

In the opinion of *Foley & Lardner LLP, Bond Counsel to the Authority*, 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 in 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" herein.

**\$93,625,000**

**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
VARIABLE RATE REVENUE BONDS  
(ACACIA CREEK AT UNION CITY PROJECT)  
SERIES 2008A  
CUSIP: 00037C MP2**



**DATED: Date of Delivery**

**PRICE: 100%**

**DUE: July 1, 2038**

The Bonds are being issued by the ABAG Finance Authority for Nonprofit Corporations (the "Authority") in the aggregate principal amounts shown above. The Bonds will be issued in fully registered form without coupons in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the Bonds and individual purchases of the Bonds will be made in book-entry form only. For so long as DTC or its nominee, Cede & Co., is the registered owner of the Bonds, (i) payments of the principal and purchase price of and premium, if any, and interest on the Bonds will be made directly to Cede & Co. for payment to its participants for subsequent disbursement to the beneficial owners, and (ii) all notices, including any notice of redemption or notice of conversion to a New Mode, shall be mailed only to Cede & Co. See "BOOK-ENTRY ONLY SYSTEM" herein. During the Daily Mode or the Weekly Mode, the Bonds will be issued in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof.

The Bonds will be issued under and secured by an Indenture (the "Indenture") between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"). The proceeds of the Bonds will be loaned to Acacia Creek, a Masonic Senior Living Community at Union City (the "Borrower") under a Loan Agreement between the Authority and the Borrower for the purposes described herein. Such proceeds, together with other available monies, will be used to (1) pay the costs of the acquisition, construction, equipping and improvement of certain facilities to be owned and/or operated by the Borrower, (2) provide funded interest, (3) provide working capital, and (4) finance the costs of issuance of the Bonds. Except as described in this Official Statement, the Bonds will be payable from and secured by a pledge and assignment of payments to be made under the Loan Agreement, payments made by Masonic Homes of California (the "Guarantor") under a Guaranty Agreement (the "Guaranty") from the Guarantor and the Borrower to the Trustee, and certain funds held under the Indenture. The sources of payment of, and security for, the Bonds are more fully described in this Official Statement.

The Bonds will initially be issued in the Daily Mode, will accrue interest from the date of original delivery and initially will bear interest at the Daily Rate, which will be a variable rate established from time to time by the Remarketing Agent (defined herein) until conversion to a New Mode as described herein. In no event shall the interest on the Bonds while bearing interest at the Daily Rate or the Weekly Rate exceed 10% per annum. Interest on the Bonds while in the Daily Mode or the Weekly Mode will be payable on the first Business Day of each calendar month (an "Interest Payment Date"). The first Interest Payment Date on the Bonds will be March 3, 2008. Initially, the Remarketing Agent for the Bonds shall be BNY Capital Markets, Inc.

The interest rate on the Bonds may be converted from time to time in accordance with the Indenture to and from an Auction Mode, the Unit Pricing Mode, the Daily Mode, the Weekly Mode, the Term Rate Mode or the Fixed Rate Mode (each a "Mode"). The Bonds will be subject to optional, extraordinary and mandatory redemption prior to maturity. While the Bonds bear interest at a Daily Rate or a Weekly Rate, the Bonds will also be subject to optional tender for purchase.

**This Official Statement describes the Bonds while the Bonds bear interest at a Daily Rate or the Weekly Rate. This Official Statement is not intended to provide information with respect to the Bonds in any Mode other than the Daily Mode or the Weekly Mode. If the Bonds are converted to another Mode other than from a Daily Mode or a Weekly Mode, the Borrower will supplement this Official Statement or deliver a new official statement or reoffering circular describing the new Mode.**

Payment of the tender price of the Bonds that are tendered for purchase and not remarketed will, subject to certain terms and conditions, be made pursuant to a Standby Bond Purchase Agreement relating to the Bonds provided by Bank of America, N.A. (the "Bank"). The Standby Bond Purchase Agreement will expire on January 30, 2011 unless it is otherwise extended or terminated earlier in accordance with its terms.



THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE AUTHORITY, PAYABLE SOLELY FROM THE FUNDS PROVIDED THEREFOR UNDER THE LOAN AGREEMENT AND THE INDENTURE. NONE OF THE AUTHORITY, THE ASSOCIATION OF BAY AREA GOVERNMENTS ("ABAG"), OR MEMBERS OF THE AUTHORITY OR ABAG SHALL BE DIRECTLY OR INDIRECTLY OR CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONIES OR ASSETS OF THE AUTHORITY, ABAG OR ANY OF ITS MEMBERS TO PAY ALL OR ANY PORTION OF THE DEBT SERVICE DUE ON THE BONDS. THE BONDS AND THE OBLIGATION TO PAY PRINCIPAL OF AND INTEREST THEREON AND ANY REDEMPTION PREMIUM WITH RESPECT THERETO DO NOT CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION OF THE AUTHORITY OR ABAG, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION, AGENCY OR PUBLIC INSTRUMENTALITY THEREOF, WITHIN THE MEANING OF ANY PROVISION OF THE CONSTITUTION OR LAWS OF THE STATE OF CALIFORNIA OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF ANY OF THEM, BUT SHALL BE PAYABLE SOLELY FROM THE REVENUES DESCRIBED HEREIN. NO OWNER OF THE BONDS SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION, AGENCY, OR PUBLIC INSTRUMENTALITY THEREOF TO PAY THE PRINCIPAL OF, PURCHASE PRICE, PREMIUM, IF ANY, OR INTEREST ON THE BONDS. NEITHER THE AUTHORITY NOR ABAG HAS ANY TAXING POWER.

The Bonds are offered when, as and if issued and received by the Underwriter, subject to prior sale, to withdrawal or modification of the offer without any notice, and to the approval of legality of the Bonds by *Foley & Lardner LLP, Bond Counsel to the Authority*. Certain legal matters will be passed upon for the Authority by its special counsel, *Nixon Peabody LLP, San Francisco, California*, for the Borrower and the Guarantor by their counsel, *Davis Wright Tremaine LLP, San Francisco, California*, for the Borrower by its special tax counsel, *Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, San Francisco, California*, for the Underwriter by its counsel, *Jones Day, San Francisco, California*, and for the Bank by its counsel, *Winston & Strawn LLP, Chicago, Illinois*. It is expected that the Bonds in definitive form will be available for delivery to DTC in New York, New York, on or about January 30, 2008.

**CAIN BROTHERS**

The date of this Official Statement is January 23, 2008.

## **REGARDING USE OF THIS OFFICIAL STATEMENT**

The information contained herein under the headings "THE AUTHORITY" and "LITIGATION-Authority" has been furnished by the Authority. The information under the heading "BOOK-ENTRY ONLY SYSTEM" has been obtained from The Depository Trust Company. All other information contained herein has been obtained from the Borrower and the Guarantor and other sources (other than the Authority) which are believed to be reliable. Such other information is not guaranteed as to accuracy or completeness by, and is not to be relied upon as or construed as a promise or representation by, the Authority or the Underwriter. No representation, warranty or guarantee is made by the Underwriter as to the accuracy or completeness of any information in this Official Statement, and nothing contained in this Official Statement is or shall be relied upon as a promise or representation by the Underwriter.

Other than with respect to information concerning the Standby Bond Purchase Agreement and the Bank contained under the headings "THE STANDBY BOND PURCHASE AGREEMENT" and "THE BANK," none of the information in this Official Statement has been supplied or verified by the Bank and the Bank does not make any representation or warranty, express or implied, as to (i) the accuracy or completeness of such information; (ii) the validity of the Bonds; or (iii) the tax status of the interest on the Bonds.

No dealer, broker, salesperson or other person has been authorized by the Authority, the Borrower, the Guarantor or the Underwriter to give any information or to make any representations other than those contained in this Official Statement and, if given or made, such information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be a sale of Bonds by any person, in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the Authority, the Borrower or the Guarantor since the date hereof.

The Authority has consented to the use of this Official Statement. The Authority does not assume any responsibility for the accuracy or completeness of any information contained in this Official Statement, except such information relating specifically to the Authority under the captions, "THE AUTHORITY" and "LITIGATION - Authority."

In making an investment decision, investors must rely upon their own examination of the terms of the offering, including the merits and risks involved.

**IN CONNECTION WITH THE OFFERING OF THE BONDS, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL 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 NOR HAS THE INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF SECURITIES LAWS OF THE STATES IN WHICH THE BONDS HAVE BEEN REGISTERED OR QUALIFIED, IF ANY, AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS RECOMMENDATIONS THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE BONDS OR THE ACCURACY OR COMPLETENESS OF THE OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.**

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

Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements.” Such statements are generally identifiable by the terminology used such as “plan”, “expect”, “estimate”, “budget” or similar words. Such forward-looking statements include, among others, certain statements contained in APPENDIX A – “FINANCIAL AND OPERATING INFORMATION” and “MANAGEMENT’S DISCUSSION” to this Official Statement.

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE BORROWER DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ITS EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR.

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## OFFICIAL STATEMENT

relating to

**\$93,625,000**

**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS  
VARIABLE RATE REVENUE BONDS  
(ACACIA CREEK AT UNION CITY PROJECT)  
SERIES 2008A  
CUSIP: 00037C MP2**

### INTRODUCTION

*Purpose of this Official Statement.* The purpose of this Official Statement, including the cover page and the Appendices hereto, is to set forth information in connection with the offering of \$93,625,000 Variable Rate Revenue Bonds (Acacia Creek at Union City Project) Series 2008A (the “Bonds”) of the ABAG Finance Authority for Nonprofit Corporations (the “Authority”). The Bonds will initially bear interest at a Daily Rate. Certain terms used herein are defined in APPENDIX C hereto.

*The Borrower and the Guarantor.* Acacia Creek, a Masonic Senior Living Community at Union City (the “Borrower”) is a California nonprofit public benefit corporation exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the “Code”), as an organization described in Section 501(c)(3) of the Code. Masonic Homes of California (the “Guarantor”), a California nonprofit public benefit corporation exempt from federal income taxation under Section 501(a) of the Code, is the sole statutory member of the Borrower, and is an organization described in Section 501(c)(3) of the Code. The Guarantor is the sole statutory member of one other California tax-exempt non-profit public benefit corporation. The Guarantor is also affiliated with the Grand Lodge of Free and Accepted Masons of California, a California unincorporated association (the “Grand Lodge”), which possesses certain appointment and consent rights under the Bylaws of the Guarantor, all as more fully described in APPENDIX A hereto.

*Purpose of the Bonds.* Concurrently with the issuance of the Bonds, the Borrower and the Authority will enter into a Loan Agreement dated as of January 1, 2008 (the “Loan Agreement”) between the Borrower and the Authority, under which the proceeds to be received by the Authority from the sale of the Bonds will be loaned to the Borrower. Such proceeds, together with other available monies, will be used to (1) pay the costs of the acquisition, construction, equipping and improvement (the “Project”) of certain facilities to be owned and/or operated by the Borrower (the “Facilities”), (2) provide funded interest, (3) provide working capital, and (4) finance the costs of issuance of the Bonds. A more detailed description of the use of the proceeds of the loans are included herein under “PLAN OF FINANCING.”

*Security for the Bonds.* The Bonds are limited obligations of the Authority. The Bonds are payable by Wells Fargo Bank, National Association, as trustee (the “Trustee”) from the Revenues pledged under the Indenture dated as of January 1, 2008 (the “Indenture”) between the Authority and Wells Fargo Bank, National Association, as trustee (the “Trustee”). Revenues generally consist of Loan Repayments to be made by the Borrower under the Loan Agreement, payments made by the Guarantor under a Guaranty Agreement by and between the Guarantor and the Borrower for the benefit of the Trustee and the Bank (the “Guaranty”) dated as of January 1, 2008, and certain funds held under the Indenture.

In the Loan Agreement, the Borrower agrees to make the Loan Repayments to the Trustee, which payments, in the aggregate, are required to be in an amount sufficient for the payment in full of all amounts payable with respect to the Bonds, including the total interest payable on the Bonds to the

maturity date of the Bonds or earlier redemption, the principal of the Bonds, any redemption premiums, and certain other fees and expenses, less any amounts available for such payment as provided in the Indenture. The Bonds are otherwise payable from investment earnings and proceeds of insurance or condemnation awards, each in the manner and to the extent set forth in the Indenture.

The Loan Repayments are the general obligation of the Borrower, secured by a security interest in all of the right, title, and interest, whether now owned or hereafter acquired of the Borrower, in and to its Gross Revenues which have been and will be deposited into the Gross Revenue Fund created pursuant to the Indenture (as described herein under the heading “SECURITY AND SOURCE OF PAYMENT FOR THE BONDS — The Loan Agreement — Gross Revenue Pledge”).

*The Guaranty.* The Guarantor, pursuant to the Guaranty, has agreed to unconditionally and irrevocably guarantee to the Trustee the full, complete and prompt payment of any and all Loan Repayments, payments of Purchase Price, Additional Payments, Avoided Payments, redemption payments with respect to the Bonds and other amounts due and payable by the Borrower under the Loan Agreement or with respect to the Bonds and, to the Bank, all payments or amounts due and owing by the Borrower to the Bank under the Standby Bond Purchase Agreement when and as the same shall become due, in each case whether at the stated maturity thereof or by acceleration or call for redemption or otherwise and agrees to pay all expenses and charges (including court costs and attorneys’ fees) paid or incurred by the Trustee, the Authority or the Bank in realizing upon any of the payments guaranteed or in enforcing the Guaranty Agreement.

*Standby Bond Purchase Agreement.* The payment of the Tender Price of the Bonds which are tendered for purchase and not remarketed shall (subject to compliance with certain terms and conditions) be made from amounts made available by Bank of America, N.A. (the “Bank”) pursuant to the Standby Bond Purchase Agreement among the Borrower, the Bank and the Trustee dated as of January 1, 2008 (the “Standby Bond Purchase Agreement”). Under the Standby Bond Purchase Agreement, the Bank is obligated, subject to compliance with certain terms and conditions, to make available to the Trustee an amount equal to the principal amount of the Bonds which are tendered plus up to 35 days’ interest at an assumed interest rate of 10% while the Bonds are in the Daily Mode or the Weekly Mode. The Standby Bond Purchase Agreement may be used to pay only the payment of the Tender Price of the Bonds tendered for purchase as described herein, and may not otherwise be used to pay the principal of or interest on the Bonds or for any other purpose. See “THE STANDBY BOND PURCHASE AGREEMENT” herein. The Standby Bond Purchase Agreement will expire on January 30, 2011, unless extended or terminated earlier in accordance with its terms.

Under certain circumstances described herein, purchases of Bonds which are tendered will not be made under the Standby Bond Purchase Agreement. The Borrower and the Guarantor are then responsible for payment of the tender price. If neither the Borrower nor the Guarantor makes such payment, funds may not be available to purchase such tendered Bonds. See “THE BONDS – General Provisions Relating to Tenders - Inadequate Funds for Tenders” herein.

*Continuing Disclosure.* In the Continuing Disclosure Agreement, the Borrower and the Guarantor agree to provide certain information annually and quarterly and to provide notice of certain events to certain information repositories. For further information, see “CONTINUING DISCLOSURE AGREEMENT” herein.

*Bondholders’ Risks.* There are risks associated with the purchase of the Bonds. See the information under the heading “BONDHOLDERS’ RISKS” herein for a discussion of certain of these risks.

## **THE AUTHORITY**

The Authority is a joint exercise of powers authority 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, 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 AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE AUTHORITY, PAYABLE SOLELY FROM THE FUNDS PROVIDED THEREFOR UNDER THE LOAN AGREEMENT AND THE INDENTURE. NONE OF THE AUTHORITY, THE ASSOCIATION OF BAY AREA GOVERNMENTS (“ABAG”), OR MEMBERS OF THE AUTHORITY OR ABAG SHALL BE DIRECTLY OR INDIRECTLY OR CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONIES OR ASSETS OF THE AUTHORITY, ABAG OR ANY OF ITS MEMBERS TO PAY ALL OR ANY PORTION OF THE DEBT SERVICE DUE ON THE BONDS. THE BONDS AND THE OBLIGATION TO PAY PRINCIPAL OF AND INTEREST THEREON AND ANY REDEMPTION PREMIUM WITH RESPECT THERETO DO NOT CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION OF THE AUTHORITY OR ABAG, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION, AGENCY OR PUBLIC INSTRUMENTALITY THEREOF, WITHIN THE MEANING OF ANY PROVISION OF THE CONSTITUTION OR LAWS OF THE STATE OF CALIFORNIA OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF ANY OF THEM, BUT SHALL BE PAYABLE SOLELY FROM THE REVENUES DESCRIBED HEREIN. NO OWNER OF THE BONDS SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION, AGENCY, OR PUBLIC INSTRUMENTALITY THEREOF TO PAY THE PRINCIPAL OF, PURCHASE PRICE, PREMIUM, IF ANY, OR INTEREST ON THE BONDS. NEITHER THE AUTHORITY NOR ABAG HAS ANY TAXING POWER.

## **PLAN OF FINANCING**

### **The Project**

The proceeds of the Bonds, together with an equity contribution from the Guarantor, will be applied by the Borrower to (1) pay the costs of the acquisition, construction, equipping and improvement of a continuing care retirement community, consisting of approximately 152 independent living units, consisting of approximately 305,000 square feet of buildings as further described in APPENDIX A under “THE BORROWER AND THE PROJECT – The Project,” (2) provide funded interest, (3) provide working capital, and (4) finance the costs of issuance of the Bonds.

### **Swap Agreement**

In connection with the issuance of the Bonds, the Borrower will enter into a Swap Agreement with Morgan Stanley Capital Services, Inc. (the “Counterparty”). Under the terms of the Swap Agreement, the Borrower will pay to the Counterparty a fixed rate of interest of 3.019% and the Counterparty will pay to the Borrower 67% times USD-LIBOR-BBA, based on a notional amount of \$93,625,000. The Swap Agreement will terminate on February 1, 2018. However, under certain circumstances the Swap Agreement may be subject to termination prior to the maturity or mandatory redemption of the Bonds, in which event the Borrower may be obligated to make a payment to the Counterparty or may receive a payment from the Counterparty, either of which may be substantial. For more information regarding the risks associated with interest rate exchange agreements, see

“BONDHOLDERS’ RISKS – Significant Risk Areas Summarized – Interest Rate Swaps and Other Hedge Risk” herein.

**ESTIMATED SOURCES AND USES OF FUNDS**

The estimated sources and uses of funds of the Bonds, without investment earnings, are as follows:

**Source of Funds:**

Principal Amount of the Bonds.....	\$93,625,000
Equity of the Guarantor .....	<u>2,000,000</u>
Total Sources of Funds .....	\$95,625,000

**Uses of Funds:**

Costs of the Project.....	\$81,795,350
Working Capital.....	5,613,883
Funded Interest <sup>(1)</sup> .....	7,074,404
Costs of Issuance <sup>(2)</sup> .....	<u>1,141,363</u>
Total Uses of Funds .....	\$95,625,000

<sup>(1)</sup> Represents approximately 24 months of funded interest and capitalized fees of the Remarketing Agent, the Bank and the Guarantor.  
<sup>(2)</sup> Includes Underwriter’s discount and fees, expenses of accountants, legal fees and other costs of issuance.

## DEBT SERVICE REQUIREMENTS

The following table sets forth, for each year ending 2038, the amounts required to be made available for total debt service with respect to the Bonds. Numbers may not add exactly due to rounding.

Year Ending July 1,	Bonds <sup>(1)</sup>		Total Debt Service
	Principal	Interest	
2008	--	\$1,467,212	\$1,467,212
2009	--	3,480,507	3,480,507
2010	--	3,601,125	3,601,125
2011	\$1,885,000	3,719,118	5,604,118
2012	1,950,000	3,651,093	5,601,093
2013	2,040,000	3,562,416	5,602,416
2014	2,115,000	3,485,743	5,600,743
2015	2,200,000	3,401,727	5,601,727
2016	2,280,000	3,320,569	5,600,569
2017	2,380,000	3,219,822	5,599,822
2018	2,475,000	3,129,224	5,604,224
2019	2,570,000	3,030,908	5,600,908
2020	2,670,000	2,934,326	5,604,326
2021	2,785,000	2,819,304	5,604,304
2022	2,890,000	2,712,126	5,602,126
2023	3,005,000	2,597,325	5,602,325
2024	3,120,000	2,482,616	5,602,616
2025	3,250,000	2,351,139	5,601,139
2026	3,375,000	2,224,917	5,599,917
2027	3,510,000	2,090,850	5,600,850
2028	3,645,000	1,955,090	5,600,090
2029	3,795,000	1,804,418	5,599,418
2030	3,945,000	1,655,877	5,600,877
2031	4,100,000	1,499,167	5,599,167
2032	4,260,000	1,338,814	5,598,814
2033	4,435,000	1,165,651	5,600,651
2034	4,610,000	990,904	5,600,904
2035	4,790,000	807,779	5,597,779
2036	4,980,000	618,664	5,598,664
2037	5,180,000	419,166	5,599,166
2038	5,385,000	213,911	5,598,911
Total	\$93,625,000	\$71,751,507	\$165,376,507

<sup>(1)</sup> The Bonds mature on July 1, 2038 and are not subject to mandatory redemption. The Borrower is expected to prepay the Bonds in accordance with the terms of the Standby Bond Purchase Agreement, according to the schedule set forth above. Neither the Trustee nor the Holders of the Bonds have the right to require the Borrower prepay the Bonds. The Borrower may choose to prepay more of the Bonds as money becomes available, from entrance fees or other sources. Debt service on the Bonds is estimated based on an assumed interest rate of 3.019% per annum, which is the rate the Borrower will pay under the Swap Agreement, plus remarketing and liquidity enhancement fees. Actual rates will vary.

## THE BONDS

**This Official Statement describes the Bonds while the Bonds bear interest at a Daily Rate or a Weekly Rate. This Official Statement is not intended to provide information with respect to the Bonds in any Mode other than the Daily Mode or the Weekly Mode.**

### General

The Bonds will be issued pursuant to the Indenture. The Bonds will be issued initially as bonds that bear interest at a Daily Rate but may be converted at the option of the Borrower, subject to certain restrictions, to Bonds that bear interest at different rates in different Modes, including the Auction Mode, the Unit Pricing Mode, the Daily Mode, the Weekly Mode, the Term Rate Mode or the Fixed Rate Mode. (each, including the Daily Mode, a “Mode”).

The Indenture requires that all Bonds be in the same Mode at one time. The Bonds will be dated the Date of Delivery, and will bear interest at a Daily Rate from the Date of Delivery at the rates established by BNY Capital Markets, Inc. (the “Remarketing Agent”) pursuant to the Indenture and the Remarketing Agreement, dated as of January 1, 2008 (the “Remarketing Agreement”) until converted to a New Mode. While in the Daily Mode, the Bonds will bear interest at a Daily Rate, which commences on a Business Day and extends to, but does not include, the next succeeding Business Day. While in the Weekly Mode, the Bonds will bear interest at a Weekly Rate, which commences on the first day the Bonds begin to accrue interest in the Weekly Mode and ends on the next succeeding Tuesday, and thereafter commences on each Wednesday and ends on Tuesday of the following week. While the Bonds bear interest at the Daily Rate or a Weekly Rate, interest on the Bonds is payable on the first Business Day of each month, commencing March 3, 2008. While the Bonds bear interest at the Daily Rate or a Weekly Rate, interest on the Bonds will be computed on the basis of a 365-day or 366-day year, as applicable, for the actual number of days elapsed.

The Bonds will be issued as fully registered bonds without coupons and in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof. The Bonds will be registered in the name of Cede & Co., as nominee of DTC, pursuant to DTC’s Book-Entry Only System. Purchases of beneficial interests in the Bonds will be made in book-entry form, without certificates. If at any time the Book-Entry Only System is discontinued for the Bonds, the Bonds will be exchangeable for other fully registered certificated Bonds in any authorized denominations, maturity and interest rate. See “BOOK-ENTRY ONLY SYSTEM” herein.

Interest on the Bonds will be payable by wire transfer in immediately available funds to an account within the United States of America to the registered owners thereof. As long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, such payments will be made directly to DTC. See “BOOK-ENTRY ONLY SYSTEM” herein.

### Determination of Interest Rates

During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m. New York time on each Business Day. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Business Day.

During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m. New York City time on each Rate Determination Date. The Weekly Rate shall be in effect (i) initially, from and including the first day the Bonds become subject to the Weekly Mode to and including the

following Tuesday and (2) thereafter, from and including each Wednesday to and including the following Tuesday.

#### **Conversion from Daily Mode or Weekly Mode to a Mode other than the Fixed Rate Mode**

The Bonds may be converted from the Daily Mode or the Weekly Mode to a New Mode (defined below) on any Business Day. To convert Bonds in the Daily Mode or the Weekly Mode to a New Mode, no later than the 5th Business Day preceding the proposed Mode Change Date, the Borrower shall give written notice to the Authority, the Trustee, the Remarketing Agent and the Bank of its intention to effect a change from the Daily Mode or the Weekly Mode to another Mode (the "New Mode") specified in such written notice. The Bonds are subject to mandatory purchase on the Mode Change Date. Notice of the proposed change in Mode shall be given to the Holders of the applicable Bonds by electronic means no less than four Business Days prior to the Mandatory Purchase Date. The notice shall state the Mandatory Purchase Date, the Purchase Price and that interest on Bonds subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The New Mode shall commence on the Mode Change Date and the interest rate(s) with respect to such Bonds shall be determined by the Remarketing Agent or the Auction Agent, as applicable. The change to the New Mode shall not occur unless the Trustee, the Bank and the Remarketing Agent have received on the Mode Change Date, a Favorable Opinion of Bond Counsel dated the Mode Change Date and addressed to the Trustee, the Bank and the Remarketing Agent.

If any of the conditions precedent to the Mode change have not been satisfied by the Mode Change Date, the New Mode shall not take effect and if the Bonds are in the Weekly Mode, they shall be changed to a Daily Mode, and if the Bonds are in the Daily Mode, they shall remain in the Daily Mode.

#### **Conversion to the Fixed Rate Mode**

At the option of the Borrower, any Bonds may be changed from the Daily Mode or the Weekly Mode to the Fixed Rate Mode on any Business Day. Not less than 30 days before the proposed Mode Change Date, the Trustee shall mail, in the name of the Borrower, a notice of such proposed change to the Holders of the Bonds, stating that the Mode will be changed to the Fixed Rate Mode, the proposed Mode Change Date and that the Holder is required to tender the Bonds on the Mode Change Date. The change to the Fixed Rate Mode shall not occur unless the Trustee, the Bank and the Remarketing Agent have received on the Mode Change Date, a Favorable Opinion of Bond Counsel dated the Mode Change Date and addressed to the Trustee, the Bank and the Remarketing Agent.

Prior to a conversion of the Bonds to a Fixed Rate Mode, the Remarketing Agent shall deliver to the Trustee, the Authority and the Borrower a certificate which includes (i) a schedule specifying the principal amount of converted Bonds which will mature on July 1 of the years specified in such schedule and the interest rate payable on the converted Bonds of each such maturity and (ii) a schedule specifying the principal amount of converted Bonds maturing on July 1 of the years specified in such schedule to be called for mandatory sinking fund redemption of July 1 of the years specified in such schedule.

If any of the conditions precedent to the change to the Fixed Rate Mode have not been satisfied by the Mode Change Date, the New Mode shall not take effect and if the Bonds are in the Weekly Mode, they shall be changed to a Daily Mode, and if the Bonds are in the Daily Mode, they shall remain in the Daily Mode.

## **Tender and Purchase of the Bonds**

THE INDENTURE PROVIDES THAT SO LONG AS CEDE & CO. IS THE SOLE REGISTERED OWNER OF THE BONDS, ALL TENDERS AND DELIVERIES OF BONDS UNDER THE PROVISIONS OF THE INDENTURE SHALL BE MADE PURSUANT TO DTC'S PROCEDURES AS IN EFFECT FROM TIME TO TIME, AND NONE OF THE AUTHORITY, THE BORROWER, THE TRUSTEE OR THE REMARKETING AGENT SHALL HAVE ANY RESPONSIBILITY FOR OR LIABILITY WITH RESPECT TO THE IMPLEMENTATION OF SUCH PROCEDURES.

*Optional Tenders of Bonds.* The Holders of Bonds in a Daily Mode or the Weekly Mode may elect to have their Bonds (or portions of those Bonds in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof) purchased on any Business Day at a price equal to the Purchase Price (i) when the Bonds are in a Daily Mode, upon delivery of an irrevocable telephonic notice of tender to the Remarketing Agent and the Trustee not later than 11:00 a.m. New York City time, on any Business Day, and (ii) when the Bonds are in a Weekly Mode, upon delivery of an irrevocable written notice of tender or irrevocable telephonic notice of tender to the Remarketing Agent and the Trustee, promptly confirmed in writing, not later than 3:00 p.m. New York City time, on the Business Day five Business Days prior to the applicable Purchase Date. Such notice of tender shall state the CUSIP number, Bond number (if the Bonds are not registered in the name of DTC) and the principal amount of such Bond and that such Bond shall be purchased on the Purchase Date. A Holder who gives the notice of tender as set forth in this paragraph may repurchase the Bonds so tendered on such Purchase Dates if the Remarketing Agent agrees to sell the Bonds so tendered to such Holder. If such Holder decides to repurchase such Bonds and the Remarketing Agent agrees to sell the specified Bonds to such Holder, the delivery requirements set forth in the Indenture shall be waived.

*Mandatory Tender on Mode Change Date.* Bonds to be changed from the Daily Mode or the Weekly Mode to another Mode are subject to mandatory purchase on the Mode Change Date. The Trustee shall give notice of such mandatory purchase to the Holders of the Bonds as described above under the headings "Conversion from Daily Mode or Weekly Mode to a Mode other than the Fixed Rate Mode" and "Conversion to the Fixed Rate Mode."

*Mandatory Purchase on Expiration Date and Termination Date.* On the second Business Day preceding the date upon which the Standby Bond Purchase Agreement is scheduled to expire in accordance with its terms, as such date may be extended from time to time (the "Expiration Date"), the Bonds shall be subject to mandatory purchase at the Purchase Price; provided, however, that such Bonds shall not be subject to mandatory purchase on the second Business Day preceding the Expiration Date if on or prior to the 15th day prior to such Expiration Date the Borrower has furnished to the Trustee an agreement to extend the stated expiration date of the Standby Bond Purchase Agreement. The Trustee shall mail notice of such mandatory purchase to the Holders of such tendered Bonds no less than 10 days prior to such Mandatory Purchase Date. The notice shall state the Mandatory Purchase Date, the Purchase Price and that interest on such Bonds shall cease to accrue from and after the Mandatory Purchase Date. The failure to give such notice with respect to any Bond shall not affect the validity of the mandatory purchase of any other Bond with respect to which notice was so given. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder.

"Termination Date" means the mandatory tender date that shall occur not more than five days following the date of receipt by the Trustee of a notice given by the Bank specifying that an event of default has occurred under the Standby Bond Purchase Agreement. On each Termination Date, the Bonds shall be subject to mandatory purchase at the principal amount thereof, plus accrued interest, if any, with respect thereto to the Termination Date. The Trustee shall give notice of such mandatory purchase by

mail to the Holders of the Bonds as soon as practicable after receipt of notice of event of default from the Bank and directing the Trustee to cause a mandatory tender of the Bonds. The notice shall state the Mandatory Purchase Date, the Purchase Price and that interest on Bonds subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. SUCH NOTICE SHALL ALSO SPECIFY, IF APPLICABLE, THAT THE BORROWER AND/OR THE GUARANTOR WILL BE THE ONLY PARTY OBLIGATED TO PURCHASE THE APPLICABLE BONDS UPON THE TERMINATION DATE. The failure to mail such notice with respect to any Bond shall not affect the validity of the mandatory purchase of any other Bond with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder.

IN THE CASE OF CERTAIN EVENTS OF DEFAULT UNDER THE STANDBY BOND PURCHASE AGREEMENT, THE BANK HAS THE RIGHT TO IMMEDIATELY, UNCONDITIONALLY TERMINATE ITS OBLIGATION TO PURCHASE BONDS (an “Automatic Termination Event”). See “THE STANDBY BOND PURCHASE AGREEMENT” herein.

*Mandatory Purchase of Bonds on Substitution Date.* The Bonds also shall be subject to mandatory tender for purchase by the Trustee at the Purchase Price on the date on which a Substitute Liquidity Facility or a Substitute Credit Facility is accepted by the Trustee and becomes effective with respect to the Bonds (the “Substitution Date”). Notices of mandatory tender prior to this subsection shall be mailed to the Holders and shall (i) specify the proposed Purchase Date and the event which gives rise to the proposed Purchase Date, (ii) state that the Bonds shall be subject to mandatory tender for purchase on such date, (iii) state that Holders may not elect to retain Bonds subject to mandatory tender, (iv) state that all Bonds subject to mandatory tender shall be required to be delivered to the principal corporate trust office of the Trustee at or before 1:00 p.m., New York City time, on the Purchase Date, (v) state that if the Holder of any Bond subject to mandatory tender fails to deliver such Bond to the Trustee for purchase on the Purchase Date, and if the Trustee is in receipt of funds sufficient to pay the Purchase Price thereof, such Bond (or portion thereof) shall nevertheless be deemed purchased on the Purchase Date and ownership of such Bond (or portion thereof) shall be transferred to the purchaser thereof, and (vi) state that any Holder that fails to deliver such Bond for purchase shall have no further rights thereunder or under the Indenture except the right to receive the Purchase Price thereof upon presentation and surrender of said Bond to the Trustee and that the Trustee will place a stop transfer against the Bonds subject to mandatory tender registered in the name of such Holder(s) on the registration books. If, following the giving of notice of mandatory tender of Bonds on a Substitution Date, an event occurs which causes such mandatory tender not to occur, then (i) the Trustee shall so notify the Holders of the Bonds by first-class mail as soon as may be practicable after the Purchase Date, and (ii) the Trustee shall return to their Holders any Bonds tendered to the Trustee in connection with such mandatory tender of Bonds.

### **Remarketing of Bonds**

The Remarketing Agent shall use its best efforts to offer for sale all Bonds required to be purchased pursuant to the Indenture as to which notice of tender has been given.

On each Purchase Date or Mandatory Purchase Date, as the case may be, (i) the Remarketing Agent shall notify the Trustee of the amount of tendered Bonds which were successfully remarketed, the names of the tendering Holders and the registration instructions and the Authorized Denominations with respect thereto, (ii) the Trustee shall execute new Bonds for the respective purchasers thereof which shall be available for pick up by the Remarketing Agent, and (iii) the Bank shall reinstate the Standby Bond Purchase Agreement upon receipt of the remarketing proceeds.

On each Purchase Date or Mandatory Purchase Date, as the case may be, if the Remarketing Agent shall give notice to the Trustee that not all of the Bonds were remarketed the Trustee shall draw on the Standby Bond Purchase Agreement in accordance with the terms thereof in an amount, in immediately available funds sufficient, together with the proceeds of the remarketing of Bonds on such date, to enable the Trustee to pay the Purchase Price in connection therewith.

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

*Purchase Fund.* The Trustee shall establish and maintain a special fund designated as the “Purchase Fund,” and within such fund two separate accounts designated, respectively, as the “Remarketing Proceeds Account” and the “Borrower Purchase Account.” The Trustee shall also establish and maintain in the Purchase Fund a special account designated as the “Liquidity Purchase Account” that will be designated for Bank moneys.

The Trustee shall deposit all moneys delivered to under the Indenture by the Remarketing Agent for the purchase of Bonds into the Remarketing Proceeds Account and shall hold all such moneys in trust for the exclusive benefit of the Person that shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to it for the account of such Person and, thereafter, for the benefit of the Holders tendering such Bonds.

The Trustee shall deposit all moneys delivered to it from a payment by the Bank into the Liquidity Purchase Account and shall hold all such moneys in trust first, for the benefit of the Holders and then, for the benefit of the Bank until the termination of the Standby Bond Purchase Agreement.

The Trustee shall deposit all moneys delivered to it hereunder from a payment by or on behalf of the Borrower for the purchase of Bonds into the Borrower Purchase Account and shall hold all such moneys in trust for the exclusive benefit of the Borrower until the Bonds purchased with such moneys shall have been delivered to or for the account of the Borrower and, after such delivery, the Trustee shall hold such funds exclusively for the benefit of the Holders tendering such Bonds.

*Payment of Purchase Price.* At or before 2:30 p.m., New York City time on the Purchase Date or Mandatory Purchase Date and upon receipt by the Trustee of the aggregate Purchase Price of the tendered Bonds, the Trustee shall pay the Purchase Price of such Bonds to the Holders by bank wire transfer in immediately available funds. The Trustee shall pay the Purchase Price from the following accounts and in the following order of priority: (1) the Remarketing Proceeds Account to the extent funds are available therein, (2) the Liquidity Purchase Account, and (3) the Borrower Purchase Account.

*Inadequate Funds for Tenders.* If the funds available for purchase of Bonds pursuant to the Indenture are inadequate for the purchase of all Bonds tendered on any Purchase Date or Mandatory Purchase Date, all Bonds shall bear interest from such date at a rate equal to the Alternate Rate, but in no event higher than the Maximum Rate, until such default is cured or such Bonds are paid in full. If the funds are not available for purchase of Bonds are inadequate for the purchase of all Bonds tendered, no purchase shall be consummated and the Trustee shall immediately (1) return all tendered Bonds to the Holders thereof, (2) return all moneys deposited in the Remarketing Proceeds Account to the Remarketing Agent for return to the Persons providing such moneys, (3) return all moneys deposited in the Liquidity Purchase Account to the Bank, and (4) notify all Bondholders in writing (A) that an event of default has occurred, and (B) of the Alternate Rate to be effective immediately.

The failure of the Borrower or the Guarantor to pay the Purchase Price of the Bonds on the Purchase Date or Mandatory Purchase Date shall not constitute a default under the Loan Agreement, the Guaranty or the Indenture in the event (a) the failure is the result of a failure of the Remarketing Agent or

the Bank to deliver proceeds in accordance with the terms of the Remarketing Agreement or the Standby Bond Purchase Agreement, respectively, and (b) funds are deposited with the Trustee not later than 11:30 a.m., New York City time on the next succeeding Business Day after which such tendered Bonds plus accrued interest to but not including such next succeeding Business Day, in which case the Trustee shall not be required to pay the Purchase Price until 1:00 p.m., New York City time on such next succeeding Business Day.

