.

Upon the receipt by the Trustee of a certificate evidencing completion of a Project conforming with the requirements set forth in the Loan Agreement, and after payment of costs payable from such Construction Fund or provision having been made for payment of such costs not yet due by retaining such costs in such Construction Fund or otherwise as directed in such certificate, the Trustee shall transfer any remaining balance in such Construction Fund into the Revenue Fund.

**Costs of Issuance Fund.** If so specified in the Request of the Authority delivered in connection with the issuance of a Series of Bonds, the Trustee shall establish a Costs of Issuance Fund. The moneys in each Costs of Issuance Fund shall be held by the Trustee in trust and applied to the payment of Costs of Issuance for the Series of Bonds to which such Costs of Issuance Fund relates, upon a requisition filed with the Trustee, in the form attached as an exhibit to the Indenture, signed by an Authorized Representative of the Borrower. Any amounts remaining in any Costs of Issuance Fund one hundred eighty (180) days following the Date of Delivery of a Series of Bonds shall be transferred to the Construction Fund, if any, established in connection with such Series of Bonds or, to the Revenue Fund if no Construction Fund shall have been established in connection with such Series of Bonds. Thereafter, such Costs of Issuance Fund shall be closed.

**Reserve Funds.** No Reserve Fund is being established in connection with the Series 2004 Bonds. The Authority and the Borrower may at the time of issuance of any Series of Bonds or at any time thereafter by Supplemental Indenture provide for the establishment of a Reserve Fund to secure one or more Series of Bonds as the Authority and the Borrower shall determine and shall specify in the Supplemental Indenture establishing such Reserve Fund. In the event that the Authority and the Borrower shall determine to establish a Reserve Fund as additional security for the Series 2004 Bonds or any other Series of Bonds, such Reserve Fund shall comply with the provisions of the Supplemental Indenture establishing such Reserve Fund.

**Rebate Fund** The Trustee shall establish and maintain a fund separate from any other fund established and maintained under the Indenture designated as the "Rebate Fund." Within the Rebate Fund, the Trustee shall maintain such other accounts as the Trustee shall be instructed to maintain by the Borrower in order to comply with the terms and requirements of each Tax Certificate. Subject to the transfer provisions set forth in the Indenture which are described below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement, for payment to the federal government of the United States of America, and no other person shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by the provisions of the Indenture and by each Tax Certificate.

Upon the Borrower's written direction, an amount shall be deposited to the Rebate Fund by the Trustee from deposits by the Borrower, or from available investment earnings on amounts (other than moneys representing the proceeds of a draw on a Credit Facility or held in the Credit Facility Account, including any subaccount established therein, remarketing proceeds, Available Moneys, moneys being aged to become Available Moneys, or moneys held for the payment of particular Bonds (including moneys held for non-presented Bonds or for the purchase of Bonds or for defeased Bonds) held in the Revenue Fund, if and to the extent required, so that the balance of the amount on deposit thereto shall be equal to the Rebate Requirement. Computations of the Rebate Requirement shall be furnished by or on behalf of the Borrower in accordance with each Tax Certificate.

The Trustee shall invest all amounts held in the Rebate Fund in Investment Securities as instructed in writing by the Borrower, and the Borrower shall be responsible for such instructions complying with each Tax Certificate. Money shall not be transferred from the Rebate Fund except as provided pursuant to the provisions of the Indenture described in the following paragraph.

Upon receipt of the Borrower's written directions, the Trustee shall remit part or all of the balances in the Rebate Fund to the United States, as so directed. In addition, if the Borrower so directs, the Trustee will deposit moneys into or transfer moneys out of the Rebate Fund from or into such accounts or funds (other than moneys representing the proceeds of a draw on a Credit Facility or held in the Credit Facility Account, including any subaccount established therein, remarketing proceeds, or moneys held for the payment of particular Bonds, including moneys held for non-presented Bonds or for the purchase of Bonds or for defeased Bonds) as directed by the Borrower's written directions. Any funds remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor shall be withdrawn and remitted to the Borrower upon the Borrower's written request.

### **Investment of Moneys in Funds and Accounts**

All moneys in any of the funds or accounts established pursuant to the Indenture (other than moneys in the Credit Facility Account, remarketing proceeds, and moneys held for the purchase of Bonds or for non-presented Bonds which shall be held uninvested) shall be invested by the Trustee as directed in writing by the Borrower solely in Investment Securities. Notwithstanding any other provision in the Indenture, in the absence of written investment instructions from the Borrower, the Trustee is directed to invest available funds in Investment Securities described in clause (9) of the definition thereof. Moneys in all funds and accounts shall be invested in Investment Securities maturing not later than the date on which such moneys will be required for the purposes specified in the Indenture.

Unless otherwise provided in the Series Indenture establishing the terms and provisions of a Series of Bonds, all interest, profits and other income received from the investment of moneys in each Construction Fund, each Costs of Issuance Fund, the Rebate Fund and any Reserve Fund shall be deposited when received in such fund. All interest, profits and other income received from the investment of moneys in any other fund or account established pursuant to the Indenture shall be deposited in the Revenue Fund. Notwithstanding anything to the contrary contained in this paragraph, an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund from which such accrued interest was paid. To the extent that any Investment Securities are registrable, such Investment Securities shall be registered in the name of the Trustee or its nominee for the benefit of the Holders.

For the purpose of determining the amount in any fund, all Investment Securities credited to such fund shall be valued at the lesser of cost or par value plus, prior to the first payment of interest following purchase, the amount of accrued interest, if any, paid as a part of the purchase price.

### **Particular Covenants**

**Tax Covenants.** The Authority and the Borrower shall at all times do and perform all acts and things permitted by law and the Indenture which are necessary or desirable in order to assure that interest paid on the Bonds (or any of them) will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being excluded from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the Authority and the Borrower agree to comply with the provisions of each Tax Certificate. The Authority and the Trustee agree to comply with Section 148(f) of the Code, relating to rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Bonds.

**Continuing Disclosure.** Pursuant to the provisions of the Loan Agreement described below under the caption "The Loan Agreement – Particular Covenants – Continuing Disclosure," the Borrower has agreed to undertake any continuing disclosure requirements promulgated under Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, and the Authority shall have no liability to the Holders of the Bonds or any other person with respect to such disclosure matters. Notwithstanding any other provision of the Indenture, failure of the Borrower to comply with the requirements of Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, shall not be considered an Event of Default; however, the Trustee at the written request of any Marketing Party or the Holders of at least 25% aggregate principal amount of Outstanding Bonds, shall, but only to the extent indemnified to its satisfaction from and against any cost, liability or expense related thereto, including, without limitation, reasonable fees and expenses of its attorneys and advisors and additional fees and expenses of the

Trustee, or any Bondholder or beneficial owner of any Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Borrower to comply with its obligations pursuant to the provisions of the Loan Agreement described below under the caption "The Loan Agreement – Particular Covenants – Continuing Disclosure."

