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**REIMBURSEMENT AGREEMENT**

**Dated as of April 1, 2008**

**between**

**WORCESTER POLYTECHNIC INSTITUTE**

**and**

**TD BANKNORTH, NATIONAL ASSOCIATION**

**as the Bank**

**relating to**

**\$48,995,000**

**Massachusetts Development Finance Agency  
Variable Rate Demand Revenue Bonds  
Worcester Polytechnic Institute, Series 2008A**

**and**

**\$5,820,000**

**Massachusetts Development Finance Agency  
Variable Rate Demand Revenue Bonds  
Worcester Polytechnic Institute, Series 2008B (Federally Taxable)**

**Executed on April 9, 2008**

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**APPENDIX I – Form of Irrevocable Transferable Letter of Credit**

**EXHIBIT A – Compliance Certificate – Financial Statements**

**EXHIBIT B – Description of Core Campus**

## **REIMBURSEMENT AGREEMENT**

This REIMBURSEMENT AGREEMENT, dated as of April 1, 2008 (this "Agreement"), between WORCESTER POLYTECHNIC INSTITUTE, a Commonwealth of Massachusetts not-for-profit corporation (the "Borrower"), and TD BANKNORTH, NATIONAL ASSOCIATION (the "Bank").

### **WITNESSETH:**

WHEREAS, the Massachusetts Development Finance Agency (the "Issuer"), a body politic and corporate and a public instrumentality of The Commonwealth of Massachusetts (the "State"), pursuant to the provisions of Chapter 23G, Massachusetts General Laws (the "Act"), is authorized to issue and sell from time to time its revenue bonds to issue bonds and to loan the proceeds thereof for the purposes described in the Act;

WHEREAS, the Issuer issued its \$54,975,000 Revenue Bonds, Worcester Polytechnic Institute Issue, consisting of \$48,995,000 Massachusetts Development Finance Agency, Variable Rate Demand Revenue Bonds, Worcester Polytechnic Institute, Series 2008A (the "Series A Bonds") and \$5,820,000 Massachusetts Development Finance Agency, Variable Rate Demand Revenue Bonds Worcester Polytechnic Institute, Series 2008B (Federally Taxable) (the "Series B Bonds" and, together with the Series A Bonds, the "Series 2008 Bonds") pursuant to a Loan and Trust Agreement, dated as of March 1, 2008 (the "Loan and Trust Agreement"), among the Issuer, the Borrower and Deutsche Bank and Trust Company Americas, as trustee (the "Trustee"), to provide funds to be loaned to the Borrower thereunder in accordance with the Act;

WHEREAS, the proceeds of the Series 2008 Bonds will be used to refund the Issuer's \$39,975,000 Revenue Bonds, Worcester Polytechnic Institute Issue, consisting of \$34,200,000 Series 2005A, Select Auction Variable Rate Securities<sup>SM</sup> (SAVRS<sup>®</sup>) and \$5,775,000 Series 2005B, Select Auction Variable Rate Securities<sup>SM</sup> (SAVRS<sup>®</sup>) (Federally Taxable) pursuant to a Loan and Trust Agreement, dated as of August 3, 2005, among the Issuer, the Borrower, Newgate Properties LLC and Deutsche Bank Trust Company Americas, as trustee (the "Trustee"), and its \$15,000,000 Revenue Bonds, Worcester Polytechnic Institute Issue, Series 2003A, Select Auction Variable Rate Securities<sup>SM</sup> (SAVRS<sup>®</sup>), pursuant to a Loan and Trust Agreement, dated as of July 1, 2003, among the Issuer, the Borrower, and the Trustee;

WHEREAS, pursuant to the Loan and Trust Agreement, the obligation of the Borrower to make payments to the Issuer and the Trustee under the Loan and Trust Agreement is a general obligation of the Borrower to which its full faith and credit are pledged; and

WHEREAS, Series 2008 Bonds bearing interest at a Covered Rate (as defined herein) (the "Bonds") are subject to purchase from time to time at the option of the owner thereof and are required to be purchased in certain events; and in order to assure further the availability of funds for the payment of the purchase price thereof, the Borrower has provided for the remarketing of the Bonds and, to the extent such remarketing may not be successful, for the purchase of the Bonds by the provider of a credit and liquidity facility, such provider to be the Bank, under the terms hereof;

NOW, THEREFORE, in consideration of the respective agreements contained herein, the parties hereto agree as follows:

## ARTICLE ONE DEFINITIONS

*Section 1.1 Definitions.* As used in this Agreement:

“*Acceleration Drawing*” means a drawing under the Letter of Credit resulting from the presentation of a certificate by the Trustee to the Bank in the form of Exhibit F to the Letter of Credit.

“*Act*” has the meaning assigned to that term in the preamble hereto.

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “*control*,” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or the power to appoint and remove its directors by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Agreement*” means this Reimbursement Agreement, as amended and supplemented from time to time.

“*Applicable Law*” means all applicable provisions of all constitutions, statutes, rules, regulations and orders of all governmental bodies, all Governmental Approvals and all orders, judgments and decrees of all courts and arbitrators.

“*Available Amount*” has the meaning set forth in the Letter of Credit.

“*Bank*” means TD Banknorth, National Association.

“*Bank Bond*” means each Bond purchased with funds provided by the Bank under the Letter of Credit, until such Bonds are repurchased or paid pursuant to Section 2.3 hereof.

“*Bank Obligations*” means the Reimbursement Obligations (which includes amounts owing to the Bank evidenced by any Bank Bonds), fees relating to the Letter of Credit and all other obligations of the Borrower owed to the Bank arising under or in relation to this Agreement.

“*Bank Rate*” means a fluctuating interest rate per annum which for each day shall equal (a) the Prime Rate for the 1st day through the 30th day, (b) the Prime Rate plus 0.25% per annum for the 31st day through the 180th day, and (c) the Prime Rate plus 2.25% per annum for the 181st day and thereafter; *provided* that during the Term Out Period the Bank Rate shall equal the Prime Rate plus 2.25% per annum; *provided further* that if an Event of Default has occurred and is continuing, the Bank Rate shall be equal to the Default Rate; and *provided further* that the Bank Rate shall be subject to adjustment as specified in Section 2.15 hereof.