In the event the grace period described in the preceding paragraph expires, the obligations of the Borrower and the Guarantor pursuant to the Loan Agreement and the Guaranty, as the case may be, to provide moneys in a sufficient amount to purchase such tendered Bonds shall remain in full force and effect and shall not be satisfied until such time as funds are deposited with the Trustee in an amount sufficient to purchase such tendered Bonds, including interest accrued from the original Purchase Date or Mandatory Purchase Date to the actual purchase date at the Alternate Rate. **FAILURE OF THE BORROWER UNDER THE LOAN AGREEMENT OR THE GUARANTOR UNDER THE GUARANTY TO PAY THE PURCHASE PRICE WILL CREATE AN EVENT OF DEFAULT UNDER THE INDENTURE, THE LOAN AGREEMENT AND THE GUARANTY.**

*No Purchases or Sales After Payment Default.* Anything in the Indenture to the contrary notwithstanding, if there shall have occurred and be continuing an Event of Default described in the Indenture and the Bank has not paid such amount under the Standby Bond Purchase Agreement, then the Remarketing Agent shall not remarket any Bonds.

## **Redemption**

**Optional Redemption.** The Bonds shall be subject to redemption prior to their stated maturity at the option of the Borrower, in whole or in part (and if in part, only in Authorized Denominations) on any date at the principal amount thereof, plus interest accrued interest thereon to the date fixed for redemption, without premium.

**Optional Redemption From Insurance and Condemnation Proceeds.** The Bonds are also subject to redemption prior to their stated maturity, at the option of the Borrower, as a whole on any date or in part on any Interest Payment Date, from insurance and condemnation proceeds (the extent such proceeds are not required to be otherwise applied pursuant to any Reimbursement Agreement or Standby Bond Purchase Agreement) deposited in the Special Redemption Account, at a Redemption Price equal to the principal amount called for redemption, without premium

**Notice of Redemption.** Notice of redemption shall be mailed by first-class mail by the Trustee, (a) not less than 15 days prior to the date fixed for redemption if the Bonds bear interest at Daily or Weekly Rates, and (b) not less than 30 nor more than 60 days prior to the date fixed for redemption if the Bonds bear interest at any other rate, to the Bank, the Rating Agencies then rating the Bonds and to the Holders of any Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee. Each notice of redemption shall state the date of such notice and the date of delivery, the date fixed for redemption, the Redemption Price, the place or places of redemption (including the name and appropriate address or addresses of the Trustee), the CUSIP number of the Bonds to be redeemed and, in the case of Bonds to be redeemed in part only, the portion 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 Redemption Price thereof or of said specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the date fixed for redemption, and that from and after such date, interest on such Bond shall cease to accrue, and shall require that such Bonds be then surrendered at the address or addresses of the Trustee specified in the redemption notice.

So long as the book-entry system is in effect, the Trustee will send each notice of redemption to Cede & Co., as nominee of DTC, and not to the Beneficial Owners. So long as DTC or its nominee is the sole registered owner of the Bonds under the book-entry system, any failure on the part of DTC or a Direct Participant or Indirect Participant to notify the Beneficial Owner so affected will not affect the validity of the redemption.

**Rescission of Notice of Redemption.** Any redemption notice may be conditional and may be rescinded by written notice given to the Trustee by the Borrower no later than five Business Days prior to the date specified for redemption. The Trustee shall give notice of such rescission, as soon thereafter as practicable, in the same manner, to the same persons, as notice of such redemption was given pursuant to the Indenture

### **Book-Entry System**

The Bonds will be issued in book-entry form. 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). One fully-registered Bond will be issued for each maturity in the total aggregate principal amount due on such maturity and will be deposited with DTC.

The Borrower and the Authority cannot and do not give any assurances that DTC will distribute to DTC Participants (as herein defined) or that DTC Participants or others will distribute to the Beneficial Owners payments of principal of and interest and premium, if any, on the Bonds 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 to make any payments or give any notice to a Beneficial Owner with respect to the Bonds or any error or delay relating thereto. See "BOOK-ENTRY ONLY SYSTEM" below.

## **SECURITY AND SOURCE OF PAYMENT FOR THE BONDS**

### **General**

The Bonds are limited obligations of the Authority, payable by the Trustee from the Revenues pledged under the Indenture for such payment. Revenues consist primarily of Loan Repayments required to be made by the Borrower pursuant to the Loan Agreement in amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds when such becomes due, payments made by the Guarantor under the Guaranty, and certain other funds held under the Indenture.

The Authority will assign its right, title and interest in the Loan Agreement to the Trustee (except for (i) the right to receive any Administrative Fees and Expenses and Additional Payments to the extent payable to the Authority, (ii) the right of the Authority to any indemnification and expenses under the Loan Agreement and (iii) the obligation of the Borrower to make deposits pursuant to the Tax Agreement).

The Bonds will be limited obligations of the Authority payable solely (i) from payments or prepayments to be made under the Loan Agreement (except for Unassigned Rights), (ii) from certain moneys and investments held by the Trustee under the Indenture, and (iii) in certain circumstances, proceeds from insurance, condemnation awards and proceeds from sales made under threat of condemnation. Under the Guaranty, the Guarantor has agreed to pay, on demand by the Trustee or the Bank, any and all Loan Repayments, payments of Purchase Price, Additional Payments, Avoided Payments, redemption payments with respect to the Bonds and other amounts due and payable by the Borrower under the Loan Agreement and the Standby Bond Purchase Agreement.

THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE AUTHORITY, PAYABLE SOLELY FROM THE FUNDS PROVIDED THEREFOR UNDER THE LOAN AGREEMENT AND THE INDENTURE. NONE OF THE AUTHORITY, THE ASSOCIATION OF BAY AREA GOVERNMENTS (“ABAG”), OR MEMBERS OF THE AUTHORITY OR ABAG SHALL BE DIRECTLY OR INDIRECTLY OR CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONIES OR ASSETS OF THE AUTHORITY, ABAG OR ANY OF ITS MEMBERS TO PAY ALL OR ANY PORTION OF THE DEBT SERVICE DUE ON THE BONDS. THE BONDS AND THE OBLIGATION TO PAY PRINCIPAL OF AND INTEREST THEREON AND ANY REDEMPTION PREMIUM WITH RESPECT THERETO DO NOT CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION OF THE AUTHORITY OR ABAG, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION, AGENCY OR PUBLIC INSTRUMENTALITY THEREOF, WITHIN THE MEANING OF ANY PROVISION OF THE CONSTITUTION OR LAWS OF THE STATE OF CALIFORNIA OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF ANY OF THEM, BUT SHALL BE PAYABLE SOLELY FROM THE REVENUES DESCRIBED HEREIN. NO OWNER OF THE BONDS SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION, AGENCY, OR PUBLIC INSTRUMENTALITY THEREOF TO PAY THE PRINCIPAL OF, PURCHASE PRICE, PREMIUM, IF ANY, OR INTEREST ON THE BONDS. NEITHER THE AUTHORITY NOR ABAG HAS ANY TAXING POWER.

### **The Loan Agreement**

The Loan Agreement provides that the Authority shall loan the proceeds of the Bonds to the Borrower and that the Borrower shall repay such loans by making payments to the Trustee in amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds when due. The Authority will pledge and assign certain of its rights under the Loan Agreement to the Trustee as security for the Bonds. For more information on the Loan Agreement, see APPENDIX C “SUMMARY OF PRINCIPAL DOCUMENTS.”

*Gross Revenue Pledge.* In the Loan Agreement, the Borrower agrees that, so long as any of the Loan Repayments remain unpaid, all of the Gross Revenues of the Borrower shall be deposited as soon as practicable upon receipt in a fund designated as the “Gross Revenue Fund” which the Borrower shall establish and maintain in an account or accounts at such banking institution or institutions as the Borrower shall from time to time designate in writing to the Trustee for such purpose (the “Depository Bank(s)”). Subject only to the provisions of the Loan Agreement and to Permitted Encumbrances, the Borrower pledges and, to the extent permitted by law, grants a security interest to the Trustee in, the Gross Revenue Fund and all of the Gross Revenues of the Borrower to secure the payment of Loan Repayments and the performance by the Borrower of its other obligations under the Loan Agreement and with respect to parity debt, and, on a subordinated basis to the Bank or the Liquidity Provider pursuant to the Reimbursement Agreement or the Liquidity Facility Agreement, respectively. The Borrower shall obtain and deliver to the Trustee control agreements, fully signed and delivered by each Depository Bank and other parties thereto, and any other documentation as may be necessary or reasonably required by the Authority or the Trustee in order to perfect or maintain as perfected such security interest.

*Negative Pledge.* In the Loan Agreement, the Borrower covenants that it will not pledge or grant a security interest in or permit to exist any Lien on any of its Pledged Assets, except for Permitted Encumbrances.

## **The Guaranty**

In the Guaranty, the Guarantor has agreed to unconditionally and irrevocably guarantee to the Trustee the full, complete and prompt payment of any and all Loan Repayments, payments of Purchase Price, Additional Payments, Avoided Payments, redemption payments with respect to the Bonds and other amounts due and payable by the Borrower under the Loan Agreement or with respect to the Bonds and, to the Bank, all payments or amounts due and owing by the Borrower to the Bank under the Standby Bond Purchase Agreement when and as the same shall become due, in each case whether at the stated maturity thereof or by acceleration or call for redemption or otherwise and agrees to pay all expenses and charges (including court costs and attorneys' fees) paid or incurred by the Trustee, the Authority or the Bank in realizing upon any of the payments guaranteed or in enforcing the Guaranty Agreement. All payments by Guarantor shall be paid in lawful money of the United States of America. For more information, see "THE GUARANTY" below.

## **The Standby Bond Purchase Agreement**

Payment of the tender price of the Bonds that are tendered for purchase and not remarketed will, subject to compliance with certain terms and conditions, be made pursuant to the Standby Bond Purchase Agreement relating to the Bonds provided by the Bank. The Standby Bond Purchase Agreement for the Bonds will expire on January 30, 2011 unless it is otherwise extended or terminated earlier in accordance with its terms. Under certain circumstances, the obligation of the Bank to purchase the Bonds tendered for purchase may be terminated or suspended without notice. For more information regarding the Bank and the Standby Bond Purchase Agreement, see "THE BANK" and "THE STANDBY BOND PURCHASE AGREEMENT" below.

## **Limitations on Enforceability**

The obligation described herein of the Borrower to pay Loan Repayments under the Loan Agreement may not be enforceable under any of the following circumstances:

- (i) to the extent payments are requested to be made from assets of the Borrower which are donor-restricted or which are subject to a direct, express or charitable trust that does not permit the use of such assets for such payments;
- (ii) if the purpose of the debt created is not consistent with the charitable purposes of the Borrower from which such payment is requested or required, or if the debt was incurred or issued for the benefit of an entity other than a nonprofit corporation that is exempt from federal income taxes under sections 501(a) and 501(c)(3) of the Code and is not a "private foundation" as defined in section 509(a) of the Code;
- (iii) to the extent payments of Loan Repayments result in the cessation or discontinuation of any material portion of the health care or related services previously provided the Borrower; or
- (iv) if and to the extent payments are requested to be made pursuant to any loan violating applicable usury laws.

In addition, common law authority and authority under state statutes exists for the ability of courts in such states to terminate the existence of a nonprofit corporation or undertake supervision of its affairs on various grounds, including a finding that such corporation has insufficient assets to carry out its stated charitable purposes. Such court action may arise on the court's own motion or pursuant to a petition of the attorney general of such states or such other persons who have interests different from

those of the general public, pursuant to the common law and statutory power to enforce charitable trusts and to see to the application of their funds to their intended charitable uses.

The legal right and practical ability of the Trustee to enforce its rights and remedies against the Borrower under the Loan Agreement and related documents may be limited by laws relating to bankruptcy, insolvency, reorganization, fraudulent conveyance or moratorium and by other similar laws affecting creditors' rights. In addition, the Trustee's ability to enforce such terms will depend upon the exercise of various remedies specified by such documents which may in many instances require judicial actions that are often subject to discretion and delay or that otherwise may not be readily available or may be limited.

The various legal opinions delivered concurrently with the issuance of the Bonds are qualified as to the enforceability of the various legal instruments by limitations imposed by state and federal laws, rulings, policy and decisions affecting remedies and by bankruptcy, reorganization or other laws of general application affecting the enforcement of creditors' rights or the enforceability of certain remedies or document provisions.

For a further description of the provisions of the Indenture and the Loan Agreement, including covenants that secure the Bonds, events of default, acceleration and remedies under the Indenture, see APPENDIX C — "SUMMARY OF PRINCIPAL DOCUMENTS."

## THE GUARANTY

In order to provide funds for the principal of and interest on the Bonds when due (whether by acceleration or maturity), the Guarantor has provided the Guaranty to the Trustee and the Bank. In the Guaranty, the Guarantor has agreed to unconditionally and irrevocably guarantee to the Trustee the full, complete and prompt payment of any and all Loan Repayments, payments of Purchase Price, Additional Payments, Avoided Payments, redemption payments with respect to the Bonds and other amounts due and payable by the Borrower under the Loan Agreement or with respect to the Bonds, together with all payments or amounts due and owing by the Borrower to the Bank under the Standby Bond Purchase Agreement when and as the same shall become due, in each case whether at the stated maturity thereof or by acceleration or call for redemption or otherwise and agrees to pay all expenses and charges (including court costs and attorneys' fees) paid or incurred by the Trustee, the Authority or the Bank in realizing upon any of the payments guaranteed or in enforcing the Guaranty Agreement.

### **Funding Obligations Pursuant to the Guaranty**

*Revenue Fund, Redemption Fund or Purchase Fund.* The Guarantor shall on or before one Business Day prior to each Interest Payment Date or Principal Payment Date or on such other date for payment by the Borrower provided for in the Indenture or Loan Agreement, transfer immediately available funds to the Trustee for deposit into the Revenue Fund, Redemption Fund or Purchase Fund, as applicable.

*Debt Service Coverage.* Within 30 days after the end of each fiscal quarter of each Fiscal Year of the Borrower, commencing with the quarter ended June 30, 2012, the Borrower shall calculate its Debt Service Coverage Ratio as of the last day of such fiscal quarter. To the extent that the Borrower's Debt Service Coverage Ratio is less than 1.1 to 1, the Guarantor shall immediately transfer such amount of cash as is necessary to cause the Borrower to have a Debt Service Coverage Ratio of not less than 1.1 to 1, calculated as of the last day of such fiscal quarter.

*Days Cash on Hand.* Within 30 days after each Liquidity Testing Date (as defined in the Guaranty), commencing with June 30, 2012, the Borrower shall calculate its Days Cash on Hand of such Liquidity Testing Date. To the extent that the Borrower's Days Cash on Hand is less than 200, the Guarantor shall immediately transfer such amount of cash necessary to cause the Borrower to have not less than 200 Days Cash on Hand, calculated as of the Liquidity Testing Date.

### **Certain Covenants**

*Construction Completion Guarantee.* In the event that money in the Project Fund is depleted or otherwise unavailable to pay Project Costs prior to the time that the Project has received a certificate of occupancy under the standards of the local jurisdiction having authority to issue such certificate or is otherwise not complete in accordance with the plans and specifications relating thereto, the Guarantor has agreed to transfer cash to the Borrower as is needed for the Borrower to pay the costs of construction necessary for the Project to qualify for such a certificate of occupancy and to be constructed in accordance with such plans and specifications, free and clear of liens, security interests and claims of any kind.

*Debt Covenant.* Guarantor shall not incur Indebtedness or Guarantees greater than 40% of the value of its and the Borrower's net unrestricted cash and liquid investments (as defined in the Guaranty).

*Maintenance of Net Unrestricted Cash and Liquid Investments.* The Guarantor agrees in the Guaranty to, as of the last day of each Fiscal Year and the last day of the second fiscal quarter of each Fiscal Year, have a ratio of net unrestricted cash and liquid investments to long term indebtedness of not less than 2.5 to 1.0.

*Ground Lease and Guarantor Fee Subordination.* The Guarantor has leased to the Borrower the ground upon which the Borrower is developing the Project pursuant to a Ground Lease between the Borrower and the Guarantor dated January 1, 2008 (the "Ground Lease"). Upon the occurrence and during the continuation of an Event of Default under the Loan Agreement, the Guarantor shall subordinate the Borrower's obligations to pay rent under the Ground Lease to the Borrower's obligations under the Loan Agreement and the Guarantor shall remit any payments of rent received during such time to the Trustee. To the extent reasonably requested by the Trustee or the Borrower, the Guarantor shall execute and deliver such instruments, acknowledgements or other writings to further evidence such subordination.

In the Guaranty, the Guarantor further agrees that all payments due to the Guarantor from the Borrower, including lease payments pursuant to the Ground Lease, fees for the guarantee provided by the Guarantor pursuant to the Guaranty and any fees owed to the Guarantor under the Management Agreement relating to the Project, are fully subordinate to interests of the Bank and the Holders of the Bonds.

### **Repayment; Indemnity**

Any and all obligations of Borrower to reimburse or repay the Guarantor for amounts paid by the Guarantor to or on behalf of Borrower pursuant to the Guaranty shall be subordinate in all respects to all of the obligations of the Borrower under the Loan Agreement, the Bonds, and the Standby Bond Purchase Agreement. If, as of a Liquidity Testing Date: (i) both (A) the Borrower's Debt Service Coverage Ratio exceeds 1.1 to 1.0 and (B) the Borrower's Days Cash on Hand exceeds 200; and (ii) no Event of Default under the Loan Agreement or the Standby Bond Purchase Agreement has occurred and is continuing, Borrower may repay Guarantor for amounts paid by the Guarantor to or on behalf of the Borrower under the Guaranty, provided that such repayment may only be made if, immediately after any such repayment,

the Borrower would continue to maintain a Debt Service Coverage Ratio of not less than 1.1 to 1 and not less than 200 Days Cash on Hand or would not otherwise be in default under the Loan Agreement, the Bonds or the Standby Bond Purchase Agreement. If the Borrower is not in compliance with the foregoing, then the Borrower shall not repay Guarantor for amounts paid by the Guarantor to or on behalf of the Borrower under the Guaranty, and no interest shall accrue on such obligation for so long as Borrower is not in compliance with the foregoing. In addition, any obligation of the Borrower to otherwise indemnify the Guarantor for any payments made by the Guarantor under the Guaranty shall be fully subordinate in payment to the Borrower's obligations under the Loan Agreement, the Bonds, the Standby Bond Purchase Agreement and any other related document, shall be unsecured, and otherwise shall comply with each and all of the terms and conditions of the Guaranty. To such end, the Guarantor shall not exercise any remedies in respect of any such repayment or indemnity obligations and will not exercise any creditors' rights, including, without limitation, the filing of any involuntary bankruptcy petition, with respect to the Borrower so long as the Borrower has outstanding obligations under the Loan Agreement, the Bonds or the Standby Bond Purchase Agreement, as applicable.

### **THE STANDBY BOND PURCHASE AGREEMENT**

The following summary of the Standby Bond Purchase Agreement does not purport to be comprehensive or definitive and is subject to all of the terms and provisions of the Standby Bond Purchase Agreement to which reference is made hereby. Investors are urged to obtain and review a copy of the Standby Bond Purchase Agreement in order to understand all of the terms of that document. Copies of the Standby Bond Purchase Agreement may be obtained from the Underwriters. See "THE BANK" for certain information regarding the Bank.

#### **General**

*Various words or terms used in the following summary are defined in this Official Statement, the Standby Bond Purchase Agreement or the Indenture, and reference thereto is made for full understanding of their import.*

The Standby Bond Purchase Agreement will be effective on January 30, 2008 (the "Effective Date"). The Standby Bond Purchase Agreement requires the Bank to provide funds for the purchase of the Bonds bearing interest in the Weekly Rate or the Daily Rate (each a "Covered Rate") that have been tendered and not remarketed subject to certain conditions described below. Bonds purchased and held by the Bank will bear interest at the Bank Rate (or, if applicable, the Default Rate) in accordance with (and as such terms are defined in) the Standby Bond Purchase Agreement.

The Standby Bond Purchase Agreement shall be effective from the Effective Date until the earliest of (i) January 30, 2011 or to an extended date as may become effective under the Standby Bond Purchase Agreement, (ii) the date on which no Bonds are Outstanding, (iii) the close of business on the Substitution Date, so long as the Bank has honored any purchase of Bonds resulting solely from such substitution, (iv) the Business Day immediately succeeding the date on which the Bonds are converted to a rate other than a Covered Rate, (iv) the close of business on the date on which the Bank is no longer required to purchase Tendered Bonds pursuant to paragraph (i), (ii) or (iii) under "Remedies", or (v) the close of business on the date the Available Commitment is reduced to zero.

The obligations of the Bank to purchase Tendered Bonds pursuant to the Standby Bond Purchase Agreement is subject to the condition precedent that no Automatic Termination Event (hereinafter defined) or Suspension Event (hereinafter defined) shall have occurred. An Automatic Termination Event will result in, and, under certain circumstances, a Suspension Event may result in, the immediate

termination, without notice, of the Bank's obligation to purchase Eligible Bonds, as more fully set forth in paragraphs (i) and (ii) under "Remedies."

### **Covenants**

The Borrower makes certain representations, warranties and covenants under the Standby Bond Purchase Agreement relating to various matters, including, without limitation, existence, authorization and validity, compliance with laws and contracts, litigation, disclosure, regulatory approvals, inspection rights and liens. The covenants and agreements contained in the Standby Bond Purchase Agreement run only in favor of the Bank and may be waived at any time in the sole discretion of the Bank or amended at any time upon the agreement of the Borrower and the Bank. Holders are not entitled to and should not rely upon any of the covenants and agreements in the Standby Bond Purchase Agreement.

### **Events of Default**

Each of the following events constitute an "Event of Default" under the Standby Bond Purchase Agreement:

(a) any representation or warranty made by the Borrower under or in connection with (or incorporated by reference in) the Standby Bond Purchase Agreement or any of the Related Documents or in any certificate or statement delivered thereunder shall prove to be untrue in any material respect on the date as of which it was made or deemed to have been made; or

(b) nonpayment (i) by the Guarantor pursuant to the Guaranty in whole or in part of any amounts with respect to the principal of or interest or premium, if any, on the Bonds (including Bank Bonds), when due, (ii) by the Borrower (or by the Guarantor pursuant to the Guaranty) of certain amounts payable under the Standby Bond Purchase Agreement (other than as described in (i) above), or (iii) by the Borrower (or by the Guarantor pursuant to the Guaranty) of any amounts payable under the Standby Bond Purchase Agreement when due (other than as described in (i) and (ii) above) and such default in payment shall continue for five Business Days;

(c) the breach by the Borrower of any of the other terms or provisions of (or incorporated by reference in) the Standby Bond Purchase Agreement (other than as set forth in (a) or (b) above) which are not remedied within 15 days after written notice thereof shall have been received by the Borrower from the Administrative Agent or the Bank; provided, however, that if the breach is other than non-payment of monies and cannot be corrected within such 15-day cure period, the Bank shall not unreasonably withhold its consent to a one-time extension of such cure period for an additional 15-day period (commencing as of the last day of the initial 15-day cure period) so long as the Borrower shall have instituted corrective action and such corrective action shall be being diligently pursued; provided, further, however, that there shall be no cure period for a failure to observe or perform any covenant or agreement set forth in or contemplated by certain covenants contained in the Standby Bond Purchase Agreement, including, without limitation, certain financial covenants and certain limitations on additional indebtedness and permitted liens; or

(d) any material provision of the Guaranty relating to the obligation of the Guarantor to make principal or interest payments with respect to the Bonds (including Bank Bonds), or the security therefor shall at any time for any reason cease to be valid and binding on the Guarantor, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the Guarantor or by any Governmental Authority having jurisdiction, or any Governmental Authority having jurisdiction shall find or rule by reason of a final, non-appealable judgment that any material provision of the Guaranty relating to the obligation of the Guarantor to make principal or interest payments with respect to the

Bonds (including Bank Bonds) or the security therefore is not valid or binding on the Guarantor, or the Guarantor shall deny that it has any or further liability or obligation under any such document; or

(e) the occurrence of any “event of default” as defined in the Indenture or any “event of default” which is not cured within any applicable cure period under any of the Related Documents and which, if not cured, would give rise to remedies available thereunder (regardless of any waiver thereof by any Person other than the Bank); or

(f) (i) the Guarantor 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 debtors, 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 Guarantor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (x) results in an order for such relief or in the appointment of a receiver or similar official or (y) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against the Guarantor, 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 an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) the Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Guarantor shall generally not, or shall be unable to, or so admit in writing its inability to, pay its debts; or

(g) (i) the Guarantor shall default in any payment of principal of or interest or any premium on any Indebtedness which is on a parity with, or senior to, the Bonds (the “Guarantor Parity Debt”) and such default shall continue beyond the expiration of the applicable grace period, if any, or (ii) the Guarantor shall fail to perform any other agreement, term or condition contained in any agreement, mortgage or other instrument under which any such obligation is created or secured, which enables (or, with the giving of notice or lapse of time, or both would enable) the holder of Guarantor Parity Debt or any Person acting on such holder’s behalf to accelerate the maturity thereof; or

(h) a final judgment or order for the payment of money in an amount in excess of \$10,000,000 shall have been rendered against the Guarantor and such judgment or order shall not have been satisfied, stayed or bonded pending appeal within a period of 60 days from the date on which it was first so rendered; or

(i) there shall have been (i) rendered a determination that interest on any of the Bonds is includable in the gross income of the owners thereof for federal income tax purposes, as a result of the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service, whether or not such decree, judgment or action is appealable or deemed to be final under applicable procedural law, or (ii) delivered to the Administrative Agent, the Bank, the Borrower, the Guarantor, the Authority and the Trustee an opinion of nationally recognized bond counsel selected by the Administrative Agent and the Bank and reasonably acceptable to the Authority, the Borrower and the Trustee, to the effect that the interest borne by the Bonds is includable in the gross income of the recipients thereof generally for federal income tax purposes; or

(j) the occurrence of any “Reportable Event,” as defined in ERISA, which is determined to constitute grounds for termination by the PBGC of any Plan maintained by or on behalf of the Borrower

or any ERISA Affiliate thereof or for the appointment by the appropriate United States District Court of a trustee to administer such Plan and such reportable event is not corrected and such determination is not revoked within 30 days after notice thereof has been given to the plan administrator or the Borrower or any ERISA Affiliate thereof, or the institution of proceedings by the PBGC to terminate any such Plan or to appoint a trustee to administer such Plan; or the appointment of a trustee by the appropriate United States District Court to administer any such Plan; or the Borrower or any ERISA Affiliate thereof as employer under a Multiemployer Plan shall have made a complete or partial withdrawal from such Multiemployer Plan and the plan sponsor of such Multiemployer Plan shall have notified such withdrawing employer that such employer has incurred a withdrawal liability in an annual amount exceeding \$5,000,000; or

(k) both S&P and Fitch shall have (i) withdrawn their respective ratings of the Bonds or of any Guarantor Parity Debt for credit-related reasons, (ii) suspended their respective ratings of the Guarantor's long-term unsecured indebtedness or of any Guarantor Parity Debt for credit-related reasons, or (iii) lowered their respective ratings of the Bonds or of any Guarantor Parity Debt to below "BBB-" and "BBB-" (or to the equivalent rating then in effect with respect to S&P and/or Fitch), respectively; or

(l) the Guarantor shall have failed to deposit sufficient funds with the Trustee one Business Day in advance of an Interest Payment Date or principal payment date with respect to regularly scheduled interest, principal or sinking fund (if any) payments on the Bonds (including Bank Bonds) following notice to the Guarantor from the Trustee that the Borrower has not deposited sufficient funds with the Trustee prior to such date; or

(m) any pledge or security interest created by the Indenture or the Standby Bond Purchase Agreement to secure any amount due under any Bonds or any Parity Debt or the Standby Bond Purchase Agreement shall fail to be fully enforceable with the priority required under the Standby Bond Purchase Agreement or the Indenture, as the case may be, by reason of a final, non-appealable judgment of a court of competent jurisdiction; or

(n) any material provision of the Standby Bond Purchase Agreement or any Related Document shall at any time for any reason cease to be valid and binding on the Borrower, to the extent a party thereto, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the Borrower, to the extent a party thereto, or by any Governmental Authority having jurisdiction, or any Governmental Authority having jurisdiction shall find or rule by reason of a final, non-appealable judgment that any material provision of the Standby Bond Purchase Agreement or any Related Document is not valid or binding on the Borrower, to the extent a party thereto, or the Borrower, to the extent a party thereto, shall deny that it has any or further liability or obligation under any such document; or

(o) 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 debtors, 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 which (x) results in an order for such relief or in the appointment of a receiver or similar official or (y) remains undismissed, undischarged or unbonded for a period of 60 days; 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 an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) the Borrower shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Borrower shall generally not, or shall be unable to, or so admit in writing its inability to, pay its debts; or

(p) (i) the Borrower shall default in any payment of principal of or interest or any premium on any Indebtedness which is on a parity with, or senior to, the Bonds (the “Parity Debt”) and such default shall continue beyond the expiration of the applicable grace period, if any, or the Borrower shall fail to perform any other agreement, term or condition contained in any agreement, mortgage or other instrument under which any such obligation is created or secured, that results in the declaring due and payable of Parity Debt or causes Parity Debt to become due and payable or (ii) the Borrower shall fail to perform any other agreement, term or condition contained in any agreement, mortgage or other instrument under which any such obligation is created or secured, which enables (or, with the giving of notice or lapse of time, or both would enable) the holder of Parity Debt or any Person acting on such holder’s behalf to accelerate the maturity thereof; or

(q) a final judgment or order for the payment of money in an amount in excess of \$10,000,000 shall have been rendered against the Borrower and such judgment or order shall not have been satisfied, stayed or bonded pending appeal within a period of 60 days from the date on which it was first so rendered.

## **Remedies**

Following the occurrence of any of the above referenced Events of Default under the Standby Bond Purchase Agreement, the following remedies shall be available to the Bank:

(i) In the case of an Event of Default described in (b)(i), (d), (f), (g)(i), (h), (k) or (l) above (each an “Automatic Termination Event”), the Available Commitment and the obligation of the Bank to purchase Bonds shall immediately terminate without prior notice or demand, and thereafter the Bank shall be under no obligation to purchase Bonds. Promptly after the Bank receives notice or otherwise becomes aware of the occurrence of an Automatic Termination Event, the Bank shall give written notice of the same to the Trustee, the Borrower and the Remarketing Agent; provided, that the Bank shall incur no liability or responsibility whatsoever by reason of its failure to receive or give such notice and such failure shall in no way affect the termination of the Bank’s Available Commitment and of its obligation to purchase Bonds pursuant to the Standby Bond Purchase Agreement.

(ii) In the case of an Event of Default other than as set forth in (i) hereof, the Bank may terminate the Available Commitment by giving written notice (a “Notice of Termination”) to the Trustee, the Borrower and the Remarketing Agent, specifying the date on which the Available Commitment shall terminate (the “Termination Date”), which shall be not less than 20 days from the date of receipt of such notice by the Trustee, and on and after the Termination Date the Bank shall be under no further obligation to purchase Bonds under the Standby Bond Purchase Agreement.

(iii) Upon the occurrence and during the continuance of a Potential Default (defined as the occurrence of any event which, with the passage of time, the giving of notice, or both, would become an Event of Default) described in (f)(ii) or (f)(iii) above (each a “Suspension Event”), the obligation of the Bank under the Standby Bond Purchase Agreement to purchase Bonds shall be immediately and automatically suspended, without notice, and the Bank shall be under no further obligation thereunder to purchase Bonds unless and until the obligation of the Bank to purchase Bonds is reinstated as described below. Promptly upon obtaining knowledge of any such Potential Default (whether from the Borrower,

the Guarantor, the Trustee or otherwise), the Bank shall give the Borrower and the Trustee written notice of such Potential Default; provided that the Bank shall not incur any liability or responsibility whatsoever by reason of its failure to give such notice and such failure shall in no way affect the suspension of the Available Commitment and of the obligations of the Bank to purchase Bonds pursuant to the Standby Bond Purchase Agreement. The Borrower shall promptly direct the Trustee in writing to notify all owners of the Bonds of any suspension of the obligation of the Bank to purchase Bonds as a result of the occurrence of such Potential Default. If at any time prior to the earlier of (i) the Stated Expiration Date and (ii) the date that is three years following the suspension of the obligation of the Bank to purchase Bonds, (x) the Potential Default which gave rise to such suspension is cured or ceased to be continuing and (y) the obligation of the Bank to purchase Bonds under the Standby Bond Purchase Agreement has not otherwise terminated, then, upon written notice from the Trustee to the Bank to such effect, the obligation of the Bank to purchase Bonds under the Standby Bond Purchase Agreement shall be automatically reinstated. If the Potential Default which gave rise to the suspension of the obligations of the Bank to purchase Bonds under the Standby Bond Purchase Agreement has not been cured or ceases to be continuing prior to the three-year anniversary of such occurrence and the obligation of the Bank to purchase Bonds under the Standby Bond Purchase Agreement has not otherwise terminated, then the obligation of the Bank to purchase Bonds shall be terminated upon written notice from the Bank to the Borrower and the Trustee and thereafter the Bank shall have no further obligation to purchase any Bonds; provided that the Bank shall not incur any liability or responsibility whatsoever by reason of its failure to give such notice and such failure shall in no way affect the termination of the Available Commitment and of the obligations of the Bank to purchase Bonds pursuant to the Standby Bond Purchase Agreement.

(d) In addition to the rights and remedies set forth in (i), (ii) and (iii), in the case of any Event of Default specified above, upon the election of the Bank, the Bank shall have all the rights and remedies available to it under the Standby Bond Purchase Agreement, the Related Documents, or otherwise pursuant to law or equity.

### **Extension of Standby Bond Purchase Agreement**

The Stated Expiration Date of the Standby Bond Purchase Agreement may be extended from time to time, at the request of the Borrower made no earlier than 364 days, and not later than 180 days, prior to the Stated Expiration Date, by agreement in writing between the Borrower and the Bank (the period from the preceding Stated Expiration Date to such new Stated Expiration Date being herein sometimes called the “Extended Bank Purchase Period”). The Extended Bank Purchase Period may itself be extended in a like manner for additional periods. The Bank has no obligation to agree to any Extended Bank Purchase Period. If the Bank, in its sole and absolute discretion, determines to extend any such period, the Bank shall give written notice of the election to extend to the Trustee, the Authority, the Borrower and the Remarketing Agent at least 60 days following receipt by the Bank of the Borrower’s request for such extension of the Stated Expiration Date. Notwithstanding anything in this paragraph to the contrary, if the Bank fails to give notice of an election to extend, the Standby Bond Purchase Agreement shall expire at the end of the Bank Purchase Period or Extended Bank Purchase Period then in effect.

### **THE BANK**

The following information has been obtained from Bank of America, N.A. The Authority, the Underwriter and the Borrower make no representations as to the accuracy or completeness of such information.

The Bank is a national banking association organized under the laws of the United States, with its principal executive offices located in Charlotte, North Carolina. The Bank is a wholly-owned indirect subsidiary of Bank of America Corporation (the “Corporation”) and is engaged in a general consumer

banking, commercial banking and trust business, offering a wide range of commercial, corporate, international, financial market, retail and fiduciary banking services. As of June 30, 2007, the Bank had consolidated assets of \$1,252 billion, consolidated deposits of \$776 billion and stockholder's equity of \$109 billion based on regulatory accounting principles.

The Corporation is a bank holding company and a financial holding company, with its principal executive offices located in Charlotte, North Carolina. Additional information regarding the Corporation is set forth in its Annual Report on Form 10-K for the fiscal year ended December 31, 2006, together with any subsequent documents it filed with the Securities and Exchange Commission (the "SEC") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Additional information regarding the foregoing is available from the filings made by the Corporation with the SEC, which filings can be inspected and copied at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549, United States, at prescribed rates. In addition, the SEC maintains a website at <http://www.sec.gov>, which contains reports, proxy statements and other information regarding registrants that file such information electronically with the SEC.

The Standby Bond Purchase Agreement has been issued by the Bank. Moody's Investors Service, Inc. ("Moody's") currently rates the Bank's long-term debt as "Aaa" and short-term debt as "P-1." The outlook is stable. Standard & Poor's rates the Bank's long-term debt as "AA+" and its short-term debt as "A-1+." The outlook is stable. Fitch Ratings, Inc. ("Fitch") rates long-term debt of the Bank as "AA" and short-term debt as "F1+." The outlook is stable. Further information with respect to such ratings may be obtained from Moody's, Standard & Poor's and Fitch, respectively. No assurances can be given that the current ratings of the Bank's instruments will be maintained.

The Bank will provide copies of the most recent Bank of America Corporation Annual Report on Form 10-K, any subsequent reports on Form 10-Q, and any required reports on Form 8-K (in each case as filed with the Commission pursuant to the Exchange Act), and the publicly available portions of the most recent quarterly Call Report of the Bank delivered to the Comptroller of the Currency, without charge, to each person to whom this document is delivered, on the written request of such person. Written requests should be directed to:

Bank of America Corporate Communications  
100 North Tryon Street, 18th Floor  
Charlotte, North Carolina 28255  
Attention: Corporate Communications

THE TENDER PRICE OF THE BONDS THAT ARE TENDERED FOR PURCHASE AND NOT REMARKETED WILL, SUBJECT TO CERTAIN TERMS AND CONDITIONS, BE MADE PURSUANT TO THE STANDBY BOND PURCHASE AGREEMENT RELATING TO THE BONDS. ALTHOUGH THE STANDBY BOND PURCHASE AGREEMENT IS A BINDING OBLIGATION OF THE BANK, THE BONDS ARE NOT DEPOSITS OR OBLIGATIONS OF THE CORPORATION OR ANY OF ITS AFFILIATED BANKS AND ARE NOT GUARANTEED BY ANY OF THESE ENTITIES. THE BONDS ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND ARE SUBJECT TO CERTAIN INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED.

The delivery hereof shall not create any implication that there has been no change in the affairs of the Corporation or the Bank since the date hereof, or that the information contained or referred to in this section is correct as of any time subsequent to its date.