### **Events of Default and Remedies of Bondholders**

**Events of Default; Acceleration; Waiver of Default.** Each of the following events which has occurred and is continuing shall constitute an "Event of Default" under the Indenture:

- (a) default in the due and punctual payment of the principal of, or premium (if any) on, any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise;
- (b) default in the due and punctual payment of any installment of interest on, any Bond, when and as the same shall become due and payable; or
- (c) failure by the Authority to perform or observe any other of the covenants, agreements or conditions on its part in the Indenture or in the Bonds contained, and the continuation of such failure for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Authority, each Credit Provider and the Borrower by the Trustee, or to the Authority, each Credit Provider, the Borrower and the Trustee by the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding.

No default specified in (c) above shall constitute an Event of Default unless the Authority and the Borrower shall have failed to correct such default within the applicable period; provided, however, that if the default shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Authority or the Borrower (or any Credit Provider on its behalf) within the applicable period and diligently pursued. With regard to any alleged default concerning which notice is given to the Borrower under the provisions of the Indenture described herein, the Authority grants the Borrower (or any Credit Provider on its behalf) full authority for the account of the Authority to perform any covenant or obligation the non-performance of which is alleged in said notice to constitute a default in the name and stead of the Authority with full power to do any and all things and acts to the same extent that the Authority could do and perform any such things and acts and with power of substitution.

During the continuance of an Event of Default, subject to the provisions of the Indenture described below under the caption "The Indenture – Events of Default and Remedies of Bondholders – Consent Regarding Defaults and Remedies," unless the principal of all the Bonds shall have already become due and payable, upon the written request of the Holders of not less than two-thirds (2/3) in aggregate principal amount of the Bonds at the time Outstanding, the Trustee shall, by notice in writing to the Authority, the Borrower and each Credit Provider, declare the principal of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in the Indenture or in the Bonds contained to the contrary notwithstanding. Upon any such declaration the Trustee shall promptly request payment under each then existing Credit Facility in accordance with the terms thereof and apply the amount so drawn to pay the principal of and interest on the applicable Bonds so declared to be due and payable. Interest on the Bonds shall cease to accrue as of the date of declaration. The Trustee shall promptly notify the Bondholders of the date of acceleration and the cessation of accrual of interest on the Bonds in the same manner as for a notice of redemption.

The provisions of the Indenture described in the preceding paragraph, however, are subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as in the Indenture provided, and before any Credit Facility has been drawn upon in accordance with its terms and honored, there shall have been deposited with the Trustee a sum sufficient to pay all the principal of the Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds and the reasonable fees and expenses of the Trustee, including reasonable fees and expenses of its attorneys, and any and all other defaults known to the

Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee and each Credit Provider or provision deemed by the Trustee and each Credit Provider to be adequate shall have been made therefor, then, and in every such case, the Holders of at least a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Authority and to the Trustee, may, on behalf of the Holders of all the Bonds, rescind and annul such declaration and its consequences and waive such default; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon. Except as provided pursuant to the provisions of the Indenture described in the following sentence, notwithstanding any other provision of the Indenture to the contrary, the Trustee may not exercise any remedy in the event of a default under the Indenture without the written consent of each Credit Provider then providing a Credit Facility with respect to any Series of Bonds, so long as the Credit Facility being provided by such Credit Facility is in effect and such Credit Provider has not wrongfully failed to make a payment under the Indenture. The Trustee may exercise any and all remedies under the Indenture and the Loan Agreement (except acceleration) to collect any fees, expenses and indemnification from the Borrower to the Trustee or the Authority without obtaining the consent of any Credit Provider.

**Institution of Legal Proceedings by Trustee.** Subject to the provisions of the Indenture described under above under the caption "The Indenture – Events of Default and Remedies of Bondholders – Events of Default; Acceleration; Waiver of Default" and described below under the caption "The Indenture - Consent Regarding Defaults and Remedies," if one or more of the Events of Default shall happen and be continuing, the Trustee in its discretion may, and upon the written request of the Holders of two-thirds (2/3) in principal amount of the Bonds then Outstanding and shall, proceed to protect or enforce its rights or the rights of the Holders of Bonds or under the Indenture and the Loan Agreement by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained in the Indenture or in the Loan Agreement, or in aid of the execution of any power in the Indenture or in the Loan Agreement granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Trustee shall deem most effectual in support of any of its rights or duties under the Indenture.

**Application of Revenues and Other Funds After Default.** If an Event of Default shall occur and be continuing, all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of the Indenture shall be promptly applied by the Trustee as follows and in the following order:

(1) To the payment of the fees and reasonable charges and expenses of the Trustee and each Marketing Party (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under the Indenture;

(2) To the payment of the principal of and interest then due on the Bonds (upon presentation of the Bonds to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of the Indenture, as follows:

(i) Unless the principal of all of the Bonds shall have become or have been declared due and payable,

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by call for redemption, with interest on the overdue principal at the rate borne by the respective Bonds, and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference.

(ii) If the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal and interest then due and unpaid upon the Bonds, with interest on the overdue principal at the rate borne by the Bonds, and, if the amount available shall not be sufficient to pay in full the whole amount so due and unpaid, then to the payment thereof ratably, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference; and

(3) To the payment of amounts owed to any Credit Provider pursuant to its Credit Agreement;

provided, however, that in no event shall moneys derived from drawings under a Credit Facility, moneys set aside to pay principal or interest on any particular Bonds (including moneys held for non-presented Bonds or for the purchase of Bonds or held for defeased Bonds) or the proceeds from remarketing of the Bonds be used to pay any of the items listed in clause (1) or clause (3) above, and Available Moneys and moneys being aged to become Available Moneys shall not be used to pay any of the items listed in clause (1) above until all amounts have been paid under clause (2) above; provided further that proceeds of a draw on a Credit Facility and remarketing proceeds shall be used solely to pay principal, interest, premium, or Purchase Price of the Bonds as otherwise provided in the Indenture.