*"Bonds"* means any Series 2008 Bonds bearing interest at a Covered Rate, other than Series 2008 Bonds owned by, for the account of, or on behalf of, the Issuer or the Borrower, and shall include, unless the context otherwise requires, all Bank Bonds.

*"Bonds and Notes Payable"* means, for any period, the amount set forth for the line item "Bonds and Notes Payable" as set forth in the most recent consolidated financial statements of the Borrower delivered pursuant to this Agreement.

*"Borrower"* has the meaning assigned to that term in the preamble hereto.

*"Borrowing Date"* has the meaning set forth in Section 2.3(b) hereof.

*"Business Day"* means any day other than a Saturday, Sunday or day on which the New York Stock Exchange or banking institutions are authorized or required by law or executive order to be closed for commercial banking purposes in New York, or in any city in which is located the designated corporate trust office of the Trustee.

*"Capital Lease"* means any lease of Property which in accordance with GAAP would be required to be capitalized on the balance sheet of the lessee.

*"Code"* means the Internal Revenue Code of 1986, as amended from time to time, and any regulations thereunder.

*"Core Campus"* has the meaning set forth in Exhibit B to this Agreement.

*"Covered Rate"* means the Weekly Rate, Daily Rate and Monthly Rate (each as defined in the Loan and Trust Agreement).

*"Date of Issuance"* shall mean the date on which the conditions precedent set forth in Section 3.1 hereof are satisfied or waived by the Bank and the Letter of Credit is issued.

*"Default Rate"* means, on any particular date, a rate of interest per annum equal to the Prime Rate from time to time in effect, plus 2.25%.

*"Dollars", "US\$", "\$" and "US. Dollars"* means the lawful currency of the United States of America.

*"Drawing Certificate"* means a Drawing Certificate for a Drawing in one of the forms attached to the Letter of Credit.

*"Drawings"* means, collectively, an Acceleration Drawing, an Interest Drawing, a Liquidity Drawing, a Redemption Drawing and a Stated Maturity Drawing.

*"Environmental Claims"* means any and all administrative, regulatory, or judicial actions, suits, demand letters, claims, liens, notices of noncompliance or violation, investigations, or proceedings relating in any way to any Environmental Law (hereinafter referred to as claims) or any permit issued under any such Environmental Law, including without limitation (a) any and all claims by governmental or regulatory authorities for enforcement, cleanup, removal,

response, remedial, or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation, or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

*“Environmental Laws”* means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

*“ERISA”* means the Employee Retirement Income Security Act of 1974, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

*“ERISA Affiliate”* means each person (as defined in Section 3(9) of ERISA) which together with the Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) and (o) of the Code.

*“Event of Default”* has the meaning set forth in Section 6.1 hereof.

*“Fiscal Year”* for any Person means any consecutive 12-month period selected as such Person’s fiscal year.

*“GAAP”* means generally accepted accounting principles in the United States as in effect from time to time, applied by the Borrower on a basis consistent with the Borrower’s most recent financial statements furnished to the Bank pursuant to Section 5.2 hereof.

*“Governmental Approval”* means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

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

*“Guaranty”* means all obligations of the Borrower guaranteeing in any manner whatever, whether directly or indirectly, any obligation of any other Person which would, if such other Person were the Borrower, constitute Indebtedness.

*“Hazardous Materials”* means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam

insulation, transformers or other equipment that contains dielectric fluid containing polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” or “pollutants,” or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material, or substance, exposure to which is prohibited, limited or regulated by any governmental authority.

“*Indebtedness*” means any Guaranty of the Borrower and any indebtedness or obligation of the Borrower (other than accounts payable and accruals), as determined in accordance with generally accepted accounting principles, including obligations under conditional sales contracts or other title retention contracts, rental obligations under leases which are considered capital leases under generally accepted accounting principles.

“*Interest Drawing*” means a drawing under the Letter of Credit resulting from a presentation of a certificate by the Trustee to the Bank in the form of Exhibit C to the Letter of Credit.

“*Interest Payment Date*” means the date interest is payable on the Bonds pursuant to the Loan and Trust Agreement and with respect to Bank Bonds, includes the earlier of the first Business Day of each month or the date such Bank Bonds are remarketed to new purchasers in accordance with the Loan and Trust Agreement.

“*Issuer*” means the Massachusetts Development Finance Agency, and its successors.

“*Letter of Credit*” means each of the Series A Letter of Credit and the Series B Letter of Credit.

“*Lien*” means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

“*Liquidity Advance*” has the meaning set forth in Section 2.3(b) hereof.

“*Liquidity Drawing*” means a drawing under the Letter of Credit resulting from the presentation of a certificate in the form of Exhibit E to the Letter of Credit.

“*Liquidity Facility*” means a Credit Facility (as defined in the Loan and Trust Agreement) for the Bonds.

“*Loan and Trust Agreement*” has the meaning assigned to that term in the preamble hereto.

“*Material Adverse Effect*” means (a) a material impairment of the ability of the Borrower, taken as a whole, to perform under this Agreement or any Related Document to which it is a party; or (b) a material adverse effect upon the legality, validity, binding effect or enforceability of this Agreement or any Related Document; or (c) a material adverse effect upon business, property, assets or condition (financial or otherwise) of the Borrower, taken as a whole.

*“Material Debt”* means, on any date, Indebtedness of the Borrower which individually equals or exceeds \$1,000,000.

*“Maximum Rate”* has the meaning set forth in Section 2.15 hereof.

*“Minimum Expendable Net Assets Ratio”* means the ratio of (i) the sum of Unrestricted Net Assets plus Temporarily Restricted Net Assets less Net Land, Buildings and Equipment to (ii) Bonds and Notes Payable.

*“Moody’s”* means Moody’s Investors Service, Inc.

*“Multi-employer Plan”* means a “multi-employer plan” (within the meaning of Section 4001(a)(3) of ERISA) to which any ERISA Affiliate makes, is making, or is obligated to make, contributions or, during the preceding five (5) calendar years, has made, or been obligated to make, contributions.

*“Net Land, Buildings and Equipment”* means, for any period, the amount set forth for the line item “Net Land, Buildings and Equipment” as set forth in the most recent consolidated financial statements of the Borrower delivered pursuant to this Agreement.

*“Notice of Extension”* has the meaning set forth in Section 2.11 hereof.