## **BOOK-ENTRY ONLY SYSTEM**

Information concerning The Depository Trust Company (“DTC”) and the Book-Entry System has been obtained from DTC and is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the Authority, the Underwriter, the Trustee, the Borrower or the Guarantor.

### **Bonds in Book-Entry Form**

Beneficial ownership in the Bonds will be available to Beneficial Owners (as described below) only by or through DTC Participants via a book-entry system (the “Book-Entry System”) maintained by DTC. If the Bonds are taken out of the Book-Entry System and delivered to owners in physical form, as contemplated hereinafter under “Discontinuance of DTC Services,” the following discussion will not apply.

### **DTC and Its Participants**

The Depository Trust Company (“DTC”), New York, New York, 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 each maturity of the Bonds, each in the aggregate principal amount of each such maturity, 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 2.2 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation (NSCC, FICC, 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” and, together with Direct Participants, the “Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

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

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

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 such other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 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 Authority or Agent on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Agent, or Authority, 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 Authority or Agent, 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 Trustee, 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 Trustee. 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 Trustee's DTC account.

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

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

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Authority believes to be reliable, but the Authority takes no responsibility for the accuracy thereof.

#### **Use of Certain Terms in Other Sections of the Official Statement**

In reviewing this Official Statement it should be understood that while the Bonds are in the Book-Entry System, reference in other sections of this Official Statement to owners of such Bonds should be read to include any person for whom a Participant acquires an interest in Bonds, but (i) all rights of ownership, as described herein, must be exercised through DTC and the Book-Entry System and (ii) notices that are to be given to registered owners by the Trustee will be given only to DTC. DTC is required to forward (or cause to be forwarded) the notices to the Participants by its usual procedures so that such Participants may forward (or cause to be forwarded) such notices to the Beneficial Owners.

#### **BONDHOLDERS' RISKS**

The purchase of the Bonds involves investment risks that are discussed throughout this Official Statement. Prospective purchasers of the Bonds should evaluate all of the information presented in this Official Statement. The risks summarized in this section focus primarily on the general risks associated with hospital or health system operations, whereas APPENDIX A describes the Borrower and the Guarantor specifically. The entire Official Statement should be read together.

The following is a discussion of certain risks that could affect payments to be made with respect to the Bonds. Such discussion is not exhaustive, should be read in conjunction with all other parts of this Official Statement and should not be considered as a complete description of all risks that could affect such payments. Prospective purchasers of the Bonds should analyze carefully the information contained in this Official Statement, including the Appendices thereto, and additional information in the form of the complete documents summarized herein, copies of which are available as described in this Official Statement.

#### **General**

Except as noted under "SECURITY AND SOURCE OF PAYMENT FOR THE BONDS," the Bonds are payable solely from and secured by Loan Repayments made pursuant to the Loan Agreement. No representation or assurance can be made that revenues will be realized by the Borrower or the

Guarantor in amounts sufficient to make the payments under the Loan Agreement or on such Note and, thus, to pay principal of, redemption premium and interest on the Bonds.

The receipt of future revenues by the Borrower will be subject to, among other factors, federal and state policies affecting the senior housing and health care industries (including changes in reimbursement rates and policies), increased competition from other senior housing and health care providers, the capability of the management of the Borrower and future economic and other conditions that are impossible to predict. The extent of the ability of the Borrower to generate future revenues has a direct effect upon the payment of, principal of, premium, if any, and interest on the Bonds. Neither the Underwriter nor the Authority has made any independent investigation of the extent to which any such factors may have an adverse effect on the revenues of the Borrower.

### **Significant Risk Areas Summarized**

Certain of the primary risks associated with the operations of the Borrower are briefly summarized in general terms below, and are explained in greater detail in subsequent sections.

Nonprofit Healthcare Environment. As nonprofit tax-exempt organizations, the Borrower and the Guarantor are subject to federal, state and local laws, regulations, rulings and court decisions relating to its organization and operation, including its operation for charitable purposes. There can often be a tension between the rules designed to regulate a wide range of charitable organizations and the day-to-day operations of a complex organization. As a result, an increasing number of the operations or practices of other healthcare providers have been challenged or questioned to determine if they are consistent with the regulatory requirements for nonprofit tax-exempt organizations.

Areas which have come under examination have included pricing practices, billing and collection practices, charitable and community care policies and procedures, executive compensation, exemption of property from real property taxation, private use of tax-exempt bond financed assets and others. These challenges and questions have come from a variety of sources, including the California Attorney General, the Internal Revenue Service, labor unions, Congress, state legislatures and state attorneys general and patients; these issues have been raised in a variety of forums, including hearings, audits and litigation. The challenges and examinations, and any resulting legislation, regulations, judgments or penalties, could have a material adverse effect on the Borrower or the Guarantor.

Construction Risks. Construction of certain portions of the Facilities is subject to the usual risks associated with construction projects, including, but not limited to, delays in issuance of required building permits or other necessary approvals or permits, strikes, shortages of materials, including, without limitation, shortages resulting from repair of damage by recent hurricanes and adverse weather conditions. The foregoing risks could result in delaying occupancy of those portions of the Project and thus the revenue flow therefrom. Management of the Borrower anticipates that the building permits will be obtained in due course. It is anticipated that the proceeds from the sale of the Bonds, together with anticipated investment earnings thereon and certain funds of the Borrower, will be sufficient to complete the construction and equipping of those portions of the Project based upon the fixed price obtained from the contractors for those portions of the Project. However, cost overruns for projects of this magnitude may occur due to change orders and other factors. In addition, the date of substantial completion may be extended by reason of changes authorized by the Borrower, delays due to acts or neglect of the Borrower or by independent contractors employed by the Borrower or by labor disputes, fire, unusual delay in transportation, adverse conditions not reasonably anticipated, unavoidable casualties or any causes beyond the control of the contractors. As a result of natural disasters, including recent hurricanes, costs of construction materials may significantly increase which may affect the cost of those portions of the Project regardless of the guaranteed maximum price contract entered into by the Borrower. Cost overruns

could also result in the Borrower not having sufficient moneys to complete construction of those portions of the Project, thereby materially affecting the receipt of revenues needed to pay the Bonds.

Interest Rate Swaps and Other Hedge Risk. Any interest rate swap or other hedge agreement to which the Borrower is a party, including the Swap Agreement, may, at any time, have a negative value to the Borrower. If either a swap or other hedge counterparty or the Borrower terminates such an agreement when the agreement has a negative value to the Borrower, the Borrower would generally be obligated to make a termination payment to the counterparty in the amount of such negative value, and such payment could be substantial and potentially materially adverse to the Borrower's financial condition. A counterparty may generally only terminate such an agreement upon the occurrence of defined termination events such as nonpayment by the Borrower and the Guarantor, or in the event rating agencies withdraw or downgrade the ratings of the Borrower and the Guarantor below specified levels. See "PLAN OF FINANCING – Swap Agreement" herein.

Risks Related to Variable Rate Obligations. The Bonds are variable rate obligations. The interest rates vary on a periodic basis and may rise. The Borrower could convert the variable rate to a fixed interest rate, but this protection against rising interest rates is limited because the Borrower would be required to continue to pay interest at the variable rate until it is permitted to convert the obligations to a fixed rate pursuant to the terms of the applicable transaction documents.

General Economic Conditions; Bad Debt and Indigent Care. Long-term care facilities are economically influenced by the environment in which they are located. To the extent that state or county governments are unable to provide a safety net, pressure is applied to nonprofit institutions to increase free services. Economic downturns and lower funding of the Medicaid program may increase the number of patients treated by healthcare facilities who are uninsured or otherwise unable to pay for some or all of their care. These conditions may give rise to increased bad debt and higher indigent care utilization. At the same time, non-operating revenue from investments may be reduced or eliminated. The Borrower and the Guarantor do not believe that these factors would have material adverse impact on the Borrower or the Guarantor.

Pension and Benefit Funds. The Borrower may incur significant expenses to fund pension and benefit plans for employees and former employees, and to fund required workers' compensation benefits. Funding obligations in some cases may be erratic or unanticipated and may require significant commitments of available cash needed for other purposes. For more information regarding the Guarantor's pension fund, in which employees of the Borrower participate, see APPENDIX A under the heading "MISCELLANEOUS – Pension Plan of Guarantor."

Facility Damage. The facilities of the Borrower and the Guarantor are highly dependent on the condition and functionality of their physical facilities. Damage from earthquake, other natural causes, fire, deliberate acts of destruction, or various facilities system failures may have a material adverse impact on operations and financial status.

### **Enforceability of the Standby Bond Purchase Agreement**

Section 105 of the Bankruptcy Code empowers a bankruptcy court to issue such orders as are necessary or appropriate to carry out the provisions of the Bankruptcy Code. Court decisions discussing the enforceability of letters of credit indicate that it is possible that a bankruptcy court acting pursuant to Section 105 or other equitable powers under the Bankruptcy Code could enjoin a drawing by the Trustee under the Standby Bond Purchase Agreement or the payment by the Trustee to the Bondholders of amounts drawn under the Standby Bond Purchase Agreement under various circumstances, including the bankruptcy or insolvency of, or a similar event with respect to, the Borrower.

## **Bankruptcy**

In the event of bankruptcy of the Borrower or the Guarantor, the rights and remedies of the Bondholders are subject to various provisions of the Federal Bankruptcy Code. If the Borrower or the Guarantor were to file a petition in bankruptcy, payments made by the Borrower during the 90 day (or perhaps one-year) period immediately preceding the filing of such petition may be voidable as preferential transfers to the extent such payments allow the recipients thereof to receive more than they would have received in the event of the Borrower's or the Guarantor's liquidation. Security interests and other liens granted to a Trustee and perfected during such preference period also may be voided as preferential transfers to the extent such security interest or other lien secures obligations that arose prior to the date of such perfection. Such a bankruptcy filing would operate as an automatic stay of the commencement or continuation of any judicial or other proceeding against the Borrower or the Guarantor and their respective property and as an automatic stay of any act or proceeding to enforce a lien upon or to otherwise exercise control over their respective property, as well as various other actions to enforce, maintain or enhance the rights of the Trustee. If the bankruptcy court so ordered, the property of the Borrower or the Guarantor, including accounts receivable and proceeds thereof, could be used for the financial rehabilitation of the Borrower or the Guarantor, as applicable, despite any security interest of the Trustee therein. The rights of the Trustee to enforce its security interests and other liens could be delayed during the pendency of the rehabilitation proceeding.

The Borrower or the Guarantor could file a plan for the adjustment of its debts in any such proceeding, which plan could include provisions modifying or altering the rights of creditors generally or any class of them, secured or unsecured. The plan, when confirmed by a court, binds all creditors who had notice or knowledge of the plan and, with certain exceptions, discharges all claims against the debtor to the extent provided for in the plan. No plan may be confirmed unless certain conditions are met, among which are conditions that the plan be feasible and that it shall have been accepted by each class of claims impaired thereunder. Each class of claims has accepted the plan if at least two-thirds in dollar amount and more than one-half in number of the class cast votes in its favor. Even if the plan is not so accepted, it may be confirmed if the court finds that the plan is fair and equitable with respect to each class of non-accepting creditors impaired thereunder and does not discriminate unfairly.

In the event of bankruptcy of the Borrower, there is no assurance that certain covenants, including tax covenants, contained in the Loan Agreement and certain other documents would survive. Accordingly, a bankruptcy trustee could take action that would adversely affect the exclusion of interest on the Bonds from gross income of the Bondholders for federal income tax purposes. In the event of bankruptcy of the Guarantor, there is no assurance that certain covenants contained in the Guaranty and certain other documents would survive.

## **Sale of Personal Residences**

It is anticipated that a number of prospective residents of the Borrower's facilities will be required to sell their current homes to pay the entrance fee prior to occupancy or to meet other financial obligations under residency agreements. If prospective residents encounter difficulties in selling their current homes due to local or national economic conditions affecting the sale of residential real estate, such prospective residents may not have sufficient funds to pay the entrance fee or to meet other financial obligations under their residency agreements, thereby causing a delay in scheduled occupancy of the Borrower's facilities or the remarketing of vacated units, either of which could have an adverse impact on the revenues of the Borrower.

## **Nonprofit Healthcare Environment**

Assisted living facilities have been the subject of adverse attention from governmental regulatory agencies, consumer attorneys, and the press for alleged substandard care resulting in injuries to residents. In certain circumstances, consumer attorneys will use the laws designed to prevent elder abuse as a means of obtaining large settlements or judgments from facilities whose residents have suffered injury. This has led to periodic discussions at both the federal and state levels regarding possible reform legislation.

Congress and state legislatures can be expected to continue to consider alternative payment methodologies, and to try to deal with perceptions about the quality of care at retirement facilities. Changes in the law, new interpretations of existing laws, and changes in payment methodology may have a dramatic effect on the definition of permissible or impermissible activities, the relative costs associated with doing business, and the amount of reimbursement by both government and other third-party payors. These changes may be applied retroactively. The ultimate timing or effect of legislative efforts cannot be predicted and may impact the Borrower or the Guarantor. Any future action by the federal government with respect to Medicare or Medicaid, or by the states with respect to Medicaid (including California's Medi-Cal program, described below), which limits or reduces the total amount of funds available for such programs, limits or reduces the amount of reimbursement for items and services rendered, would likely have a very limited effect upon the revenues of the Borrower or the Guarantor.

## **Challenges to Real Property Tax Exemptions**

Recently, the real property tax exemptions afforded to certain nonprofit healthcare providers by state and local taxing authorities have been challenged on the grounds that the healthcare providers were not engaged in charitable activities. These challenges have been based on a variety of grounds, including allegations of aggressive billing and collection practices and excessive financial margins. While the Borrower is not aware of any current challenge to the tax exemption afforded to any material real property of the Borrower or the Guarantor, there can be no assurance that these types of challenges will not occur in the future.

The foregoing are some examples of the challenges and examinations facing nonprofit healthcare organizations. They are indicative of a greater scrutiny of the billing, collection and other business practices of these organizations, and may indicate an increasingly more difficult operating environment for healthcare organizations, including the Borrower. The challenges and examinations, and any resulting legislation, regulations, judgments, or penalties, could have a future material adverse effect on the Borrower.

## **CCRC Requirements of the State**

The Borrower's Facilities will be operated as a continuing care retirement community (a "CCRC") consisting of a residential facility licensed as a Residential Care Facility for the Elderly ("RCFE") by the California Department of Social Services ("DSS"). The Borrower has received authorization from DSS to accept deposits from prospective CCRC residents and also authorization from DSS to begin commencement of construction. The Borrower has filed an application for a Certificate of Authority to enter into continuing care contracts, which is expected to issue in due course at the completion of the Project.

Management of the Borrower intends to satisfy the debt service reserve requirement under California law applicable to CCRC's that it maintain a "debt service reserve" portion of its required "liquid reserve" equal to at least the amount of principal, interest and credit enhancement premiums paid by the Borrower during the immediately preceding fiscal year. In addition, the Borrower must maintain

75 days of net operating expenses. Pursuant to California law, other than the general security pledge of assets securing the Bonds and any future parity debt, the Borrower may not subject its “liquid reserve” to any liens, charges or creditor’ claims or otherwise pledge it as collateral or encumber it. If the such reserves were drawn upon to pay debt service, the Borrower would be required to use other funds to satisfy this “liquid reserves” requirement.

Annual licensure and on-site review of an RCFE is required by DSS. DSS has the ability to deny licensing and the required permits to the Borrower if either of them are not satisfied with the Borrower’s compliance with the requirements a provider must meet to operate as an assisted living facility and/or a RCFE, respectively. In addition, DSS has broad remedial powers to intervene in the operations of a provider who fails to comply with the applicable regulatory requirements once the provider is licensed and in operation. Failure to maintain required reserves or to comply with regulatory requirements may result in the suspension or revocation of a CCRC’s certificate of authority. In the event that a CCRC becomes insolvent or is unable to perform its contractual obligations, DSS is authorized to petition for the appointment of a court-appointed administrator and may record liens on behalf of residents. Any such lien would have the force and effect of a judgment lien with priority established as of the date of its recordation.

If the Borrower fails to meet the above-described requirements, it could become unable to operate as described herein and, consequently, be unable to meet debt service requirements on the Bonds.

### **HIPAA Privacy and Security Requirements**

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) was enacted on August 21, 1996. The HIPAA accountability provisions add two prohibited practices, the commission of which may lead to civil monetary penalties: (1) the practice or pattern of presenting a claim for an item or service on a reimbursement code that the person knows or should know will result in greater payment than appropriate, i.e., upcoding, and (2) the practice of submitting claims for payment for medically unnecessary services. Violation of such prohibited practices could amount to civil monetary penalties of up to \$10,000 for each item or service involved. Management of the Borrower does not expect that the prohibited practices provisions of HIPAA will affect the Borrower in a material respect.

HIPAA also includes administrative simplification provisions intended to facilitate the processing of health care payments by requiring the use of standardized formats for the electronic transmission of health care information. A final rule governing the Standards for Electronic Transactions (“Transaction Rule”) was issued in August 2000 with an extended compliance date of October 2002. The Borrower believes it is in substantial compliance with these rules, but has exposure to risk of compliance exceptions.

Congress recognized that standardization of information formats and greater use of electronic technology presents additional privacy and security risks due to the creation of expanded databases of personally identifiable health care information and the ease with which vast amounts of such data can be transmitted. Therefore, HIPAA requires the establishment of distinct privacy and security protections for individually identifiable health information maintained by health care providers, health plans and health care clearinghouses. The HIPAA Privacy Rule became effective on April 14, 2003. The Privacy Rule limits the use and disclosure of individually identifiable health information; gives patients new rights to access their medical records and to know who else has accessed them; restricts certain disclosures of individually identifiable health information to the minimum needed for the intended purpose; and establishes new requirements for access to records by researchers and others. The Privacy Rule establishes specific federal penalties if a patient’s right to privacy is violated, including civil monetary penalties of \$100 per violation up to \$25,000 per person, per year, per standard. In addition, criminal

penalties are provided in HIPAA for certain types of violations of the statute that are done knowingly: up to \$50,000 and/or one year in prison for obtaining or disclosing protected health information inappropriately; up to \$100,000 and/or five years in prison for inappropriately obtaining or disclosing protected health information under “false pretenses”; and up to \$250,000 and/or 10 years in prison for obtaining protected health information with the intent to sell, transfer or use it for commercial advantage, personal gain or malicious harm.

The HIPAA Security Rule became effective on April 20, 2005. The Security Rule requires health care providers, health plans, and the health care clearinghouses that engage in electronic transactions as part of the payment process to establish certain safeguards to protect the security and integrity of electronic patient health information that they hold or transmit. The safeguards involve the creation of administrative policies and procedures to address such matters as appointing a security official, training workforce in security procedures, and creating contingency plans for responding to disasters like fire or vandalism; of physical safeguards covering matters like access to the facility, workstation security, and disposal of hardware or disk drives; and technical safeguards covering matters like tracking access to electronic information, authenticating persons seeking access, and encrypting electronic information during transmission. The Borrower is exposed to ongoing costs associated with establishing and maintaining compliance with HIPAA.

### **Licensing, Surveys, Investigations and Audits**

Health facilities are subject to numerous legal, regulatory, professional and private licensing, certification and accreditation requirements. These include, but are not limited to, requirements of state licensing agencies and The Joint Commission. Renewal and continuation of certain of these licenses, certifications and accreditations are based on inspections or other reviews generally conducted in the normal course of business of health facilities. Loss of, or limitations imposed on, healthcare facility licenses could reduce utilization or revenues, or a healthcare facility’s ability to operate all or a portion of its facilities.

### **Liability Insurance Crisis**

The senior care and housing industry, and in particular the nursing industry, is facing a crisis in which professional and general liability insurance is becoming increasingly expensive and at times unavailable. Premium increases and ranges of coverage have been very volatile. While premiums have stabilized during the past two years, insurance and legal professionals anticipate ongoing volatility in premiums. This estimation is based on current litigation trends and an absence of meaningful tort reform.

The insurance crisis has been attributed to a number of factors, including, most notably, an epidemic increase in litigation against facilities. In many instances, plaintiffs in elder abuse actions have access to various enhanced remedies, such as attorneys’ fees, post-death pain and suffering, and punitive damages in certain circumstances. As a result, simple negligence cases are increasingly re-characterized as abuse cases. Congressional reports on abuse and increased enforcement activities by State regulatory agencies have also contributed to this phenomenon. Liability insurance does not provide coverage for judgments for punitive damages where prohibited by law, or for the payment of claims of intentional acts.

Workers’ compensation insurance is costly. The Borrower’s premiums are dependent on the Borrower’s loss experience as well as general claims trends in the industry.

## **Nature of the Income of the Elderly**

A large percentage of the monthly income of the residents of the Borrower's facilities will be fixed income derived from pensions and Social Security. In addition, some residents will be liquidating assets in order to pay the monthly and other fees. If, due to inflation or otherwise, substantial increases in fees are required to cover increases in operating costs, wages, benefits and other expenses, many residents may have difficulty paying or may be unable to pay such increased fees. The Borrower's inability to collect from residents the full amount of their payment obligations may jeopardize the ability of the Borrower to pay amounts due under the Loan Agreement.

## **Investment Income**

A significant portion of the Guarantor's revenue is derived from income earned on investments. While the Guarantor believes that those investments are being managed prudently and has adopted policies designed to ensure the prudent management of those investments in the future, there can be no assurance that unforeseen developments in the securities markets will not have an adverse effect on the market value of those investments and the income generated from them.

## **Rate Setting**

Future legislation granting full or partial rate fixing authority to a State or federal agency could prevent the Borrower from increasing rates adequately to cover potential increases in its operating costs or other expenses. In addition, proposed legislation, if enacted, would limit the frequency of rate increases imposed by assisted living facilities and the ability to assess separate charges for items and services not authorized in the initial admission agreement.

## **Environmental Laws and Regulations**

There are potential risks relating to liabilities for environmental hazards with respect to the ownership or long-term leasing of any real property. If hazardous substances are found to be located on property, owners of such property may be held liable for costs and other liabilities related to the removal of such substances, which costs and liabilities could exceed the value of a facility. A site assessment has been done on the site in connection with the issuance of the Bonds and has not identified any known material hazardous substances at the property.

At the present time, management of the Borrower is not aware of any pending or threatened claim, investigation or enforcement action regarding such environmental issues which, if determined adversely to the Borrower, would have material adverse consequences. In the event such enforcement actions were initiated, the Borrower could be liable for the costs of removing or otherwise treating pollutants or contaminants located at the Facilities. In addition, under certain environmental statutes, in the event an enforcement action was initiated, a lien could attach to the Facilities, which would adversely affect the Borrower's ability to generate revenues from the operation of the Facilities sufficient to meet the debt service requirements with respect to the Bonds and its obligations under the Loan Agreement.

## **Tax-Exempt Status and Other Tax Matters**

Maintenance of the Tax-Exempt Status of the Borrower. The tax-exempt status of the Bonds 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 large-scale technical operations and business activities, they often do not adequately address the myriad of operations and transactions entered into by a modern healthcare organization. Although traditional activities of healthcare providers, such as medical office building leases, have been the subject of interpretations by the IRS in the form of Private Letter Rulings, many activities or categories of activities have not been fully addressed in any official opinion, interpretation or policy of the IRS.

The IRS has periodically conducted audit and other enforcement activity regarding tax-exempt healthcare organizations. The IRS conducts special audits of large tax-exempt healthcare organizations with at least \$500 million in assets or \$1 billion in gross receipts. Such audits are conducted by teams of revenue agents, often take years to complete and require the expenditure of significant staff time by both the IRS and taxpayers. These audits examine a wide range of possible issues, including tax-exempt bond financing of partnerships and joint ventures, retirement plans and employee benefits, employment taxes, political contributions and other matters. The Borrower has not been the subject of such an audit, nor has it received any notice that such an audit is forthcoming.

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 such entity could be in jeopardy. Although the IRS has not frequently revoked the 501(c)(3) tax-exempt status of nonprofit healthcare 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 of other tax-exempt debt of the Borrower and defaults in covenants regarding the Bonds and other related tax-exempt debt and obligations 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 of the Borrower could have a future material adverse effect on the financial condition of the Borrower.

In some cases, the IRS has imposed substantial monetary penalties on tax-exempt healthcare facilities in lieu of revoking their tax-exempt status. In those cases, the IRS and exempt healthcare facilities entered into settlement agreements requiring the healthcare facility to make substantial payments to the IRS. Given the small size of the Borrower, the wide range of complex transactions entered into by the Borrower, and potential exemption risks, the Borrower could be at risk for incurring future monetary and other liabilities imposed by the IRS.

In lieu of revocation of exempt status, the IRS may impose penalty excise taxes on certain “excess benefit transactions” involving 501(c)(3) 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. These 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, pursuant to these “intermediate sanctions” rules.

State and Local Tax Exemption. Until recently, the State of California has not been as active as the IRS in scrutinizing the income tax exemption of healthcare organizations. In California it is possible that legislation may be proposed to strengthen the role of the California Franchise Tax Board and the Attorney General in supervising nonprofit health systems. It is likely that the loss by the Borrower of

federal tax exemption would also trigger a challenge to its state tax-exemption. Depending on the circumstances, such event could be material and adverse.

State, county and local taxing authorities undertake audits and reviews of the operations of tax-exempt healthcare providers with respect to their real property tax exemptions. In some cases, particularly where authorities are dissatisfied with the amount of services provided to indigents, the real property tax-exempt status of the healthcare providers has been questioned. The real property of the Guarantor that will be leased by the Borrower is currently treated as exempt from real property taxation. Although the real property tax exemption of the Guarantor with respect to its healthcare facilities has not, to the knowledge of management, been under challenge or investigation, an audit could lead to a challenge that could adversely affect the future real property tax exemption of the Guarantor.

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 future financial condition of the Borrower by requiring payment of income, local property or other taxes.

Maintenance of Tax-Exempt Status of Interest on the Bonds. The Code imposes a number of requirements that must be satisfied for interest on state and local obligations, such as the Bonds, to be excludable from gross income for federal income tax purposes. These requirements include limitations on the use of bond proceeds, limitations on the investment earnings of bond proceeds prior to expenditure, a requirement that certain investment earnings on bond proceeds be paid periodically to the United States Treasury, and a requirement that the Authority files an information report with the IRS. The Borrower has covenanted in the Loan Agreement that it will comply with such requirements. Future failure by the Borrower to comply with the requirements stated in the Code and related regulations, rulings and policies may result in the treatment of interest on the Bonds as taxable, retroactively to the date of issuance. The Authority has covenanted in the Indenture that it will not take any action or refrain from taking any action that would cause interest on the Bonds to be included in gross income for federal income tax purposes.

IRS officials have recently indicated that more resources will be invested in audits of tax-exempt bonds in the charitable organization sector. The Bonds may be, from time to time, subject to audits by the IRS. In addition, Bond Counsel will render an opinion with respect to the tax-exempt status of the Bonds, as described under the caption “TAX MATTERS.” The Borrower has not sought to obtain a private letter ruling from the IRS with respect to the Bonds, and the opinion of Bond Counsel is not binding on the IRS. There is no assurance that an IRS examination of the Bonds will not adversely affect the market value of the Bonds. See “TAX MATTERS” herein.

Limitations on Contractual and Other Arrangements Imposed by the Internal Revenue Code. The IRS scrutinizes a broad variety of contractual relationships commonly entered into by healthcare facilities and has issued a detailed audit guide suggesting that field agents scrutinize numerous activities of the healthcare facilities in an effort to determine whether any action should be taken with respect to limitations on or revocation of their tax-exempt status or assessment of additional tax. Any suspension, limitation, or revocation of the Borrower’s tax-exempt status or assessment of significant tax liability would have a materially adverse effect on the Borrower and might lead to loss of tax exemption of interest on the Bonds.

### **Amendments to Documents**

Certain amendments to the Documents may be made without the consent of the owners of the Bonds and other amendments may be made with the consent of the owners of a majority in an aggregate principal amount of all outstanding Certificates. Such amendments could affect the security for the

Bonds. Certain amendments may be made without the consent of the owners of the Bonds if the amendment does not materially adversely affect the interest of the owners of the Bonds. See “SUMMARY OF PRINCIPAL DOCUMENTS” in APPENDIX C hereto.

### **Future Legislation**

Legislative bodies have considered legislation concerning the charity care standards that nonprofit, charitable healthcare facilities must meet to maintain their federal income tax-exempt status under the Code and legislation mandating that nonprofit, charitable healthcare facilities have an open-door policy toward Medicare and Medicaid patients as well as offer, in a non-discriminatory manner, qualified charity care and community benefits. Excise tax penalties on nonprofit, charitable healthcare facilities that violate these charity care and community benefit requirements could be imposed or their tax-exempt status under the Code could be revoked. The scope and effect of legislation, if any, that may be enacted at the federal or state levels with respect to charity care of nonprofit healthcare facilities cannot be predicted. Any such legislation or similar legislation, if enacted, could have the effect of subjecting a portion of the income of the Borrower to federal or state income taxes or to other tax penalties and adversely affect the ability of the Borrower to generate net revenues sufficient to meet its obligations and to pay the debt service on the Bonds and its other obligations.

### **Medicare and Medicaid Programs**

Starting in October, 2007, the facilities operated by the Guarantor are certified as providers for Medicare and Medicaid services. As of October 31, 2007, the income the Guarantor had received from Medicare and Medicaid was negligible.

Medicare and Medicaid are the commonly used names for healthcare reimbursement or payment programs governed by certain provisions of the federal Social Security Act. Medicare is an exclusively federal program and Medicaid is jointly funded by the federal and state government. Medicare provides certain health care benefits to beneficiaries who are 65 years of age or older or disabled, or qualify for the End Stage Renal Disease Program. Medicaid is designed to pay providers for care given to the medically indigent, is funded by federal and state appropriations, and is administered by the individual states. Medical benefits are available under each participating state’s Medicaid program (termed Medi-Cal in California), within prescribed limits, to persons meeting certain minimum income or other eligibility requirements including children, the aged, the blind and/or disabled.

Health care providers have been and will be affected significantly by changes in federal health care laws and regulations, particularly those pertaining to Medicare and Medicaid. The purpose of much of the recent statutory and regulatory activity has been to reduce the rate of increase in health care costs, particularly costs paid under the Medicare and Medicaid programs. Diverse and complex mechanisms to limit the amount of money paid to health care providers under both the Medicare and Medicaid programs have been enacted, and have caused severe reductions in reimbursement from the Medicare program.

### **Other Risk Factors**

Nursing and Healthcare Professionals Shortage. Currently there is a shortage of qualified, available nurses and other healthcare professionals. Various studies have predicted that this shortage will become more acute over time and grow to significant proportions. In California, new state regulation of nurse to patient ratios will likely intensify the nursing shortage. Likewise, some other types of healthcare professionals, including family practice physicians, are in short supply. The Borrower’s and the Guarantor’s operations, patient and physician satisfaction, financial condition and future growth could be

negatively affected by nursing and other professional shortages, resulting in future material adverse impact to healthcare facilities.

Earthquakes. According to the Seismic Safety Commission of the State of California, the State is mapped into seismic hazard zones 3 and 4. Seismic hazard zones account for geographic variation in the expected levels of earthquake ground shaking and are based on the historical records of earthquakes and the location of known earthquake faults. The Hayward Fault runs along the westerly edge of Guarantor's property, which is adjacent to the Borrower's facilities. The Borrower's facilities are situated approximately 1/8th of one mile from the Hayward Fault line. These facilities have been engineered to withstand a strong earthquake. Local building codes take into account the likelihood of ground shaking and are intended to provide safety to the building occupants.

There can be no assurance that the occurrence of a significant seismic event in any area in which the Borrower operates would not have a material adverse effect of its facilities, the operations of the Borrower or the ability of the Borrower to make the Loan Repayments.

Other Future Risks. In the future, the following factors, among others, may adversely affect the future operations of healthcare providers, including the Borrower or the market value of the Bonds, to an extent that cannot be determined at this time.

(a) Adoption of legislation that would establish a national or statewide single-payor health program or that would establish national, statewide or otherwise regulated rates applicable to healthcare facilities and other healthcare providers.

(b) Reduced demand for the services of the Borrower that might result from decreases in population.

(c) Bankruptcy of an indemnity/commercial insurer, managed care plan or other payor.

(d) Efforts by insurers and governmental agencies to limit the cost of healthcare services, to reduce the number of beds and to reduce the utilization of healthcare facilities by such means as preventive medicine, improved occupational health and safety and outpatient care, or comparable regulations or attempts by third-party payors to control or restrict the operations of certain healthcare facilities.

(e) The occurrence of a natural or man-made disaster that could damage the Borrower's facilities, interrupt utility service to the facilities, result in an abnormally high demand for healthcare services or otherwise impair the Borrower's operations and the generation of revenues from the facilities.

(f) Limitations on the availability of, and increased compensation necessary to secure and retain, nursing, technical and other professional personnel.

## **LITIGATION**

### **Authority**

There is no litigation that has been served on the Authority or, to the best knowledge of the Authority, that is otherwise pending or threatened against the Authority which seeks to restrain or enjoin the sale, issuance, execution or delivery 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, the

pledge or application of any moneys or security provided for the payment of the Bonds or the existence or powers of the Authority relating to the issuance of the Bonds.

### **The Borrower and The Guarantor**

There is no controversy or litigation of any nature now pending against the Guarantor or the Borrower, or to the knowledge of its respective officers, threatened which seeks to restrain or enjoin the sale, execution or delivery of the Bonds, or in any way contests or affects the validity of the Bonds or any proceedings of the Guarantor or the Borrower taken with respect to the execution, sale and delivery thereof, the pledge or application of any moneys or security provided for the payment of the Bonds or the use of the Bond proceeds.

Other than as described herein and in APPENDIX A, there is no litigation or proceedings pending or, to the knowledge of the Guarantor or the Borrower, threatened except (a) litigation involving claims against the Borrower for professional, general or employment practices liability in which the probable recoveries and estimated costs and expenses of defense, in the opinion of the Guarantor and the Borrower risk management staff and legal counsel, will be within applicable insurance policy limits, subject to deductibles (for claims covered by third party insurers) or insurance reserves (for claims that are self-insured), and (b) other litigation and proceedings, including lawsuits described under the heading "Legal Claims" in note 10 of Guarantor's audited financial statements for the year ended June 30, 2007, relate to allegations of child molestation that is claimed to have occurred at Guarantor's facility between 1960 and 1990, which if adversely determined, would not, in the judgment of the management of the Guarantor and the Borrower, have a material adverse effect on the financial condition or operations of the Guarantor or the Borrower.

### **LEGAL MATTERS**

The validity of the Bonds and certain other legal matters are subject to the approving opinions of Foley & Lardner LLP, Bond Counsel. A complete copy of the proposed form of Bond Counsel opinion is contained in APPENDIX D hereto. Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement. Certain legal matters will be passed upon for the Authority by its special counsel, Nixon Peabody LLP, San Francisco, California, for the Borrower and the Guarantor by their counsel, Davis Wright Tremaine LLP, San Francisco, California, for the Borrower by its special tax counsel, Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, San Francisco, California, for the Underwriter by its counsel, Jones Day, San Francisco, California, and for the Bank by its counsel, Winston & Strawn LLP, Chicago, Illinois.

### **TAX MATTERS**

In the opinion of Foley & Lardner LLP, Bond Counsel to the Authority ("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 (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 D 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 Borrower, the Guarantor and the Authority have covenanted to comply with certain restrictions and requirements designed to assure that the interest on the Bonds will not be included in gross income for federal income tax purposes. Failure to comply with these covenants may result in such interest being included in gross income for federal income tax purposes, possibly from the original issuance date of the Bonds. The opinion of Foley & Lardner LLP, as Bond Counsel, assumes 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.

The opinion of Bond Counsel relies on factual representations made by the Borrower, the Guarantor, the Authority and other persons. These factual representations include but are not limited to certifications by the Borrower and the Guarantor regarding their reasonable expectations regarding the use and investment of bond proceeds, their reasonable expectations regarding payment of the Bonds, and their reasonable needs to maintain funds. Bond Counsel has not verified these representations by independent investigation. Bond Counsel does not purport to be an expert in asset valuation and appraisal, financial analysis, financial projections or similar disciplines. Failure of any of these factual representations to be correct may result in interest on the Bonds being included in gross income for federal income tax purposes, possibly from the original issuance date of the Bonds.

In addition, Bond Counsel has relied, among other things, on the opinions of Davis Wright Tremaine LLP, counsel to the Borrower and the Guarantor, and on the opinion of Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, special tax counsel to the Borrower, regarding the current qualification of the Borrower and the Guarantor as organizations described in Section 501(c)(3) of the Code. Such opinions are subject to a number of qualifications and limitations.

Bond Counsel has also relied upon representations of the Borrower and the Guarantor concerning its "unrelated trade or business" activities as defined in Section 513(a) of the Code. Neither Bond Counsel nor Counsel of the Borrower and the Guarantor has given any opinion or assurance concerning Section 513(a) of the Code and neither Bond Counsel nor Counsel to the Borrower and the Guarantor nor Special Tax Counsel to the Borrower can give or has given any opinion or assurance about the future activities of the Borrower and the Guarantor, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the resulting changes in enforcement thereof by the Internal Revenue Service.

Failure of the Borrower or the Guarantor 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 charitable purpose of the Borrower or the Guarantor 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.

Certain requirements and procedures contained or referred to in the Indenture, the Loan Agreement, the Tax Agreement and other relevant documents may be changed and certain actions (including, without limitation, conversion of the interest rate mode of the Bonds and replacement or extension of the Initial Standby Bond Purchase Agreement) 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 counsel other than Foley & Lardner 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 legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Beneficial Owners from realizing the full current benefit of the tax status of such interest. As one example, on May 21, 2007, the United States Supreme Court agreed to hear an appeal from a Kentucky state court which ruled that the United States Constitution prohibited the state from providing a tax exemption for interest on bonds issued by the state and its political subdivisions but taxing interest on obligations issued by other states and their political subdivisions. The introduction or enactment of any such future legislative proposals, clarification of the Code or court decisions may also affect the market price for, or marketability of, the Bonds. Prospective purchasers of the Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, 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 Internal Revenue Service ("IRS") or the courts and is not a guarantee of result. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the Authority, the Borrower or the Guarantor 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, the Borrower and the Guarantor 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, the Guarantor 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 the Guarantor 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, the Borrower or the Guarantor 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, the Guarantor or the Beneficial Owners to incur significant expense.