**Trustee to Represent Bondholders.** The Trustee is irrevocably appointed (and the successive respective Holders of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Holders of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Holders under the provisions of the Bonds, the Indenture and the Loan Agreement and applicable provisions of any other law. Subject to the provisions of the Indenture described above under the caption "The Indenture – Events of Default and Remedies of Bondholder – Events of Default; Acceleration; Waiver of Default," upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Trustee to represent the Bondholders, the Trustee in its discretion may, and upon the written request of the Holders of not less than two-thirds (2/3) in aggregate principal amount of the Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of such Holders by such appropriate action, suit, mandamus or other proceedings as it shall deem most effectual to protect and enforce any such right, at law or in equity, either for the specific performance of any covenant or agreement contained in the Indenture, or in aid of the execution of any power in the Indenture granted, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Trustee or in such Holders under the Indenture and the Loan Agreement, or any other law arising under the Indenture; and upon instituting such proceeding, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the Revenues and other assets pledged under the Indenture, pending such proceedings. All rights of action under the Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Holders of such Bonds, subject to the provisions of the Indenture.

**Bondholders' Direction of Proceedings.** Anything in the Indenture to the contrary notwithstanding, but subject to the provisions of the Indenture described below under the caption "The Indenture – Events of Default and Remedies of Bondholders – Consent Regarding Defaults and Remedies," the Holders of two-thirds (2/3) in aggregate principal amount of the Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee, to direct the method of conducting all remedial proceedings taken by the Trustee under the Indenture, provided that such direction shall not be otherwise than in accordance with law and the provisions of the Indenture, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Bondholders not parties to such direction or for which it has not been provided adequate indemnity satisfactory to it.

**Limitation on Bondholders' Right to Sue.** Subject to the provisions of the Indenture described above under the captions "The Indenture – Events of Default and Remedies of Bondholders – Events of Default; Acceleration; Waiver of Default" and described below under the caption "Consent Regarding Defaults and Remedies," no Holder of any Bond shall have the right to institute any suit, action or proceeding at law or in equity,

for the protection or enforcement of any right or remedy under the Indenture and the Loan Agreement, or any other applicable law with respect to such Bond, unless: (1) such Holder shall have given to the Trustee written notice of the occurrence of an Event of Default; (2) the Holders of not less than two-thirds (2/3) in aggregate principal amount of the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers in the Indenture granted or to institute such suit, action or proceeding in its own name; (3) such Holder or said Holders shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and (4) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are declared, in every case, to be conditions precedent to the exercise by any Holder of Bonds of any remedy under the Indenture or under law; it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by such Holders' action to affect, disturb or prejudice the security of the Indenture or the rights of any other Holders of Bonds, or to enforce any right under the Indenture and the Loan Agreement, or other applicable law with respect to the Bonds, except in the manner in the Indenture provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner in the Indenture provided and for the benefit and protection of all Holders of the Outstanding Bonds, subject to the provisions of the Indenture.

**Absolute Obligation of Authority.** Nothing described above under the caption "The Indenture – Events of Default and Remedies of Bondholders – Limitation on Bondholders' Right to Sue," or in any other provision of the Indenture, or in the Bonds, contained shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest on the Bonds to the respective Holders of the Bonds at their respective dates of maturity, or upon call for redemption, as in the Indenture provided, but only out of the Revenues and other assets in the Indenture pledged therefor, or affect or impair the right of such Holders, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

**Termination of Proceedings.** In case any proceedings taken by the Trustee or any one or more Bondholders on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Bondholders, then in every such case the Authority, each Credit Provider, the Trustee and the Bondholders, subject to any determination in such proceedings, shall be restored to their former positions and rights under the Indenture, severally and respectively, and all rights, remedies, powers and duties of the Authority, each Credit Provider, the Trustee and the Bondholders (except such rights, remedies or powers that have been determined adversely to the respective party) shall continue as though no such proceedings had been taken.

Notwithstanding any other provision of the Loan Agreement to the contrary, so long as any Credit Provider is not then continuing wrongfully to dishonor request for payment under its Credit Facility, the Trustee will not without the prior written consent or direction of such Credit Provider exercise any remedies under the Loan Agreement in the case of any Loan Default Event; provided, however, that no consent of any Credit Provider will be required with respect to the enforcement of the sections of the Loan Agreement relating to indemnification or additional fees of the Trustee or the Authority. The Trustee may exercise any and all remedies under the Indenture and the Loan Agreement (except acceleration) to collect any fees, expenses and indemnification from the Borrower without obtaining the consent of any Credit Provider.

**Remedies Not Exclusive.** No remedy in the Indenture conferred upon or reserved to the Trustee, to the Credit Providers or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given under the Indenture or now or hereafter existing at law or in equity or otherwise.

**No Waiver of Default.** No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power arising upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by the Indenture to the Trustee or to the Holders of the Bonds may be exercised from time to time and as often as may be deemed expedient.

**Rights of Credit Providers Regarding Defaults and Remedies.** Notwithstanding any other provisions of the Indenture, so long as any Credit Provider is not continuing wrongfully to dishonor request for payment under its Credit Facility, no Event of Default shall be declared pursuant to the provisions of the Indenture described above under the caption "The Indenture – Events of Default and Remedies of Bondholders – Events of Default; Acceleration; Waiver of Default," nor any remedies exercised with respect to any Event of Default other than an Event of Default declared by the Bondholders, and no Event of Default under the Indenture shall be waived by the Trustee or the Bondholders to the extent they may otherwise be permitted under the Indenture, without, in each case, the prior written consent of such Credit Provider. No Event of Default shall be waived, in any circumstance, unless the Trustee has received written notice from each Credit Provider that its Credit Facility has been fully reinstated and is in full force and effect.

### **Modification or Amendment of the Indenture**

**Amendments Permitted.** The Indenture and the rights and obligations of the Authority and of the Holders of the Bonds and of the Trustee may be modified or amended from time to time and at any time by an indenture or indentures supplemental thereto, which the Authority and the Trustee may enter into upon receipt of the written consent of the Borrower and the Holders of a majority in aggregate principal amount of all Bonds then Outstanding. No such modification or amendment shall (1) extend the fixed maturity of any Bond, or reduce the amount of principal thereof, or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Holder of each Bond so affected, or (2) reduce the aforesaid proportion of Bonds the consent of the Holders of which is required to effect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under the Indenture prior to or on a parity with the lien created by the Indenture, or deprive the Holders of the Bonds of the lien created by the Indenture on such Revenues and other assets (except as expressly provided in the Indenture), without the consent of the Holders of all of the Bonds then Outstanding. It shall not be necessary for the consent of the Bondholders to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof. Promptly after the execution by the Authority and the Trustee of any Supplemental Indenture pursuant to the provisions of the Indenture described in this paragraph, the Trustee shall mail a notice, setting forth in general terms the substance of such Supplemental Indenture, to each Rating Agency then rating the Bonds and the Holders of the Bonds at the address shown on the registration books of the Trustee. Any failure to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