*“Official Statement”* means collectively, the Official Statement, dated April \_\_, 2008, with respect to the Bonds, and any supplement thereto used with respect to the Bonds.

*“Outstanding”* has the meaning set forth in the Loan and Trust Agreement.

*“Potential Default”* means the occurrence of any event specified in Section 6.1 hereof which, with the passage of time, the giving of notice, or both (to the extent required by such Section), would become an Event of Default.

*“Prime Rate”* means the rate of interest per annum equal to the rate of interest per annum from time to time announced by the Bank as its prime rate (which is not intended to be the lowest rate of interest charged by the Bank in connection with the extension of credit to its customers). Each change in the Prime Rate shall take effect at the time of such change in such prime rate.

*“PBGC”* means the Pension Benefit Guaranty Corporation or any Person succeeding to any or all of its functions under ERISA.

*“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.

*“Plan”* means an employee benefit plan (as defined in Section 3(3) of ERISA) which the Borrower or any ERISA Affiliate sponsors or maintains or to which the Borrower or any ERISA Affiliate makes, is making or is obligated to make contributions, and includes any Multi-employer Plan.

*“Property”* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

*“Rating Agency”* means Moody’s or S&P or any substitute or additional bond rating agency rating the Bonds.

*“Redemption Drawing”* means a drawing under the Letter of Credit resulting from the presentation of a certificate by the Trustee to the Bank in the form of Exhibit D to the Letter of Credit.

*“Reimbursement Obligations”* means any and all obligations of the Borrower to reimburse the Bank for any drawings under the Letter of Credit and all obligations to repay the Bank for any Liquidity Advance, including in each instance all accrued interest thereon which such Reimbursement Obligations are evidenced and secured by the Bank Bonds.

*“Related Documents”* means the Loan and Trust Agreement, the Bonds, the Remarketing Agreement, the authorizing resolutions of the Borrower and the Official Statement.

*“Release”* means disposing, discharging, injecting, spilling, leaking, dumping, emitting, escaping, emptying, seeping, placing, and the like, into or upon any land or water or air, or otherwise entering into the environment.

*“Remarketing Agent”* means Lehman Brothers, Inc., and any successor thereto under the Remarketing Agreement.

*“Remarketing Agreement”* means the Remarketing Agreement, dated as of April 1, 2008, by and among the Borrower, the Trustee and the Remarketing Agent, as the same may be amended or supplemented from time to time.

*“Reportable Event”* means, as to any Plan, (a) any of the events set forth in Section 4043(b) of ERISA or the regulations thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC, (b) a withdrawal from a Plan described in Section 4063 of ERISA, or (c) a cessation of operations described in Section 4062(e) of ERISA.

*“S&P”* means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors and assigns.

*“Series 2008 Bonds”* has the meaning assigned to that term in the preamble hereto.

*“Series A Letter of Credit”* means the Irrevocable Transferable Letter of Credit issued in support of the Series A Bonds by the Bank for the account of the Borrower in favor of the Trustee, in the form of Appendix I hereto, with appropriate insertions, as amended from time to time.

*“Series B Letter of Credit”* means the Irrevocable Transferable Letter of Credit issued in support of the Series B Bonds by the Bank for the account of the Borrower in favor of the

Trustee, in the form of Appendix I hereto, with appropriate insertions, as amended from time to time.

*“Stated Amount”* has the meaning set forth in the Letter of Credit.

*“Stated Expiration Date”* has the meaning set forth in the Letter of Credit.

*“Stated Maturity Drawing”* means a drawing under the Letter of Credit resulting from the presentation of a certificate by the Trustee to the Bank in the form of Exhibit G to the Letter of Credit.

*“Subsidiary”* of a Person means any other Person of which more than 50% of the voting stock or other equity interests (in the case of Persons other than corporations), is owned or controlled directly or indirectly by the first Person, or one or more of the Subsidiaries of the first Person, or a combination thereof.

*“Tax Exempt Organization”* means a Person organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code, which is exempt from federal income taxation under Section 501(a) of the Code, and which is not a “private foundation” within the meaning of Section 509(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect.

*“Temporarily Restricted Net Assets”* means, for any period, the amount set forth for the line item “Temporarily Restricted Net Assets” as set forth in the most recent consolidated financial statements of the Borrower delivered pursuant to this Agreement.

*“Trustee”* means Deutsche Bank and Trust Company Americas, in its capacity as Trustee under the Loan and Trust Agreement, and any successor trustee thereunder.

*“Termination Date”* has the meaning set forth in the Letter of Credit.

*“Term Out”* has the meaning assigned to that term in Section 2.3(e) hereof.

*“Term Out Date”* has the meaning assigned to that term in Section 2.3(e) hereof.

*“Term Out Period”* has the meaning assigned to that term in Section 2.3(e) hereof.

*“Unfunded Current Liability”* means the excess of a Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Plan’s assets, determined in accordance with the assumptions used by that Plan’s actuaries for funding that Plan pursuant to Section 412 of the Code for the applicable plan year.

*“Unrestricted Net Assets”* means, for any period, the amount set forth for the line item “Unrestricted Net Assets” as set forth in the most recent consolidated financial statements of the Borrower delivered pursuant to this Agreement.

*“written”* or *“in writing”* means any form of written communication or a communication by means of telecopier.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein which are not specifically defined herein shall have the same meanings herein as set forth in the Loan and Trust Agreement. All references in this Agreement to times of day shall be references to Boston, Massachusetts time unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

## ARTICLE TWO LETTER OF CREDIT

*Section 2.1 Issuance of Letter of Credit.* Upon the terms, subject to the conditions and relying upon the representations and warranties set forth in this Agreement or incorporated herein by reference, the Bank agrees to issue the Letters of Credit. The Series A Letter of Credit shall be in the initial Stated Amount of \$49,735,966, which is the sum of (i) the principal amount of Series A Bonds outstanding on the Date of Issuance, plus (ii) interest thereon at the rate of twelve percent (12%) per annum for a period of forty-six (46) days, calculated on the basis of a 365-day year for the actual number of days elapsed. The Series B Letter of Credit shall be in the initial Stated Amount of \$5,930,022, which is the sum of (i) the principal amount of Series B Bonds outstanding on the Date of Issuance, plus (ii) interest thereon at the rate of fifteen percent (15%) per annum for a period of forty-six (46) days, calculated on the basis of a 365-day year for the actual number of days elapsed.