Recent legislation amended section 6049 of the Code to require information reporting for payments of tax-exempt interest applicable to interest paid after December 31, 2005. The Internal Revenue Service has published transitional guidance for information reporting requirements for payments of interest on tax-exempt bonds, including circumstances under which "backup withholding" may be required.

## **UNDERWRITING**

The Bonds will be purchased from the Authority by Cain Brothers & Company, LLC, as Underwriter, pursuant to a purchase contract. The Underwriter has agreed to purchase the Bonds at an aggregate purchase price of \$93,238,726.74 (representing the aggregate principal amount of the Bonds less Underwriters' discount of \$386,273.26). The purchase contract provides that the Underwriter will purchase all of the Bonds if any Bonds are issued and delivered. The Borrower has agreed to indemnify the Underwriter and the Authority against certain liabilities. The Underwriter reserves the right to join with dealers and other underwriters in offering the Bonds to the public. The obligation of the Underwriter to accept delivery of the Bonds is subject to the various conditions of the purchase contract.

## **RATINGS**

Fitch Ratings and Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., are expected to assign their respective long-term and short-term ratings to the Bonds of "AA/F1+" and "AA/A-1+," on the condition that, upon delivery of the Bonds, the Guarantor will issue the Guaranty as to the long-term ratings and that the Bank will execute and deliver the Standby Bond Purchase Agreement as to the short-term ratings. The rating and an explanation of its significance may be obtained from the rating agencies furnishing such ratings. Such rating reflects only the views of the rating agencies.

Generally, rating agencies base their ratings on the information and materials so furnished and on investigations, studies, and assumptions by the rating agencies. There is no assurance that a particular rating will be maintained for any given period of time or that it will not be lowered or withdrawn entirely if, in the judgment of the agency originally establishing the rating, circumstances so warrant. Except as set forth below under "CONTINUING DISCLOSURE AGREEMENT," neither the Authority, the Underwriter, the Guarantor, nor the Borrower have undertaken any responsibility to bring to the attention of the holders of the Bonds any proposed revision or withdrawal of the rating of the Bonds or to oppose any such proposed revision or withdrawal. Any such change in or withdrawal of such rating could have an adverse effect on the market price of the Bonds.

## **REMARKETING AGENT**

The initial Remarketing Agent shall be BNY Capital Markets, Inc. The Remarketing Agent is appointed by the Authority, and is paid by the Borrower for its services. The Remarketing Agent's responsibilities include determining the interest rate of the Bonds on each Rate Determination Date as provided in the Indenture and remarketing Bonds that are optionally or mandatorily tendered to it or the Trustee by the beneficial owners thereof (subject, in each case, to the terms of the Remarketing Agreement). Interest on any Bonds in the Daily Mode or Weekly Mode shall accrue at the rate of interest per annum determined by the Remarketing Agent on and as of the Rate Determination Date as the minimum rate of interest which, in the judgment of the Remarketing Agent under then existing market conditions, would result in the sale of such Bonds on the Rate Determination Date at a price equal to the Purchase Price. Such determination shall be conclusive and binding upon the Borrower, the Authority, the Trustee.

On each Rate Determination Date, the Remarketing Agent is required to determine the interest rate that will be effective with respect to the Bonds on the Effective Date. That rate is required by the Indenture to be the lowest rate necessary in the judgment of the Remarketing Agent to remarket the Bonds at par, plus accrued interest on the Effective Date. While the Bonds are in the Daily Mode, interest at the Daily Rate shall be determined by the Remarketing Agent not later than 10:00 a.m., New York City time, on each Business Day. The Daily Rate for any day which is not a Business Day shall be the Daily

Rate established on the immediately preceding Business Day. If the Bonds are converted to a Weekly Mode, while in the Weekly Mode, they shall bear interest at the Weekly Rate, which shall be determined by the Remarketing Agent not later than 4:00 p.m., New York City time, on each Rate Determination Date (which is each Wednesday or, if that Wednesday is not a Business Day, the next Business Day immediately preceding such Wednesday). The Weekly Rate shall be in effect (i) initially, from and including the first day the Bonds become subject to the Weekly Mode to and including the following Tuesday and (ii) thereafter from and including each Wednesday to and including the following Tuesday. The Remarketing Agent shall make the Daily Rate available (i) after 10:00 a.m. New York City time for Bonds in the Daily Mode, and after 4:00 p.m. for Bonds in the Weekly Mode, on the Rate Determination Date by telephone to any Holder or the Borrower, the Authority, the Trustee and the Bank and (ii) by Electronic Means to the Trustee not later than the second Business Day after the Rate Determination Date.

Upon receipt of written notice from the Company that the Bonds are to be converted from the Daily Mode or the Weekly Mode, the Remarketing Agent shall determine the new rate(s) for the Bonds in accordance with the Indenture.

The Remarketing Agent acts as remarketing agent for a variety of variable rate demand obligations issued by many issuers and, in its sole discretion, routinely purchases such obligations for its own account. The Remarketing Agent is permitted, but not obligated, to purchase tendered Bonds for its own account and, in its sole discretion, routinely acquires such tendered Bonds in order to achieve a successful remarketing of the Bonds or for other reasons. However, the Remarketing Agent is not obligated to purchase Bonds, and may cease doing so at any time without notice. If the Remarketing Agent ceases to purchase Bonds, it may be necessary for the Trustee to draw on the Standby Bond Purchase Agreement to pay tendering Bondholders.

The Remarketing Agent may also make a secondary market in the Bonds by routinely purchasing and selling such Bonds other than in connection with an optional or mandatory tender and remarketing. Such purchases and sales must be at fair market value, which may be at, above, or below par. No notice period is required for such purchases. However, the Remarketing Agent is not required to make a secondary market in the Bonds. Thus, investors who purchase the Bonds, whether in a remarketing or otherwise, should not assume that they will be able to sell their Bonds other than by tendering the Bonds in accordance with the tender process.

The Remarketing Agent may also sell any Bonds it has purchased to one or more affiliated investment vehicles for collective ownership or enter into derivative arrangements with affiliates or others in order to reduce its exposure to the Bonds. The purchase of Bonds by the Remarketing Agent may create the appearance that there is greater third party demand for such Bonds in the market than is actually the case. The practices described above also may result in fewer Bonds being tendered in a remarketing.

Pursuant to the Remarketing Agreement, on each Rate Determination Date, the Remarketing Agent is required to determine the interest rate that will be effective with respect to the Bonds on the Effective Date. There may or may not be Bonds tendered and remarketed on an Effective Date, and the Remarketing Agent may or may not be able to remarket any Bonds tendered for purchase on such date at par. The Remarketing Agent is not obligated to advise purchasers in a remarketing if it does not have third-party buyers for all of the Bonds at the remarketing price.

Under certain circumstances the Remarketing Agent may have the ability to resign or cease its remarketing efforts, without a successor having been named, subject to the terms of the Remarketing Agreement. In the event there is no Remarketing Agent, Bondholders may tender their Bonds to the Trustee. In that event, the Bonds will bear interest at the rate set in accordance with an index,

remarketings of the Bonds will cease until a successor remarketing agent has been appointed. In this case, tendering Bondholders will be paid from draws on the Standby Bond Purchase Agreement.

### **INDEPENDENT AUDITORS**

The financial statements of the Guarantor as of and for the years ended June 30, 2007, 2006 and 2005 included as APPENDIX B in this Official Statement have been audited by Moss Adams LLP, independent certified public accountants, as stated in their report appearing therein.

### **CONTINUING DISCLOSURE AGREEMENT**

Because the Bonds are limited obligations of the Authority, payable solely from amounts received from the Borrower, financial or operating data concerning the Authority is not material to an evaluation of the offering of the Bonds or to any decision to purchase, hold or sell the Bonds. Accordingly, the Authority is not providing any such information. The Borrower has undertaken all responsibilities for any continuing disclosure to Holders of the Bonds, as described below, and the Authority shall have no liability to the Holders of the Bonds or any other person with respect to Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 by the Securities and Exchange Commission (the “Rule”).

The Borrower and the Guarantor have covenanted for the benefit of Holders and Beneficial Owners of the Bonds to provide to the Trustee, as dissemination agent, for dissemination of:

(a) certain financial information and operating data relating to the Guarantor and the Borrower by not later than 150 days following the end of each of the Guarantor’s and the Borrower’s respective fiscal year (the “Annual Report”), commencing with the report for the fiscal year ended June 30, 2008, including:

(i) the financial statements of the Guarantor and the Borrower which have been examined by independent certified public accountants in accordance with generally accepted accounting principles in the United States of America, and

(ii) operating information substantially similar in form and scope to the historical operating data (not on a pro forma basis) set forth in the charts with the following titles, or in the text under the following captions, in APPENDIX A to this Official Statement, together with discussion prepared by management as it deems appropriate: “FINANCIAL AND OPERATING INFORMATION – Historical Utilization,” “- Sources of Revenue,” “- Summary of Revenue and Expenses,” “- Liquidity,” “- Investments” and “- Risk Management,” and

(b) certain unaudited financial information relating to the Guarantor by not later than 45 days following the end of each fiscal quarter of the Guarantor and the Borrower (the “Quarterly Report”), commencing with the report for the fiscal quarter ended March 31, 2008, and

(c) during the period the Project is being constructed, a summary of the status of construction of the Project, summarized from the information provided by the construction project manager to the Borrower and the Guarantor (the “Construction Summary”), no less often than quarterly, and

(d) notices of the occurrence of the following enumerated events, if material: (a) principal and interest payment delinquencies; (b) non-payment related defaults; (c) unscheduled draws on the debt service reserves reflecting financial difficulties; (d) unscheduled draws on credit enhancements reflecting financial difficulties; (e) substitution of credit or liquidity providers, if any, or their failure to perform; (f) adverse tax opinions or events adversely affecting the tax-exempt status of the Bonds; (g) modifications

to rights of Bondholders; (h) optional, contingent or unscheduled redemption of Bonds; (i) defeasances; (j) release, substitution or sale of property securing repayment of the Bonds; and (k) rating changes.

The Annual Report, the Quarterly Report, the Construction Summary and notices of material events will be filed by the Trustee on behalf of the Borrower and the Guarantor with the Nationally Recognized Municipal Securities Information Repositories and with any California state information depository, in each case as designated from time to time by the Securities and Exchange Commission. There is currently no California state information depository. Any notice of a material event will also be filed with the Municipal Securities Rulemaking Board.

Failure by the Borrower to comply with the Continuing Disclosure Agreement will not constitute an event of default under the Indenture, the Guaranty or the Loan Agreement and the Trustee is limited to the remedies described in the Continuing Disclosure Agreement, the Loan Agreement and the Guaranty.

### **MISCELLANEOUS**

The summaries or descriptions of provisions of the Bonds, the Loan Agreement, the Indenture, the Guaranty and the Standby Bond Purchase Agreement, and all references to other materials not purported 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. Reference is made to such documents for a full and complete statement of the provisions thereof. Such documents are on file at the offices of the Underwriter and following delivery of the Bonds will be on file at the offices of the Trustee.

So far as any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact, and no representation is made that any of such statements will be realized. Neither this Official Statement nor any statement which may have been made orally or in writing is to be construed as a contract with the owners of the Bonds.



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**APPENDIX A**

**INFORMATION CONCERNING MASONIC HOMES OF CALIFORNIA AND ACACIA  
CREEK, A MASONIC SENIOR LIVING COMMUNITY AT UNION CITY**

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## INTRODUCTION

Masonic Homes of California (the “Guarantor”) and Acacia Creek, a Masonic Senior Living Community at Union City (the “Borrower”) are California nonprofit public benefit corporations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

The Guarantor operates two facilities in California: a continuing care retirement community (“CCRC”) in Union City, and a CCRC and children’s program in Covina (the “Guarantor’s Facilities”). The Guarantor is affiliated with The Grand Lodge of Free and Accepted Masons of the State of California (the “Grand Lodge”) and members of the Masonic Fraternity in California.

The Guarantor’s community involvement dates back to the first Masonic Home for widows and orphans dedicated by the Grand Lodge in October 1898. The mission of the Guarantor is to provide quality care to California Master Masons, their wives, widows and others, as well as to children with and without Masonic affiliations, with dignity and compassion, within an atmosphere based on Masonic tenets that fulfill the physical, social, spiritual and nurturing needs of the extended community.

Through the efforts of the Guarantor, children acquire a quality education, master new skills, develop self-sufficiency and independence and learn the virtue of generosity. The Guarantor helps parents learn effective parenting and coping skills to foster nurturing and loving relationships within their families and raise their children in a loving and healthy environment. It provides resources and guidance for members who support their elderly family members through the challenges and functional changes associated with the aging process, and helps members and lodges fulfill their fraternal obligation to support their distressed brethren and families.

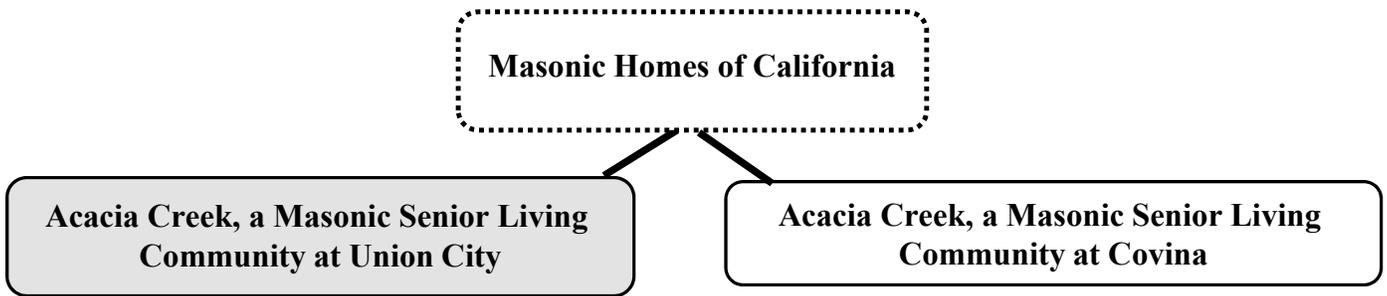
Sensing the need for additional services, the Guarantor formed the Borrower to add more independent living, assisted living and dementia units to the existing facilities of the Guarantor in Union City.

For more information about the development of the Project to date, see “THE BORROWER AND THE PROJECT” below and “PLAN OF FINANCING – The Project” in the forepart of this Official Statement.

## GOVERNANCE AND MANAGEMENT

### Corporate Structure

The following chart shows the relationship among the Borrower, the Guarantor and their affiliates.



Legend:

- The shaded box is the Borrower
- The dotted-lined box is the Guarantor

### **The Guarantor's Board of Trustees**

The Guarantor has no voting members. The Guarantor is governed by a 12-member Board of Trustees (the "Guarantor Board"). The Grand Master of the Grand Lodge designates two members of the Executive Committee of the Grand Lodge to serve as voting ex officio Trustees; the remaining 10 Trustees are appointed by the Grand Master of the Grand Lodge from time to time, after recommendation from the Guarantor Board. All members of the Guarantor Board must be California Master Masons in good standing.

Trustees are designated for terms of three years, commencing with the close of the Annual Communication of the Grand Lodge. Each Trustee holds office until a successor has been designated. Trustees may not be named to serve more than three full consecutive terms, without counting any initial partial term to fill a mid-term vacancy. Thereafter, a former trustee shall become re-eligible for designation one year after the end of his most recent term.

As long as the Guarantor operates at least one CCRC, the Guarantor Board names at least one resident to participate as a nonvoting resident representative to the Guarantor Board. The resident representative(s) shall be selected directly or indirectly by residents of all such communities or, at the option of the Guarantor Board, a separate resident representative for each such community, in accordance with California law. The resident representative(s) shall be entitled to the same notice of Guarantor Board meetings, the Guarantor Board information packets, minutes, and other materials as voting Trustees, and to attend, speak at, and participate in all meetings of the Guarantor Board, subject to certain conditions enumerated in the Bylaws.

The table below identifies the members of the Guarantor's Board as of November 1, 2007 and their office, principal occupation or civic affiliation.

**Guarantor Board of Trustees**

<b>Name</b>	<b>Term Ends October,</b>	<b>Principal Occupation</b>
William Bray	2009	Retired Airline Mechanic
Gary Charland	2010	Director, Outpatient Services, Washington Hospital
David R. Doan	2010	Past Grand Master Commander of Police, Los Angeles Police Department
Al E. Gates	2008	Stone Mason
George L. Geanoulis	2009	Chief Executive Officer and President, Prothos Mortgage Corporation
Mark N. Gibson	2008	Chief Executive Officer and President, Restaurant Express
Allen B. Gresham	2009	Past Grand Master Retired Attorney
Frank Loui	2010	Funeral Director
Ken G. Nagel	2008	Technical Vice President and General Manager, Masonic Homes of California
Michael D. Neben	2009	Chief Executive Officer and President, Chamber of Commerce
Timothy Wood	2010	Entrepreneur, Business Owner
Gary A. Yanes	2009	IT Manager, Kaiser Permanente

**Committees**

Under its Bylaws, the Guarantor Board may delegate certain of its powers to standing committees that formulate and carry out the actions of the Guarantor Board. The standing committees of the Guarantor Board include but are not limited to an Admissions Committee, a Children's Program Committee, a Finance Committee, a Strategic Planning Committee, a Board Development Committee, and certain Advisory Committees. The Advisory Committees include a Medical Advisory Committee, an Audit Committee, an Insurance Committee and an Investment Committee.

The Audit Committee assists the Grand Master of the Grand Lodge, the Grand Secretary, the Grand Treasurer and the Guarantor Board in discharging their financial oversight responsibilities. The

Audit Committee reviews financial information reported to stakeholders of the various entities to maintain accuracy, timeliness and compliance with accepted accounting principles and standards. The Audit Committee also assists with the quality of financial reporting, inquires about disclosures, including board and management discussion and analysis. Finally, the Audit Committee establishes procedures to deal with concerns of employees regarding accounting, internal controls and other financial matters of the Guarantor.

The Guarantor Board has designated the Board Development Committee to serve as the compensation committee of and to make recommendations to the Guarantor Board regarding the compensation, including benefits, of the executive management team of the Guarantor to assure that such compensation is just and reasonable. Such review shall occur (1) initially upon the hiring of the officer; (2) whenever the officer's term of employment, if any, is renewed or extended; and (3) whenever the officer's compensation is modified, unless the modification applies to substantially all employees.

### **Executive Management Team**

John E. Howl, Executive Director of the Guarantor's Finance and Vice President of Strategic Development, is responsible for the finances and strategic development of the Acacia Creek communities. He has an M.B.A. with an emphasis in Health Care and more than 20 years executive experience in health care and senior service administration for nonprofit faith-based organizations.

Robert Mark Fallon, Executive Director of the Guarantor's Senior Services, designs, implements, and administers the continuing care services for the seniors of the Guarantor's communities. He has a Masters in Public Health and a California Teaching Credential for Special Education, and he is licensed as a California Nursing Home Administrator and a California Residential Care Facility Administrator.

Steffani Kizziar, Interim Executive Director for Masonic Outreach and Children's Services, has been employed by the Guarantor since July 2001. Prior to this, she served as the Director of Business Initiatives at Catholic Healthcare West – Bay Area Region, from November 1995 to July 2001. From October 1995 to June 1995, she served as the Manager of Network Initiatives for the University of California – San Diego. She received her Bachelor of Arts degree from San Francisco State University in 1989.

John L. Cooper III, Grand Secretary of the Masonic Grand Lodge of California, was formerly the Executive Assistant of the Masonic Grand Lodge of California, from October 1990 to October 2001. He has been the Grand Secretary since October 1991. In addition, he serves as the Superintendent of the Escondido Union High School District. He received the Hiram Award in 1992 for his volunteer work, and participates in several Masonic memberships, including the Knight of the York Cross of Honor, the 33rd Degree Scottish Rite, and the Demolya Legion of Honor. He received his Bachelor and Master of Arts degrees from the University of California – Los Angeles in 1964 and 1965, respectively, and his Ph. D. from the Claremont Graduate School in 1985.

### **Borrower's Governance and Management**

The Guarantor is the sole corporate member of the Borrower. The Borrower's Board of Directors (the "Borrower Board") consists of at least five but no more than seven Directors, with the precise number of Directors to be determined by resolution of the Borrower Board. All members of the Borrower Board must be California Master Masons in good standing. Other qualifications for Directors shall be as established by the Borrower Board from time to time, with certain restrictions on interested persons as directors.

### **Borrower Board of Directors**

<b>Name</b>	<b>Term Ends October,</b>	<b>Principal Occupation</b>
Larry L. Adamson	2008	Chief Executive Officer and President, Midnight Mission Corporation
George L. Geanoulis	2009	Chief Executive Officer and President, Prothos Mortgage Corporation
Mark N. Gibson	2008	Chief Executive Officer and President, Restaurant Express
Frank Loui	2010	Funeral Director
Ara Maloyan	2010	Civil Engineer, City of Beverly Hills Planning Department
Michael D. Neben	2009	Chief Executive Officer and President, Chamber of Commerce
Loyal Stark	2008	Retired Executive Officer, Pacific Bell

### **Intercompany Agreement**

The Borrower and the Guarantor will enter into an Intercompany Agreement contemporaneously with the issuance of the Bonds (the “Intercompany Agreement”). In the Intercompany Agreement, the Borrower will agree to reimburse the Guarantor for all amounts paid by the Guarantor under the Guaranty, including all costs and fees incurred by the Guarantor in any action or proceeding relating to the Guaranty. The Borrower’s reimbursement obligation will bear interest at the rate of 8% per annum, and will be payable on demand.

The Borrower will pay the Guarantor an annual guaranty fee of 0.5% per annum of the positive difference between the average outstanding principal balance of the Bonds and the average amount of unexpended bond proceeds, if any. The guaranty fee will be payable in quarterly installments in arrears.

The Borrower’s obligation to reimburse the Guarantor and to pay the guaranty fee shall be fully subordinated to the Borrower’s obligation to pay Loan Repayments. All payments by the Borrower to the Guarantor under the Intercompany Agreement shall be suspended during any period in which an Event of Default under the Loan Agreement has occurred and is continuing.

The Intercompany Agreement contains certain negative covenants made by the Borrower for the benefit of the Guarantor. These covenants are not enforceable by any party (including holders of the Bonds) other than the Guarantor.

### **Management Agreement**

The Borrower and the Guarantor will enter into a Management Agreement contemporaneously with the issuance of the Bonds (the “Management Agreement”). The term of the Management Agreement is ten years, renewable for three additional periods of ten years each.

In the Management Agreement, the Guarantor will agree to provide management services and operational support to the Borrower, including, by way of example, conducting the resident marketing program, overseeing resident admissions, managing resident relations, collecting resident fees, providing budgeting and accounting services and computer systems, managing vendor relations, maintaining licenses and permits, facilitating compliance with the Bonds, maintaining plant and equipment and providing insurance. The Borrower will furnish all personnel required for the operations of Borrower and provide related human resources management.

The Borrower will reimburse the Guarantor its out-of-pocket expenditures incurred in connection with the provision of services and support and in addition pay a management fee once 95% occupancy of the Project has been achieved, equal to 4% of accrued net resident service revenue of Borrower.

## **FACILITIES AND SERVICES OF THE GUARANTOR**

### **Guarantor Facilities**

The Guarantor owns and operates a CCRC in Union City, California and a community for seniors and children in Covina, California.

The Guarantor's Union City facilities occupy a 305-acre hilltop site 40 miles east of San Francisco. The grounds are gated and include 10 buildings. The community offers independent living, assisted living, skilled nursing, secure Alzheimer's/dementia care, and hospice to approximately 300 residents. The community includes a wide range of services and amenities for residents. The Ralph Head Building houses public areas that include an extensive library, game rooms, an ice cream parlor, a bingo parlor, gift shops, a carpentry workshop and a movie screening room.

The Sedam Building houses medical and dental clinics, beauty and barber shops, a spacious dining room and a meditation chapel. The Siminoff Center holds the lodge room and worship center; the Lorber Building offers 125 beds for skilled nursing care, of which approximately 60 are used at any one time. The Traditions unit houses 16 individuals suffering from Alzheimer's or other forms of dementia. The Wollenberg/Grider Health Center includes a hydrotherapy pool, other rehabilitation services, a fully-equipped and staffed exercise room, a pharmacy and 26 assisted living apartments; and the Adams Building houses 38 apartments, a complete ceramics studio, a computer learning center and recreation facilities.

The Guarantor's Covina community is located on 33 acres in the San Gabriel Valley, approximately 30 miles east of downtown Los Angeles. It includes 56 garden apartments designed with full-size kitchens, generous closet space and individually controlled heating and cooling systems. In the apartments, residents receive independent and assisted living services. The community's common areas include dining rooms, loungers, a library, a technology center, a fitness center, a billiards and game room and arts and crafts rooms.

One of the unique features of the Covina campus is its intergenerational character. This community is also home for up to 48 children, who live in a separate neighborhood on the same campus. The children's community consists of eight 5,100 square-foot houses that are each home to up to seven children, with 1,300 square-foot attached apartments for their caregivers. The residential program is based on a family model of care that teaches academic and life skills in a nurturing, home-like environment.

There are currently waiting lists of 1-3 years for serves on the Union City campus; and a 3-5 year wait for the Covina campus.

## **Services Provided at the Senior Communities and the Residency Agreement**

As of January 1, 2008, senior residents entering the Guarantor's Facilities were required by a continuing care agreement to assign 75% of their assets to the Guarantor in exchange for receiving health care services for the remainder of their lives. In the event that a resident cancels a continuing care agreement within the first 90 days of residency, the resident is entitled to receive a refund of all of his or her assigned assets. As of June 30, 2007 and 2006, assigned assets subject to refund were \$398,604 and \$531,481, respectively.

Financially qualified senior residents may enter the Guarantor's Facilities by paying a monthly rental fee. The amount of the monthly fee varies according to the resident's determination of whether to pay an entrance fee. In the event of withdrawal of such a resident, the resident is refunded his or her entrance fees ratably over the first 30 to 60 months.

## **Resident Qualifications**

Eligibility for admission to one of the Guarantor's Facilities is limited to Masons, their wives and widows and, in certain circumstances, the mothers of Master Masons. There are no financial qualifications for senior members. Upon entry, senior members must commit 75% of their assets and 75% of their income, whatever the amount.

As of June 30, 2007, approximately 20,000 widows and 68,000 Master Masons were eligible for admission to the Guarantor's Facilities.

## **Services Provided at the Facilities for Children**

The Covina children's program is licensed to provide care and services for up to 48 children ages 4 through 17. As of January 1, 2008, there were 36 children in residence in the community with another approximately 100 families receiving care through the outreach program. Funding for the children's program at Covina, which averages \$60,000 to \$70,000 a year per child, is provided through the generosity of California's Masons.

Affiliation with the Masons of California is not required for admission to the children's program. The admission process begins with a parent, guardian, counselor or psychologist contacting a representative of the Masonic Home. Average stay of children in the program is 12 to 18 months.

Children living in the Guarantor's children's facility in Covina attend nearby public schools. Each student is placed in a class that best suits his or her needs. On-ground tutors are available to assist residents with their studies. After high school graduation, college scholarships or vocational training is available to students who qualify. There is also an incentive program for academic achievement and assistance/support in enrolling in higher education.

## **Licenses**

The Guarantor's Facilities for seniors are operated as CCRCs consisting of residential assisted living facilities licensed as a Residential Care Facility for the Elderly ("RCFE") by the California Department of Social Services ("DSS"), a skilled nursing facility licensed by the California Department of Public Health, and a children's facility licensed as a group home by DSS.

## **THE BORROWER AND THE PROJECT**

### **The Borrower**

The Borrower is a California nonprofit public benefit corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. The Borrower was incorporated in April 2006 to meet an increased demand for independent living and dementia units for Masons and their families in the Union City market. The Borrower's facilities (the "Facilities") have been developed in response to the desire of members for expanded senior living options for the fraternal family of California. Admission preference will be given to Masons and their wives and widows.

### **The Project**

The Borrower plans to build and operate a CCRC, consisting of approximately 152 independent living units, consisting of approximately 305,000 square feet of buildings. See "PLAN OF FINANCING – The Project" and "THE GUARANTY" in the front part of this Official Statement.

The Borrower will lease land owned by the Guarantor adjacent to the Guarantor's current Union City community. The Project will not include any additional skilled nursing beds, as the Borrower will contract with the Guarantor to provide the skilled nursing component of the continuing care agreement.

Planning the design of the Project has been underway since 2006. These planning measures include interviews and selection of architects and general contractors, design development by the architect, and cost estimates by the general contractor. The Guaranty requires the Guarantor, in the event that money in the Project Fund is depleted prior to the time that the Project is sufficiently complete, to transfer funds to the Borrower needed to pay the costs of construction necessary. See "THE GUARANTY" in the forepart of this Official Statement. A construction estimate (based on 100% of design development drawings) and owner review are expected during January 2008. Permit applications will be submitted in February 2008. The bid process is expected to begin in January 2008 and continue through March 2008.

The entitlement process, including Planning Commission Approval, City Council Approval, and Submission of Environmental Application and Environmental Engineer Re-writes, is complete except for Planning Commission and City Council review of plan revisions, which will take place during January and February of 2008. The Borrower has received authorization from DSS to accept deposits from prospective CCRC residents and also authorization from DSS to begin commencement of construction. The Borrower has filed an application for a Certificate of Authority to enter into continuing care contracts, which is expected to issue in due course at the completion of the Project.

Early site work began in October 2007. Construction is expected to begin in March 2008 and continue until November 2009.

### **Ground Lease**

The Borrower and the Guarantor will enter into a Ground Lease contemporaneously with the issuance of the Bonds (the "Ground Lease") with a term to commence upon the closing ("Ground Lease Commencement Date"). The term of the Ground Lease is 50 years, renewable at Borrower's option for an additional period of 25 years. The demised premises consist of approximately 10 acres, upon which Borrower will construct and operate the Project. The Borrower will pay rent for the demised premises to the Guarantor, commencing from and after the later to occur of (i) 18 months after substantial completion of construction of the Project, or (ii) the date upon which the Project is 95% or more occupied (the "Rent

Commencement Date”), in the amount of \$695,000 per year, increased annually by the percentage increase in the Consumer Price Index and adjusted by appraisal to fair market value on the seventh anniversary of Grand Lease Commencement Date and every ten years thereafter.

## **FINANCIAL AND OPERATING INFORMATION**

### **Summary of Financial Information**

The financial data for the fiscal years ended June 30, 2005, 2006 and 2007 are presented for the Guarantor because the Borrower, as a start-up, does not yet have financial statements and the Guarantor is the primary obligator on the Bonds, through the Guaranty.

The summary financial information for the Guarantor for the three fiscal years ended June 30, 2007 has been derived by management of the Guarantor from the consolidated financial statements audited by Moss Adams, LLP, independent auditors. The following information summarizes, and should be read in conjunction with, the consolidated financial statements and related notes which are included in APPENDIX B to this Official Statement. Interim financial information for the four-month periods ended October 31, 2006 and 2007 was prepared by management of the Guarantor, and is unaudited.

### **Sources of Revenue**

The Guarantor received approximately 90% of its total revenue in the fiscal year ended June 30, 2007 from donations and investment earnings. Total revenues of the Guarantor for the fiscal year ended June 30, 2007 were approximately \$101.1 million, with approximately \$14.2 million (14%) coming from contributions and bequests and memorials, and approximately \$76.8 million (76%) coming from investment income and net realized gain on investments.

The Guarantor was certified in October 2007 to bill Medicare and Medicaid. As of October 31, 2007, the income the Guarantor received from Medicare and Medicaid was negligible.

### **Summary of Balance Sheet**

The following is a summary balance sheet of the Guarantor as of June 30, 2005, 2006 and 2007, and as of October 31, 2006 and 2007. The data for each June 30 are derived from the audited consolidated financial statements of the Guarantor and should be read in conjunction with the financial statements and related notes in APPENDIX B to this Official Statement. The unaudited data has been prepared by management of the Guarantor.

## Summary of Comparative Historical Balance Sheets

(in thousands)

	As of June 30,			As of October 31, (unaudited)	
	2005	2006	2007	2006	2007
Current assets					
Cash and equivalents-unrestricted	\$2,309	\$792	\$2,399	\$1,895	\$1,176
Funds held for residents	567	546	9,956	599	10,963
Receivables	483	343	58	41	74
Prepaid expenses and other assets	2,876	2,207	4,973	1,876	2,053
Related entities receivable	0	0	98	0	0
Due from other funds	1,483	895	809	962	730
Assets held for sale	1,923	1,268	3,413	2,711	3,000
Total current assets	<u>9,641</u>	<u>6,051</u>	<u>21,706</u>	<u>8,084</u>	<u>17,996</u>
Investments, at fair value	685,795	755,381	876,597	777,336	890,102
Property and equipment, net	99,476	94,740	94,277	93,676	93,233
Assets held in trusts	13,076	13,351	13,387	13,350	13,387
Other assets	1,358	1,353	957	1,399	759
Total Assets	<u>\$809,346</u>	<u>\$870,876</u>	<u>\$1,006,924</u>	<u>\$893,845</u>	<u>\$1,015,477</u>
Liabilities and net assets					
Current liabilities					
Accounts payable and accrued liabilities	\$3,514	\$2,278	\$25,889	\$3,331	\$26,968
Accrued payroll and benefits payable	1,740	1,790	2,040	1,224	1,400
Related entities payable	149	831	0	856	2,650
Due to other funds	1,483	895	811	965	733
Total Current liabilities	<u>6,886</u>	<u>5,794</u>	<u>28,740</u>	<u>6,376</u>	<u>31,751</u>
Minimum pension liability	4,154	3,663	1,110	3,663	1,110
Liability to beneficiaries of split-interest agreements	4,341	4,012	4,023	4,012	4,023
Deferred revenue from assigned assets	17,291	16,714	18,577	17,927	17,705
Total liabilities	<u>32,672</u>	<u>30,183</u>	<u>52,450</u>	<u>31,978</u>	<u>54,589</u>
Net assets	<u>776,674</u>	<u>840,693</u>	<u>954,474</u>	<u>861,867</u>	<u>960,888</u>
Total liabilities and net assets	<u>\$809,346</u>	<u>\$870,876</u>	<u>\$1,006,924</u>	<u>\$893,845</u>	<u>\$1,015,477</u>

## Summary of Statement of Activities

The following is a summary statement of activities of the Guarantor for each of the three fiscal years ended June 30, 2005, 2006 and 2007 and for the four-month periods ended October 31, 2006 and 2007. The data for each of the three fiscal years are derived from the audited consolidated financial statements of the Guarantor and should be read in conjunction with the financial statements and related notes in APPENDIX B to this Official Statement. The unaudited data has been prepared by management of the Guarantor.

	(in thousands)				
	For Fiscal Year Ended June 30,			For Four-Month Period Ended October 31, (unaudited)	
	2005	2006	2007	2006	2007
Public support and revenue:					
Contributions	\$931	\$981	\$1,122	\$535	\$477
Bequests and memorials	15,252	7,209	13,052	5,240	1,013
Amortization of deferred revenue from assigned assets	2,968	2,904	3,306	791	1,000
Amount received from pensions assigned by resident	3,711	3,979	3,963	1,294	1,309
Investment income	16,103	16,506	22,103	5,209	3,997
Net realized gain on investments	31,954	86,306	54,703	15,625	15,503
Royalty and other income	1,947	2,170	2,643	804	910
Change in value of split interest agreements	1,368	691	208	2	104
Net assets released from restriction	0	0	0	0	0
Total public support and revenue	<u>\$74,234</u>	<u>\$120,746</u>	<u>\$101,100</u>	<u>\$29,500</u>	<u>\$24,313</u>
Expenses:					
Program					
Operation of Masonic Homes	\$27,289	\$27,488	\$28,036	\$9,090	\$9,756
Masonic Outreach Services	1,790	1,703	1,855	580	610
Scholarship	17	15	45	19	32
Total Program Expenses	<u>29,096</u>	<u>29,206</u>	<u>29,936</u>	<u>9,689</u>	<u>10,398</u>
Administration	9,649	11,679	29,258	4,630	5,437
Total Expenses	<u>38,745</u>	<u>40,885</u>	<u>59,194</u>	<u>14,319</u>	<u>15,835</u>
Excess of revenues over expenses before other items	35,489	79,861	41,906	15,181	8,478
Write-off of property and equipment	(765)	0	0	0	0
Change in minimum pension liability	(179)	320	2,170	0	0
Net unrealized gain (loss) on investments	(9,146)	(16,162)	69,705	5,993	(2,064)
Change in net assets	25,399	64,019	113,781	21,174	6,414
Net assets at beginning of year	751,275	776,674	840,693	840,693	954,474
Net assets at end of year	<u>\$776,674</u>	<u>\$840,693</u>	<u>\$954,474</u>	<u>\$861,867</u>	<u>\$960,888</u>

## Investments

All investments of the Guarantor are managed by the Investment Committee of the Grand Lodge, which employs outside independent investment managers. Currently, investments of the Guarantor consist of corporate stocks, fixed income securities, money market accounts and institutional mutual funds that invest in a diversified portfolio of fixed income securities of varying maturities with portfolio duration of three to six years.

As of June 30, 2006 and 2007, the investments of the Guarantor consisted of the following:

	As of June 30, (in thousands)	
	2006	2007
Corporate stocks	\$538,937	\$650,456
Equity mutual funds	47,241	41,579
Alternative investments	53,594	61,782
Fixed income mutual funds	112,368	119,067
Money market accounts	3,241	3,713
Total investments	\$755,381	\$876,597

## Risk Management

The Guarantor maintains general and professional liability insurance in the maximum amount of \$2 million. The Borrower is also insured for auto liability in a maximum amount of \$1 million workers' compensation in the maximum amount of \$1 million and property insurance in the maximum amount of \$100 million.

### MANAGEMENT'S DISCUSSION OF GUARANTOR'S FINANCIAL POSITION

#### Four Months Ended October 31, 2007 Compared to Four Months Ended October 31, 2006

*Assets:* Total assets increased by \$121,632,000 or 14% from \$893,845,000 in 2006 to \$1,015,477,000 in 2007. The principal reason for the increase was a net change to the value of investments, which rose by \$112,766,000, or 15%, principally due to earnings on the portfolio.