The Indenture and the rights and obligations of the Authority, of the Trustee and of the Holders of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture or Indentures, which the Authority and the Trustee may enter into without the consent of any Bondholders but with the consent of the Borrower, for any one or more of the following purposes:

- (1) to add to the covenants and agreements of the Authority in the Indenture contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power in the Indenture reserved to or conferred upon the Authority;
- (2) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in the Indenture, or in regard to matters or questions arising under the Indenture, as the Authority or the Borrower may deem necessary or desirable and not inconsistent with the Indenture;
- (3) to modify, amend or supplement the Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;
- (4) to conform to the terms and provisions of any Alternate Credit Facility;

(5) to modify, amend or supplement the Indenture in such a manner to permit the Authority, the Trustee, the Borrower or any other responsible party to comply with the requirements of Rule 15c2-12, as it may from time to time be amended or supplemented, with respect to the Bonds;

(6) to make any modification or amendment to the Indenture, even if consent of Bondholders would otherwise be required, (i) if such amendment will be effective upon the remarketing of Bonds following the mandatory tender thereof, or (ii) if notice of such proposed modification or amendment is given to Bondholders (in the same manner as notices of redemption are given) at least fifteen (15) days before the effective date thereof and on or before such effective date the Bondholders have the right to demand purchase of their Bonds;

(7) to provide for the issuance of Additional Bonds; or

(8) to modify, amend or supplement the Indenture in any other manner which the Trustee determines will not materially adversely affect the interests of the Holders of the Bonds.

The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by the provisions of the Indenture described above, which materially adversely affects the Trustee's own rights, duties or immunities under the Indenture or otherwise.

Any Supplemental Indenture permitted pursuant to the provisions of the Indenture described under this caption may be approved by an Authorized Representative of the Authority and need not be approved by resolution or other action of the governing body of Authority.

**Effect of Supplemental Indenture.** Upon the execution of any Supplemental Indenture pursuant to the provisions of the Indenture described herein, the Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under the Indenture of the Authority, the Borrower, the Trustee and all Holders of Bonds Outstanding shall thereafter be determined, exercised and enforced under the Indenture subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of the Indenture for any and all purposes.

## **Defeasance**

**Discharge of Indenture.** Bonds may be paid in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable under the Indenture by the Authority:

(a) by paying or causing to be paid with Available Moneys the principal of, interest and premium, if any, on the Bonds, as and when the same become due and payable;

(b) by depositing with the Trustee, in trust, at or before maturity, money or securities in the necessary amount (as provided pursuant to the provisions of the Indenture described below under the caption "Deposit of Money or Securities with Trustee") to pay or redeem with Available Moneys all Bonds;  
or

(c) by delivering to the Trustee, for cancellation by it, the Bonds then Outstanding.

If the Authority shall also pay or cause to be paid all other sums payable under the Indenture by the Authority, then and in that case, at the election of the Authority (evidenced by a Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and the Indenture), and notwithstanding that any Bonds shall not have been surrendered for payment, the Indenture and the pledge of Revenues and other assets made under the Indenture and all covenants, agreements and other obligations of the Authority under the Indenture shall cease, terminate, become void and be completely discharged and satisfied except only as provided pursuant to the provisions of the Indenture described below under the caption "Discharge of Liability on Bonds." In such event, upon Request of the Authority, the Trustee shall cause an accounting for such

period or periods as may be requested by the Authority to be prepared and filed with the Authority and shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver all moneys or securities or other property held by it pursuant to the Indenture (other than the Rebate Fund) which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption and any amounts owed to the Trustee under the Indenture in the following order (1) first, to each Credit Provider to the extent of any amounts due to such Credit Provider pursuant to its Credit Agreement, and (2) second, to the Borrower, provided, however, that notwithstanding any provision of the Indenture or the Loan Agreement, under no circumstances may the Authority or the Borrower receive any funds derived from a draw on any Credit Facility, remarketing proceeds, or moneys held for the payment of particular Bonds (including moneys held for non-presented Bonds).

**Discharge of Liability on Bonds.** Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided pursuant to the provisions of the Indenture described below under the caption "Deposit of Money or Securities with Trustee") to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given as in the Indenture provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bond shall cease, terminate and be completely discharged, except only that the Holder thereof shall thereafter be entitled to payment of the principal of, premium, if any, and interest on such Bond by the Authority, and the Authority shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payment and such money or securities shall be pledged to such payment; provided further, however, that the provisions of the Indenture described below under the caption "Payment of Bonds After Discharge of Indenture Obligation" shall apply in all events.

The Authority may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

**Deposit of Money or Securities with Trustee.** Whenever in the Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Indenture (exclusive of the Rebate Fund, the Credit Facility Account and any account established to hold funds for the purchase of Bonds) and shall be:

(a) Available Moneys in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as in the Indenture provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or redemption price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Investment Securities of the type described in clause (1) of the definition of Investment Securities which are purchased with Available Moneys, the principal of and interest on which when due and without reinvestment will provide money sufficient to pay the principal of, premium, if any, all unpaid interest to maturity, or to the redemption date, on the Bonds to be paid or redeemed, as such principal and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in the Indenture provided or provision satisfactory to the Trustee shall have been made for the giving of such notice;

provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of the Indenture or by Request of the Authority) to apply such money or Investment Securities to the payment of such principal, premium, if any, and interest with respect to such Bonds and provided further that the Trustee shall have received a report of an Accountant that the moneys or Investment Securities on deposit are sufficient to pay the principal, premium, if any, and interest on the Bonds to maturity or the redemption date and if such Bonds are then bearing interest at other than an auction rate or a fixed rate, a legal opinion from a nationally recognized firm in bankruptcy law that payment of the Bonds from such moneys would not constitute transfers avoidable under 11 U.S.C. Section 547(b) should the

Borrower or the Authority become the debtor in a case under the Bankruptcy Code.

Notwithstanding any other provision of the Indenture, no Bond which is subject to optional or mandatory tender in accordance with the provisions of the Indenture shall be deemed to be paid within the meaning of the Indenture, unless arrangements shall have been made to assure that such Bond, if tendered for purchase in accordance with the provisions of the Indenture could be paid and redeemed from such moneys or Investment Securities as are provided pursuant to the provisions of the Indenture.