*Section 2.2 Letter of Credit Drawings.* The Trustee is authorized to make drawings under the Letter of Credit in accordance with the terms thereof. The Borrower hereby directs the Bank to make payments under the Letter of Credit in the manner therein provided. The Borrower hereby irrevocably approves reductions and reinstatements of the Available Amount as provided in the Letter of Credit.

*Section 2.3 Reimbursement of Liquidity Drawings; Prepayment; Interest; Term Out.*  
(a) [RESERVED]

(b) Each Liquidity Drawing hereunder shall constitute an advance (a "*Liquidity Advance*") to the Borrower. Subject to the provisions of paragraph (e), the Borrower promises to pay to the Bank each Liquidity Advance on the earliest of (i) the date that is one hundred eighty (180) days from the date of such Liquidity Advance, (ii) the Termination Date, (iii) the date on which the related Bank Bonds are redeemed or cancelled pursuant to the Loan and Trust Agreement, such payment to be in the principal amount of Bonds so redeemed or cancelled, (iv) the date on which any Bonds purchased with funds disbursed under the Letter of Credit are remarketed pursuant to the Loan and Trust Agreement, such payment to be in the principal amount of Bonds so remarketed and (v) the date on which the Letter of Credit is replaced by a Liquidity Facility pursuant to the terms of the Loan and Trust Agreement, such payment to be in the full outstanding principal amount of all unpaid Liquidity Advances due and owing to the Bank. The Borrower also promises to pay to the Bank interest on the unpaid principal amount of each Liquidity Advance from the time of payment by the Bank of the related Liquidity Drawing (the "*Borrowing Date*") until it is paid in full as provided herein, at a rate per annum equal to the Bank Rate from time to time in effect, payable monthly in arrears on the first

calendar day of each month and on the day each principal installment is paid and on the date such Liquidity Advance is required to be paid in full as provided herein; *provided*, that interest shall not accrue on any Liquidity Advance which is repaid not later than 2:00 p.m. (Boston, Massachusetts time) on the Borrowing Date on which such Liquidity Advance is made. Any Liquidity Advance not paid when due shall bear interest at the Default Rate. Any Liquidity Advance created pursuant to this paragraph may be prepaid in whole or in part at any time without premium or penalty on any Business Day.

(c) Upon the Bank's receipt of any payment or prepayment of any Liquidity Advance, the aggregate amount of Liquidity Advances outstanding hereunder shall be reduced by the amount of such payment or prepayment and any prepayment shall be applied to the prepayment of Liquidity Advances in chronological order of their incurrence hereunder and within each Liquidity Advance in inverse order of the principal installments payable thereon.

(d) Upon the Bank's honoring any Liquidity Drawing, the Bank shall be deemed to have purchased the Bank Bonds in respect of which such Liquidity Drawing is made, and the Borrower shall cause the Trustee to hold such Bank Bonds for the benefit of the Bank and register such Bank Bonds in the name of the Bank or its nominee, or to otherwise deliver such Bank Bonds as directed by the Bank pursuant to the Loan and Trust Agreement. During such time as the Bank is the owner of any Bonds, the Bank shall have all the rights granted to a legal or beneficial owner of Bonds under the Loan and Trust Agreement and such additional rights as may be granted to the Bank hereunder. To the extent that the Bank actually receives payment in respect to principal of or interest on any Bank Bond held by the Bank, the Liquidity Advance made in connection with the purchase of such Bank Bond shall be deemed to have been reduced *pro tanto*, with the Bank crediting any payment on such Bank Bond received by it, first to the payment of any outstanding interest accrued .on the related Liquidity Advance, and second to the payment of the principal of such Liquidity Advance. Any such payment or prepayment to be applied to principal of Liquidity Advances hereunder shall be applied to the prepayment of related Liquidity Advances in chronological order of their issuance hereunder, and within each Liquidity Advance in inverse order of the principal installments payable thereon. Following the occurrence of an Event of Default, any payments received by the Bank hereunder shall be applied by the Bank to the payment of the Reimbursement Obligations in such order as the Bank shall in its sole discretion determine.

(e) In the event that on the earlier of (i) the Stated Expiration Date and (ii) the 180<sup>th</sup> day following date of purchase of any Bank Bonds (the "*Term Out Date*"), such Bank Bonds then held by the Bank cannot be remarketed by the Remarketing Agent, whether at a Covered Rate or otherwise, the Bank agrees that the Bank will continue to hold for an additional period of up to five (5) years (such additional period, the "*Term Out Period*") from the Term Out Date any such Bank Bonds then held by it (the "*Term Out*"); *provided* that the Trustee shall redeem (from moneys provided by the Borrower for such purpose) such Bank Bonds by paying to the Bank the aggregate amount of principal and interest due on the Bank Bonds pursuant to Section 2.3(b)(iii) hereof (net of any payments of interest accrued on such Bank Bonds prior to the date of purchase of such Bank Bonds by the Bank), in twenty (20) equal principal amounts on a quarterly basis, on each third Interest Payment Date, commencing on the fifteenth (15th) Interest Payment Date after the Term Out Date so that all Bank Bonds are redeemed by the last day of the Term Out Period. The Borrower may prepay at any time, without penalty or premium,

the outstanding amount of any Bank Bonds in whole or in part together with accrued interest to the date of such prepayment of the amount prepaid.

*Section 2.4 Reimbursement of Acceleration Drawings, Interest Drawings, Redemption Drawings and Stated Maturity Drawings.* Each Interest Drawing, Redemption Drawing, Acceleration Drawing and Stated Maturity Drawing shall be used by the Trustee to purchase on behalf of the Bank from the Bondowners the right to the payment of the principal of or interest on the Bonds for which such Drawing was made. The Borrower acknowledges that all such purchased principal and interest payments on the Bonds shall continue to be outstanding and due and owing to the Bank until paid. The Borrower hereby promises to reimburse the Bank for the full amount of all Interest Drawings, Redemption Drawings, Acceleration Drawings and Stated Maturity Drawings immediately upon payment by the Bank of each such drawing and on the date of each such payment. If the Borrower does not make such reimbursement on such date, such reimbursement obligation shall bear interest at the Default Rate.