Other significant factors contributing to the increase in total assets:

1. Cash and equivalents decreased by \$719,000 or 38% from \$1,895,000 in the four-month period 2006 to \$1,176,000 in the 2007 four-month period due to the timing of the settlement of certain investments liquidated for operating purposes, which occurred after the end of the period in 2007.

2. Funds held for residents increased by \$10,364,000, from \$599,000 for the four months ended October 31, 2006 to \$10,963,000 for the four months ended October 31, 2007, principally due to the receipt of \$7,462,000 in advance deposits on the Acacia Creek projects. Also included in the balance is a \$2,752,000 contribution, on which restrictions on the donation are being negotiated with the donor's agent.

3. Investments increased by \$112,766,000 from \$777,336,000 at October 31, 2006 to \$890,102,000 at October 31, 2007 due principally to the strong returns on investments over the period. Please see the table below under the heading "Investment Activity," in the discussion of results for the year ended June 30, 2007.

*Liabilities:* Total liabilities increased by \$22,611,000 or 71% from \$31,978,000 in the four-month period ended October 31, 2006 to \$54,859,000 in the four-month period ended October 31, 2007. The largest single item contributing to the increase was the recording of \$13,944,000 for judgments awarded in lawsuits brought against the Guarantor's children's programs. Also affecting liabilities was the accrual of the liability of \$7,462,000 for Acacia Creek deposits referred to above under funds held for residents. Both of these items are included in accounts payable and accrued liabilities which increased from \$3,331,000 in 2006 to \$26,968,000 in 2007, an increase of \$23,637,000 (710%). The commencement of construction of the facilities of the Borrower has also increased accounts payable in 2007.

Other significant changes in liabilities were:

1. Related entities payable increased by \$1,794,000 or 210%, from \$856,000 in the four-month period ended October 31, 2006 to \$2,650,000 in the four-month period ended October 31, 2007. The balance in 2007 consists principally of a \$2,752,000 contribution for scholarships in process of being transferred to the California Masonic Foundation for administration of the scholarship program.

2. Minimum pension liability decreased \$2,553,000, or 70%, from \$3,663,000 in 2006 to \$1,110,000 in 2007. The decrease was substantially due to earnings on investments in the plan and to payments of benefits to retirees.

*Net Assets:* The change in net assets represents the cumulative results of operations.

*Public Support and Revenues:* The Guarantor experienced a decrease of \$5,187,000, or 18%, in total public support and revenues from \$29,500,000 in the four-month period ended October 31, 2006 to \$24,313,000 in the four-month period ended October 31, 2007. The increase in total operating revenues can be primarily explained by the following factors:

1. Bequests and memorials decreased by \$4,227,000, or 81%, from \$5,240,000 in the four-month period 2006 to \$1,013,000 in the four-month period 2007. Bequests and memorials typically include a few large gifts that can cause significant variations in the total received based on the timing of these large bequests.

2. Net investment activity for the period consisted of:

**Investment Activity**

	<b>Four Months Ended October 31,</b>	
	<b>2006</b>	<b>2007</b>
Investment income	\$5,209	\$3,997
Net realized gain on investments	15,625	15,503
Net unrealized gain (loss) on investments	<u>5,993</u>	<u>(2,064)</u>
Net results of investing activity	<u>\$26,827</u>	<u>\$17,436</u>

*Expenses:* Total expenses increased by \$1,516,000, or 11%, from \$14,319,000 in the four-month period 2006 to \$15,835,000 in the four-month period 2007.

**Fiscal Year Ended June 30, 2007 Compared to Fiscal Year Ended June 30, 2006**

*Assets:* Total assets increased by \$136,048,000, or 16%, from \$870,876,000 in fiscal year 2006 to \$1,006,924,000 in fiscal year 2007. The increase is due principally to gains in invested funds, which increased \$121,216,000, or 16%, from \$755,381,000 in 2006 to \$876,597,000 in 2007.

The following table shows the investment results for the fiscal years ended June 30, 2006 and 2007.

	<b>Fiscal Year Ended June 30,</b>	
	<b>2006</b>	<b>2007</b>
Investment income	\$16,506	\$22,103
Net realized gain on investments	86,306	54,703
Net unrealized gain (loss) on investments	<u>(16,162)</u>	<u>69,705</u>
Net results of investing activity	86,650	146,511
Used in operations	<u>(17,064)</u>	<u>(25,295)</u>
Net change to investments	<u>\$69,586</u>	<u>\$121,216</u>

Other factors contributing to the increase in total assets were:

1. Cash and equivalents-unrestricted increased by \$1,607,000, or 203%, from \$792,000 in fiscal year 2006 to \$2,399,000 in fiscal year 2007. The difference is due to the timing of transfers from investments for operating purposes. The transfer in 2006 occurred after the end of the last day of the 2006 fiscal year.

2. Funds held for residents increased \$9,410,000, from \$546,000 in 2006 to \$9,956,000 in 2007 principally due to the receipt of \$6,441,000 in advance deposits on the Project. Also included in the balance is a \$2,752,000 contribution, on which restrictions on the donation are being negotiated with the donor's agent.

3. Assets held for sale increased by \$2,145,000, or 169%, from \$1,268,000 in fiscal year 2006 to \$3,413,000 in fiscal year 2007 due to higher net worth residents being admitted to the facility late in the year. To a lesser extent, longer timeframes to sell incoming resident homes contributed to the increase.

*Liabilities:* Total liabilities increased by \$22,267,000, or 74%, from \$30,183,000 in fiscal year 2006 to \$52,450,000 in fiscal year 2007. The largest single item contributing to the increase was the recording of \$13,944,000 for judgments awarded in lawsuits brought against the Guarantor's children's programs. Also affecting liabilities was the accrual of the liability of \$6,441,000 for Acacia Creek deposits referred to above under funds held for residents. Both of these items are included in accounts payable and accrued liabilities which increased from \$2,278,000 in 2006 to \$25,889,000 in 2007, an increase of \$23,611,000 (or 1,036%).

Other significant variances were:

1. Minimum pension liability decreased by \$2,553,000, or 70%, from \$3,663,000 in fiscal year 2006 to \$1,110,000 in fiscal year 2007, primarily due to earnings on invested funds in the retirement plan.

2. Deferred revenue from assigned assets increased by \$1,863,000, or 11%, from \$16,714,000 in fiscal year 2006 to \$18,577,000 in fiscal year 2007, due to the admittance of residents with higher asset values.

*Public Support and Revenues:* The Guarantor experienced a decrease of \$19,646,000 or 16% in total public support and revenues from \$120,746,000 in fiscal year 2006 to \$101,100,000 in fiscal year 2007. The decrease in total operating revenues can be primarily explained by the following factors:

1. Bequests and memorials increased by \$5,843,000 or 81% from \$7,209,000 in fiscal year 2006 to \$13,052,000 in fiscal year 2007. Please refer to discussion of investment activity presented above.

2. Change in value of split interest agreements declined by \$483,000 or 70% from \$691,000 in fiscal year 2006 to \$208,000 in fiscal year 2007. These are based on actuarial calculations of benefits due to beneficiaries and can fluctuate substantially based on the deaths of beneficiaries.

3. Net realized gain on investments decreased from \$86,306,000 to \$54,703,000 in fiscal years 2006 and 2007, respectively, or by \$31,603,000. Please see the table above for discussion of investments.

*Expenses:* Total expenses increased by \$18,309,000, or 45%, from \$40,885,000 in fiscal year 2006 to \$59,194,000 in fiscal year 2007. The increase is explained primarily by the increase in Administration costs by \$17,579,000 or 151%, from \$11,679,000 in 2006 to \$29,258,000 in 2007. This was the result of the accrual of damages awarded under lawsuits against the children's program, which increased by \$13,944,000 in fiscal year 2007.

*Net unrealized loss on investments:* The net unrealized gain (loss) on investments went from a loss of \$16,162,000 to a gain of \$69,705,000. Please refer to the table above for a discussion of the results of investing activities.

*Change in Net Assets:* The change in net assets grew by \$49,762,000 or 78%, from \$64,019,000 in fiscal year 2006 to \$113,781,000 in fiscal year 2007, the net result of operations.

### **Fiscal Year Ended June 30, 2006 Compared to Fiscal Year Ended June 30, 2005**

*Assets:* Total assets increased by \$61,530,000, or 8%, from \$809,346,000 in fiscal year 2005 to \$870,876,000 in fiscal year 2006. As has been discussed for other periods, the most significant change in assets is due to the increase in the investment portfolio. Investments, at fair value increased by \$69,586,000, or 10%, from \$685,795,000 in fiscal year 2005 to \$755,381,000 in fiscal year 2006.

Other factors contributing to the increase in total assets:

1. Cash and equivalents-unrestricted decreased by \$1,517,000, or 66%, from \$2,309,000 in fiscal year 2005 to \$792,000 in fiscal year 2006 due to short term cash transfer variances.

2. Prepaid expenses and other assets decreased by \$669,000, or 23%, from \$2,876,000 in fiscal year 2005 to \$2,207,000 in fiscal year 2006. The largest variance was due to assigned income receivable decreasing \$942,000. Certificates of deposit of admitted residents also decreased \$325,000. These balance fluctuate based on the timing of admitting residents and settling their financial affairs. Significant offsetting variances were in prepaid pension expense which increased \$498,000 and prepaid insurance which increased \$193,000.

3. Assets held for sale also decreased by \$655,000 or 34% from \$1,923,000 in fiscal year 2005 to \$1,268,000 in fiscal year 2006 due to the timing of admitting residents and settling their assets.

4. Property and equipment, net decreased by \$4,736,000 or 5%, from \$99,476,000 in fiscal year 2005 to \$94,740,000 in fiscal year 2006 due to normal depreciation. In the period ended June 30, 2007, additions to fixed assets offset depreciation recorded.

*Liabilities:* Total liabilities decreased by \$2,489,000 or 8% from \$32,672,000 in fiscal year 2005 to \$30,183,000 in fiscal year 2006. This decrease is primarily attributed to the following factors:

1. Accounts payable and accrued liabilities decreased by \$1,236,000, or 35%, from \$3,514,000 in fiscal year 2005 to \$2,278,000 in fiscal year 2006, due principally to a decrease in the liability to residents on unsettled assets of \$874,000.

2. Related entities payable increased by \$682,000, or 458%, from \$149,000 in fiscal year 2005 to \$831,000 in fiscal year 2006, due to the timing of settling normal balances.

3. Deferred revenue from assigned assets decreased by \$577,000, or 3%, from \$17,291,000 in fiscal year 2005 to \$16,714,000 in fiscal year 2006. This is consistent with the changes in other resident related balances. New residents admitted in the year ended June 30, 2007 resulted in a substantial increase in that period.

*Net Assets:* Total net assets increased by \$64,019,000, or 8%, from \$776,674,000 in fiscal year 2005 to \$840,693,000 in fiscal year 2006, the net result of operations.

*Public Support and Revenues:* The Guarantor experienced an increase of \$46,512,000, or 63%, in total public support and revenues from \$74,234,000 in fiscal year 2005 to \$120,746,000 in fiscal year 2006. The single largest factor was the net realized gain on investment, which increased \$54,352,000 based on market conditions during the period and the increased value of the investments.

The increase in total operating revenues can be explained by the following factors:

1. Bequests and memorials decreased by \$8,043,000 or 53%, from \$15,252,000 in fiscal year 2005 to \$7,209,000 in fiscal year 2006. Bequests and memorials fluctuate substantially based on the timing of large donations.

2. Change in value of split interest agreements declined by \$677,000, or 49%, from \$1,368,000 in fiscal year 2005 to \$691,000 in fiscal year 2006. As previously stated, actuarial calculations of benefits due to beneficiaries can result in large variances depending on deaths of beneficiaries.

*Expenses:* Total expenses increased by \$2,140,000, or 6%, from \$38,745,000 in fiscal year 2005 to \$40,885,000 in fiscal year 2006. This increase is explained primarily by the fact that administration expense increased by \$2,030,000, or 21%, from \$9,649,000 in 2005 to \$11,679,000 in 2006. This was the

result primarily of legal defense costs for lawsuits brought against the Guarantor's children's program previously discussed.

*Writeoff of property and equipment:* Writeoffs of property and equipment declined by \$765,000, or 100%, from \$765,000 in fiscal year 2005 to \$0 in fiscal year 2006. A significant development project was terminated in 2005, and the feasibility and design costs were written off.

## MISCELLANEOUS

### **Employees of Guarantor**

The Guarantor employed approximately 280 full-time and part-time employees as of June 30, 2007. None of the Guarantor's employees are covered by collective bargaining agreements as of June 30, 2007. The Guarantor considers its relationship with its employees to be good.

### **Memberships of Guarantor**

The Guarantor is a member of the American Association of Homes and Services for the Aging, as well as the Aging Services of California, formerly the California Association of Homes & Services for the Aging.

### **Pension Plan of Guarantor**

See Note 8 to the financial statements of the Guarantor as of and for the year ended June 30, 2007, in APPENDIX B herein for more information regarding the pension plan of the Guarantor.

**APPENDIX B**

**FINANCIAL STATEMENTS OF THE GUARANTOR**

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**MASONIC HOMES OF CALIFORNIA  
AND SUBSIDIARIES**

**INDEPENDENT AUDITOR'S REPORT  
AND  
CONSOLIDATED FINANCIAL STATEMENTS**

**YEAR ENDED JUNE 30, 2007 AND 2006**

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**INDEPENDENT AUDITOR'S REPORT**

Board of Trustees  
Masonic Homes of California and Subsidiaries

We have audited the accompanying consolidated statement of financial position of Masonic Homes of California as of June 30, 2007 and the related consolidated statement of activities and changes in net assets and cash flows for the year then ended. These consolidated financial statements are the responsibility of the management of Masonic Homes of California. Our responsibility is to express an opinion on the consolidated financial statements based on our audit. The prior year summarized comparative information has been derived from the Organization's June 30, 2006, financial statements. In our audit of the June 30, 2006 financial statements, we were unable to obtain sufficient audit evidence supporting the alternative investments valued at \$53,594,253 as of June 30, 2006, whose fair values have been estimated by management in the absence of readily determinable fair values. As a result, in our report dated October 12, 2006 (except for Note 11 to the 2006 financial statements as to which the date is November 20, 2006), we expressed an opinion that, except for the fair value and unrealized gains related to alternative investments, the financial statements were presented fairly in all material respects.

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

In our opinion, the June 30, 2007, consolidated financial statements referred to in the first paragraph present fairly, in all material respects, the financial position of Masonic Homes of California as of June 30, 2007, and the changes in its net assets and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.



San Francisco, California  
December 11, 2007

**MASONIC HOMES OF CALIFORNIA AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF FINANCIAL POSITION**  
**JUNE 30, 2007 (WITH SUMMARIZED COMPARATIVE INFORMATION AS OF JUNE 30, 2006)**  
**(IN THOUSANDS)**

	<u>Unrestricted</u>	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>2007 Total</u>	<u>2006 Total</u>
Assets					Comparative Totals Only
Current assets					
Cash and equivalents - unrestricted	\$ 2,399	\$ -	\$ -	\$ 2,399	\$ 792
Funds held for residents	9,956	-	-	9,956	546
Receivables	58	-	-	58	343
Prepaid expenses and other assets	4,973	-	-	4,973	2,207
Related entities receivable	98	-	-	98	-
Due from other funds	809	-	-	809	895
Assets held for sale	3,413	-	-	3,413	1,268
Total current assets	21,706	-	-	21,706	6,051
Investments, at fair value	733,172	1,731	141,694	876,597	755,381
Property and equipment, net	94,277	-	-	94,277	94,740
Assets held in trusts	-	13,066	321	13,387	13,351
Other assets	957	-	-	957	1,353
Total assets	<u>\$ 850,112</u>	<u>\$ 14,797</u>	<u>\$ 142,015</u>	<u>\$ 1,006,924</u>	<u>\$ 870,876</u>
Liabilities and net assets					
Current liabilities					
Accounts payable and accrued liabilities	\$ 25,889	\$ -	\$ -	\$ 25,889	\$ 2,278
Accrued payroll and benefits payable	2,040	-	-	2,040	1,790
Related entities payable	-	-	-	-	831
Due to other funds	811	-	-	811	895
Total current liabilities	28,740	-	-	28,740	5,794
Minimum pension liability	1,110	-	-	1,110	3,663
Liability to beneficiaries of split-interest agreements	-	4,023	-	4,023	4,012
Deferred revenue from assigned assets	18,577	-	-	18,577	16,714
Total liabilities	48,427	4,023	-	52,450	30,183
Net assets	801,685	10,774	142,015	954,474	840,693
Total liabilities and net assets	<u>\$ 850,112</u>	<u>\$ 14,797</u>	<u>\$ 142,015</u>	<u>\$ 1,006,924</u>	<u>\$ 870,876</u>

**MASONIC HOMES OF CALIFORNIA AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF CHANGES IN NET ASSETS**  
**YEAR ENDED JUNE 30, 2007 (WITH SUMMARIZED COMPARATIVE INFORMATION**  
**FOR THE YEAR ENDED JUNE 30, 2006) (IN THOUSANDS)**

	Unrestricted	Temporarily Restricted	Permanently Restricted	2007 Total	2006 Total
					Comparative Totals Only
Public Support and Revenue					
Contributions	\$ 49	\$ 930	\$ 143	\$ 1,122	\$ 981
Bequests and memorials	2,944	3,205	6,903	13,052	7,209
Amortization of deferred revenue from assigned assets	3,306	-	-	3,306	2,904
Amount received from pensions assigned by resident	3,963	-	-	3,963	3,979
Investment income	21,926	177	-	22,103	16,506
Net realized gain on investments	54,273	430	-	54,703	86,306
Royalty and other income	2,643	-	-	2,643	2,170
Change in value of split interest agreements	-	84	124	208	691
Net assets released from restriction	4,503	(4,503)	-	-	-
Total public support and revenue	<u>93,607</u>	<u>323</u>	<u>7,170</u>	<u>101,100</u>	<u>120,746</u>
Expenses					
Program					
Operation of Masonic Homes	28,036	-	-	28,036	27,488
Masonic Outreach Services	1,855	-	-	1,855	1,703
Scholarship	45	-	-	45	15
Total program expenses	<u>29,936</u>	<u>-</u>	<u>-</u>	<u>29,936</u>	<u>29,206</u>
Supporting services					
Administration	29,258	-	-	29,258	11,679
Total expenses	<u>59,194</u>	<u>-</u>	<u>-</u>	<u>59,194</u>	<u>40,885</u>
Excess of Revenues over Expenses before other items	34,413	323	7,170	41,906	79,861
Change in minimum pension liability	2,170	-	-	2,170	320
Net unrealized gain(loss) on investments	69,170	535	-	69,705	(16,162)
Change in Net Assets	105,753	858	7,170	113,781	64,019
Net assets at beginning of year	<u>695,932</u>	<u>9,916</u>	<u>134,845</u>	<u>840,693</u>	<u>776,674</u>
Net assets at end of year	<u>\$ 801,685</u>	<u>\$ 10,774</u>	<u>\$ 142,015</u>	<u>\$ 954,474</u>	<u>\$ 840,693</u>

*See accompanying notes.*

**MASONIC HOMES OF CALIFORNIA AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**  
**YEARS ENDED JUNE 30, 2007 AND 2006**  
**(IN THOUSANDS)**

	2007	2006
Cash flows from operating activities		
Contributions Received	\$ 7,414	\$ 5,599
Net proceeds from assigned assets	3,132	3,559
Amounts received from assigned assets	3,963	3,979
Investment income received	22,103	16,506
Royalty and other income	2,192	1,629
Cash paid for operating expenses	<u>(33,274)</u>	<u>(34,897)</u>
Net cash provided by (used in) operating activities	<u>5,530</u>	<u>(3,625)</u>
Cash flows from investing activities		
Proceeds from sales of investments	23,337	166,905
Purchase of investments	(20,145)	(166,344)
Proceeds from sales of equipment	4	21
Purchase of equipment	(4,754)	(1,204)
Funds held for residents	<u>(9,411)</u>	<u>21</u>
Net cash used in investing activities	<u>(10,969)</u>	<u>(601)</u>
Cash flows from financing activities		
Contributions received restricted for investment in perpetuity	7,046	2,709
Net cash provided by financing activities	<u>7,046</u>	<u>2,709</u>
Net increase (decrease) in cash	1,607	(1,517)
Cash, beginning of year	<u>792</u>	<u>2,309</u>
Cash, end of year	<u>\$ 2,399</u>	<u>\$ 792</u>
Reconciliation of increase (decrease) in net assets to net cash provided by (used in) operating activities		
Change in net assets	\$ 113,781	\$ 64,019
Adjustment to reconcile decrease in net assets to net cash provided by operating activities		
Depreciation	5,216	5,405
Amortization of deferred revenue	(3,306)	(2,904)
Loss on disposal of property and equipment	(4)	514
Realized and unrealized gain on investments	(124,408)	(70,146)
Contributions and income received restricted for investment in perpetuity	(7,046)	(2,709)
Minimum pension liability	(2,170)	(320)
Changes in assets and liabilities		
Receivables	285	140
Prepaid expenses and other assets	(2,750)	503
Related entities receivable and payable	(928)	681
Assets held for sale	(2,144)	655
Assets held in trust	(37)	(275)
Accounts payable and accrued liabilities	23,860	(1,186)
Liabilities to beneficiaries of split interest agreements	11	(329)
Deferred revenue from assigned assets, net	<u>5,170</u>	<u>2,327</u>
Net cash provided by (used in) operating activities	<u>\$ 5,530</u>	<u>\$ (3,625)</u>

**MASONIC HOMES OF CALIFORNIA**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**YEARS ENDED JUNE 30, 2007 AND 2006**

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**Note 1 – Summary of Significant Accounting Policies**

**History and Organization** - Masonic Homes of California (“Masonic Homes”), a California not-for-profit corporation, operates a home for adults in Union City, California, and a home for adults and children at Covina, California. The Masonic Homes is supported by The Grand Lodge of Free and Accepted Masons of the State of California (the “Grand Lodge”) and members of the Masonic Fraternity in California.

The adult residents who enter Masonic Homes are required by a life-care agreement to assign 75% of their assets to Masonic Homes in exchange for continuing care for the remainder of their lives. In the event that a continuing care contract is canceled by the resident through withdrawal within the first 90 days of residency, the resident is entitled to a pro-rata refund of all his or her assigned assets. As of June 30, 2007 and 2006, deferred revenue from assigned assets subject to refund were \$398,604 and \$531,481, respectively.

Financially qualified adult residents may enter Masonic Homes by paying a monthly rental fee; such amounts vary with an option to pay an entrance fee. In the event of withdrawal, residents are refunded entrance fees ratably over the first 36 or 60 months.

Masonic Homes is subject to statutory reserve requirements. As of June 30, 2007, Masonic Homes’ reserves, as calculated in accordance with Continuing Care Contract Statutes of the California Health and Safety Code, were in excess of such requirements.

Masonic Homes annually calculates the present value of the net cost of future services and the use of facilities to be provided to current residents and compares that amount with the present value of related anticipated cash inflows. If the present value of the net cost of future services and the use of facilities exceeds the present value of related anticipated cash inflows, a liability is recorded with a corresponding charge to income. Masonic Homes has determined, using a discount rate of 6.75%, that no accrual for the obligation to provide future services and use of facilities to current residents was required as of June 30, 2007 and 2006.

Masonic Homes is the sole shareholder of Acacia Creek, A Masonic Retirement Living Community at Union City (“Acacia Creek – UC”) with the purpose of serving the needs of the elderly housing with independent, assisted living and dementia units.

Masonic Homes is the sole shareholder of Acacia Creek, A Masonic Retirement Living Community at Covina (“Acacia Creek – Covina”) with the purpose of serving the needs of the elderly housing with independent, assisted living and dementia units.

**Principles of Consolidation** - The consolidated financial statements include the accounts of Masonic Homes of California and Subsidiaries (collectively, the “Organization”). All significant inter-company accounts and transactions have been eliminated.

**MASONIC HOMES OF CALIFORNIA**  
**CONSOLIDATED NOTES TO FINANCIAL STATEMENTS**  
**YEARS ENDED JUNE 30, 2007 AND 2006**

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**Net Asset Classifications** - The accompanying financial statements have been prepared in accordance with the standards set forth in Statements of Financial Accounting Standards No. 116 (*Accounting for Contributions Received and Contributions Made*), No. 117 (*Financial Statements for Not-for-Profit Organizations*) and the guidelines set forth in the industry audit and accounting guide “*Health Care Organizations*” issued by the American Institute of Certified Public Accountants. Under these guidelines, contributions of cash and other assets are classified as one of the following three categories:

*Unrestricted* - Unrestricted net assets represent resources that are not subject to donor-imposed restrictions and are available to support Masonic Homes’ activities.

*Temporarily Restricted* - Temporarily restricted net assets represent contributions that are limited in use in accordance with donor-imposed stipulations. These stipulations may expire with time or may be satisfied by the actions of Masonic Homes according to the intention of the donor. Upon satisfaction of such stipulations, the associated net assets are released from temporarily restricted net assets and reported as unrestricted. If a restriction is fulfilled in the same fiscal year in which the contribution was received, the contribution is reported as temporarily restricted support and net assets released from restrictions in that period.

*Permanently Restricted* - Permanently restricted net assets represent contributions to be held in perpetuity as directed by the donor.

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

**Cash and Cash Equivalents** - Cash and cash equivalents consist of highly liquid investments with original maturities of three months or less at the time of purchase, with the exception of cash and cash equivalents held in the endowment fund as investments or whose use is restricted.

**Funds Held for Residents** - Funds held for residents includes residents’ accounts at Union City and Covina, which comprise of unexpended portions of monthly allowances made to residents or other income earned by residents. A corresponding liability for such agency funds is included in accounts payable and accrued liabilities.

**Investments** - Investments in debt and equity securities are stated at estimated fair market values based on quoted market prices. Investments received through gifts are recorded at estimated fair-market values at the dates of donation. Unrealized gains or losses that result from market fluctuations are recorded in the period in which such fluctuations occur. Realized gains or losses resulting from sales or maturities of securities are calculated on a cost basis.

**MASONIC HOMES OF CALIFORNIA  
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2007 AND 2006**

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**Assets Held for Sale** - Assets held for sale consist primarily of tangible property received from residents, including real estate that is held for sale. Assets are recorded at appraised value on the date of assignment.

**Property and Equipment** - Property and equipment are carried at cost and are depreciated on the straight-line method over the following estimated useful lives:

Buildings and improvements	5 - 50 years
Equipment	3 - 35 years
Furniture and fixtures	5 - 20 years
Vehicles	2 - 7 years

**Prepaid Expenses and Other Assets** - Prepaid expenses and other assets consist primarily of pension prepayments and intangible assets, insurance premium prepayments, notes receivable, resident-assigned assets awaiting liquidation, life insurance policies on residents and fine art at the two Masonic Homes' locations.

Other assigned assets are recorded at fair market value on the date of assignment. Fine art is recorded at appraised value at the date of donation.

**Deferred Revenue from Pooled Income Fund** - Deferred revenue from pooled income fund represents the discount for future investment earnings on Masonic Homes' remainder interest in the Masonic Homes Pooled Income Fund (the "Pooled Income Fund") (Note 4). Masonic Homes has determined the amount deferred using the tax deduction methodology from IRS Publication 1457 tables, and a discount rate of 8.3% as of June 30, 2007 and 2006.

**Assets held in Trusts** - Assets held in trusts represent the assets use to satisfy the liability to beneficiaries of split interest agreements. When a donor establishes a split interest agreement where the Masonic Homes is the trustee the lump sum received by the donor is invested separately. (See Note 4)

**Liability to Beneficiaries of Split-Interest Agreements** - Liability to beneficiaries of split-interest agreements represents the income beneficiaries' interest in various charitable remainder trusts of which Masonic Homes is the trustee (Note 4). The liability is calculated as the present value of the estimated future cash flows to be distributed to the income beneficiaries over their expected lives. Masonic Homes has determined the amount of the liability using the tax deduction methodology from IRS Publication 1457, Table S, or IRS Publication 1458, Table D, as applicable, and a discount rate of 5.8% as of June 30, 2007 and 2006.

**MASONIC HOMES OF CALIFORNIA  
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS  
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**Revenue Recognition**

*Residency Fees* - The fair-market value of real and personal property assigned to Masonic Homes by residents entering into a continuing care contract is deferred and amortized over the actuarially determined individual or joint and last survivor life expectancy (using the straight-line method based on the State of California Department of Social Services life expectancy table), with any unamortized balance recognized as income upon death of the individual or last survivor.

*Assigned Retirement Benefits* - Resident retirement benefits that are assigned to Masonic Homes are recognized when received. These amounts are generally received in the form of annuity payments.

*Obligation to Provide Future Services to Current Residents* - The Organization is required to accrue a liability in the financial statements to cover future services for current residents if deferred residency fees plus future anticipated income are not sufficient to cover these costs. Management has determined that no such accrual is required in the accompanying financial statements.

**Contributions** - The Organization records contributions according to SFAS No. 116, *Accounting for Contributions Received and Contributions Made*. In accordance with SFAS No. 116, contributions, including unconditional promises to give, are recorded in the period made. All contributions are available for unrestricted use unless specifically restricted by the donor. Conditional promises to give are recognized when the conditions on which they depend are substantially met. Unconditional promises to give due in the next year are recorded at their net realizable value. Unconditional promises to give due in subsequent years are reported at the present value of their net realizable value, using risk-free interest rates applicable to the years in which the promises are to be received.

**Recognition of Donor-Restricted Contributions** - Donor-restricted support is reported as an increase in temporarily or permanently restricted net assets, depending on the nature of the restriction. When a restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets.

**Functional Expense Allocations** - Expenses, such as depreciation, supplies, personnel, and occupancy costs, are allocated among program services and supporting services classifications on the basis of time records and on estimates made by Masonic Homes' management.

**Fair Value of Other Financial Instruments** - The carrying amount of cash and cash equivalents approximates fair value because of the short maturity of those instruments. The carrying amounts of the accounts receivable and payable approximate their fair values. Investments and assets related to split-interest agreements are carried at estimated fair value based on quoted market prices.

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**Comparative Information** - The financial statements include certain prior-year summarized comparative information in total but not by net asset class. Such information does not include sufficient detail to constitute a presentation in conformity with U.S. generally accepted accounting principles. Accordingly, such information should be read in conjunction with the Masonic Homes' financial statements for the year ended June 30, 2006, from which the summarized information was derived.

**Concentration of Risk** - Financial instruments potentially subjecting the Masonic Homes to concentrations of credit risk consist primarily of bank demand deposits in excess of FDIC limits. Management believes, however, that the risk of loss is minimal due to the high financial quality of the banks.

**Tax-Exempt Status** - Masonic Homes is a nonprofit corporation as described in Section 501(c)(3) of the Internal Revenue Code and Section 23701(d) of California Revenue and Taxation Code and has been granted tax-exempt status by the Internal Revenue Service and the California Franchise Tax Board. Accordingly, no provision for income taxes is included in the financial statements.

**Changes in Accounting Principles** - Effective June 30, 2007, Masonic Homes adopted Statement of Financial Accounting Standard ("SFAS") No. 158, "Employers' Accounting for Defined Benefit Pension and Other Post Retirement Plans" ("SFAS 158"), and recorded a \$1,358,890 reduction in intangible assets and an increase in pension liability as opposed to accounting prior to SFAS 158. The year-end measurement provision of SFAS 158 is effective for fiscal years ending after December 15, 2008. Management is currently assessing the potential impact of this change in standard on Masonic Homes' financial condition and results of operations. (See Note 8).

**Reclassification** - Certain accounts in prior year financial statements have been reclassified for comparative purposes to conform with the presentation in the current year financial statements. The statement of cash flows is presented using the direct method.

## **Note 2 – Investments**

Investments are presented at fair value and consist of corporate stocks, fixed income securities, money market accounts, and institutional mutual funds that invest in a diversified portfolio of fixed income securities of varying maturities with portfolio duration of three to six years.

**MASONIC HOMES OF CALIFORNIA**  
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Investments consisted of the following as of June 30:

	<u>2007</u>	<u>2006</u>
Corporate stocks	\$ 650,456,118	\$ 538,936,344
Equity mutual funds	41,579,492	47,241,181
Alternative Investments	61,782,011	53,594,253
Fixed income mutual funds	119,066,793	112,367,920
Money market accounts	<u>3,713,100</u>	<u>3,241,183</u>
Total investments	<u>\$ 876,597,514</u>	<u>\$ 755,380,881</u>

Alternative investments are less liquid than the Organization's other investments. The following table summarizes these investments by investment strategy type at June 30:

Alternative investment strategy	Number of funds	<u>2007</u>	Number of funds	<u>2006</u>
Real Estate	1	\$ 44,801,806	1	\$ 39,070,709
Hedge fund of funds	1	<u>16,980,205</u>	1	<u>14,523,544</u>
Total alternative investments	2	<u>\$ 61,782,011</u>	2	<u>\$ 53,594,253</u>

**Note 3 – Property and Equipment**

Property and equipment consisted of the following as of June 30:

	<u>2007</u>	<u>2006</u>
Land and improvements	\$ 13,686,203	\$ 13,663,998
Buildings and improvements	133,286,878	131,807,632
Furniture and equipment	11,998,696	11,379,439
Construction in progress	<u>3,198,169</u>	<u>598,818</u>
Total property and equipment	162,169,946	157,449,887
Less: accumulated depreciation	<u>(67,892,536)</u>	<u>(62,709,963)</u>
Property and equipment, net	<u>\$ 94,277,410</u>	<u>\$ 94,739,924</u>

Depreciation expense for the years ended June 30, 2007 and 2006 totaled \$5,216,473 and \$5,405,425, respectively. No assets were disposed during 2007. During the year ended June 30, 2006, assets with a net book value of \$539,275 were written off as they are no longer in use.

**MASONIC HOMES OF CALIFORNIA  
CONSOLIDATED NOTES TO FINANCIAL STATEMENTS  
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**Note 4 – Assets Held In Trust**

Assets held in trusts consisted of the following as of June 30:

	2007	2006
Contributions receivable from split-interest agreements	\$ 321,069	\$ 321,069
Assets of pooled income fund	2,155,073	2,236,068
Assets of split-interest agreements	6,629,343	6,505,638
Assets of charitable gift annuities	1,073,976	1,079,905
Beneficial interest in perpetual trusts	3,207,936	3,207,935
Total assets held in trusts	\$ 13,387,397	\$ 13,350,615

**Contributions Receivable from Split-Interest Agreements** - Contributions receivable from split-interest agreements represent the estimated net present value of Masonic Homes' interest in various irrevocable trusts held by third parties. The net present value of these receivables was determined using the tax deduction methodology from the IRS.

**Assets of Pooled Income Fund** - Assets of the Pooled Income Fund represent the fair value of assets held in the Pooled Income Fund, which was organized in 1974 as a charitable trust to which donors contribute irrevocable remainder interests in investments while retaining an income interest for life for one or more beneficiaries. All dividend and interest income of the Pooled Income Fund is distributed quarterly to the beneficiaries, based on their proportionate share of the Pooled Income Fund. Upon the death of each donor's last income beneficiary, the remainder interest becomes available for Masonic Homes' use.

**Assets of Split-Interest Agreements** - Assets of split-interest agreements consist of cash and other assets received under various irrevocable charitable trusts of which Masonic Homes is the trustee. The assets received under these agreements are recorded at estimated fair market value when received.

**Beneficial Interests in Perpetual Trusts** - Beneficial interests in perpetual trusts represent the net present value of Masonic Homes' irrevocable interest in the income generated from various perpetual trusts held by third-party trustees. The assets of the trusts have been donor restricted for investment in perpetuity. The income of \$3,174,017 and \$3,174,017 at June 30, 2007 and 2006, respectively, of the beneficial interests in perpetual trusts is either unrestricted or temporarily restricted. Income of \$33,919 of the beneficial interests in perpetual trusts is permanently restricted at both June 30, 2007 and 2006.

**MASONIC HOMES OF CALIFORNIA**  
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**Assets of Charitable Gift Annuities** - Assets of charitable gift annuities consist of cash and other assets received under irrevocable annuity contracts. These contracts guarantee a specified amount for the life of the donor, or beneficiaries designated by the donor. The assets received are not commingled with the general assets of the Masonic Homes. A reserve account has been established and invested in accordance with California statutes. The discount rates used range from 3.6% to 6.0%. Upon the death of the donor, the remaining funds revert to the Masonic Homes and are taken into income. The change in present value of the gift annuities for the year ended June 30, 2007 and 2006 is \$99,066 and \$45,217, respectively.

**Note 5 – Deferred Revenue from Assigned Assets**

Changes in deferred revenue from assigned assets fees are as follows for the years ended June 30:

	<u>2007</u>	<u>2006</u>
Balance, beginning of year	\$ 16,713,702	\$ 17,291,079
Received from new residents	5,624,388	2,874,846
Amortized		
Due to deaths and withdrawals	(454,307)	(547,847)
Based on actuarial calculation	<u>(3,306,302)</u>	<u>(2,904,376)</u>
Balance, end of year	<u>\$ 18,577,481</u>	<u>\$ 16,713,702</u>

**Note 6 – Temporarily Restricted Net Assets and Net Assets Released from Restrictions**

Temporarily restricted net assets consisted of the following as of June 30:

	<u>2007</u>	<u>2006</u>
Available for use in awarding scholarships or other programs related to children	\$ 5,286,285	\$ 4,406,271
Available for use in the activities of the homes in Union City and Covina upon lapse of time restrictions	<u>5,487,992</u>	<u>5,509,590</u>
Total temporarily restricted net assets	<u>\$ 10,774,277</u>	<u>\$ 9,915,861</u>

**MASONIC HOMES OF CALIFORNIA  
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Net assets were released from donor restrictions as shown in the following table for the periods ending June 30, 2007 and 2006. Net assets were released from donor restrictions by incurring expenses satisfying the restricted purposes or by occurrence of other events specified by donors.