**Payment of Bonds After Discharge of Indenture Obligation.** Notwithstanding any provisions of the Indenture to the contrary, and subject to applicable laws of the State, any moneys deposited with the Trustee, in trust for the payment of the principal of, or interest or premium on, any Bond remaining unclaimed for two (2) years after such payment has become due and payable (whether on an Interest Payment Date, at maturity, upon call for redemption, upon tender for purchase or by declaration as provided in the Indenture), then such moneys shall be repaid to the Borrower upon its written request, and the Holder of such Bond shall thereafter be entitled to look only to the Borrower for payment thereof, and all liability of the Authority and the Trustee with respect to such moneys shall thereupon cease; provided, that before the disposition of such moneys as aforesaid, the Trustee may (at the cost of the Borrower) first publish a notice at least once in a Qualified Newspaper, such notice to be in such form as may be deemed appropriate by the Trustee, in respect of the Bonds so payable and not presented and in respect of the provisions relating to the disposition of the moneys held for the payment thereof.

## THE LOAN AGREEMENT

The Loan Agreement provides the terms of the loan of the proceeds of the Bonds to the Borrower and the repayment and security for such loan provided by the Borrower. The summary of the provisions of the Loan Agreement set forth below does not purport to be complete or definitive, is supplemental to the summary of other provisions of the Loan Agreement set forth elsewhere in this Official Statement, and is qualified in its entirety by reference to the full terms of the Loan Agreement.

### Loan of Bond Proceeds

**Loan Repayments.** Pursuant to the Indenture, the Authority will issue the Series 2004 Bonds. Pursuant to the Loan Agreement, the Authority will loan and advance to the Borrower, and the Borrower will borrow and accept from the Authority (solely from the proceeds of the sale of the Series 2004 Bonds), the proceeds of the Series 2004 Bonds, such proceeds to be applied under the terms and conditions of the Loan Agreement and the Indenture. In consideration of the loan to the Borrower of such proceeds and the proceeds of any Additional Bonds, the Borrower agrees that, on or before each Bond Payment Date and as long as any of the Bonds remain Outstanding, it shall pay to the Trustee for deposit in the Revenue Fund the amount of interest on and principal of the Bonds becoming due and payable on such dates. Notwithstanding the foregoing, if on any Bond Payment Date the aggregate amount in the Revenue Fund is for any reason insufficient or unavailable to make the required payments of principal (or redemption price) of or interest on the Bonds then becoming due (whether by maturity, redemption, acceleration or otherwise), the Borrower shall forthwith pay the amount of any such deficiency to the Trustee. Each payment by the Borrower to the Trustee under the Loan Agreement (the "Loan Repayments") shall be in lawful money of the United States of America and paid to the Trustee at its Principal Corporate Trust Office and held, invested, disbursed and applied as provided in the Indenture.

Except as otherwise expressly provided in the Indenture, all amounts payable under the Loan Agreement by the Borrower to the Authority shall be paid to the Trustee as assignee of the Authority and the Loan Agreement and all right, title and interest of the Authority in any such payments are assigned and pledged to the Trustee so long as any Bonds remain Outstanding.

The Borrower shall receive a credit against its payments required to be made under the provisions of the Loan Agreement described herein, in addition to any credits resulting from payment or repayment from other sources, to the extent of any corresponding payment made by any Credit Provider to the Trustee under a Credit Facility.

**Reserve Fund Replenishment.** In the event that a Reserve Fund shall be established in connection with one or more Series of Bonds, the Borrower further agrees to pay, or cause to be paid on or before the first day each month (i) one-twelfth of the aggregate amount of each prior withdrawal from such Reserve Fund for the purpose of making up a deficiency in the Revenue Fund (until deposits on account of such withdrawal are sufficient to fully restore the amount withdrawn) and (ii) one-fourth of the amount of any deficiency in any Reserve Fund resulting from the valuation of such Reserve Fund, if, upon such valuation, the amount on deposit in such Reserve Fund is less than 90% of the applicable Reserve Fund Requirement.

**Additional Payments.** In addition to the Loan Repayments and other payments made pursuant to the provisions of the Loan Agreement described herein, the Borrower shall also pay to the Authority, to the Trustee or to the other applicable party, as the case may be, "Additional Payments," as follows:

(a) All taxes and assessments of any type or character charged to the Authority or to the Trustee affecting the amount available to the Authority or the Trustee from payments to be received under the Loan Agreement or in any way arising due to the transactions contemplated by the Loan Agreement (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Trustee and taxes based upon or measured by the net income of the Trustee; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Authority or the Trustee, at the Borrower's expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Authority or the Trustee;

(b) All reasonable fees, charges and expenses of the Trustee and any Marketing Party for services rendered under the Indenture or otherwise in connection with the Bonds, as and when the same become due and payable;

(c) The fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under the Loan Agreement, the Bonds or the Indenture;

(d) The annual fee of the Authority and the fees and expenses of the Authority or any agent selected by the Authority to act on its behalf in connection with the Loan Agreement, the other Borrower Documents, the Bonds or the Indenture, including, without limitation, any and all expenses incurred in connection with the authorization, issuance, sale and delivery of any such Bonds or in connection with any litigation which may at any time be instituted involving the Loan Agreement, the other Borrower Documents, the Bonds or the Indenture or any of the other documents contemplated by the Loan Agreement or thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the Loan Agreement, the other Borrower Documents, the Bonds or the Indenture;

(e) All other fees and expenses of the Authority attributable to the Loan Agreement, the Bonds or the Indenture; and

(f) All amounts required to be paid pursuant to the provisions of the Loan Agreement described below under the captions "The Loan Agreement – Loan Default Events and Remedies- Remedies Not Exclusive; No Waiver of Rights" and "Expenses on Default."

**Option to Pay Purchase Price.** If (i) sufficient remarketing proceeds are not available to pay the Purchase Price of any Bond tendered pursuant to the provisions of the Indenture and (ii) if the Credit Provider with respect to such Series of Bonds has not paid the full amount required by the Indenture to pay the Purchase Price of any Bond of such Series at the times required under the Indenture, the Borrower may, at its sole option, but shall not be required to, pay to the Tender Agent the amounts necessary for the purchase of Bonds of such Series pursuant to the provisions of the Indenture applicable to such Series of Bonds.

**Obligations of the Borrower Unconditional; Net Contract.** The obligations of the Borrower to make the Loan Repayments and Additional Payments required under the Loan Agreement and to perform and observe the other agreements on its part contained in the Loan Agreement shall be absolute and unconditional, and shall not be abated, rebated, setoff, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any Bonds remain Outstanding or any Additional Payments remain unpaid, regardless of any contingency, event or cause whatsoever, including, without limiting the generality of the foregoing, any natural disaster, acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Facilities, commercial frustration of purpose, any changes in the laws of the United States of America or of the State of California or any political subdivision of either or in the rules or regulations of any governmental authority, or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Loan Agreement or the Indenture. The Loan Agreement shall be deemed and construed to be a "net contract," and the Borrower shall pay absolutely net the Loan Repayments, Additional Payments and all other payments required under the Loan Agreement, regardless of any rights of setoff, recoupment, abatement or counterclaim that the Borrower might otherwise have against the Authority or the Trustee or any other party or parties.