*Section 2.5 Letter of Credit Fees and Other Fees.*

(a) The Borrower hereby absolutely and unconditionally agrees to pay or cause to be paid to the Bank a facility fee (payable quarterly in advance as described below) for maintaining the Letter of Credit in an amount equal to 0.26% of the Stated Amount of the Letter of Credit that is outstanding; *provided*, that if at any time the primary operating account and/or the primary cash management relationship of the Borrower is not with the Bank, such facility fee shall be in an amount equal to 0.31% of the Stated Amount of the Letter of Credit that is outstanding. Such facility fee shall be payable on the date of issuance in the amount of \$24,303.82 and thereafter, quarterly in advance, on the first day (or, if such day is not a Business Day, on the next following Business Day) of each March, June, September and December, commencing June 1, 2008, with respect to the period or portion thereof commencing on such fee payment date, and on the last day of the Bank Purchase Period or, if earlier, the Termination Date.

(b) On the date of each drawing under the Letter of Credit, the Borrower hereby agrees to pay a draw fee of \$200.

(c) In connection with the transfer of the Letter of Credit to any successor trustee, the Borrower hereby agrees to pay to the Bank on the date of each occurrence, a fee of \$200 plus the fees and expenses of counsel to the Bank.

(d) In connection with the written request by the Borrower for any amendment, supplement, waiver or modification of this Agreement or any Related Document requiring the consent of the Bank, the Borrower shall pay or cause to be paid to the Bank a sum equal to \$200 plus the fees and expenses of the Bank and of counsel to the Bank.

*Section 2.6 Method of Payment.* All payments by the Borrower to the Bank hereunder shall be nonrefundable when paid and made in lawful currency of the United States and in immediately available funds. Amounts payable to the Bank shall be made through the Federal Wire Reserve System to TD Banknorth Massachusetts, ABA #211370545, Account #: 0559025119, Attention: Patricia A. Shick, Reference: Worcester Polytechnic Institute (or to such

other account of the Bank as the Bank may specify by written notice (which shall include telecopy, tested telex or other electronic telecommunication) to the Borrower and the Trustee) not later than 2:00 p.m., Boston, Massachusetts time, on the date payment is due. Any payment received by the Bank after 2:00 p.m., Boston, Massachusetts time, shall be deemed to have been received by the Bank on the next Business Day.

*Section 2.7 Computation of Interest and Fees.* All computations of interest and fees payable by the Borrower hereunder shall be made on the basis of a 360-day year for the actual number of days elapsed. Interest shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof.

*Section 2.8 Payment Due on Non-Business Day to Be Made on Next Business Day.* If any sum becomes payable pursuant to this Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

*Section 2.9 Late Payments.* If the principal amount of any Obligation is not paid when due, such Obligation shall bear interest until paid in full at Default Rate, payable on demand.

*Section 2.10 Source of Funds.* All payments made by the Bank pursuant to the Letter of Credit shall be made from funds of the Bank, and not from the funds of any other Person.

*Section 2.11 Extension of Stated Expiration Date.* The Stated Expiration Date shall automatically extend for a period of one (1) year unless any of the parties to this Agreement shall provide written notice of non-extension to each of the remaining parties to this Agreement not later than ninety (90) days prior to then current Stated Expiration Date. The Bank shall deliver to the Trustee a Notice of Extension in the form of Exhibit K to the Letter of Credit (herein referred to as a "Notice of Extension") designating the date to which the Stated Expiration Date is being extended. Such extension of the Stated Expiration Date shall be effective, after receipt of such notice, on the Business Day following the date of delivery of such Notice of Extension, and thereafter all references in this Agreement to the Stated Expiration Date shall be deemed to be references to the date designated as such in the most recent Notice of Extension delivered to the Trustee.

*Section 2.12 Amendments upon Extension.* Upon any extension of the Stated Expiration Date pursuant to Section 2.11 hereof, the Bank and the Borrower each reserve the right to renegotiate any provision hereof.

*Section 2.13 Obligations Absolute.* The Borrower acknowledges and agrees that all Bank Obligations hereunder are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever by the Bank, and without limiting the generality of the foregoing, the Bank Obligations hereunder shall not be impaired by any acceptance by the Bank of any other security for or guarantors upon the Bank Obligations hereunder or by any failure, neglect or omission on part of the Bank to resort to the Borrower for payment of the Bank Obligations hereunder or to realize upon or protect any collateral security therefor. The Bank Obligations hereunder shall not in any manner be impaired or affected by the Person who receives or uses the proceeds of the Advances evidenced by the Bank Obligations or

for what purposes such proceeds are used. Such liability of the Borrower shall also not be impaired or affected by (and the Bank, without notice to anyone, is hereby authorized to make from time to time) any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any collateral security for the Bank Obligations hereunder or of any guaranty thereof. In order to enforce payment of the Bank Obligations hereunder, foreclose or otherwise realize on any collateral security therefor, and to exercise the rights granted to the Bank hereunder and thereunder and under applicable law, the Bank shall be under no obligation at any time to first resort to any collateral security, property, liens or any other rights or remedies whatsoever, and the Bank shall have the right to enforce the Bank Obligations, hereunder irrespective of whether or not other proceedings or steps are pending seeking resort to or realization upon or from any of the foregoing. By its acceptance below, the Borrower hereby expressly waives and surrenders any defense to its liability with respect to the Bank Obligations hereunder based upon any of the foregoing.

*Section 2.14 Unconditional Obligations.* The Borrower acknowledges and agrees that the Bank Obligations owed hereunder are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever by the Bank, and without limiting the generality of the foregoing, the Borrower's absolute and unconditional liability on the Bank Obligations shall not be impaired by any acceptance by the Bank of any other security for or guarantors upon the Bank Obligations or by any failure, neglect or omission on the Bank's part to resort to the Borrower for payment of the Bank Obligations or to realize upon or protect any collateral security therefor. The Borrower's absolute and unconditional liability on the Bank Obligations shall not in any manner be impaired or affected by the Person who receives or uses the proceeds of the Liquidity Advances evidenced by the Reimbursement Obligations or for what purposes such proceeds are used. Such absolute and unconditional liability of the Borrower shall also not be impaired or affected by (and the Bank, without notice to anyone, is hereby authorized to make from time to time) any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any collateral security for the Bank Obligations or of any guaranty thereof. In order to enforce payment of the Bank Obligations of the Borrower hereunder, foreclose or otherwise realize on any collateral security therefor, and to exercise the rights granted to the Bank hereunder and thereunder and under applicable law, the Bank shall be under no obligation at any time to first resort to any collateral security, property, liens or any other rights or remedies whatsoever, and the Bank shall have the right to enforce the Bank Obligations of the Borrower irrespective of whether or not other proceedings or steps are pending seeking resort to or realization upon or from any of the foregoing. The Borrower hereby expressly waives and surrenders any defense to its absolute and unconditional liability on the Bank Obligations based upon any of the foregoing. In furtherance thereof, the Borrower agrees that wherever in this Agreement it is provided that the Borrower is liable for a payment such obligation is the absolute and unconditional obligation of the Borrower.