	<u>2007</u>	<u>2006</u>
Use in the activities of the home for adults in Union City, California	\$ 1,641,954	\$ 2,137,562
Use in the activities of the home for adults/children in Covina, California	2,269,340	1,629,976
Use in Masonic Outreach Services	564,704	541,374
Use in awarding scholarships	<u>27,407</u>	<u>5,850</u>
Total net assets released from restrictions	<u>\$ 4,503,405</u>	<u>\$ 4,314,762</u>

**Note 7 – Permanently Restricted Net Assets**

Permanently restricted net assets are restricted to investments in perpetuity, the income from which is expendable to support the following activities as of June 30:

	<u>2007</u>	<u>2006</u>
Use in the activities of Masonic Homes	\$ 140,026,907	\$ 133,076,487
Use in awarding scholarships	1,667,227	1,447,977
Use for investment in the Endowment Fund	<u>321,069</u>	<u>321,069</u>
Total permanently restricted net assets	<u>\$ 142,015,203</u>	<u>\$ 134,845,533</u>

**Note 8 – Retirement Plans**

**Defined Benefit Plan**

Masonic Homes, the Grand Lodge, and the California Masonic Memorial Temple participate in a defined benefit pension plan (the “Plan”) that covers all employees. The Grand Lodge is the sponsoring employer of the Plan. Benefits are to be paid to eligible employees at retirement based primarily upon years of service and compensation levels near retirement. Contributions to the Plan reflect benefits attributed to employees’ services to date, as well as services expected to be provided in the future. Plan assets consist primarily of fixed income institutional mutual funds and equity securities.

**MASONIC HOMES OF CALIFORNIA**  
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Pension expense and other activity of the entire Plan for the years ended June 30, 2007 and 2006 consisted of the following components:

	<u>2007</u>	<u>2006</u>
Pension expense	\$ 1,021,139	\$ 1,401,952
Employer contribution	1,800,000	2,000,000
Benefits paid	1,277,002	1,009,964

The following sets forth the funded status of the Plan as of June 30, 2007 and 2006:

	<u>2007</u>	<u>2006</u>
Projected benefit obligation	\$ 23,370,321	\$ 24,849,567
Fair value of plan assets	<u>23,480,131</u>	<u>19,362,705</u>
Funded status	<u>\$ 109,810</u>	<u>\$ (5,486,862)</u>
Accrued benefit cost	<u>\$ 109,810</u>	<u>\$ (3,761,336)</u>

Assumptions as of June 30, 2007 and 2006:

	<u>2007</u>	<u>2006</u>
Discount rate	6.25%	6.25%
Expected return on plan assets	8.00%	8.00%
Rate of compensation increase	5.00%	5.00%

Pension activity has been allocated to the three contributing employers based on information provided by the Plan's actuary including the relative number of participating employees of each employer, the length of service of the employees and other factors. Pension expense allocated to Masonic Homes was \$994,089 and \$1,139,416 for the years ending June 30, 2007 and 2006, respectively.

An actuarially determined pension liability adjustment is required when the actuarial present value of accumulated benefits exceeds plan assets and accrued pension liabilities. The amounts allocated to the organization and recorded in connection with this liability are as follows:

**MASONIC HOMES OF CALIFORNIA  
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	2007	2006	Change
Additional minimum pension liability	\$ 1,110,485	\$ 3,662,869	\$ 2,552,384
Long term intangible asset	-	382,269	(382,269)
Net increase to unrestricted net asset			\$ 2,170,115

The additional minimum pension liability included in accrued liabilities in the statement of financial position is stated net of a prepaid pension cost. As of June 30, 2007 and 2006, the prepaid pension cost was \$1,200,222 and \$529,065, respectively. The long-term intangible asset is included in other assets in the statement of financial position.

**Plan Termination** - The Plan was frozen effective March 31, 2007, with the intent to eventually terminate the Plan. When the Plan terminates, its net assets generally may not be sufficient on a pro rata basis to provide for total participants' benefits. Whether a particular participant's accumulated plan benefits will be paid depends on the priority of those benefits, the level of benefits guaranteed by the Pension Benefit Guaranty Corporation ("PBGC") at that time, and the financial condition of the Grand Lodge upon termination of the Plan. Some benefits may be fully or partially provided for by the then-existing assets and the PBGC guaranty, while other benefits may not be provided for at all.

Plan assets will be shared among eligible plan participants in the event of a termination in the following priority order:

- ❖ Benefits from required employee contributions to the Plan.
- ❖ Benefits to retirees, the beneficiaries of retirees, and beneficiaries of participants who died before retirement but with the preretirement survivor's option in effect. To qualify in this category, retirees or beneficiaries must already have been receiving, or have been eligible to receive, benefits for at least three years before plan termination. (This includes active employees who were eligible to retire at least three years before plan termination.) The benefit paid would be the smallest benefit received or that could have been received during the five-year period ending on the plan termination date.
- ❖ Benefits to retirees and beneficiaries who began receiving benefits within three years of plan termination, and active employees who could have retired and began receiving payments within that time. This category also includes active employees entitled to a benefit and employees who left the Grand Lodge who are eligible for a deferred benefit.
- ❖ Accrued benefits for all other participants.

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Generally, the PBGC guarantees most vested normal age retirement benefits, early retirement benefits, and certain disability and survivor's pensions. However, the PBGC does not guarantee all types of benefits under the Plan, and the amount of benefit protection is subject to certain limitations. Vested benefits under the Plan are guaranteed at the level in effect on the date of the Plan's termination.

**Defined Contribution Plan** - The California Masonic Retirement Plan II ("Retirement Plan") a defined contribution plan sponsored by the Grand Lodge was effective on April 1, 2007. Masonic Homes, the Grand Lodge, and the California Masonic Memorial Temple participate in the Retirement Plan that covers all employees who meet certain age and service requirements. The Retirement Plan provides for both an employer contribution and an employer match of employee contributions. The total employer contributions and matches made by the Masonic Homes to the plan were \$370,918 for the year ended June 30, 2007.

**Note 9 – Related-Party Transactions**

The Grand Lodge provides general and administrative support to Masonic Homes, for which the Grand Lodge is reimbursed through an allocation of certain expenses. The allocations to the Masonic Homes were \$4,356,064 and \$3,556,614 for the fiscal years ended June 30, 2007 and 2006, respectively.

**Note 10 – Contingencies and Commitments**

**Industry Regulations** - The health care industry is subject to numerous laws and regulations of federal, state, and local governments. These laws and regulations include, but are not necessarily limited to, matters such as licensure, accreditations, government health care program participation requirements, reimbursement for patient services, and Medicare and Medicaid fraud and abuse. Government activity continues with respect to investigations and allegations concerning possible violations of fraud and abuse statutes and regulations by health care providers. Violations of these laws and regulations could result in expulsion from government health care programs, together with the imposition of significant fines and penalties, as well as significant repayments for patient services previously billed. Management believes that the Company is in compliance with fraud and abuse, as well as other applicable government laws and regulations. While no regulatory inquiries have been made, compliance with such laws and regulations can be subject to future government review and interpretation, as well as regulatory actions known or unasserted at this time.

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**Legal Claims** - Masonic Homes is currently involved in lawsuits arising in the ordinary course of its operations. While some of these cases are in the pleading stages and Masonic Homes has denied the material allegations and intends to defend the actions vigorously, several of the cases have gone to trial, which resulted in total plaintiff's awards of \$15,545,100. While the ultimate liabilities cannot be determined for all cases due to uncertainties that exist, management has accrued the entire amount of plaintiff's awards.

**Note 11 – Supplemental Cash Flow Information**

Noncash operating transactions include:

- Net changes in minimum pension liability gains of \$2,170,115 and losses of \$319,850 for the years ended June 30, 2007 and 2006, respectively.

**Note 12 – Subsequent Events**

During the year management continued planning and design for construction of Acacia Creek Union City and Acacia Creek Covina. Current estimates for construction costs are \$88.2 million and \$85.2 million, respectively. The Organization expects to issue tax-exempt variable rate revenue bonds to cover construction costs and other start-up costs. The bond offering for Acacia Creek Union City is estimated at \$96.5 million. The amount for the bond offering for Acacia Creek Covina is still under discussion.

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**APPENDIX C**

**SUMMARY OF PRINCIPAL DOCUMENTS**

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## SUMMARY OF PRINCIPAL DOCUMENTS

Brief descriptions of the Indenture and the Loan Agreement are included hereafter in this Appendix C to the Official Statement. Such descriptions do not purport to be comprehensive or definitive. All references herein to the Indentures and the Loan Agreement are qualified in their entirety by reference to each such document, copies of which are available for review prior to the issuance and delivery of the Bonds at the office of the Authority and thereafter at the office of the Trustee. All references to the Bonds are qualified in their entirety by reference to the definitive forms thereof and the information with respect thereto included in the Indenture.

### DEFINITIONS

The following are definitions of certain terms used in the Indenture, the Loan Agreement and this Official Statement.

“Act” means Chapter 5 of Division 7 of Title I (commencing with Section 6500) of the Government Code of the State of California.

“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 its 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, within the meaning of the Bankruptcy Code of 1978, as amended, and judicial interpretations thereof.

“Additional Bonds” means bonds authorized by the Authority and issued under and pursuant to a supplemental indenture.

“Additional Payments” means the payments required to be made by the Borrower pursuant to the Loan Agreement.

“Administrative Fees and Expenses” means any application, commitment, financing or similar fee charged, or reimbursement for administrative or other expenses incurred, by the Authority, including Additional Payments.

“Affiliate” means a Person which, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Borrower or the Authority, as applicable.

“Alternate Letter of Credit” means an alternate irrevocable letter of credit, including, if applicable, a similar letter of credit issued by a commercial bank, savings institution or other financial institution, and delivered to the Trustee pursuant to the Loan Agreement.

“Alternate Rate” means with respect to Bonds in a Daily Mode and a Weekly Mode, an annual rate equal to the SIFMA Municipal Swap Index.

“Annual Debt Service Requirement” means the Debt Service Requirements of the Borrower payable during the twelve month period ending with the date of the period being measured. In calculating the Annual Debt Service Requirement, the following assumptions shall also apply:

(i) with respect to Balloon Indebtedness or Put Indebtedness, the amount of the principal payments required to be made in any such measurement period shall be deemed to be that amount which would be payable in such measurement period if the total principal of such Indebtedness were amortized from the date of calculation over a period of 25 years on a level annual debt service basis; provided, however, that, if the option of the holder to require that such Put Indebtedness be purchased prior to its stated maturity date has expired as of the date of calculation of the Annual Debt Service Requirement, such Put Indebtedness shall be deemed to be payable in accordance with its terms unless such Put Indebtedness constitutes Balloon Indebtedness;

(ii) the amortization schedule of Balloon Indebtedness and Put Indebtedness and the debt service payable with respect to such Indebtedness shall be calculated on the assumption that such Indebtedness is being issued simultaneously with the calculation of the Annual Debt Service Requirement; provided, however, that, if the option of the holder to require that such Put Indebtedness be purchased prior to its stated maturity date has expired as of the date of calculation of the Annual Debt Service Requirement, such Put Indebtedness shall be deemed payable in accordance with its terms unless such Put Indebtedness constitutes Balloon Indebtedness;

(iii) with respect to Put Indebtedness and Balloon Indebtedness, the interest on such Indebtedness shall be calculated at the Projected Rate.

“Auction Mode” means the Mode during which a Bond bears interest at the Auction Rate.

“Auction Rate” shall have the meaning set forth in Exhibit A to the Indenture.

“Authority” means the ABAG Finance Authority for Nonprofit Corporations, a joint exercise of powers agency organized and existing under the laws of the State.

“Authorized Denomination” means (i) \$100,000 and any integral multiple of \$5,000 in excess thereof, with respect to Bonds in a Daily Mode or a Weekly Mode.

“Authorized Representative” means with respect to the Authority, its President, Chief Financial Officer, Secretary or any other person as may be designated and authorized to sign for the Authority; with respect to the Borrower, the person or persons at the time designated to act on behalf of the Borrower by a written certificate signed by the Borrower, furnished to the Trustee, the Guarantor, the Bank and the Authority, containing the specimen signature of each such person; with respect to the Guarantor, the person or persons at the time designated to act on behalf of the Guarantor by a written certificate signed by the Guarantor, furnished to the Trustee, the Bank and the Authority, containing the specimen signature of each such person; and with respect to the Bank, the person or persons at the time designated to act on behalf of the Bank by a written certificate signed by the Bank, furnished to the Trustee, the Borrower, the Guarantor and the Authority, containing the specimen signature of each such person.

“Available Moneys” means (1) moneys derived from drawings under a Letter of Credit that are not commingled with any other moneys, (2) moneys held by the Trustee (other than moneys held in the account for purposes of discharged Bonds) and subject to a first-priority perfected lien under the Indenture for a period of at least one hundred twenty-three (123) days and not commingled with any moneys so held for less than said period and during and prior to which period no petition in bankruptcy was filed by or against, and no receivership, insolvency, assignment for the benefit of creditors or other similar proceeding has been commenced by or against the Borrower, the Authority or any Guarantor; provided, however, if a Guarantor exists, such period shall be at least three hundred and seventy (370) days, (3) proceeds from the remarketing of any Bonds pursuant to the provisions of the Indenture to any person other than the Authority, the Borrower or any “affiliate” thereof (as defined in Title 11 of the United States Code), (4) investment income derived from the investment of moneys described in clause (2) so long as (A) investments of such moneys are in Investment Securities rated by in (i) any of the two-highest long-term rating categories; or (ii) if applicable, the highest short-term rating category; and (B) with respect to such investment earnings there has been delivered to the Trustee an opinion of nationally recognized bankruptcy counsel to the effect that the payment of such moneys to the holders of the Bonds would not constitute transfers avoidable under 11 U.S.C. Section 547(b) and recoverable from the holders of the Bonds under 11 U.S.C. Section 550(a)

should the Authority, the Borrower or the Guarantor be the debtor in a case under the United States Bankruptcy Code, or (5) money with respect to which the opinion described in (4) (B) of this definition is delivered to the Trustee. For the purposes of this definition, the term “money” shall include cash and any investment securities including, without limitation, Government Obligations.

“Avoided Payment” means any amount previously distributed to a Holder in respect of any payment by or on behalf of the Borrower, which amount has been recovered from such Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction that such payment constitutes an avoidable preference with respect to such Holder.

“Bank” means (a) the Liquidity Provider, or (b) any provider of the Alternate Letter of Credit or Substitute Liquidity Facility.

“Bank Bonds” mean Bonds purchased by the Bank pursuant to the Reimbursement Agreement or Liquidity Facility Agreement, but excluding Bonds no longer considered Bank Bonds pursuant to the terms of such Reimbursement Agreement or Liquidity Facility Agreement.

“Bank Bond Rate” means the interest rate(s) applicable from time to time to Bank Bonds as determined in accordance with the Liquidity Facility Agreement and/or the Reimbursement Agreement, as applicable.

“Bank Bond Sale Date” means the day on which a Bank Bond ceases to be a Bank Bond.

“Balloon Indebtedness” means Long-Term Indebtedness 25% or more of the original principal amount of which is due in any consecutive 12-month period, which portion of the principal is not required by the documents pursuant to which such Indebtedness is incurred to be amortized by redemption or prepayment prior to such 12-month period.

“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.

“Bondholder” see “Holder.”

“Bonds” or “Bond” means the revenue bonds of the Authority authorized by and at any time Outstanding pursuant hereto and executed, issued and delivered in accordance with the Indenture.

“Borrower Purchase Account” means the account by that name within the Purchase Fund established pursuant to the Indenture.

“Business Day” means a day other than a Saturday, Sunday or a legal holiday in the State of New York or any other day on which banking institutions chartered under the laws of the State of New York or the United States of America are authorized or required by law to close or a day on which the office of the Bank at which drafts are to be presented under the Letter of Credit, the office of the Liquidity Provider (as set forth in the Liquidity Facility for funding Liquidity Facility Requests), if applicable, or the Corporate Trust Office of the Trustee and of the Tender Agent is authorized to be closed, the office of the Remarketing Agent (as set forth in the Remarketing Agreement) or the Federal Reserve System is closed.

“Certificate,” “Statement,” “Request,” “Requisition” or “Order” of the Authority, the Bank or the Borrower mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the Authority, the Bank or the Borrower by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument. If and to the extent required by the Indenture, each such instrument shall include the statements provided for in the Indenture.

“Code” means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any future laws of the United States of America relating to federal income taxation, and except as otherwise provided herein or required by the context hereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of the Treasury (including applicable final regulations or temporary regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

“Consultant” means a professional consulting, financial advisory, accounting, investment banking or commercial banking firm selected by Guarantor and not unacceptable to the Trustee, having the skill and experience necessary to render the particular report required and having a favorable and nationally recognized reputation for such skill and experience, which firm does not control the Guarantor, the Borrower or any Affiliate thereof and is not controlled by or under common control with the Guarantor, the Borrower or an Affiliate thereof.

“Corporate Trust Office” means the office of the Trustee as may be specified to the Authority by the Trustee, except that with respect to presentation of Bonds for payment or for registration of transfer and exchange, such term means the office or agency of the Trustee at which, at any particular time, its corporate trust agency business shall be conducted.

“Costs of Issuance” means all costs and expenses of issuance of the Bonds, including, but not limited to: (i) underwriters’ discount and fees; (ii) counsel fees related to the financing, including, without limitation, Bond Counsel, and special tax counsel fees, as well as counsel fees for the Authority and the Borrower; (iii) financial advisor fees; (iv) rating agency fees; (v) trustee fees and trustee counsel fees; (vi) paying agent and certifying and authenticating agent fees related to issuance of the Bonds; (vii) accounting fees and expenses; (viii) printing costs of the Bonds and of the preliminary and final official statement; (ix) publication costs associated with the financing proceedings; (x) costs of any credit enhancement of the Bonds; and (xi) any other fees or costs deemed issuance costs for purposes of the Act and by Section 1.150-1(b) of the Income Tax Regulations.

“Costs of Issuance Fund” means the fund by that name established pursuant to the Indenture.

“Current Mode” shall have the meaning specified in the Indenture.

“Custody Agreement” means the Custody Agreement between the Liquidity Provider and the Trustee, as custodian, and agreed to by the Borrower.

“Daily Mode” means the Mode during which a Bond bears interest at the Daily Rate.

“Daily Rate” means an interest rate that is determined on each Business Day with respect to any Bonds in the Daily Mode pursuant to the Indenture.

“Days Cash on Hand” means, as of the date of the calculation, an amount determined by dividing Unrestricted Cash and Investments of the Borrower at the end of the fiscal quarter being measured, by the amount determined by dividing (1) the expenses of the Borrower (excluding depreciation and amortization), as shown on the financial statements of the Borrower for the 12-month period ending with the date of measurement, by (2) the actual number of days in the 12-month period for which such calculation is being made.

“Debt Service Coverage Ratio” means the ratio determined by dividing Income Available for Debt Service, as shown on the financial statements of the Borrower at the end of any fiscal quarter, based on the prior twelve-month period ended on each date of calculation, by the Annual Debt Service Requirement.

“Debt Service Requirements” means, with respect to the period of time for which calculated, the aggregate of the payments required to be made during such period in respect of principal (whether at maturity, as a result of mandatory sinking fund redemption, mandatory prepayment or otherwise) and interest (including liquidity facility, letter of credit and remarketing fees and payments made under Interest Rate Agreements and netted with payments received under Interest Rate Agreements) on outstanding Long-Term Indebtedness of each Person or a group of Persons with respect to which calculated; provided that: (i) interest shall be excluded from the determination of the

Debt Service Requirements to the extent that funded interest or related fee reserves are available to pay such interest; and (ii) principal of Indebtedness shall be excluded from the calculation of Debt Service Requirements to the extent that (a) amounts are on deposit in an irrevocable escrow and such amounts (including, where appropriate, the earnings or other increment to accrue thereon) are required to be applied to pay such principal, and (b) such amounts so required to be applied are sufficient to pay such principal.

“Disbursement Request” means a Certificate substantially in the forms attached to the Indenture, as appropriate.

“Disclosure Agreement” means that certain Continuing Disclosure Agreement dated as of January 1, 2008, executed by the Borrower, the Guarantor and the Trustee as Dissemination Agent, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with its terms.

“Electronic Means” means (i) telecopy, telegraph, telex, facsimile transmission, email transmission or other similar electronic means of communication, including a telephonic communication confirmed by writing or written transmission and (ii) with respect to a Bond bearing interest at the Auction Rate, as set forth in the definition of “Electronic Means” in Exhibit A to the Indenture.

“Environmental Laws” means all present and future federal, state or local laws, rules or regulations relating to environmental matters, permits, pollution, waste disposal, industrial hygiene, land use and other requirements of governmental authorities relating to the environment or to any Hazardous Material or Hazardous Material Activity (including, without limitation, CERCLA and the applicable provisions of the Health and Safety Code of the State of California and the Water Code of the State of California) or the protection of human or animal health or welfare, including, without limitation, those related to any Release or threatened Release of Hazardous Materials and to the generation, use, storage, transportation or disposal of any Hazardous Materials, in any manner applicable to the Borrower or the Facilities.

“Event of Default” means any of the events specified in the Indenture.

“Expiration Date” means the date upon which the Liquidity Facility is scheduled to expire in accordance with its terms (without giving effect to the occurrence of any event, including, without limitation, the Termination Date, the Mode Change Date to the Fixed Rate Mode or the Auction Mode, or the substitution of a Substitute Liquidity Facility for the Liquidity Facility, which may cause the Liquidity Facility to expire prior to such date), as such date may be extended from time to time in accordance with the Liquidity Facility or the Liquidity Facility Agreement (it being understood and acknowledged that “Expiration Date” means, with respect to the Initial Liquidity Facility, the “Scheduled Expiration Date” under and as defined in the Initial Liquidity Facility, as such “Scheduled Expiration Date” may be extended from time to time in accordance with the Initial Liquidity Facility).

“Facilities” has the meaning set forth in the recitals in the Indenture.

“Favorable Opinion of Bond Counsel” means an Opinion of Bond Counsel to the effect that the action proposed to be taken is authorized or permitted by the Indenture and will not result in the inclusion of interest on the Bonds in gross income for federal income tax purposes.

“Fiscal Year” means any period beginning on July 1 of any calendar year and ending on June 30 of the following calendar year or such other twelve month period selected by the Borrower as its fiscal year.

“Fitch” means Fitch Inc. a corporation organized and existing under the laws of the state of its organization, 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, any other nationally recognized securities rating agency designated by the Borrower by notice to the Authority, the Bank and the Trustee.

“Fixed Interest Rate” means the non-variable interest rate on the Bonds established in accordance with the Indenture.

“Fixed Rate Bonds” means a Bond during the Fixed Rate Mode.

“Fixed Rate Mode” means the Mode during which a Bond bears interest at a Fixed Interest Rate.

“Funded Interest Account” means an account within the Project Fund established pursuant to the Indenture.

“Government Obligations” means direct obligations of the United States of America or obligations the full and timely payment of the principal of and interest on which is unconditionally guaranteed by the United States of America.

“Gross Revenues” means all revenues, receipts and accounts of the Borrower, including, without limiting the generality of the foregoing: (a) revenues derived from its operations (including, without limitation, all rental revenue, but excluding any funds delivered to the Borrower by a potential resident for so long as such funds are held in a deposit escrow account, if the granting of a security interest in such funds would constitute a violation of applicable law), (b) gifts, grants, bequests, donations and contributions and the income therefrom, exclusive of any gifts, grants, bequests, donations and contributions to the extent specifically restricted by the donor to a particular purpose or in a manner that is inconsistent with their use for the payment of the Bonds or their being pledged as security hereunder, (c) revenues received upon the sale or other disposition of the Property or any part of it, (d) any proceeds of any casualty insurance, performance bonds or taking by eminent domain or condemnation paid with respect to the Property remaining after payment therefrom of any expenses (including attorneys’ fees) incurred in the collection of those proceeds, and (e) all proceeds of the foregoing.

“Guarantor” means any Person that has guaranteed, in whole or in part, the obligations of the Borrower under the Reimbursement Agreement, Liquidity Facility Agreement and the Loan Agreement, and means, initially, Masonic Homes of California under the Initial Guaranty.

“Guaranty” means all obligations of the Guarantor guaranteeing, or in effect guaranteeing, any Indebtedness or other obligation of any Primary Obligor in any manner, whether directly or indirectly, including but not limited to obligations incurred through an agreement, contingent or otherwise, by such Person (i) to purchase such Indebtedness or obligation or any Property constituting security therefor, (ii) to advance or supply funds (a) for the purchase or payment of such Indebtedness or obligation or (b) to maintain working capital or other balance sheet condition, (iii) to purchase securities or other Property or services primarily for the purpose of assuring the owner of such Indebtedness or obligation of the ability of the Primary Obligor to make payment of the Indebtedness or obligation or (iv) otherwise to assure the owner of such Indebtedness or obligation against loss in respect thereof.

“Hazardous Material” means (a) any chemical, material or substance now or in the future defined as or included in the definition of “hazardous substance,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” “infectious waste,” “toxic pollutant” or “toxic substances” or any other term intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP toxicity” or “EP toxicity” or words of similar import under any applicable local, state or federal laws or under the regulations adopted or publications promulgated pursuant thereto, including, without limitation, Environmental Laws, (b) any oil, petroleum or petroleum derived substances, (c) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources, (d) any flammable substances or explosives, (e) any radioactive materials, (f) asbestos in any form which is or could become friable, (g) urea formaldehyde foam insulation, (h) electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million, (i) pesticides and (j) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority as one that may or could pose a hazard to the health and safety of the owners, occupants or any persons in the vicinity of the Facilities.

“Hazardous Material Activity” means any actual, proposed or threatened storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Materials from, under, into or on the Facilities or surrounding property.

“Holder” or “Bondholder,” or “Owner,” whenever used herein with respect to a Bond, means, subject to the Indenture, the person in whose name the Bond is registered.

“Income Available for Debt Service” means the unrestricted excess of revenues over expenses, plus (1) interest and all bond financing related fees on Long-Term Indebtedness, (2) depreciation and amortization, and (3) cash entrance fees received net of entrance fee refunds; but excluding (a) unrealized gains or losses resulting from the periodic valuation of investments, (b) amortized entrance fees, (c) extraordinary gains or losses, (d) non-cash changes in the fair market value of any Interest Rate Agreements, (e) subordinated management fees and land lease payments to the Guarantor, and (f) other non-operating non-cash revenues or expenses; all as determined in accordance with generally accepted accounting principles.

“Indebtedness” means, for any Person, (i) indebtedness (including Non-Recourse Indebtedness) incurred or assumed by such Person for borrowed money or for the acquisition, construction or improvement of Property other than goods acquired in the ordinary course of business of such Person, (ii) capitalized rental obligations of such Person and (iii) all Guaranties by such Person; provided that Indebtedness shall not include any obligation to repay moneys deposited by patients or others with a the Guarantor or the Borrower as security for or as prepayment of the cost of patient care or any rights of residents of life care, elderly housing or similar facilities to endowment or similar funds deposited by or on behalf of such residents.

“Indenture” means the Indenture, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture.

“Initial Guaranty” means the Guaranty Agreement dated as of January 1, 2008, from the Guarantor to the Trustee.

“Initial Liquidity Facility Agreement” means the Standby Bond Purchase Agreement, dated as of January 1, 2008, among the Borrower, the Trustee and the Bank of America, N.A. as the “Bank” and as the “Agent,” as the same may be amended from time to time in accordance with its terms.

“Intercompany Agreement” means the Intercompany Agreement dated as of January 1, 2008, between the Borrower and the Guarantor.

“Interest Fund” means the fund by that name created under the Indenture.

“Interest Payment Date” means (1) with respect to Bonds in a Daily Mode or a Weekly Mode, the first Business Day of each month; (2) any Mode Change Date; (3) any Substitution Date; (4) the respective Maturity Dates of the Bonds; and (5) with respect to Bank Bonds, the dates set forth in the Reimbursement Agreement or Liquidity Facility Agreement.

“Interest Payment Period” means the period commencing on the last Interest Payment Date to which interest has been paid (or, if no interest has been paid in such Mode, from the date of original issuance of the Bonds, or the Mode Change Date, as the case may be) to, but not including, the Interest Payment Date on which interest is to be paid.

“Interest Period” means the period of time that an interest rate remains in effect, which period:

(1) with respect to any Bond in a Daily Mode, commences on a Business Day and extends to, but does not include, the next succeeding Business Day; and

(2) with respect to any Bond in a Weekly Mode, commences on the first day Bonds begin to accrue interest in the Weekly Mode and ends on the next succeeding Tuesday, and thereafter commences on each Wednesday and ends on Tuesday of the following week.

“Interest Rate Agreements” means an interest rate exchange, hedge or similar agreement entered into to hedge the interest payable on Long-Term Indebtedness, which agreement may include an interest rate swap, a

forward or futures contract or an option (e.g. a call, put, cap, floor or collar) and which agreement does not constitute an obligation to repay money borrowed, credit extended or the equivalent thereof.

“Interest Rate Swap” means the ISDA Master Agreement and the ISDA Schedule to such ISDA Master Agreement by and between the Borrower and Morgan Stanley Capital Services, Inc. dated as of December 20, 2007.

“Investment Securities” means any of the following:

- (a) Government Obligations;
- (b) debt obligations which are (i) issued by any state or political subdivision thereof or any agency or instrumentality of such state or political subdivision, and (ii) at the time of purchase, rated “AAA” by S&P’s and rated “Aaa” by Moody’s;
- (c) any bond, debenture, note, participation certificate or other similar obligation which is either (i) issued or guaranteed by the Federal National Mortgage Association, the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal Farm Credit Bank or the Student Loan Marketing Association, or (ii) backed by the full faith and credit of the United States of America;
- (d) U.S. denominated deposit account, certificates of deposit and banker’s acceptances with domestic commercial banks, which have a rating on their short-term certificates of deposit on the date of purchase of “A-1” by S&P’s or “P 1” by Moody’s, without regard to gradation, and which matures not more than 360 days after the date of purchase;
- (e) commercial paper which is rated at the time of purchase within the classification or higher, “A 1” by S&P’s or “P 1” by Moody’s, without regard to gradation, and which matures not more than 270 days after the date of purchase;
- (f) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by a corporation which are, at the time of purchase, rated by S&P’s, Moody’s or Fitch in any of the three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise);
- (g) investment agreements with banks that at the time such agreement is executed are rated by S&P’s or Moody’s in one of the two highest rating categories assigned by S&P’s or Moody’s (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) or investment agreements with non-bank financial institutions which, (1) all of the unsecured, direct long-term debt of either the non-bank financial institution or the related guarantor of such non-bank financial institution is rated by S&P’s or Moody’s at the time such agreement is executed in one of the two highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) for obligations of that nature; or (2) if such non-bank financial institutions have no outstanding long-term debt that is rated, all of the short-term debt of either the non-banking financial institution or the related guarantor of such non-bank financial institution is rated by Standard and Poor’s or Moody’s in the highest rating category (without regard to any refinement or gradation of the rating category by numerical modifier or otherwise) assigned to short term indebtedness by S&P’s or Moody’s; provided that if at any time after purchase the provider of the investment agreement drops below the two highest rating categories assigned by S&P’s or Moody’s, the investment agreement must provide that it shall, within 30 days, either (1) be assigned to a provider rated in one of the two highest rating categories, (2) be guaranteed by an entity rated in one of the two highest rating categories, or (3) be secured by the provider (and/or any such guarantor) with collateral securities the fair market value of which, in relation to the amount of the investment agreement including principal and interest, is equal to at least 102% (and, in the event the provider fails to take any of the foregoing remedial actions, the agreement shall provide the Trustee or the Borrower, as applicable, the right to terminate the investment agreement subject to any make-whole or other termination payments or receipts that may be applicable under the terms of the agreement); investment agreements with banks or non-bank financial institutions shall not be permitted if no rating is available with respect to debt of the investment agreement provider or the related guarantor of such provider at the time of the entering thereof;

(h) repurchase agreements with respect to and secured by Government Obligations or by obligations described in clauses (b), (c) and (e) above, which agreements may be entered into with a bank (including without limitation the Trustee), a trust company, financial services firm or a broker dealer which is a member of the Securities Investors Protection Corporation, provided that (i) the Trustee or a custodial agent of the Trustee has possession of the collateral and that the collateral is, to the knowledge of the Trustee, free and clear of third-party claims, (ii) a master repurchase agreement or specific written repurchase agreement governs the transaction, (iii) the collateral securities are valued no less frequently than monthly, and (iv) the fair market value of the collateral securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 103%, and (v) such obligations must be held in the custody of the Trustee's agent; and

(i) shares of a fixed income mutual fund, Exchange Traded Fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and whose investments consist solely of Permitted Investments as defined in paragraphs (a) through (h) above, including money market mutual funds from which the Trustee or its affiliates derive a fee for investment advisory or other services to the fund.

The Trustee may at the direction of the Borrower enter into agreements for the forward delivery (on one or more future dates) of Government Obligations or obligations described in clauses (b), (c) and (e) above, which agreements may be entered into with a bank (including without limitation the Trustee), a trust company, financial services firm or a broker dealer which is a member of the Securities Investors Protection Corporation, provided that the securities that are the subject of any such agreement must otherwise meet the requirements as to such Investment Securities herein. In the case of any such forward delivery agreement, the Investment Securities that are delivered pursuant to any such agreement shall be deemed the applicable "Investment Securities" for the purposes of the Indenture, rather than such agreement itself.

"L/C Purchase Account" means the account by that name within the Purchase Fund established pursuant to the Indenture.

"Letter of Credit" means in the event of delivery of an Alternate Letter of Credit, such Alternate Letter of Credit.

"Letter of Credit Account" means the account by that name in the Revenue Fund established pursuant to the Indenture.

"Lien" means any lien (statutory or otherwise), security interest (including without limitation any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code of the State of California or comparable law of any jurisdiction), hypothecation, assignment, deposit arrangement, encumbrance, preference, priority or other security or preferential arrangement of any kind or nature.

"Liquidity Facility" means (a) the Initial Liquidity Facility Agreement, or (b) with respect to any Substitute Liquidity Facility accepted by the Tender Agent pursuant to and in accordance the Indenture, whichever, if any, is then in effect with respect to the Bonds.

"Liquidity Facility Agreement" means, (a) the Initial Liquidity Facility Agreement and (b) any other Liquidity Facility then in effect, the separate agreement, if any, under and pursuant to which such Liquidity Facility is issued (it being understood and acknowledged that there may, but need not be a Liquidity Facility Agreement with respect to a Liquidity Facility).

"Liquidity Facility Request" has the meaning assigned to that term in the Indenture.

"Liquidity Payments" means the payments required to be made by the Borrower pursuant to the Loan Agreement.

“Liquidity Provider” means, with respect to a Liquidity Facility then in effect, the Person or Persons that are obligated to purchase, or to advance funds to provide for the purchase of, Bonds under and in accordance with such Liquidity Facility; provided, however, that if such Liquidity Facility names a Person to act as “agent” for, or on behalf of, or for the benefit of, such Person or Persons that are so obligated under such Liquidity Facility, then “Liquidity Provider” means, with respect to such Liquidity Facility, such “agent” acting for, and on behalf of, and for the benefit of, such Person or Persons that are so obligated under such Liquidity Facility and shall mean initially Bank of America, N.A.

“Liquidity Purchase Account” means the account by that name in the Purchase Fund established pursuant to the Indenture.

“Liquidity Testing Date” means each June 30 and December 31.

“Loan Agreement” means that certain loan agreement by and between the Authority and the Borrower, dated as of January 1, 2008, 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 in the Loan Agreement.

“Loan Repayments” means the payments so designated and required to be made by the Borrower pursuant to the Loan Agreement.

“Long-Term Indebtedness” means Indebtedness for borrowed monies having a term from its most recent incurrence or renewal of more than one (1) year.

“Mandatory Purchase Date” means: (1) any Mode Change Date excluding, however, a Mode Change Date arising from a change from a Daily Mode to a Weekly Mode, and a Weekly Mode to a Daily Mode; (2) unless the provisions of the Indenture are satisfied, any Termination Date or Expiration Date; and (3) any Substitution Date.

“Maturity Date” means July 1, 2038.

“Maximum Rate” means the lesser of (a) 10% per annum and (b) the maximum interest rate permitted by law. Notwithstanding the foregoing, the Maximum Rate as it applies to Bank Bonds shall be limited only by clause (b) above.

“Mode” means, as the context may require, the Auction Mode, the Unit Pricing Mode, the Daily Mode, the Weekly Mode, the Term Rate Mode or the Fixed Rate Mode.

“Mode Change Date” means, with respect to any Bond, the day following the last day of one Mode for such Bonds on which another Mode begins.

“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 Authority, with the approval of the Borrower, by notice to the Bank, the Trustee, the Remarketing Agent and the Tender Agent.

“New Mode” shall have the meaning specified in the Indenture.

“Non-Recourse Indebtedness” means any Indebtedness the liability for which is effectively limited to Property, Plant and Equipment and the income therefrom, the cost of which Property, Plant and Equipment shall have been financed solely with the proceeds of such Indebtedness, with no recourse, directly or indirectly, to any other Property or the general credit of any Person.

“Opinion of Bond Counsel” means an opinion of Bond Counsel, addressed to the Authority, the Bank and the Trustee.

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

“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 Indenture, including Bonds (or portions of Bonds) referred to in 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 Indenture.

“Owner” has the same meaning as “Holder.”

“Parity Debt” means one or more of the following obligations of the Borrower incurred with the prior written consent of the Bank which is, by its terms and in compliance with the Indenture and the Loan Agreement secured equally and ratably with the Bonds hereunder: (i) the obligations of the Borrower with respect to Additional Bonds issued in accordance with the Indenture, (ii) all of the Borrower’s payment and performance obligations under the Letter of Credit, and (iii) any other parity obligations incurred by the Borrower in accordance with the provisions of the Loan Agreement.

“Permitted Encumbrances” has the meaning set forth in the Reimbursement Agreement or Liquidity Facility Agreement, as applicable.

“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.

“Pledged Assets” means the following:

- (i) the Gross Revenues;
- (ii) all other funds held hereunder, together with any amounts and investments, if any, on deposit in such funds from time to time and all investment income thereon; and
- (iii) all proceeds of the foregoing;

“Pledged Funds” means all of the funds held under the Indenture, excepting the Rebate Fund.

“Primary Obligor” means the Person who is primarily obligated on an obligation which is guaranteed by another Person.

“Principal Payment Date” means July 1, 2038 or, concerning Bank Bonds, such earlier date as is provided in the Liquidity Facility Agreement and the Reimbursement Agreement, as appropriate.

“Project” means the acquisition, construction and equipping of the Facilities.

“Project Fund” means the fund by that name established pursuant to the Indenture.