**Prepayment.** The Borrower shall have the right at any time or from time to time to prepay all or any part of the Loan Repayments and the Authority agrees that the Trustee shall accept such prepayments when the same are tendered by the Borrower, and the Trustee shall call for redemption Bonds of the Series and maturity directed by the Borrower. The Borrower shall be required to prepay Loan Repayments in the amounts and at the times that Bonds are subject to mandatory redemption pursuant to the Indenture. All such prepayments (and the additional payment of any amount necessary to pay the applicable premiums, if any, payable upon the redemption of Bonds) shall be deposited upon receipt in the Revenue Fund and used for the redemption or purchase or defeasance of Outstanding Bonds in the manner and subject to the terms and conditions set forth in the Indenture.

**Amounts Remaining in Funds.** After payment in full of (i) the Bonds, or after provision for such payment shall have been made as provided in the Indenture, (ii) the fees, charges and expenses of the Authority and the Trustee and paying agents in accordance with the Indenture, (iii) all other amounts required to be paid under the Loan Agreement and the Indenture, and (iv) payment to any Credit Provider of any amounts owed by the Borrower to such Credit Provider under its Credit Agreement, any amounts remaining in any fund held by the Trustee under the Indenture shall be paid as provided in the provisions of the Indenture described under the caption "The Indenture – Defeasance – Discharge of Indenture."

#### **Particular Covenants of the Borrower**

**Maintenance of Existence.** (a) To the extent permitted by law and its articles of incorporation and bylaws, the Borrower covenants and agrees that during the term of the Loan Agreement it will maintain its existence as a California nonprofit public benefit corporation and an organization described in Section 501(c)(3) of the Code, will continue to maintain its status as a corporation in good standing in the State of California, will not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not combine or consolidate with or merge into another entity so that the Borrower is not the resulting or surviving entity (any such sale, disposition, combination or merger shall be referred to hereafter as a "transaction"); provided, however, that the Borrower may enter into any such transaction at any time if it has obtained the prior written consent of the Authority and an Approving Opinion. The consent of the Authority (which shall not be unreasonably withheld) shall be given within thirty (30) days after the Authority receives satisfactory evidence that:

- (i) the surviving or resulting transferee, person or entity, as the case may be, assumes and agrees in writing to pay and perform all of the obligations of the Borrower under the Loan Agreement,
- (ii) the surviving or resulting transferee, person or entity, as the case may be, is an organization described in Section 501(c)(3) of the Code and qualifies to do business in the State of California,
- (iii) each existing Credit Facility will remain in full force and effect, and

(iv) the credit rating on the Bonds, as determined by each Rating Agency, shall be no lower than the rating level of the Bonds immediately prior to the transaction.

(b) Within ten (10) days after the consummation of the transaction, the Borrower shall provide the Authority and the Trustee with counterpart copies of the merger instruments, or other documents constituting the transaction, including: (A) copies of the instruments of assumption referred to in (i) above; (B) evidence of qualification as referred to in (ii) above; (C) evidence demonstrating compliance with the requirement of clauses (iii) and (iv) above; and (D) a Certificate of the Borrower stating that the requirements of the Loan Agreement described in clause (a) above have been met. The Borrower shall give the Authority at least thirty (30) days' written notice prior to the effective date of any transaction described above, together with drafts of the documents of assumption and the Certificate of the Borrower as required in the Loan Agreement. The Borrower agrees to provide such other information as the Authority may reasonably request in order to assure compliance with the requirements of the Loan Agreement described herein.

(c) If a merger, consolidation, sale or other transfer is effected, as provided in the Loan Agreement described herein, all provisions of the Loan Agreement described herein shall continue in full force and effect and no further merger, consolidation, sale or transfer shall be effected except in accordance with the provisions of the Loan Agreement as described herein.

**Continuing Disclosure.** The Borrower covenants and agrees to comply with the continuing disclosure requirements promulgated under Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, if and to the extent that such requirements are applicable to any of the Bonds. Notwithstanding any other provision of the Loan Agreement, failure of the Borrower to comply with the requirements of Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, shall not be considered a Loan Default Event; however, the Trustee, at the written request of any Marketing Party or the Holders of at least 25% aggregate principal amount of Outstanding Bonds, shall, but only to the extent indemnified to its satisfaction from and against any cost, liability or expense related thereto, including, without limitation, reasonable fees and expenses of its attorneys and advisors and additional fees and expenses of the Trustee or any Bondholder or beneficial owner of the Bonds, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Borrower to comply with its obligations pursuant to the Loan Agreement described herein.

**Tax Covenant.** The Borrower covenants and agrees that it shall at all times do and perform all acts and things permitted by law and the Loan Agreement and the Indenture which are necessary in order to assure that interest paid on the Bonds (or any of them) will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being excluded from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the Borrower agrees to comply with the provisions of each Tax Certificate.

**Maintenance and Repairs; Taxes; Utility and Other Charges.** The Borrower agrees to maintain the Facilities, or cause the Facilities to be maintained, during the term of the Loan Agreement (i) in as reasonably safe condition as its operations shall permit and (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof.

The Borrower agrees to pay or cause to be paid during the term of the Loan Agreement all taxes, governmental charges of any kind lawfully assessed or levied upon the Facilities or any part thereof, including any taxes levied against any portion of the Facilities which, if not paid, will become a charge on the receipts from the Facilities prior to or on a parity with the charge thereon and the pledge or assignment thereof to be created therefrom or under the Loan Agreement, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of any portion of the Facilities and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Facilities, provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as are required to be paid during the term of the Loan Agreement. The Borrower may, at the Borrower's expense and in the Borrower's name, in good faith, contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during that period of such contest and any appeal therefrom unless by such nonpayment the Facilities or any part thereof will be subject to loss or forfeiture.

**Insurance.** The Borrower agrees to insure the Facilities or cause the Facilities to be insured during the term of the Loan Agreement for such amounts and for such occurrences as are customary for similar facilities within the State of California, or as may be required by any Credit Provider pursuant to its Credit Agreement, by means of policies issued by reputable insurance companies qualified to do business in the State of California.