*Section 2.15 Maximum Rate.* Interest payable on the Bank Bonds or otherwise payable hereunder shall not be payable at a rate per annum greater than the lesser of (a) twelve percent (12%) per annum and (b) the maximum nonusurious lawful rate of interest permitted by applicable law (the "*Maximum Rate*"). If any rate of interest payable on the Bank Bonds or otherwise payable hereunder shall exceed the Maximum Rate for any period for which interest is

payable, (a) interest at the Maximum Rate shall be due and payable with respect to such period, and (b) interest at the rate equal to the difference between (i) the rate of interest otherwise calculated in accordance with this Agreement and (ii) the Maximum Rate (the "Excess Interest") shall be deferred until such date as the rate of interest otherwise calculated in accordance with this Agreement ceases to exceed the Maximum Rate, at which time such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate shall be paid to the Bank, which payments of deferred Excess Interest shall continue until all deferred Excess Interest is fully paid to the Bank. Excess Interest arising on any Interest Payment Date (i) shall, to the extent permitted by law, bear interest (compounded on each succeeding Interest Payment Date) at a rate per annum equal to the Bank Rate until paid in full and (ii) shall become payable, together with interest thereon, to the extent permitted by law, on the next succeeding Interest Payment Date or Dates to the extent the interest (including Excess Interest and, to the extent permitted by law, interest on Excess Interest) payable on the Bank Bonds (if any) for the monthly interest period ending on such Interest Payment Date does not exceed the Maximum Rate for such monthly interest period. All amounts of interest payable on a Bond which is a Bank Bond, including without limitation, Excess Interest (and interest thereon, to the extent permitted by law), for so long as such Bond shall remain a Bank Bond, shall constitute interest on such Bond. To the extent Excess Interest (or, to the extent permitted by law, any interest thereon) shall be unpaid with respect to Bank Bonds, and such Bonds shall be redeemed or remarketed or shall otherwise cease to be Bank Bonds, such unpaid Excess Interest (including, to the extent permitted by law, any unpaid interest thereon) shall be converted into a fee payable to the Bank (herein, the "Excess Interest Fee Amount") and shall bear interest at a rate per annum equal to the Bank Rate. The Excess Interest Fee Amount and accrued interest thereon shall be payable on the next succeeding Interest Payment Date, or, if earlier, the date of the occurrence of an Immediate Termination Event.

*Section 2.16 Termination of Letter of Credit Arrangement by Borrower.* The parties hereto agree that the Borrower shall have the right to terminate this Letter of Credit, exercisable at any time upon thirty (30) days' prior written notice to the Bank and the payment and satisfaction of all of the Obligations owed and to be owing on or before the proposed Letter of Credit termination date.

### **ARTICLE THREE CONDITIONS PRECEDENT**

*Section 3.1 Conditions Precedent to Issuance of the Letter of Credit.* As conditions precedent to the obligation of the Bank to issue the Letter of Credit:

(a) *Representations.* On the Date of Issuance (and after giving effect to the issuance of the Bonds and the effectiveness hereof), (i) there shall exist no Event of Default or Potential Default and neither will result from the execution or delivery of this Agreement by the Borrower; and (ii) all representations and warranties made by the Borrower herein or in any of the Related Documents to which it is a party shall be true and correct with the same effect as though such representations and warranties had been made at and as of such date.

(b) *Documents.* The Borrower shall provide or cause to be provided to the Bank on the Date of Issuance, in form and substance satisfactory to the Bank and its counsel:

(i) Copies of the articles of incorporation of the Borrower certified by the Secretary of The Commonwealth of Massachusetts as of a recent date as being true and accurate and in full force and effect without modification or amendment.

(ii) Certificate of the secretary of the Borrower certifying (a) that attached thereto is a true and complete copy of the bylaws of the Borrower as in effect on the date of such certification, (b) that, attached thereto is a true and complete copy of resolutions adopted by the governing body of the Borrower authorizing the execution, delivery and performance of this Agreement, the Related Documents and the other documents to be delivered by the Borrower in connection herewith and therewith and (c) the incumbency and signatures of the authorized signing officers of the Borrower.

(iii) Executed copies of this Agreement and copies of each of the executed Related Documents.

(iv) Specimen copies of the Bonds.

(v) A copy of the current Official Statement.

(vi) Certificate of an authorized officer of the Borrower, dated the Date of Issuance, to the effect set forth in Section 3.1(a) hereof.

(vii) A certificate of the Trustee, dated the Date of Issuance, evidencing the signatures and office of officers executing the Related Documents in form and substance satisfactory to the Bank.

(viii) A written opinion of Greenberg Traurig LLP, as counsel to the Borrower, dated the Date of Issuance and addressed to the Bank, in form and substance satisfactory to the Bank.

(ix) Such other documents, instruments, opinions and approvals as the Bank shall have reasonably requested.

(c) *Certain Payments.* The Borrower shall have paid all the fees then due referred to in Section 2.5 hereof, and the fees and expenses of the Bank and of counsel to the Bank as provided in Section 7.13 hereof.

(d) *Rating.* The Bank shall have received satisfactory evidence that the Bonds shall have received long- and short-term ratings, respectively, of "Aa2"/"P-1" or better by Moody's and/or "AA-"/"A-1+" or better by S&P.