“Projected Rate” means (i) in the case of obligations the interest on which is expected to be exempt from federal income taxes, the interest rate which equals the most recently available Revenue Bond Index as published in The Bond Buyer (or such comparable index approved by the applicable Bond Insurer if such Revenue Bond Index is

no longer published) for a term most closely approximating the actual term of the Indebtedness in question or, in the case of Balloon Indebtedness or Put Indebtedness, the term determined in accordance with the definition of Annual Debt Service Requirement and (ii) in all other cases, the projected yield at par of an obligation as set forth in the report of a Consultant. Such report shall state that, in determining the Projected Rate, such Consultant reviewed (to the extent available) the yield evaluation at par of such number of other obligations selected by such Consultant as such Consultant deems appropriate, which obligations such Consultant states are reasonable comparators for utilizing in developing such Projected Rate and which obligations are not entitled to the benefits of any credit enhancement, including without limitation any letter of credit or insurance policy.

“Property” means any and all rights, titles and interests in and to any and all property, whether real or personal, tangible (including cash) or intangible, wherever situated and whether owned on the date of the Initial Guaranty or thereafter acquired.

“Property, Plant and Equipment” means all Property of a Person which is classified as property, plant and equipment under generally accepted accounting principles.

“Purchase Date” means any Business Day on which an optional tender becomes effective.

“Purchase Fund” means the fund by that name established pursuant to the Indenture.

“Purchase Price” means (i) an amount equal to the principal amount of any Bonds purchased on any Purchase Date, plus, in the case of any purchase of Bonds in the Daily Mode or the Weekly Mode, accrued interest thereon, if any, to the Purchase Date, or (ii) an amount equal to the principal amount of any Bonds purchased on a Mandatory Purchase Date, plus accrued interest thereon, if any, to the Mandatory Purchase Date, *provided that*, in each case, if the applicable Purchase Date or Mandatory Purchase Date is an Interest Payment Date, interest payable on such Bond on such Interest Payment Date shall not be taken into account in the computation of the Purchase Price payable by the purchaser of such Bond.

“Put Indebtedness” means Long-Term Indebtedness which is payable or required to be purchased by or on behalf of the underlying obligor, at the option of the owner thereof, prior to its stated maturity date.

“Qualified Project Costs” means costs of the Project which constitute costs for property which is to be owned by the Borrower and will not be used in an “unrelated trade or business” (as such term is used in Section 513(a) of the Code) of the Borrower (or any other organization described in Section 501(c)(3) of the Code) or in the trade or business of a person who is neither a governmental unit nor an organization described in Section 501(c)(3) of the Code; provided, however, that Costs of Issuance are not Qualified Project Costs and that letter of credit fees, municipal bond insurance premiums or other guaranty fees and any funded interest on the Bonds shall be allocated between Qualified Project Costs to be paid or reimbursed from proceeds of the Bonds and costs other than Qualified Project Costs to be paid or reimbursed from the proceeds of the Bonds.

“Rate Determination Date,” when used with respect to Bonds, means the date on which the interest rate(s) with respect to the Bonds shall be determined, which, (i) in the case of the Daily Mode, shall be each Business Day commencing with the first day the Bonds become subject to the Daily Mode; and (ii) in the case of the initial conversion to the Weekly Mode, shall be no later than the Mode Change Date, and thereafter, shall be each Wednesday or, if Wednesday is not a Business Day, the next Business Day immediately preceding such Wednesday.

“Rating Agency” means each nationally recognized agency then rating the Bonds.

“Rating Category” means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

“Rebate Amount” means the excess of the future value, as of a computation date, of all receipts on nonpurpose investments (as defined in Section 1.148-1(b) of the Income Tax Regulations) over the future value, as of that date, of all payments on nonpurpose investments, all as provided by regulations under the Code implementing Section 148 thereof.

“Rebate Fund” means the fund by that name established pursuant to the Indenture.

“Record Date” means the day (whether or not a Business Day) immediately preceding each Interest Payment Date.

“Redemption Fund” means the fund by that name established pursuant to the Indenture.

“Redemption Price” means, with respect to any Bond (or portion thereof), the principal amount of such Bond (or portion) plus accrued interest, if any and the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and the Indenture.

“Reimbursement Agreement” means a reimbursement agreement between the Borrower and the Bank, as it may be amended or supplemented from time to time, or any other similar agreement entered into in connection with the issuance of the Substitute Liquidity Facility or a Substitute Credit Facility.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), or into or out of the Facilities, including the movement of any Hazardous Material through the air, soil, surface water, groundwater or property.

“Remarketing Agent” means BNY Capital Markets, Inc. and its successors in such office under the Indenture.

“Remarketing Agreement” means the Remarketing Agreement, dated as of January 1, 2008, between the Borrower and the Remarketing Agent or the agreement or instrument pursuant to which a successor to the Remarketing Agent shall perform its services.

“Remarketing Proceeds Account” means the account by that name within the Purchase Fund established pursuant to the Indenture.

“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, the Letter of Credit (other than payments of Purchase Price), 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.

“S&P” means Standard and Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the State of New York, its successors and their assigns, or, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Authority, with the approval of the Borrower, by notice to the Bank, the Trustee, the Remarketing Agent and the Tender Agent.

“Short-Term,” when used in connection with Indebtedness, means Indebtedness of a Person for money borrowed or credit extended having an original maturity less than or equal to one year and not renewable at the

option of the debtor for, or subject to any binding commitment to refinance or otherwise provide for such Indebtedness having, a term greater than one year beyond the date of original issuance.

“Special Record Date” means the date established by the Trustee pursuant to the Indenture as a record date for the payment of defaulted interest on the Bonds.

“State” means the State of California.

“Substitute Credit Facility” means a letter of credit, line of credit, guaranty, insurance policy or other similar agreement which provides for the payment of the principal of and interest on the Bonds. For purposes of this definition, the Initial Guaranty shall be considered a credit facility.

“Substitute Liquidity Facility” means a letter of credit, line of credit, bond purchase agreement, insurance policy or other similar agreement which (i) provides for the purchase, or the funding of amounts to purchase, Bonds subject to purchase on Purchase Dates and (ii) has a term of at least 364 days.

“Substitution Date” means a date on which a Substitute Credit Facility or Substitute Liquidity Facility is accepted by the Tender Agent and becomes effective with respect to the Bonds, in each case, in accordance with the Indenture.

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

“Tax Agreement” means the Tax Agreement dated the date of delivery of the Bonds, concerning certain matters pertaining to the use and investment of proceeds of the Bonds, by and among the Borrower, the Trustee and the Authority, including any and all exhibits attached thereto, as originally executed and as it may be amended or supplemented from time to time in accordance with its terms.

“Tender Agent” means initially the Trustee and any successor tender agent appointed pursuant to the Indenture; provided, however, the Tender Agent shall always be the Trustee.

“Tender Notice” means a notice delivered to the Trustee pursuant to the Indenture.

“Tender Notice Deadline” shall mean (i) during the Daily Mode, 11:00 a.m. New York City time, on any Business Day, and (ii) during the Weekly Mode, 3:00 p.m. New York City time, on the Business Day five Business Days prior to the applicable Purchase Date.

“Termination Date” means the mandatory tender date which shall occur not more than five (5) days following the date of receipt by the Trustee of a notice given by the Bank specifying that an event of default under the Reimbursement Agreement or the Liquidity Facility Agreement has occurred and directing the Trustee to cause a mandatory tender of the Bonds.

“Term Rate” means the per annum interest rate with respect to any Bonds in the Term Rate Mode determined pursuant to the Indenture.

“Term Rate Mode” means the Mode during which a Bond bears interest at the Term Rate.

“Trustee” means Wells Fargo Bank, National Association, a national banking association, or its successor as Trustee hereunder as provided in the Indenture.

“Unassigned Rights” means the Authority’s right to (i) receive any Administrative Fees and Expenses and Additional Payments to the extent payable to the Authority, (ii) the right of the Authority to any indemnification and expenses under the Loan Agreement, and (iii) the obligation of the Borrower to make deposits pursuant to the Tax Agreement.

“Undelivered Bond” shall have the meaning ascribed thereto in the Indenture.

“Unit Pricing Mode” means the Mode during which a Bond bears interest at the Unit Pricing Rate.

“Unit Pricing Rate” means the per annum interest rate with respect to any Bond in the Unit Pricing Mode determined pursuant to the Indenture.

“Unrestricted Cash and Investments” means the sum of cash, cash equivalents, marketable securities, including without limitation board-designated assets and amounts that are on deposit in a funded depreciation fund or account, as shown on the most recent audited or unaudited financial statements of the Borrower, but excluding (a) trustee held funds, (b) donor-restricted funds to the extent that the payment of debt service on indebtedness of the Borrower would be inconsistent with the donor’s restrictions, and (c) any funds pledged or otherwise subject to a security interest for debt other than the Bonds.

“Variable Index” means the current average rate for survey, as shown on the most recent publication of The Bond Market Association, or any successor publication computed by the Remarketing Agent and transmitted to the Trustee. If for any reason the Variable Index for any rate determination date cannot be established as provided above or is held to be invalid or unenforceable by a court of law, the Variable Index for such rate determination date shall be an index computed by the Remarketing Agent and shall be equal to 95% of the yield applicable to 91-day United States Treasury bills, such yield to be computed on the basis of the coupon equivalent of the average per annum discount rate at which such Treasury bills shall have been sold at the most recent Treasury auction conducted prior to such rate determination date.

“Variable Rate Indebtedness” means any portion of Indebtedness the interest rate on which is not established at the time of incurrence at a fixed or constant rate for its term and shall include, without limitation, any such Indebtedness for which the interest rate is established from time to time based upon a fixed formula, a percentage of an index, an auction or bidding process or the like.

“Weekly Mode” means the Mode during which a Bond bears interest at the Weekly Rate.

“Weekly Rate” means an interest rate that is determined on a weekly basis with respect to any Bonds in the Weekly Mode pursuant to the Indenture.

## **SUMMARY OF CERTAIN PROVISIONS OF THE BOND INDENTURE**

The Indenture, entered into between the Authority and the Trustee, provides for, among other things, the issuance, execution and delivery of the Bonds and sets forth the terms thereof, the creation of certain of the funds and accounts described herein, certain covenants of the Authority, defines events of default and remedies therefor, and sets forth the rights and responsibilities of the Trustee. Certain provisions of the Indenture, not previously discussed in this Official Statement, are summarized below. Other provisions of the Indenture are set forth elsewhere in this Official Statement. Reference is made to the Bond Indenture for full and complete statement of the Bond Indenture’s provisions.

### **Changes to Modes other than Fixed Rate Mode**

Any Bonds other than Bonds in the Fixed Rate Mode, may be changed from one Mode to another Mode (other than the Fixed Rate Mode) as follows:

(i) No later than the 5th Business Day preceding the proposed Mode Change Date, the Borrower shall give written notice to the Authority, the Trustee, the Tender Agent (if any), the Remarketing Agent (if any), the Auction Agent (if any), the Broker-Dealer (if any), the Bank (if any) of its intention to effect a change in the Mode from the Mode then prevailing (for purposes of this Section, the “Current Mode”) to another Mode (for purposes of this Section, the “New Mode”) specified in such written notice, and, if the change is to a Term Rate Mode, the length of the initial Interest Period. Notice of the proposed change in Mode shall be given to the Holders of the applicable Bonds.

(ii) The New Mode shall commence on the Mode Change Date and the interest rate(s) with respect to such Bonds (together, in the case of a change to the Unit Pricing Mode, with the Interest Period(s) and Purchase Date(s)) shall be determined by the Remarketing Agent in the manner provided in the Indenture or, in the case of Auction Rate securities, by the Auction Agent as provided in the Indenture.

(iii) Conditions Precedent: (a) The Mode Change Date shall be a Business Day; (b) Additionally, the Mode Change Date in the case of a change from the Unit Pricing Mode, shall be a day which is the last Purchase Date for all Interest Periods for such Bonds set by the Remarketing Agent; and from the Term Rate Mode, shall be the Purchase Date for such Bonds for the current Interest Period; (c) The Trustee, the Tender Agent (if any), the Auction Agent (if any) and the Remarketing Agent (if any) shall have received on the Mode Change Date a Favorable Opinion of Bond Counsel dated the Mode Change Date and addressed to the Trustee, the Tender Agent (if any), the Auction Agent (if any), the Bank (if any) and the Remarketing Agent (if any); (d) If the Current Mode is the Unit Pricing Mode, no Interest Period set after delivery by the Borrower to the Remarketing Agent of the notice of the intention to effect a change in Mode shall extend beyond the proposed Mode Change Date; (e) If the Current Mode is a Mode other than an Auction Mode and the New Mode is an Auction Mode, the Borrower shall have appointed an Auction Agent and a Broker-Dealer; (f) If the Current Mode is the Auction Mode, the Borrower shall have appointed a Remarketing Agent and a Tender Agent; (g) The remarketing proceeds available on the Mode Change Date shall be not less than the amount required to purchase all of the Bonds at the Purchase Price (unless the Borrower, in its sole discretion, elects to transfer to the Tender Agent the amount of such deficiency on or before the Mode Change Date); (h) If the Current Mode is a Mode other than a Daily Mode or a Weekly Mode, confirmation that the Letter of Credit or Liquidity Facility, as applicable, is effective on or prior to the Mode Change Date; (i) If the Current Mode is a Mode other than a Daily Mode or a Weekly Mode, prior written notice from each of the Rating Agencies then rating the Bonds to the effect that the rating on the Bonds will not be reduced or withdrawn on the Mode Change Date.

(iv) If the foregoing conditions have not been satisfied by the Mode Change Date, the New Mode shall not take effect and (a) if the change was from a Unit Pricing Mode, the Bonds shall remain in the Unit Pricing Mode with interest rates with respect thereto and Interest Periods to be established in accordance with the Indenture; (b) if the change was from an Auction Mode, the Bonds shall remain in the Auction Mode, shall automatically convert to a seven-day Auction Period and shall bear interest at the Maximum Rate; and (c) otherwise, all Bonds shall be changed to a Daily Mode.

### **Changes to Fixed Rate Mode**

At the option of the Borrower, any Bonds may be changed to the Fixed Rate Mode as provided in the Indenture. Not less than thirty (30) days (or such shorter time as may be agreed to by the Trustee, the Remarketing Agent (if any) and Auction Agent (if any)) before the proposed Mode Change Date, the Borrower shall give written notice to the Authority, the Trustee, the Tender Agent (if any), the Remarketing Agent (if any), the Auction Agent (if any), the Broker-Dealer (if any), the Bank (if any) and each Rating Agency then rating the Bonds stating that the Mode will be changed to the Fixed Rate Mode and setting forth the proposed Mode Change Date. Any such change in Mode shall be made as follows:

(i) The Mode Change Date shall be: (a) in the case of a change from the Unit Pricing Mode, a day which is the last Purchase Date for all Interest Periods for such Bonds set by the Remarketing Agent; (b) a Business Day; and (c) in the case of a change from the Term Rate Mode, the Purchase Date for such Bonds for the current Interest Period.

(ii) Not less than the 30th day next preceding the Mode Change Date, the Tender Agent shall mail, in the name of the Borrower, a notice of such proposed change to the Holders of the applicable Bonds stating that the Mode will be changed to the Fixed Rate Mode, the proposed Mode Change Date and that such Holder is required to tender such Holder's Bonds for purchase on such proposed Mode Change Date.

(iii) The change to the Fixed Rate Mode shall not occur unless the Trustee, the Bank (if any) and the Remarketing Agent (if any) and the Auction Agent (if any) have received on the Mode Change Date, a Favorable Opinion of Bond Counsel dated the Mode Change Date and addressed to the Trustee, the Bank (if any), the Remarketing Agent (if any) and the Auction Agent (if any).

(iv) If the foregoing conditions have not been satisfied by the Mode Change Date, the New Mode shall not take effect and (a) if the change was from a Unit Pricing Mode, such Bonds shall remain in the Unit Pricing Mode with interest rates with respect thereto and Interest Periods to be established in accordance with the Indenture; (b) if the change was from an Auction Mode, such Bonds shall remain in the Auction Mode, shall automatically convert to a seven-day Auction Period and shall bear interest at the Maximum Rate; and (c) otherwise, all such Bonds shall be changed to a Daily Mode.

### **Additional Bonds**

The Authority may issue Additional Bonds under the Indenture from time to time payable and secured on a parity with the Bonds, if there is no Event of Default under the Indenture and if there shall be delivered to the Trustee and the Bank:

(A) a Borrower Certificate stating that (i) the Additional Bonds comply with the Loan Agreement and summarized under the caption "Parity Debt" herein and (ii) the proceeds of the Additional Bonds plus the other amounts, if any, stated to be available for the purpose, will be sufficient to accomplish the purpose of the issue and to pay the cost of issuance, which shall be itemized in reasonable detail; and

(B) an Opinion of Bond Counsel that (1) the Additional Bonds are issued for the purpose permitted under the Indenture, (2) all conditions prescribed under the Indenture as precedent to the issuance of the Additional Bonds have been fulfilled, (3) the Additional Bonds have been validly authorized and executed and when authenticated and delivered pursuant to the request of the Authority will be valid, legally binding, limited obligations of the Authority, enforceable against the Authority in accordance with their terms (except to the extent that the rights and remedies created thereby is subject to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors and secured parties, and that the availability of specific enforcement, injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought) and are entitled to the benefit and security of the Indenture, (4) issuance of such Additional Bonds will not adversely affect the exclusion of interest on the Outstanding Bonds from the gross income of the Holders thereof for federal income tax purposes, and (5) interest on such Additional Bonds (if they are the Bonds) will be excluded from gross income of the Holders thereof for federal income tax purposes;

(C) an opinion of counsel to the Borrower in form and substance acceptable to the Authority and Bond Counsel;

(D) prior written approval of the Bank and confirmation that the Letter of Credit or Liquidity Facility, as applicable, is effective with respect to the Additional Bonds, or a Substitute Liquidity Facility is effective with respect to the Additional Bonds;

(E) prior written approval of the Guarantor and confirmation that the Initial Guaranty, if applicable, is effective with respect to the Additional Bonds;

(F) such other documents or opinions as the Authority or Bond Counsel shall reasonably request; and

(G) prior written notice from each of the Rating Agencies then rating the Bonds to the effect that the rating on the Bonds will not be reduced or withdrawn as a result of the issuance of such Additional Bonds.

In the case of refunding bonds, in addition to the foregoing (A) through (G), there shall also be delivered to the Trustee and the Bank a Borrower Certificate that notice of redemption of the Bonds to be refunded has been given or that provisions have been made therefore.

There shall be a Supplemental Indenture entered into setting forth the terms of the Additional Bonds and an amendment to the Loan Agreement providing for additional payments to be made by the Borrower sufficient to cover the debt service on the Additional Bonds.

## **Establishment and Application of Costs of Issuance Fund**

The Trustee shall establish, maintain and hold in trust a separate fund designated as the “Costs of Issuance Fund.” The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay the Costs of Issuance upon receipt by the Trustee of a Requisition of the Borrower, stating the Person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. In each such Requisition, the Authorized Representative of the Borrower shall certify that the requested disbursement for Costs of Issuance of the Bonds, when added to all disbursements from the Cost of Issuance Fund for Costs of Issuance under previous Requisitions, will not result in more than two percent (2%) of the proceeds of the Bonds having been drawn from the Costs of Issuance Fund or otherwise used to pay Costs of Issuance of the Bonds. In the event a disbursement from the Costs of Issuance Fund is made which is not consistent with that certification of the Borrower, the Borrower will promptly repay to the Trustee for deposit in the Costs of Issuance Fund such amount as may be necessary for the certification made by the Borrower in the Requisition to be accurate. Each such Requisition of the Borrower 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. On the one hundred eightieth (180th) day following the initial issuance of the Bonds, or upon the earlier Request of the Borrower, amounts, if any, remaining in the Costs of Issuance Fund shall be transferred to the Funded Interest Account of the Project Fund.

## **Establishment of Project Fund**

(A) The Trustee shall establish, maintain and hold in trust a separate fund designated as the “Project Fund.” The moneys in the Project Fund shall be used and withdrawn by the Trustee to pay the costs of the Project. No moneys in the Project Fund shall be used to pay Costs of Issuance or interest accruing on the Bonds.

(B) Within the Project Fund, the Trustee shall establish a Funded Interest Account. Within the Funded Interest Account, the Trustee shall establish three separate subaccounts: (i) the Capitalized Interest Subaccount, (ii) the Remarketing Agent Fees Subaccount, and (iii) the Liquidity Provider Fees Subaccount. On the Closing Date, the Trustee shall deposit in the Funded Interest Account of the Project Fund the amount provided in this Official Statement under the caption “ESTIMATED SOURCES AND USES OF FUNDS.” At such time as no moneys remain in the Funded Interest Account, the Trustee shall close it.

(C) Before any payment from the Project Fund shall be made, the Borrower shall file or cause to be filed with the Trustee a Disbursement Request (in substantially the form attached to the Indenture).

In such Disbursement Request, the Authorized Representative of the Borrower shall certify with respect to each such payment inter alia that:

(1) If all disbursements from the Costs of Issuance Fund to be used to pay Costs of Issuance have not yet been made, the disbursement requested will be used only to pay Qualified Project Costs.

(2) If all Costs of Issuance to be paid with proceeds of the Bonds have previously been requisitioned from the Costs of Issuance Fund but the aggregate Qualified Project Costs paid with previous disbursements from the Project Fund and to be paid with the disbursement requested do not equal or exceed ninety-five percent (95%) of the costs of the Project (including Costs of Issuance) paid (or to be paid) with the requested disbursement and all previous disbursements from either the Project Fund or the Costs of Issuance Fund, the disbursement requested will be used only for Qualified Project Costs.

(3) If all Costs of Issuance to be paid with proceeds of the Bonds have previously been requisitioned from the Costs of Issuance Fund and the aggregate Qualified Project Costs paid with previous disbursements from the Project Fund equals or exceeds ninety-five percent (95%) of the costs of the Project (including Costs of Issuance) paid with previous disbursements from either the Project Fund or the Costs of Issuance Fund, the disbursement requested, when added to all disbursements from the Project Fund under previous requisitions, will not result in less than ninety-five percent (95%) of the total of all disbursements from either the Project Fund or the Costs of Issuance Fund having been used to pay Qualified Project Costs.

In the event a disbursement from the Project Fund is made which is not consistent with the applicable certification of the Borrower, the Borrower will promptly repay to the Trustee for deposit in the Project Fund such amount as may be necessary for the certification made by the Borrower in the Disbursement Request to be accurate.

Upon receipt of a Disbursement Request, the Trustee shall pay the amount set forth in such Disbursement Request as directed by the terms thereof out of the Project Fund. The Trustee shall not make any such payment if and to the extent it has received any written notice of claim of lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys to be so paid, that has not been released or will not be released simultaneously with such payment. Each such Disbursement Request 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.

(D) When the Project shall have been completed, there shall be delivered to the Trustee a Certificate of the Borrower stating the fact and date of such completion and stating that all of the costs thereof have been determined and paid (or that all of such costs have been paid less specified claims that are subject to dispute and for which a retention in the Project Fund is to be maintained in the full amount of such claims until such dispute is resolved). Upon the receipt of such Certificate, the Trustee shall, as directed by said Certificate, transfer any remaining balance in such Project Fund to the Revenue Fund. Upon such transfer, the Project Fund shall be closed.

Within ninety (90) days of delivering the described Certificate to the Trustee and in accordance with Section 1.141-6(a) and 1.148-6(d) of the Income Tax Regulations, the Borrower shall make a final allocation of the proceeds of the Bonds to the expenditures made to complete the Project and the Facilities. This final allocation must be made by the later of (i) eighteen (18) months after the date on which a particular expenditure was paid, or (ii) eighteen (18) months after the date on which the Facilities (or any distinct component thereof) was placed in service. Further, in no event shall this final allocation be made later than sixty (60) days after the fifth anniversary of the date of issuance of the Bonds (or sixty (60) days after the retirement of the Bonds, if earlier).

#### **Pledge and Assignment; Revenue Fund**

Subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, 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 (other than the Rebate Fund) 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 the Reimbursement Agreement and Liquidity Facility Agreement (except with respect to payment on Bank Bonds held by the Liquidity Provider, which shall be on a parity with all other Bonds). 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 Bonds, without any physical delivery thereof or further act.

The Authority transfers in trust, and assigns to the Trustee, for the benefit of the Holders from time to time of the Bonds and thereafter the Bank (except with respect to payment on Bank Bonds held by the Liquidity Provider, which shall be on a parity with all other Bonds), all of the Revenues and other assets pledged in the Indenture and all of the right, title and interest of the Authority in the Loan Agreement (except for any deposits to the Rebate Fund, the right to receive any Administrative Fees and Expenses to the extent payable to the Authority) and any rights of the Authority to receive any indemnification and rights of inspection and consent and to receive any notices and reports). Such assignment to the Trustee is solely in its capacity as Trustee under the Indenture, subject to the protections, immunities and limitations from liability afforded the Trustee hereunder. 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.

All Revenues (other than those Revenues to be deposited directly into the Redemption Fund pursuant to the Indenture) 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 for the Bonds; except as otherwise

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.

#### **Priority of Moneys in Revenue Fund; Letter of Credit Account; Liquidity Facility Agreement**

Funds for the payment of the principal or redemption price of and interest on the Bonds shall be derived from the following sources in the order of priority indicated in each of the accounts in the Revenue Fund; provided however, that amounts in the Revenue Fund shall be used to pay when due (whether upon redemption, acceleration, interest payment date, maturity or otherwise) the principal or redemption price of and interest on the Bonds held by Holders (other than the provider of the Letter of Credit, the Authority or the Borrower) prior to the payment of the principal and interest on the Bonds held by the provider of the Letter of Credit, the Authority or the Borrower:

- (1) moneys paid into the Letter of Credit Account of the Revenue Fund from a draw by the Trustee under the Letter of Credit;
- (2) moneys paid into the Revenue Fund pursuant to the Indenture and proceeds from the investment thereof, which constitute Available Moneys;
- (3) any other moneys (other than from draws on the Letter of Credit) paid into the Revenue Fund and deposited in the Revenue Fund and proceeds from the investment thereof, which constitute Available Moneys; and
- (4) 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.

#### **Letter of Credit and Confirming Letter of Credit**

The Trustee shall create within the Revenue Fund a separate account called the “Letter of Credit Account,” into which all moneys drawn under the Letter of Credit to pay principal, interest, or redemption price of the Bonds (other than in connection with a tender of the Bonds pursuant to the Indenture) shall be deposited and disbursed. None of the Borrower, the Authority or any Guarantor shall have any rights to or interest in the Letter of Credit Account. The Letter of Credit Account 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 was made. No moneys from the Letter of Credit Account may in any circumstance be used to pay principal or interest on any Bank Bonds held by the provider of the Letter of Credit or Bonds registered in the name of the Borrower or the Authority or any Affiliate thereof.

The Trustee may establish within the Revenue Fund one or more accounts to facilitate the calculation of the aging of moneys deposited with the Trustee until they become Available Moneys.

The Trustee shall draw moneys under the Letter of Credit 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 enhanced by such Letter of Credit, other than Bonds owned by or for the account of the Borrower, the Bank or any Guarantor, when due whether at maturity, interest payment date, redemption, acceleration or otherwise. In addition, the Trustee shall draw moneys under the Letter of Credit in accordance with the terms thereof to the extent necessary to make timely payments required to be made pursuant to, and in accordance with the Indenture.

The Trustee shall hold and maintain the Letter of Credit (if any) for the benefit of the Bondholders until the Letter of Credit expires in accordance with its terms. Subject to the provisions of the Indenture, the Trustee shall enforce all terms, covenants and conditions of the Letter of Credit, including payment when due of any draws on the Letter of Credit, and the provisions relating to the payment of draws on, and reinstatement of amounts that may be drawn under, the Letter of Credit, and will not consent to, agree to or permit any amendment or modification of the Letter of Credit which would materially adversely affect the rights or security of the Holders of the Bonds. If at any time during the term of the Letter of Credit any successor Trustee shall be appointed and qualified under the

Indenture, the resigning or removed Trustee shall request that the Bank transfer the Letter of Credit 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 the Letter of Credit expires in accordance with its terms (including expiration following conversion of the Bonds to the Fixed Interest Rate) or is replaced by an Alternate Letter of Credit, the Trustee shall give notice to the Bank and surrender the Letter of Credit to the Bank, on the Business Day following the effective date of such expiration or replacement; provided, however, that the Trustee shall not surrender the Letter of Credit until the draws, if any, on the Letter of Credit have been honored. All provisions herein relating to the rights of the Bank then providing the Letter of Credit shall be of no force and effect if there is no Letter of Credit or Alternate Letter of Credit in effect and there are no Bank Bonds registered in the name or at the direction of the Bank providing such Letter of Credit and all amounts owing to the Bank hereunder and under the Reimbursement Agreement have been paid.

### **Rebate Fund**

Section 148(f) of the Code, as implemented by Sections 1.148-0 to 1.148-11 of the Income Tax Regulations (the "Rebate Provisions") requires that, among other requirements and with certain exceptions, the Authority pay to the United States of America the Rebate Amount owed with respect to the Bonds. The Borrower will timely make or have made all necessary calculations of the Rebate Amount as required to comply with the requirements of the Indenture and the Rebate Provisions and shall deposit or cause the Trustee to deposit into the Rebate Fund from investment earnings on moneys deposited in the other funds and accounts created hereunder, or from any other funds held by the Trustee and available for such purpose, or from other moneys paid by the Borrower to the Trustee for such purpose, the amount necessary to increase the balance in the Rebate Fund to the Rebate Amount. The Borrower shall annually certify in writing the Rebate Amount, if any (and if none is due, that none is due), and the calculations determining the same to the Trustee, and shall instruct the Trustee in writing to make from the Rebate Fund (or to the extent necessary, from other funds of the Borrower delivered to the Trustee) all required payments to the United States of America of the Rebate Amount as shall be required to satisfy the Rebate Provisions, and to the extent the funds held by the Trustee in the Rebate Fund are not sufficient to make payments of such Rebate Amount, the Borrower shall pay to the Trustee an amount necessary to make up such deficiency. In complying with the foregoing, the Borrower may rely upon any instructions from and any Opinions of Bond Counsel, including, without limitation, a letter to be delivered by Bond Counsel to the Borrower and the Trustee on the date of issuance of the Bonds, and upon any certificates, opinions or calculations prepared by certified public accountants or other consultants reasonably selected by the Borrower.

### **Investment of Moneys**

All moneys in any of the funds or accounts established pursuant to the Indenture shall be invested by the Trustee as directed in writing by the Borrower solely in Investment Securities. Notwithstanding any other provision herein, in the absence of written investment instructions directing the Trustee by noon of the second Business Day preceding the day when investments are to be made, the Trustee is directed to invest available funds in Investment Securities described in paragraph (i) of the definition thereof. The Trustee shall not be liable for any losses resulting from any investments made pursuant to the preceding sentence. The Trustee shall be entitled to rely conclusively upon the Borrower's investment directions as to the fact that each such investment meets the criteria of the Indenture.

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 and, with the exception of Investment Securities described below, in no event later than three years from date such Investment Securities are purchased. Notwithstanding anything else in the Indenture, any moneys in the Revenue Fund held for the payment of the Bonds shall be invested at the written direction of the Borrower in Government Obligations, rated in the highest rating category applicable to such investments which mature not later than the date on which it is estimated that such moneys will be required to pay the Bonds (but in any event maturing in not more than thirty days). Moneys in the Letter of Credit Account created in the Indenture, moneys held in the L/C Purchase Account created in the Indenture, moneys held in the Liquidity Purchase Account, remarketing proceeds and moneys held for non-presented Bonds shall be held uninvested.

All interest, profits and other income received from the investment of moneys in the Funded Interest Account of the Project Fund shall be deposited when received in such fund. All interest, profits and other income received from the investment of the Costs of Issuance Fund and Project Fund shall be deposited when received in the Funded Interest Account of the Project Fund until such account is closed pursuant to the Indenture and, thereafter, in the Revenue 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 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.

Subject to the Indenture, investments in any and all funds and accounts (other than moneys representing the proceeds of a draw on a Letter of Credit or held in the Letter of Credit Account, moneys held in the Liquidity Purchase Account, 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 held under the Indenture)) may be commingled for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in particular funds and accounts, the amounts received or held by the Trustee hereunder, provided that the Trustee shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in the Indenture. Subject to the Indenture, any moneys invested in accordance with the Indenture may be invested in a pooled investment account consisting solely of funds held by the Trustee as a fiduciary. The Trustee may act as principal or agent in the making or disposing of any investment. The Trustee may sell or present for redemption any Investment Securities whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Investment Security is credited, and the Trustee shall not be liable or responsible for any loss resulting from such investment or early liquidation thereof.

## **Tax Covenants**

The Authority covenants to and for the benefit of the purchasers and owners of the Bonds from time to time outstanding that so long as the Bonds remain outstanding, it will not (i) knowingly use or permit the use of moneys on deposit in any fund or account in connection with the Bonds, whether or not such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, (ii) direct the Trustee to invest any funds held by it under the Indenture, or (iii) take any other action or approve any other action, that directly or indirectly would cause any Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code, a “hedge bond” within the meaning of Section 149 of the Code, or “federally guaranteed” within the meaning of Section 149(b) of the Code; and that it will observe and not violate the requirements of Section 148 of the Code. Without limiting the generality of the foregoing, the Authority covenants that not more than fifty percent (50%) of the proceeds of the Bonds will be invested in a guaranteed investment contract with a term of four (4) years or more, or in another form of nonpurpose investment (within the meaning of Section 148(f)(6)(A) of the Code) having a substantially guaranteed yield for four (4) years or more.

In addition to the foregoing, the Authority covenants and agrees, for the benefit of the owners from time to time of the Bonds, that:

(i) it will not take any action, or omit to take any action or permit any action that is within its control to be taken or omitted, the result of which would cause or be likely to cause the interest payable with respect to the Bonds not to be excluded from gross income for federal income tax purposes;

(ii) it will comply with the requirements applicable to it contained in Section 103 and Part IV of Subchapter B of Chapter 1 of Subtitle A of the Code to the extent necessary to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes;

(iii) it will refrain from taking any action that would cause the Bonds, or any of them, not to be classified as “qualified bonds” under Section 141(e) of the Code; and

(iv) it shall complete and file Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues, with respect to the Bonds, within the time period required by Section 149(e) of the Code and take any other steps necessary to comply with the information reporting requirement imposed by that section of the Code.

The Trustee covenants that it will make investments of money deposited with it in any Fund in connection with the Bonds only in accordance with the terms of the Indenture and with written directions of the Borrower and that it will make all payments to the United States of America to the extent moneys are available therefor in Funds held in accordance with the terms of the Indenture.

#### **Events of Default; Acceleration; Waiver of Default**

Each of the following events which has occurred and is continuing shall constitute an “Event of Default” hereunder:

(1) default in the due and punctual payment of the principal of, or premium (if any) on, the Bonds when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise;

(2) default in the due and punctual payment of any installment of interest on, or the Purchase Price of, the Bond, when and as the same shall become due and payable;

(3) 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, the Bank and the Borrower by the Trustee, or to the Authority, the Bank, the Borrower and the Trustee by the Holders of not less than sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds at the time Outstanding;

(4) the occurrence and continuance of a Loan Default Event;

(5) failure by the Bank to reinstate the Letter of Credit following the payment of interest by the Bank pursuant to the Letter of Credit (if any)

(6) receipt by the Trustee of notice from the Bank that an Event of Default (as defined in the Reimbursement Agreement) has occurred under the Reimbursement Agreement (if any) and directing an acceleration.

No default specified in (3) 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 cure or grace period, it shall not constitute an Event of Default if corrective action is instituted by the Authority or the Borrower (or the Bank on its behalf) within the applicable cure or grace period and diligently pursued in the sole determination of the Bank. With regard to any alleged default concerning which notice is given to the Borrower under the provisions of the Indenture, the Authority grants the Borrower (or the Bank 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 described above and subject to the Indenture, unless the principal of all the Bonds shall have already become due and payable, the Trustee upon the written request of the Holders of not less than sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds at the time Outstanding and with the consent of the Bank pursuant to the Indenture, or upon the occurrence of an Event

of Default described above, the Trustee shall, promptly upon such occurrence, by notice in writing to the Authority, the Borrower and the Bank, 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 draw upon any then existing Letter of Credit in accordance with the terms thereof and apply the amount so drawn to pay the principal of and interest on the Bonds. 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 preceding paragraph, however, is 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 hereinafter provided, and before the Letter of Credit has been drawn upon in accordance with its terms and honored, there shall have been deposited with the Trustee a sum sufficient to pay (with Available Moneys if a Letter of Credit is in effect) all the principal of the Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, with interest on such overdue installments of principal as provided in the Loan Agreement, 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 the Bank or provision deemed by the Trustee and the Bank 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.

Notwithstanding any other provision of the Indenture except as provided in the following sentence, the Trustee may not exercise any remedy in the event of a default under the Indenture without the written consent of the Bank, so long as the Letter of Credit is in effect and the Bank has not wrongfully failed to pay a properly presented drawing thereunder. The Trustee may exercise any and all remedies under the Indenture and the Loan Agreement (except acceleration of the Bonds) to collect any fees, expenses and indemnification from the Borrower to the Trustee or the Authority without obtaining the consent of the Bank.

#### **Institution of Legal Proceedings by Trustee**

Pursuant to the Indenture, 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 in principal amount of the Bonds then Outstanding and upon being indemnified to its satisfaction therefor pursuant to the Indenture shall, proceed to protect or enforce its rights or the rights of the Holders of Bonds under the Act, 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 herein or therein, or in aid of the execution of any power herein or therein 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 (subject to 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 (including those previously outstanding) of the Trustee and Tender Agent (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 the 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 the 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;

(3) to the payment of amounts (other than with respect to Bank Bonds held by the Liquidity Provider, which shall be paid on a parity with all other Bonds, if any), owed the Bank pursuant to the Reimbursement Agreement or Liquidity Facility Agreement;

provided, however, that in no event shall moneys derived from drawings under a Letter of Credit, moneys set aside to pay principal or interest on any particular Bonds (including moneys held for non-presented Bonds or held under the Indenture), 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 Letter of Credit and remarketing proceeds shall be used solely to pay principal, interest, premium, or purchase price of the Bonds as otherwise provided herein.