**Credit Facilities.** (a) Except as may otherwise be permitted under the Indenture, the Borrower agrees that throughout the term of the Loan Agreement it will maintain or cause to be maintained a Credit Facility for the Series 2004 Bonds and will maintain or cause to be maintained a Credit Facility for any other Series of Bonds if required pursuant to the terms of the Series Indenture setting forth the terms and provisions of such Series of Bonds. At any time the Borrower may, at its option, provide for the delivery to the Trustee of an Alternate Credit Facility and the Borrower shall, in any event, cause to be delivered an Alternate Credit Facility at least twenty (20) days before the expiration date of any existing Credit Facility, unless otherwise permitted by the Indenture. As and to the extent applicable, taking into account the Rate Period to be applicable to the Series of Bonds for which an Alternate Credit Facility is being provided, such Alternate Credit Facility shall be in all material respects the same as the Credit Facility it replaces; provided, that the expiration date of such Alternate Credit Facility shall be a date not earlier than three hundred sixty-four (364) days from its date of issuance, subject to earlier termination upon payment of the Bonds in full or provision for such payment in accordance with the Indenture. On or prior to the date of the delivery of an Alternate Credit Facility to the Trustee, the Borrower shall cause to be furnished to the Trustee (i) an opinion of counsel to the Credit Provider providing such Alternate Credit Facility to the effect that such Alternate Credit Facility is enforceable in accordance with its terms (except to the extent that the enforceability thereof may be limited by bankruptcy, reorganization or similar laws limiting the enforceability of creditors' rights generally and except that no opinion need be expressed as to the availability of any discretionary equitable remedies) and (ii) written evidence from the Rating Agency then rating such Series of Bonds that such Series of Bonds shall have a long-term rating of "A" (or equivalent) or higher or, if such Series of Bonds shall have only been assigned a short-term rating, such short-term rating shall be in one of the two highest short-term rating categories (without regard to "+"s or "-"s).

(b) Not later than twenty-five (25) days prior to the stated termination date of each Credit Facility, the Borrower shall provide a written statement to the Trustee indicating the status of the extension of the term of such Credit Facility.

**Special Services Covenant.** The Borrower shall provide services substantially of the kind provided on the date of issuance of the Series 2004 Bonds within the territorial limits of the County of Santa Clara or one or more other Members or Associate Members of the Authority, as long as any Bonds remain Outstanding; provided, however, that the Authority may, upon review of such facts as it deems relevant, from time to time allow the Borrower to provide alternative services which serve the public interest and provide public benefit, or deem this special services covenant to be satisfied in whole or in part.

## **Loan Default Events and Remedies**

**Loan Default Events.** Each of the following events shall constitute a Loan Default Event under the Loan Agreement:

(a) Failure by the Borrower to pay in full any Loan Repayment required under the Loan Agreement when due, whether at maturity, upon a date fixed for prepayment, by declaration or otherwise, pursuant to the terms of the Loan Agreement;

(b) If any representation or warranty made by the Borrower in the Loan Agreement or in any document, instrument or certificate furnished to the Trustee or the Authority in connection with the issuance of the Bonds shall at any time prove to have been incorrect in any material respect as of the time made;

(c) If the Borrower shall fail to observe or perform any covenant, condition, agreement or provision in the Loan Agreement on its part to be observed or performed, other than as referred to in paragraph (a) or (b) above, for a period of sixty (60) days after written notice, specifying such failure or breach and requesting that it be remedied, has been given to the Borrower by the Authority, any Credit Provider or the Trustee; except that, if such failure or breach can be remedied but not within such sixty-day period and if the Borrower has taken all action

reasonably possible to remedy such failure or breach within such sixty-day period, such failure or breach shall not become a Loan Default Event for so long as the Borrower shall diligently proceed to remedy same in accordance with and subject to any directions or limitations of time established by the Trustee;

(d) If the Borrower shall abandon the Facilities, or any substantial part thereof and such abandonment shall continue for a period of thirty (30) days after written notice thereof shall have been given to the Borrower by the Authority, any Credit Provider or the Trustee;

(e) If the Borrower files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself or for the whole or any substantial part of the Facilities;

(f) If a court of competent jurisdiction shall enter an order, judgment or decree declaring the Borrower an insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the Borrower or of the whole or any substantial part of the Facilities, or approving a petition filed against the Borrower seeking reorganization of the Borrower under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof;

(g) If, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Borrower or of the whole or any substantial part of the Facilities, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control; and

(h) If any Event of Default under the Indenture shall occur.

**Remedies on Default.** If a Loan Default Event shall occur, then, and in each and every such case during the continuance of such Loan Default Event, the Authority or the Trustee, to the extent the Trustee has actual knowledge or notice of such Loan Default Event, may take any one or more of the following remedial steps:

(a) The Authority or the Trustee may, upon notice in writing to the Borrower and each Credit Provider, declare all installments of Loan Repayments and Additional Payments payable for the remainder of the term of the Loan Agreement to be immediately due and payable, whereupon the same shall be immediately due and payable, anything in the Loan Agreement to the contrary notwithstanding; "all installments" as used in this paragraph shall mean an amount equal to the entire principal amount of the then Outstanding Bonds, together with all interest accrued or to accrue on and prior to the next succeeding redemption date or dates on which the Bonds can be redeemed after giving notice to the Holders thereof as required by the Indenture.

(b) The Authority or the Trustee may take whatever action, at law or in equity, as may appear necessary or desirable to collect the Loan Repayments, Additional Payments and any other payments then due and thereafter to become due under the Loan Agreement or to enforce the performance and observance of any obligation, covenant, agreement or provision contained in the Loan Agreement to be observed or performed by the Borrower.

(c) The Trustee shall immediately draw upon each Credit Facility, if permitted by its terms and required by the terms of the Indenture, and apply the amount so drawn in accordance with the Indenture and may exercise any remedy available to it under the Loan Agreement.

**Remedies Not Exclusive; No Waiver of Rights.** No remedy in the Loan Agreement conferred upon or reserved to the Authority or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy, to the extent permitted by law, shall be cumulative and shall be in addition to every other remedy given under the Loan Agreement or now or hereafter existing at law or in equity or otherwise. In order to entitle the Authority or the Trustee to exercise any remedy, to the extent permitted by law, reserved to it contained in the Loan Agreement, it shall not be necessary to give any notice, other than such notice as may be in

the Loan Agreement expressly required. Such rights and remedies as are given to the Authority under the Loan Agreement shall also extend to the Trustee, and the Trustee may exercise any rights of the Authority under the Loan Agreement, and the Trustee and the Holders of the Bonds shall be deemed third-party beneficiaries of all covenants and conditions in the Loan Agreement contained.