#### **ARTICLE FOUR REPRESENTATIONS AND WARRANTIES**

In order to induce the Bank to enter into this Agreement, the Borrower represents and warrants to the Bank as of the date hereof and such representations and warranties shall also be deemed to be remade on and as of the Date of Issuance that:

*Section 4.1 Existence and Power.* The Borrower is a corporation duly organized, validly existing and in good standing under the laws of The Commonwealth of Massachusetts, with the power to enter into and perform this Agreement and is a nonprofit educational institution within the Commonwealth and an “Institution” within the meaning of the Act. The Borrower has all power and authority to conduct its business as currently conducted, to own its respective assets and to enter into and satisfy its respective obligations under this Agreement and the Related Documents to which it is a party. No part of the net earnings of the Borrower inures to the benefit of any private shareholder or individual within the meaning of Section 501(c)(3) of the Code.

*Section 4.2 Due Authorization; Valid and Binding Obligations.* The execution, delivery and performance by the Borrower of this Agreement and the Related Documents to which the Borrower is a party are within the corporate power and authority of the Borrower and have been duly authorized by all necessary corporate action. This Agreement and the Related Documents to which the Borrower is a party are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and by general equitable principles.

*Section 4.3 Financial Statements.* The Borrower has delivered to the Bank audited consolidated financial statements of the Borrower as at and for the most recently audited fiscal year then ended, audited by PricewaterhouseCoopers, LLP or any other independent public accountants of nationally recognized standing acceptable to the Bank (the “Submitted Financial Statements”). Such Submitted Financial Statements are true and correct, have been prepared in accordance with generally accepted accounting principles (except as identified in the footnotes to the audited financial statements), consistently applied, and fairly present the financial condition, results of operations and cash flows of the Borrower at such date and for such period on a consolidated basis. Since the date of the Submitted Financial Statements, there has been no material adverse change in the business, properties, condition (financial or otherwise) or operations, present or prospective, of the Borrower nor any increase in its long-term debt which has not been disclosed to the Bank in writing. No fact is known to the Borrower which materially and adversely affects or in the future could reasonably be expected to (so far as it can reasonably foresee) materially and adversely affect the business, assets or liabilities, financial condition, results of operations or business prospects of the Corporation which has not been set forth in such Submitted Financial Statements. There are no outstanding or unpaid judgments in excess of \$1,000,000 against the Borrower or any Subsidiary thereof. Except as previously disclosed in writing to the Bank, the Borrower has not incurred any Material Debt since the date of the Submitted Financial Statements.

*Section 4.4 Regulatory Authority.* The Borrower (i) is duly authorized and licensed to operate its business under the laws, rulings, regulations and ordinances of the United States of America, The Commonwealth of Massachusetts and the departments, agencies and political subdivisions thereof, and (ii) has obtained all requisite approvals of The Commonwealth of Massachusetts, of federal, regional and local governmental bodies or other third Persons required to be obtained for the operation of, its respective business and the execution, delivery and performance of this Agreement and the Related Documents to which it is a party. The Borrower is not in violation of any applicable federal, state and local zoning, subdivision, environmental,

pollution control, educational or other laws, rules, regulations, codes and ordinances which violation would not, in the aggregate, have a Material Adverse Effect on the financial condition or operations of the Borrower or the validity or enforceability against the Borrower of this Agreement or any of the Related Documents to which it is a party.

*Section 4.5 Noncontravention and No Default.* The execution and delivery by the Borrower of this Agreement and the Related Documents to which the Borrower is a party, and the performance of its respective obligations hereunder and thereunder, will not conflict with or violate any existing law or regulation or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Borrower is a party or by which it or any of its respective property is bound or its respective articles or incorporation, bylaws or any of the laws, rules or regulations applicable to the Borrower or its respective property or any decree or order of any court or other governmental body applicable to the Borrower.

*Section 4.6 Events of Default.* No Event of Default or Potential Default has occurred and is continuing.

*Section 4.7 Pending Litigation and Other Proceedings.* Except as disclosed to the Bank in writing prior to the Date of Issuance, there is no pending action or proceeding before any court, governmental agency or arbitrator against or directly involving the Borrower and, to the best of the Borrower's knowledge, there is no threatened action or proceeding affecting the Borrower before any court, governmental agency or arbitrator which, in any case, could reasonably be expected to have a Material Adverse Effect on the financial condition or operations of the Borrower or the validity or enforceability against the Borrower of this Agreement or any of the Related Documents to which it is a party.

*Section 4.8 Incorporation of Representations and Warranties.* The representations and warranties made by the Borrower in the Related Documents to which it is a party are incorporated herein by this reference as if fully set forth at this point and are made by the Borrower for the benefit of the Bank. No amendment to such representations and warranties (or any defined terms therein) contained in the Related Documents to which the Borrower is a party shall be effective to amend such representations and warranties for purposes of this Agreement without the written consent of the Bank, which consent shall not be unreasonably withheld or delayed.

*Section 4.9 Accuracy and Completeness of Information.* Each statement, information, report, representation, or warranty made by the Borrower herein or in any Related Documents or furnished to the Bank in connection with the negotiation or preparation of this Agreement or any Related Documents is true and accurate in all material respects on the date as of which such information is furnished and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements herein or therein not misleading.

*Section 4.10 Representations and Warranties. Official Statement.* The Borrower has duly authorized and approved the Official Statement. Except for the information regarding the Bank (as to which no representation is made), (i) the Official Statement is, and any supplement shall be, accurate in all material respects and (ii) the Official Statement does not, and any

supplement shall not, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

*Section 4.11 Rights in Properties.* Other than the liens previously disclosed in writing to the Bank, the Borrower and its Subsidiaries have good and marketable title to their respective real properties (other than properties which they lease) and good title to all of their other property and assets (other than properties and assets disposed of in the ordinary course of business), subject to no lien of any kind, except those Liens specifically permitted under the Loan and Trust Agreement.

*Section 4.12 Taxes.* The Borrower has filed all tax returns (federal, state, and local) required to be filed, including all income, franchise, employment, property, and sales taxes, and has paid all of its respective liabilities for taxes, assessments, governmental charges, and other levies that are due and payable, and the Borrower knows of no pending investigation of the Borrower or any of its respective subsidiaries by any taxing or educational authority or of any pending but unassessed tax liability of the Borrower.

*Section 4.13 Nature of Obligations.* The obligations of the Borrower hereunder and under the Loan and Trust Agreement are absolute and unconditional general obligations of the Borrower and are *pari passu* with all other Indebtedness issued under the Loan and Trust Agreement. The obligations, duties and liabilities of the Borrower hereunder do not contravene any provisions of the Loan and Trust Agreement, and constitute the valid and binding obligations of the Borrower.