### **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 Indenture, 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 sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds then Outstanding, subject to the rights of the Bank pursuant to the Indenture, 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 herein, or in aid of the execution of any power herein 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 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 the Bonds, subject to the provisions of the Indenture.

### **Bondholders' Direction of Proceedings**

Anything in the Indenture to the contrary notwithstanding, but subject to the Indenture, the Holders of sixty-six and two-thirds percent (66-2/3%) 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 hereunder, 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 Indenture, no Holder of the 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 applicable law with respect to the 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 sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (3) subject to provisions of the Indenture, 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 hereunder 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 applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Holders of the Outstanding Bonds, subject to the provisions of the Indenture.

### **Consent To Defaults**

So long as the Bank is not continuing wrongfully to dishonor a properly presented drawing under any Letter of Credit, no Event of Default shall be declared pursuant to the Indenture (except in a case resulting from the failure of the Borrower to pay the Trustee's fees and expenses or indemnification of the Trustee), nor any remedies exercised with respect to any Event of Default by the Trustee or by the Bondholders (except in a case resulting from the failure of the Borrower to pay the Trustee's fees and expenses or indemnification of the Trustee) 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 hereunder, without, in any case, the prior written consent of the Bank. No Event of Default can be waived, in any circumstance, unless the Trustee has received written notice from the Bank that the Letter of Credit, if any, has been fully reinstated and is in full force and effect and that the notice from the Bank declaring an Event of Default (as defined under the Reimbursement Agreement) under the Reimbursement Agreement has been rescinded by the Bank.

## **Paying Agent**

The Authority, with the written approval of the Trustee and the Bank, may appoint and at all times have a Paying Agent in such cities as the Authority deems desirable, for the payment of the principal of, and the interest (and premium, if any) on, the Bonds. It shall be the duty of the Trustee to make such credit arrangements with such Paying Agent as may be necessary to assure, to the extent of the moneys held by the Trustee for such payment, the prompt payment of the principal of, and interest (and premium, if any) on, the Bonds presented at either place of payment. The Trustee will not be responsible for the failure of the Bank or any other party to make funds available to the Trustee or Paying Agent. The Trustee is the initial Paying Agent. If the Paying Agent is any entity other than the Trustee, (i) the Paying Agent may hold any such funds and (ii) the Paying Agent shall be subject to the same standards applicable to the Trustee as set forth in the Indenture.

## **Duties of Remarketing Agent**

The Authority, with the advice of the Borrower, shall appoint the Remarketing Agent for the Bonds, subject to the conditions set forth in the Indenture. The Remarketing Agent shall designate to the Trustee its principal office and signify its acceptance of the duties and obligations imposed on it hereunder by a written instrument of acceptance delivered to the Authority and the Trustee under which the Remarketing Agent will agree to perform the obligations of the Remarketing Agent set forth herein and under which the Remarketing Agent will agree to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Authority, the Trustee, the Bank and the Borrower at all reasonable times. The Remarketing Agent shall set the interest rates on the Bonds and perform the other duties provided for in the Indenture and shall remarket Bonds as provided in the Indenture. There may be separate Remarketing Agents for these two functions. The Remarketing Agent shall hold all moneys delivered to it in trust in non-commingled funds for the benefit of the person or entity which shall have so delivered such moneys until such moneys are paid to the Trustee or the Tender Agent as provided herein. The Remarketing Agent may for its own account or as broker or agent for others deal in Bonds and may do anything any other Holder may do to the same extent as if the Remarketing Agent were not serving as such.

## **The Tender Agent**

Pursuant to the Indenture, the Authority appoints the Trustee as initial Tender Agent, and the Trustee, as Tender Agent, accepts such appointment. Successor Tender Agents may be appointed by the Borrower from time to time upon notice to the Tender Agent, the Bank and the Trustee. Any successor Tender Agent shall designate its principal office and signify its acceptance of all of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Authority, the Trustee, the Bank and the Remarketing Agent. The Tender Agent shall perform the duties provided for in the Indenture and in exercising such duties shall be entitled to the same rights and immunities applicable to the Trustee as set forth in the Indenture and shall not be liable for any action or omission to act except for negligence or willful misconduct. Notwithstanding any provision in the Indenture to the contrary, the Tender Agent shall not be responsible for any misconduct or negligence on the part of any agent, correspondent, attorney or receiver appointed with due care by it hereunder.

## **Modification or Amendment of Indenture**

(A) 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 hereto, which the Authority and the Trustee may enter into upon receipt of the written consent of (1) if a Letter of Credit is then in effect, the Bank and the Borrower or (2) if no Letter of Credit is then in effect, the Holders of a majority in aggregate principal amount of all Bonds then Outstanding and the Borrower. No such modification or amendment shall (1) extend the fixed maturity of the 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 percentage 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 and the Bank. 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 this subsection (A), the Trustee shall mail a notice, setting forth in general terms the substance of such Supplemental Indenture, to the Borrower 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.

(B) 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 an indenture or indentures supplemental hereto, which the Authority and the Trustee may enter into without the consent of any Bondholders, but with the prior written consent of the Bank and the Borrower, as long as the Letter of Credit or the Liquidity Facility is in effect and the Bank has not failed to honor a properly presented drawing or purchase notice, as applicable, thereunder, and only to the extent permitted by law and after receipt of an opinion of counsel that the provisions of such Supplemental Indenture shall not materially adversely affect the interests of the Holders of the Bonds, including, without limitation, 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 herein 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 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 of the Indenture 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 Letter of Credit or Substitute Liquidity Facility;

(5) to the extent necessary, as evidenced by an Opinion of Bond Counsel, to preserve the exclusion of interest on the Bonds outstanding from gross income for federal income tax purposes;

(6) 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 S.E.C. Rule 15c2-12, as it may from time to time be amended or supplemented, with respect to the Bonds;

(7) 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 of the Bonds 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; or

(8) to issue an Additional Bonds.

The Trustee shall give notice of any such modification or amendment to any Rating Agency then rating the Bonds.

(C) The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by subsections (A) or (B) of this Section which materially adversely affects the Trustee's own rights, duties or immunities under the Indenture or otherwise.

### **Discharge of Indenture**

Bonds may be paid by the Authority in any of the following ways, with the prior written consent of the Bank, as long as the Letter of Credit is in effect and the Bank has not failed to honor a properly presented drawing thereunder, provided that the Authority also pays or causes to be paid any other sums payable hereunder 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) while the Bonds bear interest at the Fixed Interest Rate, by depositing with the Trustee, in trust, at or before maturity, money or securities in the necessary amount to pay or redeem all Bonds; or

(C) while the Bonds bear interest at the Fixed Interest Rate, 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 hereunder 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 the 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 in the Indenture. 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 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 hereunder in the following order (1) first, to the Bank to the extent of any amounts due to the Bank pursuant to the Reimbursement Agreement or Liquidity Facility 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 Letter of Credit, Liquidity Facility, remarketing proceeds, or moneys held for the payment of particular Bonds (including moneys held for non-presented Bonds).

In addition to the foregoing, defeasance of the Bonds is limited to:

(A) Bonds that bear interest at the Fixed Interest Rate;

(B) Bonds that are defeased after the Borrower delivers to the Trustee and the Authority a rating letter from each Rating Agency then rating the Bonds; or

(C) Bonds that bear interest at a Daily Rate or Weekly Rate and (i) are defeased to its earliest mandatory redemption or tender date and (ii) are defeased at the Maximum Rate.

### **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 to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of the Bond), provided that, if the Bond is to be redeemed prior to maturity, notice of such redemption shall have been given 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 the 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 the 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.

The Authority may at any time surrender to the Trustee for cancellation by it the Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and the 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 the 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 each Letter of Credit Account, the Liquidity Facility Account, the Rebate Fund and the account holding the moneys described in the Indenture) and shall be:

(A) Available Moneys in an equal amount to the principal amount of the 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 provided in the Indenture 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 the Bonds and all unpaid interest thereon to the redemption date; or

(B) Government Obligations 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, with maturities no longer than 30 days or as may be necessary to make the required payment on the Bonds 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 provided in the Indenture 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 Government Obligations to the payment of such principal, premium, if any, and interest on the Bonds and provided further that any Rating Agency then rating the Bonds and the Trustee shall have received a report of an accountant that the moneys or Government Obligations on deposit are sufficient to pay the principal, premium, if any, and interest on the Bonds to maturity or the redemption date, and 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, any Guarantor or the Authority become the debtor in a case under the United States Bankruptcy Code.

### **Payment of Bonds After Discharge of Indenture Obligation**

Notwithstanding any provisions of the Indenture, any moneys held by the Trustee in trust for the payment of the principal of, or interest on, the Bonds and remaining unclaimed for two years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in the Indenture), if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid to the Authority free from the trusts created by the Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Authority as aforesaid, the Trustee, as the case may be, may (upon the request of and at the cost of the Borrower) first mail to the Holders of all Bonds which have not been paid at the addresses shown on the registration books maintained by the Trustee a notice, in such form as may be deemed appropriate by the Trustee, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof. All moneys held by or on behalf of the Trustee for the payment of principal of or interest or premium on Bonds, whether at redemption, acceleration or maturity, shall be held in trust for the account of the Holders thereof and the Trustee

shall not be required to pay Holders, the Authority or the Borrower any interest on, or be liable to holders or any other person for any interest earned on, moneys so held.

### **Limitation of Rights to Parties and Bondholders**

Nothing in the Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee, the Bank, the Borrower, the Direct Participants (as provided in the Indenture) and the Holders of the Bonds, any legal or equitable right, remedy or claim under or in respect of the Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee, the Bank, the Borrower, the Direct Participants (as provided in the Indenture) and the Holders of the Bonds.

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

The Loan Agreement, entered into between the Authority and the Borrower, provides for, among other things, the loan of the Bond proceeds by the Authority to the Borrower, certain covenants of the Borrower relating to the loan, including repayment of the loan, and defines events of default and remedies therefor. Certain provisions of the Loan Agreement, not previously discussed in this Official Statement are summarized below.

#### **Payment of Loan Repayments**

The Authority loans and advances to the Borrower, and the Borrower borrows and accepts from the Authority (solely from the proceeds of the sale of the Bonds), the proceeds of the Bonds to be applied under the terms and conditions of the Loan Agreement and the Indenture. In consideration of the loan of such proceeds to the Borrower, the Borrower agrees that as long as any of the Bonds remain Outstanding, it shall pay to the Trustee for deposit in the Revenue Fund: 1) on or before each Interest Payment Date and Principal Payment Date, while the Bonds bear interest at a Daily Rate or Weekly Rate, the amount of interest on and principal of the Bonds becoming due and payable on such dates (taking into account transfers from the Funded Interest Account), and 2) on or before the first Business Day of each month, after the Bonds are converted to bear interest at the Fixed Interest Rate, the sum of (A) one-sixth of the aggregate amount of interest becoming due and payable on the next succeeding Interest Payment Date on all Bonds then Outstanding; provided that from the first Business Day of each month following the date upon which interest on the Bonds begins to accrue interest at the Fixed Interest Rate until the next succeeding Interest Payment Date, such payments to the Trustee for deposit in the Revenue Fund shall be sufficient on a pro rata basis to pay the interest becoming due and payable on said Interest Payment Date (taking into account transfers from the Funded Interest Account); plus (B) one-twelfth of the aggregate amount of principal becoming due and payable on the next succeeding Principal Payment Date on the Outstanding Bonds; provided that from the first Business Day of each month following the date upon which interest on the Bonds begins to accrue interest at the Fixed Interest Rate until the next succeeding Principal Payment Date, such payments to the Trustee for deposit in the Revenue Fund shall be sufficient on a pro rata basis to pay the principal becoming due and payable on said Principal Payment Date. Notwithstanding the foregoing, if on any Interest Payment Date or Principal Payment Date with respect to the Bonds, 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 or acceleration), the Borrower shall forthwith pay the amount of any such deficiency to the Trustee. In addition, the Borrower agrees to pay, together with the proceeds of the remarketing of Bonds and liquidity draws, if any, under the Liquidity Facility on such date, an amount to enable the Tender Agent to pay the Purchase Price of the Bonds to the extent not paid by the Bank. Each payment by the Borrower to the Trustee described under this paragraph and concerning payment of the Purchase Price to the extent not paid by the Bank (the "Loan Repayments") shall be in lawful money of the United States of America and paid to the Trustee at its Corporate Trust Office and held, invested, disbursed and applied as provided in the Indenture.

Except as otherwise expressly provided herein, all amounts payable hereunder 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 Loan Agreement, in addition to any credits resulting from payment or repayment from other sources, to the extent of any corresponding payment made by the Bank to the Trustee under the Letter of Credit or made by the Liquidity Provider to the Trustee under the Liquidity Facility.

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

### **Additional Payments**

In addition to the Loan Repayments, the Borrower shall also pay to the Authority or to the Trustee, 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 hereunder or in any way arising due to the transactions contemplated hereby (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 for services rendered under the Indenture and all amounts referred to in the Indenture, 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, the Tax Agreement or the Indenture;

(D) Fees and expenses of the Authority in connection with the loan to the Borrower under the Loan Agreement, the Bonds, the Indenture or any other documents contemplated hereby or thereby, including, without limitation the Authority's initial bond administration fee and its annual bond administration fee, fees and expenses incurred by counsel to the Authority in connection with the issuance, sale and delivery of the Bonds, and any litigation which may at any time be instituted involving such loan or the Bonds, the Indenture and any other documents contemplated hereby or thereby for which the Borrower may be liable to indemnify the Authority pursuant to the Loan Agreement, and expenses incurred by the Authority in supervision and inspection of the Borrower and its operations with respect to the use and application of such loan; and

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

### **Obligations of the Borrower Unconditional; Net Contract**

The obligations of the Borrower to make the Loan Repayments and Additional Payments required hereunder and to perform and observe the other agreements on its part contained herein 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, unpredictable event or occurrence outside the control of the Borrower, and which is not attributable to any act or failure to take preventive action by the Borrower, and shall include, without limitation, acts of nature, war, hostilities or fire, whatsoever, including, without limiting the generality of the foregoing, any 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 hereunder, 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. 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 of Outstanding Bonds in the manner and subject to the terms and conditions set forth in the Indenture and the Reimbursement Agreement.

### **Security for Borrower’s Obligations**

In consideration of the issuance of the Bonds and the loan of the proceeds thereof to the Borrower hereunder and to secure the payment of Loan Repayments and the performance of the other obligations of the Borrower hereunder and under the Reimbursement Agreement, the Borrower pledges and grants a security interest (subject to Permitted Encumbrances) to the Trustee, as assignee of the Authority, and, on a subordinated basis, the Bank in the Pledged Funds held under the Indenture that secure the Bonds and the obligations under the Reimbursement Agreement. The Borrower agrees to cause to be filed Uniform Commercial Code financing statements in form and substance satisfactory to the Trustee, and to execute and deliver such other documents (including, but not limited to, control agreements and continuation statements) as the Authority or the Trustee may reasonably require in order to perfect or maintain as perfected such security interest or give public notice thereof.

The Borrower covenants and agrees that, except as provided in the Indenture, it will not create, assume or suffer to exist any Lien upon the Pledged Funds held under the Indenture; provided, however, that notwithstanding the provisions of the Loan Agreement, the Borrower may create, assume or suffer to exist Permitted Encumbrances.

Upon written request of the Borrower, the Trustee shall execute and deliver such releases, subordinations, requests for reconveyance or other instruments as may be reasonably requested by the Borrower in connection with (1) the disposition of the Pledged Funds in accordance with the provisions of the Indenture or (2) the granting by the Borrower of any Lien which constitutes a Permitted Encumbrance.

### **Gross Revenue Pledge**

(A) The Borrower agrees that, so long as any of the Loan Repayments remain unpaid, all of the Gross Revenues of the Borrower shall be deposited as soon as practicable upon receipt in a fund designated as the “Gross Revenue Fund” which the Borrower shall establish and maintain, subject to the provisions of subsection (B) below, in an account or accounts at such banking institution or institutions as the Borrower shall from time to time designate in writing to the Trustee for such purpose (the “Depository Bank(s)”). Subject only to the provisions of the Loan Agreement and to Permitted Encumbrances permitting the application thereof for the purposes and on the terms and conditions set forth therein, the Borrower hereby pledges and, to the extent permitted by law, grants a security interest to the Trustee in, the Gross Revenue Fund and all of the Gross Revenues of the Borrower to secure the payment of Loan Repayments and the performance by the Borrower of its other obligations under the Loan Agreement and with respect to Parity Debt, and, on a subordinated basis to the Bank or the Liquidity Provider pursuant to the Reimbursement Agreement or the Liquidity Facility Agreement, respectively. The Borrower shall obtain and deliver to the Trustee control agreements, fully signed and delivered by each Depository Bank and other parties thereto, and any other documentation as may be necessary or reasonably required by the Authority or the Trustee in order to perfect or maintain as perfected such security interest.

(B) Amounts in the Gross Revenue Fund may be used and withdrawn by the Borrower at any time for any lawful purpose, except as hereinafter provided. In the event that the Borrower is delinquent for more than one Business Day in the payment of any Loan Repayment or any payment required with respect to Parity Debt, the Trustee shall notify the Borrower and the Depository Bank(s) of such delinquency, and, unless such Loan Repayment or payment with respect to Parity Debt is paid within ten days after receipt of such notice, upon request of the Trustee, the Borrower shall cause the Depository Bank(s) to transfer the Gross Revenue Fund to the name and credit of the Trustee. All Gross Revenues of the Borrower shall continue to be deposited in the Gross Revenue Fund as provided in subsection (A) of this caption but to the name and credit of the Trustee until the amounts on deposit in said fund are sufficient to pay in full, or have been used to pay in full, all Loan Repayments and payments with respect to Parity Debt (including, without limitation, all payments to the Bank or the Liquidity Provider pursuant to the Reimbursement Agreement or the Liquidity Facility Agreement, respectively) in default and all other Loan Default Events and events of default with respect to Parity Debt known to the Trustee shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, whereupon the Gross Revenue Fund (except for the Gross Revenues required to make such payments or cure such defaults) shall be returned to the name and credit of the Borrower. During any period that the Gross Revenue Fund is held in the name and to the credit of the Trustee, the Trustee shall use the withdrawn amounts in said fund from time to time to make Loan Repayments, Additional Payments, and the other payments required of the Borrower under the Loan Agreement or with respect to any Parity Debt as such payments become due (whether by maturity, redemption, acceleration or otherwise), and, if such amounts shall not be sufficient to pay in full all such payments due on any date, then to the payment of Loan Repayments, Additional Payments and debt service on such Parity Debt ratably, according to the amounts due respectively for Loan Repayments and such debt service, without any discrimination or preference, and to such other payments (including, without limitation, all payments to the Bank or the Liquidity Provider pursuant to the Reimbursement Agreement or the Liquidity Facility Agreement, respectively) in the order which the Trustee, in its reasonable discretion, shall determine to be in the best interests of the holders of the Bonds and such Parity Debt, without discrimination or preference. During any period that the Gross Revenue Fund is held in the name and to the credit of the Trustee, the Borrower shall not be entitled to use or withdraw any of the Gross Revenues of the Borrower unless and to the extent that the Trustee, at its sole discretion, so directs for the payment of current or past due operating expenses of the Borrower; provided, however, that the Borrower shall be entitled to use or withdraw any amounts in the Gross Revenue Fund which do not constitute Gross Revenues of the Borrower; and further provided, however, that the Borrower shall be entitled to use or withdraw any amounts in the Gross Revenue Fund to pay Bank or Liquidity Facility Provider fees and expenses necessary to maintain Letter of Credit and Liquidity Facility, respectively. The Borrower agrees to execute and deliver all instruments as may be required to implement this pledge. The Borrower further agrees that a failure to comply with the terms of this pledge shall cause irreparable harm to the holders from time to time of the Bonds and of Parity Debt, and shall entitle the Trustee, with or without notice to the Borrower, to take immediate action to compel the specific performance of the obligations of the Borrower as provided under this caption.

### **Negative Pledge**

The Borrower covenants that it will not pledge or grant a security interest in or permit to exist any Lien on any of its Pledged Assets, except for Permitted Encumbrances.

### **Prohibited Uses**

No portion of the proceeds of the Bonds shall be used to finance or refinance any facility, place or building to be used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

### **Tax Covenants**

The Borrower represents and covenants that it will comply with the requirements and conditions of the Loan Agreement applicable to the Bonds and the Tax Agreement, and it has not executed nor will it execute any agreement with provisions contradictory to, or in opposition to, the provisions of the Loan Agreement. The Borrower acknowledges that such covenants are designed for the purpose of ensuring that the Bonds are treated as consisting of obligations described in Section 103(a) of the Code. Without limiting the foregoing, the Borrower also represents and covenants that, notwithstanding any provision of the Loan Agreement or the rights of the Borrower

hereunder, it has not taken, and will not take or omit to take, or permit to be taken on its behalf by any other party, any action which would cause, or which would reasonably be likely to cause, the interest on the Bonds to be included in gross income for federal income tax purposes. The Borrower will take such reasonable actions as may be necessary to continue such exclusion from gross income, including, without limitation, the preparation and filing of any statement required to be filed by it in order to maintain such exclusion.

#### **Liquidity Facility; Substitute Liquidity Facility.**

(A) The Borrower agrees that, other than as provided below under the caption “Letter of Credit” below or described under the caption “Guaranty” in this Official Statement, at all times prior to the Mode Change Date to the Fixed Rate Mode or the Auction Mode, it shall maintain the Liquidity Facility in an amount equal to the aggregate principal amount of all the Bonds, plus an amount equal to 35 days’ interest on the Bonds (assuming an annual rate of interest equal to the Maximum Rate). The Borrower covenants that, subject only to the conditions described under the caption “Letter of Credit” below or under the caption “Guaranty” in this Official Statement, it will not voluntarily terminate the Liquidity Facility without at least fifteen (15) days’ written notice to the Trustee and without providing for the substitution in accordance with the Indenture of a Substitute Liquidity Facility for the Liquidity Facility prior to the effective date of such termination of the Liquidity Facility.

(B) The Borrower shall have the right to cause a Substitute Liquidity Facility to be substituted for the Liquidity Facility subject to, and in accordance with the Indenture. The Borrower agrees to give such notices and to take such other actions, in each case, as are provided to be given and taken by the Borrower pursuant to the Indenture.

#### **Letter of Credit**

Except as may 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 Letter of Credit for the Bonds or an Alternate Letter of Credit for the Bonds. At any time the Borrower may, at its option, provide for the delivery to the Trustee of a Substitute Liquidity Facility, including an Alternate Letter of Credit and the Borrower shall, in any event, cause to be delivered a Substitute Liquidity Facility at least 20 days before the expiration date of any existing Liquidity Facility or Letter of Credit, unless otherwise permitted by the Indenture. An Alternate Letter of Credit shall be an irrevocable Letter of Credit or other irrevocable credit facility, issued by a commercial bank or other financial institution, the terms of which shall in all material respects be the same as the applicable Letter of Credit; provided, that the expiration date of such Alternate Letter of Credit shall be a date not earlier than one year 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 Letter of Credit to the Trustee, the Borrower shall cause to be furnished to the Trustee (i) an opinion of counsel to the bank issuing such Alternate Letter of Credit stating to the effect that such Alternate Letter of Credit 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 that the Bonds shall have a long-term rating of that either shall not be lowered from the rating in existence immediately prior to delivery of such Alternate Letter of Credit or withdrawn or, if the Bonds only have a short-term rating, such short-term rating shall be in the highest short-term Rating Category.

The Borrower shall provide written notice to the Trustee no later than 90 days prior to the expiration of the Letter of Credit of such expiration date.

## **Parity Debt**

The Borrower may incur Parity Debt, subject, however, to prior written consent by the Bank, if required under the Reimbursement Agreement, and subject to the following conditions:

- (A) The agreement under which Parity Debt is issued shall require that:
  - (i) A Loan Default Event shall constitute an event of default under such agreement;
  - (ii) Rights and obligations of the holders of Parity Debt shall be substantially the same as the rights and obligations of the Holders of Bonds under the Indenture;
  - (iii) Remedies upon an event of default shall be substantially the same as the remedies provided in the Indenture and the Loan Agreement, and prior to exercising any such remedies, the holders of such Parity Debt (or a trustee representing their interest) shall be required to cooperate with the Trustee to the end that the interests of such holders and the Bondholders shall be equally protected;
- (B) Any collateral given or to be given to secure Parity Debt shall also secure the Bonds on a pari passu basis; provided that the Borrower may, but need not, establish a debt service reserve account for debt service on Parity Debt; and
- (C) At the time of incurrence of any such Parity Debt, there is no Event of Default under the Loan Agreement.

## **Initial Guaranty**

The Borrower agrees that, subject to the release of the Initial Guaranty as provided under the caption “GUARANTY” in this Official Statement, at all times, it shall maintain the Initial Guaranty.

## **Fees to the Guarantor**

The Borrower may pay fees to the Initial Guarantor as set forth in the Intercompany Agreement. The Borrower and the Authority acknowledge and agree that the fees payable to the Guarantor pursuant to the Loan Agreement and the Intercompany Agreement will be subordinate to payments due and owing to the Bank and the Holders and will be subject to the payment limitations provided in the Initial Guaranty.

## **Nonliability of Authority**

The Authority shall not be obligated to pay the principal (or Redemption Price) of or interest on the Bonds, except from Revenues and other moneys and assets received by the Trustee on behalf of the Authority pursuant to the Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Authority, the Association of Bay Area Governments (“ABAG”) or any member is pledged to the payment of the principal (or Redemption Price) or interest on the Bonds. The Authority shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Loan Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement.

The Borrower acknowledges that the Authority’s primary source of moneys to repay the Bonds will be provided by the payments made by the Borrower pursuant to the Loan Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and together with payments made by the Guarantor to the Trustee, pursuant to the Initial Guaranty, and agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or Redemption Price) and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such

principal (or Redemption Price) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Authority or any third party.

### **Loan Default Events**

The following events shall be “Loan Default Events”:

(A) Failure by the Borrower to pay in full any payment required hereunder when due, whether at maturity, upon a date fixed for prepayment, by declaration by the Trustee of an Event of Default or otherwise pursuant to the terms of the Loan Agreement; provided, however, the failure of the Borrower to pay the Purchase Price of the Bonds on the Purchase Date or Mandatory Purchase Date under Section 4.5 of the Loan Agreement shall not constitute a default under the Loan Agreement in the event (a) the failure is the result of a failure of the Remarketing Agent or the Bank to deliver proceeds in accordance with the terms of the Remarketing Agreement or the Liquidity Facility Agreement, respectively, and (b) funds are deposited with the Trustee not later than 11:30 a.m., New York City time on the next succeeding Business Day after which such tendered Bonds plus accrued interest to but not including such next succeeding Business Day, in which case the Trustee shall not be required to pay the Purchase Price until 1:00 p.m., New York City time on such next succeeding Business Day; and further provided, in the event the grace period described in the preceding clause expires, the obligations of the Borrower pursuant to this Agreement to provide moneys in a sufficient amount to purchase such tendered Bonds shall remain in full force and effect and shall not be satisfied until such time as funds are deposited with the Trustee in an amount sufficient to purchase such tendered Bonds, including interest accrued from the original Purchase Date or Mandatory Purchase Date to the actual purchase date at the Alternate Rate;

(B) If any representation or warranty made by the Borrower herein 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 subsection (A) or (B) of 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, the Bank 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, the Bank 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.

Upon having actual notice of the existence of a Loan Default Event, the Trustee shall give written notice thereof to the Borrower unless the Borrower has expressly acknowledged the existence of such Loan Default Event in a writing delivered by the Borrower to the Trustee or filed by the Borrower in any court.

Notwithstanding any other provision of the Loan Agreement to the contrary, so long as the Bank is not in default under the Letter of Credit, the Trustee shall not without the prior written consent or direction of the Bank exercise any remedies under the Loan Agreement in the case of any Loan Default Event; provided, however, that no consent of the Bank shall be required with respect to the enforcement of certain provisions of the Loan Agreement. The Trustee may exercise any and all remedies under the Indenture and the Loan Agreement (except acceleration) to enforce such provisions without obtaining the consent of the Bank.

### **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, subject in all cases to the provisions of the Indenture:

(A) The Authority or the Trustee may, upon notice in writing to the Borrower and the Bank, 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 subsection 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 the Letter of Credit, 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 thereunder.

### **Assignment by Authority or Trustee**

The Loan Agreement, including the right to receive payments required to be made by the Borrower hereunder and to compel or otherwise enforce performance by the Borrower of its other obligations hereunder, may be assigned and reassigned in whole or in part to one or more assignees or subassignees by the Authority or the Trustee at any time subsequent to its execution without the necessity of obtaining the consent of the Borrower. Each of the Authority and the Borrower expressly acknowledges that all right, title and interest of the Authority in and to the Loan Agreement (excluding the Authority’s right to indemnification, fees and expenses) have been assigned to the Trustee, as security for the Bonds under and as provided in the Indenture, and that if any Loan Default Event shall occur, the Trustee shall be entitled to act hereunder in the place and stead of the Authority.

### **Concerning the Liquidity Provider**

The Liquidity Provider is an express third party beneficiary of the Loan Agreement with the power to enforce the provisions of the Loan Agreement against the parties to it. References in the provisions of the Loan Agreement to the Liquidity Provider (including, without limitation in provisions of the Loan Agreement requiring the consent of, or the giving of notice to, the Liquidity Provider) shall be of no further force or effect at such time as (i) the obligations of the Liquidity Provider (and if the Liquidity Provider acts as agent for one or more other Persons, the obligations of such other Persons) under the Liquidity Facility have terminated in accordance with the terms of the Liquidity Facility (in the case of the Initial Liquidity Facility, by reason of the occurrence of the end of the “Bank Purchase Period” under and as defined in the Initial Liquidity Facility), and (ii) any and all Bank Bonds Outstanding at the time of such termination cease to be Outstanding and all “Obligations” under and as defined in the Initial Liquidity Facility have been paid in full.

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**APPENDIX D**

**FORM OF OPINION OF BOND COUNSEL**

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## APPENDIX D

### Proposed Form of Bond Counsel Opinion

[To be Dated the Date of Initial Delivery]

ABAG Finance Authority for Nonprofit  
Corporations  
101 Eighth Street  
Oakland, California 94607

Acacia Creek, A Masonic Senior Living  
Community at Union City  
c/o Masonic Homes of California  
34400 Mission Boulevard  
Union City, California 94587-3604

Re: ABAG Finance Authority For Nonprofit Corporations  
Variable Rate Revenue Bonds (Acacia Creek at Union City  
Project), Series 2008A

We have acted as Bond Counsel to the Authority in connection with the issuance by ABAG Finance Authority for Nonprofit Corporations (the "Authority") of \$93,625,000 in aggregate principal amount of Variable Rate Revenue Bonds (Acacia Creek at Union City Project), Series 2008A (the "Bonds"). The Bonds are issued pursuant to an Indenture dated as of January 1, 2008 (the "Indenture") between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"). The Authority has made a loan of the proceeds of the Bonds to Acacia Creek, a Masonic Senior Living Community at Union City, a California nonprofit public benefit corporation (the "Borrower"), pursuant to a Loan Agreement dated as of January 1, 2008 (the "Loan Agreement") between the Authority and the Borrower. The Bonds have been issued to finance the costs of acquisition, construction and equipping of a continuing care retirement community facilities to be located in Union City, California.

The Loan Agreement and the rights of the Authority thereunder (except certain limited provisions of the Loan Agreement), including all right, title and interest and privilege of the Authority in and to the loan repayments and other amounts, payable by the Borrower under the Loan Agreement, to be applied to the payment, when due, of the principal of, premium, if any, and interest on the Bonds (collectively, the "Loan Repayments"), have been pledged and assigned by the Authority to the Trustee as security for the Bonds.

For purposes of this opinion we have examined (i) resolutions of the Authority adopted on January 23, 2008, authorizing the issuance of the Bonds, certified by the Executive Director of the Authority, (ii) executed counterparts of the Indenture, the Loan Agreement and

the Guaranty Agreement from Masonic Homes of California (the “Guarantor”) to the Trustee, (iii) the opinion of even date herewith of Nixon Peabody LLP, counsel to the Authority, (iv) the opinion of even date herewith of Davis Wright Tremaine LLP, counsel to the Borrower (the “Borrower Counsel’s Opinion”), (v) the opinion of even date herewith of the Davis Wright Tremaine LLP, counsel to the Guarantor (the “Guarantor Counsel’s Opinion”), (vi) the opinion of even date herewith of Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP special tax counsel to the Borrower (the “Borrower Tax Counsel’s Opinion”) and (vii) such certified proceedings and other papers as we have considered necessary and appropriate to render this opinion.

In rendering this opinion, we are relying on the Borrower Counsel’s Opinion and the Borrower’s Tax Counsel’s Opinion, as appropriate, with respect to various matters concerning the Borrower, including but not limited to (i) the Borrower’s corporate existence, (ii) the Borrower’s status as an organization described in Section 501(c)(3) of the Code which is exempt from federal income taxation pursuant to Section 501(a) of the Code, (iii) the Borrower’s power to enter into and perform the Loan Agreement and the Borrower’s power to issue the Note, (iv) the authorization, execution and delivery of such documents by the Borrower and (v) the validity, binding effect and enforceability of such documents as against the Borrower.

In rendering this opinion, we are relying on the Guarantor Counsel’s Opinion with respect to various matters concerning the Guarantor, including but not limited to (i) the Guarantor’s corporate existence, (ii) the Guarantor’s status as an organization described in Section 501(c)(3) of the Code which is exempt from federal income taxation pursuant to Section 501(a) of the Code, (iii) the Guarantor’s power to enter into and perform the Guaranty Agreement, (iv) the authorization, execution and delivery of such documents by the Guarantor and (v) the validity, binding effect and enforceability of such documents as against the Guarantor.

As to questions of fact material to our opinion, we have relied upon representations and covenants made on behalf of the Authority and the Borrower in the Indenture, the Loan Agreement, and the Tax Agreement dated January 30, 2008 (including all exhibits thereto, the “Tax Agreement”), among the Authority, the Borrower and the Trustee, certificates of officials of the Authority, certificates of officers of the Borrower (including certifications as to the use of Bond proceeds, the operation and use of the property financed thereby, and as to its status as an organization described in Section 501(c)(3) of the Code) and certificates of other persons, without undertaking to verify the same by independent investigation.

We express no opinion herein as to the accuracy, completeness or sufficiency of any offering material relating to the Bonds. We have not passed upon any matters relating to the business, affairs or condition (financial or otherwise) of the Borrower and no inference should be drawn that we have expressed any opinion on matters relating to the ability of the Borrower to perform its obligations under the contracts described herein.

The description of the Bonds in this opinion and other statements concerning the terms and conditions of the issuance of the Bonds do not purport to set forth all of the terms and conditions of the Bonds nor of any other document relating to the issuance of the Bonds, but are intended only to identify the Bonds and to describe briefly certain features thereof. This opinion

shall not be deemed or treated as an offering memorandum, prospectus or official statement, and is not intended in any way to be a disclosure document used in connection with the sale or delivery of the Bonds.

The interest rate mode and certain agreements, requirements and procedures contained or referred to in the Indenture, the Loan Agreement, the Tax Agreement and other relevant documents may be changed and certain actions (including, without limitation, procurement, extension, renewal or replacement of a letter of credit and defeasance of the 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 set forth below are expressly limited to, and we opine only with respect to, the laws of the State of California and the federal income tax laws.

Based upon the foregoing, we are of the opinion that, under existing law:

1. The Authority has the power to issue the Bonds and to enter into and perform its obligations under the Indenture and the Loan Agreement.

2. The Indenture and the Loan Agreement were duly authorized, executed and delivered by the Authority and are valid, binding and enforceable obligations of the Authority.

3. The Bonds have been duly authorized, executed and delivered by the Authority and, assuming due authentication by the Trustee, are valid and binding special and limited obligations of the Authority, payable solely from: (1) Loan Repayments received by the Trustee, and (2) all cash and securities held by the Trustee from time to time in specified trust funds under the Indenture and pledged to the payment of the Bonds (the "Pledged Revenues"). The Bonds and the interest and premium, if any, payable thereon do not constitute a charge against the general credit of the Authority and are not payable from revenues of the Authority except from the Loan Repayments and other funds provided for in the Indenture. The Authority has no taxing powers.

4. The interest on the Bonds (i) is excluded from gross income of the owners of the Bonds for federal income tax purposes as of the date hereof and (ii) is not an item of tax preference for purposes of the federal alternative minimum tax imposed on all taxpayers; however, such interest is taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on certain corporations. The Authority has included provisions and procedures in the Indenture, the Loan Agreement and the Tax Agreement in order to meet certain requirements of the Code subsequent to the issuance of the Bonds. The opinion set forth in the first sentence of this paragraph is subject to the condition that the Borrower comply with, and the Borrower has covenanted to comply with, each such requirement. Failure to comply with certain of such requirements may cause the interest on the Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal income tax consequences arising with respect to the Bonds.

5. The interest on the Bonds is exempt from State of California personal income taxes.

The rights of the owners of the Bonds and the enforceability of the Bonds, the Indenture and the Loan Agreement may be subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the exercise of judicial discretion in appropriate cases, and limitations on legal remedies against public agencies in the State of California.

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 or events are taken or do occur. With the delivery of this opinion, our engagement with respect to the Bonds has concluded. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture, the Loan Agreement and related agreements, certificates and instruments, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not affect the validity of the Bonds, the Indenture or the Loan Agreement or cause interest on the Bonds to be included in gross income for federal income tax purposes pursuant to the provisions of the Code.

We express no opinion with respect to any indemnification, contribution, 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 any of the real or personal property described in the Indenture or the Loan Agreement or the accuracy or sufficiency of the description of any such property contained therein.

We have acted in this transaction as Bond Counsel to the Authority. This opinion is addressed to you solely for your benefit in connection with the initial issuance and delivery of the Bonds on the date hereof. No persons other than you may rely upon this letter without our express prior written consent. This opinion may not be utilized for any other purpose and may not be quoted without our express prior written consent. This opinion speaks only as of its date and is limited to the opinions expressly stated herein. We assume no obligation to review, supplement or update this opinion subsequent to its date, whether by reason of a change in law, legislative or regulatory action, judicial decision or for any other reason.

Respectfully submitted,

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# ACACIA CREEK

MASONIC SENIOR LIVING AT UNION CITY