No delay in exercising or omitting 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 of any such default or an acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

**Expenses on Default.** In the event the Borrower should default under any of the provisions of the Loan Agreement and the Authority or the Trustee should employ attorneys or incur other expenses for the collection of the payments due under the Loan Agreement, the Borrower agrees that it will on demand therefor pay to the Authority or the Trustee the fees of such attorneys and such other reasonable expenses so incurred by the Authority or the Trustee.

**Notice of Default.** The Borrower agrees that, as soon as is practicable, and in any event within ten (10) days of a Loan Default Event, the Borrower will furnish the Trustee notice of any event which is a Loan Default Event which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which the Borrower proposes to take with respect thereto.

**Rights of Credit Providers Regarding Defaults and Remedies.** Notwithstanding any other provision of the Loan Agreement to the contrary, so long as any Credit Provider is not then continuing wrongfully to dishonor request for payment under its Credit Facility, the Trustee shall not without the prior written consent or direction of such Credit Provider exercise any remedies under the Loan Agreement in the case of any Loan Default Event; provided, however, that no consent of any Credit Provider shall be required with respect to the exercise any and all remedies under the Indenture and the Loan Agreement (except acceleration) to collect any fees, expenses and indemnification from the Borrower.

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## APPENDIX B

### BOOK-ENTRY SYSTEM

*The information herein concerning DTC and DTC's book-entry system has been obtained from sources that the Authority, the Borrower, the Trustee and the Underwriter believe to be reliable, but the Authority, the Borrower, the Trustee and the Underwriter take no responsibility for the accuracy thereof. Beneficial Owners should confirm the following information with DTC or the DTC Participants (as defined herein).*

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

DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 85 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Government Securities Clearing Corporation, MBS Clearing Corporation, and Emerging Markets Clearing Corporation, (NSCC, GSCC, MBSCC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

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

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

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

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

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

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

A Beneficial Owner shall give notice to elect to have its Bonds purchased or tendered, through its Participant, to the Tender Agent, and shall effect delivery of such Bonds by causing the Direct Participant to transfer the Participant's interest in the Bonds, on DTC's records, to the Tender Agent. The requirement for physical delivery of Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Bonds to the Tender Agent's DTC account.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Borrower or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

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

***The foregoing description of the procedures and record-keeping with respect to beneficial ownership interests in the Bonds, payment of the principal, purchase price, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interests in such Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.***

***The Borrower and the Authority cannot and do not give any assurances that DTC will distribute to DTC Participants, or that DTC Participants or others will distribute to the Beneficial Owners, payments of principal, interest and premium, if any, with respect to the Bonds paid or any redemption or other notices or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. Neither the Borrower nor the Authority is responsible or liable for the failure of DTC or any DTC Participant or Indirect***

*Participant to make any payments or give any notice to a Beneficial Owner with respect to the Bonds or any error or delay relating thereto.*

*So long as Cede & Co. is the registered owner of the Bonds, as nominee of DTC, references herein to the Owners or registered Bondholders of the Bonds, shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Bonds.*

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**APPENDIX C**

**PROPOSED FORM OF OPINION OF BOND COUNSEL**

[Closing Date]

ABAG Finance Authority  
for Nonprofit Corporations  
Oakland, California

ABAG Finance Authority for Nonprofit Corporations  
Revenue Bonds (Pathways Home Health and Hospice), Series 2004  
(Final Opinion)

Ladies and Gentlemen:

We have acted as bond counsel in connection with issuance by the ABAG Finance Authority for Nonprofit Corporations (the "Issuer") of \$6,070,000 aggregate principal amount of ABAG Finance Authority for Nonprofit Corporations Revenue Bonds (Pathways Home Health and Hospice), Series 2004 (the "Bonds"), issued pursuant to the provisions of the Joint Exercise of Powers Act (Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500 thereof) and an Indenture, dated as of September 1, 2004 (the "Indenture"), between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"). The Indenture provides that the Bonds are issued for the purpose of making a loan of the proceeds thereof to Pathways Home Health and Hospice (the "Borrower") pursuant to a Loan Agreement, dated as of September 1, 2004 (the "Loan Agreement"), between the Issuer and the Borrower. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

In such connection, we have reviewed the Indenture, the Loan Agreement, the Tax Certificate and Agreement, dated the date hereof (the "Tax Certificate"), between the Issuer and the Borrower, opinions of counsel to the Issuer, the Trustee and the Borrower, certificates of the Issuer, the Trustee, the Borrower and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

We have relied on the opinion of Foley & Lardner LLP, counsel to the Borrower, regarding, among other matters, the current qualification of the Borrower as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") and the use of the facilities financed with the proceeds of the Bonds in activities that are not considered unrelated trade or business activities of the Borrower within the meaning of Section 513 of the Code. We note that such opinion is subject to a number of qualifications and limitations. Failure of the Borrower to be organized and operated in accordance with the Internal Revenue Service's requirements for the maintenance of its status as an organization described in Section 501(c)(3) of the Code, or use of the bond-financed facilities in activities that are considered unrelated trade or business activities of the Borrower within the meaning of Section 513 of the Code, could negatively affect several of the opinions and conclusions set forth below.

The interest rate period and certain agreements, requirements and procedures contained or referred to in the Indenture, the Loan Agreement, the Tax Certificate and other relevant documents may be changed and certain actions (including, without limitation, defeasance of Bonds) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. No opinion is expressed herein as to any Bond or the interest thereon if any such change occurs or action is taken or omitted upon the advice or approval of counsel other than ourselves.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures

presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Issuer. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second and third paragraphs hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture, the Loan Agreement and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Bonds, the Indenture, the Loan Agreement and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public entities in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or as subject to the lien of the Indenture or the Loan Agreement or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering material relating to the Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Bonds constitute the valid and binding limited obligations of the Issuer.
2. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Issuer. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Bonds, of the Revenues and any other amounts (including proceeds of the sale of the Bonds) held by the Trustee in any fund or account established pursuant to the Indenture, except the Rebate Fund and funds held to pay the Purchase Price of any Bonds, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture.
3. The Loan Agreement has been duly executed and delivered by, and constitutes a valid and binding agreement of, the Authority.
4. The Bonds are not a charge or lien on the funds or property of the Issuer except to the extent of the aforementioned pledge. Neither the faith and credit nor the taxing power of the State of California or of any political subdivision thereof is pledged to the payment of the principal of or interest on the Bonds. The Bonds do not constitute a debt of the State of California, and said State is not liable for payment thereof.
5. Interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although we observe that it is included in adjusted current earnings when calculating corporate alternative minimum taxable income. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP



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