*Section 4.14 Other Documents.* Each of the Related Documents to which the Borrower is a party is in full force and effect, and the Borrower hereby makes to the Bank each of the representations and warranties made by the Borrower therein as if set forth at length herein.

*Section 4.15 Insurance.* The Borrower currently maintains insurance which meets or exceeds that required by the Loan and Trust Agreement and such insurance is of such type and in such amounts or in excess of such amounts as are customarily carried by and insures against such risks as are customarily insured against by entities of like size, business and character to the Borrower. Any reserves maintained by the Borrower with respect to self-insurance programs have been actuarially determined and provide reasonable reserves with respect to the risks involved.

*Section 4.16 Accreditation.* The Borrower's facilities are accredited by New England Association of Schools and Colleges, Inc.

*Section 4.17 Licenses.* The Borrower and its Subsidiaries are duly authorized and licensed to operate their existing facilities under the laws, rulings, regulations and ordinances of all applicable Governmental Authorities. Each facility of the Borrower and its Subsidiaries is in compliance in all material respects with applicable federal, state and local zoning, subdivision, environmental, pollution control and other laws, rules, regulations, codes and ordinances.

*Section 4.18 Business.* The primary direct or indirect business of the Borrower and its Subsidiaries is the education business or education-related business.

*Section 4.19 Compliance with Statutes, Etc.* The Borrower is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its respective business and the ownership of its respective property except such noncompliances as would not, in the aggregate, materially and adversely affect the financial condition or operations of the Borrower, or the validity or enforceability against the Borrower of this Agreement or against the Borrower of any of the Related Documents to which it is a party. No funds made available under this Agreement will be used by the Borrower for the purpose, whether incidental, immediate or ultimate of purchasing any margin stock (within the meaning of Regulation U of the Board of Governors for the Federal Reserve System).

*Section 4.20 Compliance with ERISA.* Each Plan is in substantial compliance with ERISA and the Code; no Reportable Event has occurred with respect to any Plan; no Plan is insolvent or in reorganization; no Plan has an Unfunded Current Liability; and no Plan has an accumulated or waived funding deficiency or permitted decreases in its funding standard within the meaning of Section 412 of the Code; neither the Borrower nor any Subsidiary of the Borrower nor any ERISA Affiliate has incurred any material liability to or on account of a Plan pursuant to Section 409, 502(i), 502(1), 515, 4062, 4063, 4064, 4068, 4069, 4201 or 4204 of ERISA or Section 4971 or 4975 of the Code or expects to incur any liability under any of the foregoing Sections with respect to any Plan; no proceedings have been instituted to terminate any Plan; no condition exists which presents a material risk to the Borrower or any Subsidiary of the Borrower or any ERISA Affiliate of incurring a liability to or on account of a Plan pursuant to the foregoing provisions of ERISA and the Code; no lien imposed under the Code or ERISA on the assets of the Borrower or any subsidiary of the Borrower or any ERISA Affiliate exists or is likely to arise on account of any Plan; and the Borrower and its Subsidiaries may terminate contributions to any other employee benefit plans maintained by them without incurring any material liability to any person interested therein.

*Section 4.21 Environmental Matters.* (i) The existing facilities of the Borrower and its Subsidiaries and any other properties now owned or leased by the Borrower and its Subsidiaries and the operations conducted thereon have not violated and do not violate any applicable Environmental Laws in any material respect; (ii) the existing facilities of the Borrower and its Subsidiaries and any other properties now owned or leased by the Borrower and its Subsidiaries and the operations conducted by the Borrower and its Subsidiaries are not subject to any existing, pending or threatened investigation, inquiry or proceeding, known to the Borrower, by any governmental authority or to any remedial obligations under any Environmental Laws; (iii) the properties previously owned or leased by the Borrower and its Subsidiaries and the operations conducted thereon were not, to the best knowledge of the Borrower during any period of ownership or tenancy by the Borrower and any Subsidiary thereof, in violation of any Environmental Laws, or subject to any existing, pending or threatened investigation, inquiry or proceeding by any governmental authority or to any remedial obligations under any Environmental Laws; (iv) all notices, permits, licenses or similar authorizations, if any, required to be obtained or to be filed in connection with the use of the existing facilities of the Borrower and its Subsidiaries or any other properties now owned or leased by the Borrower and any Subsidiary thereof, including without limitation, past or present treatment, storage, disposal or release of any Hazardous Materials into the environment, have been obtained or filed; (v) all Hazardous Materials generated by or on the existing facilities of the Borrower and its

Subsidiaries or any other properties now owned or leased by the Borrower and any Subsidiary thereof, to the best knowledge of the Borrower, in the past have been and shall continue to be transported, treated and disposed of in full compliance with all applicable Environmental Laws; (vi) all Hazardous Materials generated by or on any properties previously owned or leased by the Borrower and any Subsidiary thereof in the past have during such period of ownership or tenancy by the Borrower or any Subsidiary thereof, to the best knowledge of the Borrower, been transported, treated and disposed of in full compliance with all applicable Environmental Laws; (vii) to the Borrower's knowledge, there has been no Release of Hazardous Materials on or to the existing facilities of the Borrower or its Subsidiaries or any other properties now owned or leased by the Borrower or any Subsidiary thereof, except in compliance with all Environmental Laws or as otherwise disclosed to the Bank in writing; (viii) to the best knowledge of the Borrower, no Hazardous Materials have been disposed of or otherwise released on or to the properties previously owned or leased by the Borrower and any Subsidiary thereof during any period of ownership or tenancy by the Borrower and any Subsidiary thereof, except in compliance with all Environmental Laws; (ix) to the best of the Borrower's knowledge, the Borrower and its Subsidiaries have no contingent liability in connection with any Release of any Hazardous Material into the environment; and (x) the uses which the Borrower and its Subsidiaries makes or intends to make of the existing facilities of the Borrower and its Subsidiaries or any other properties owned or leased by the Borrower and any Subsidiary thereof, including the Release of any Hazardous Materials, will not result in any violation of any Environmental Laws. The representations and warranties set forth in this Section 4.1(u) regarding owned or leased properties shall be limited to the best knowledge of the Borrower and shall in all cases be limited to the duration of any ownership or tenancy by the Borrower and its Subsidiaries.

*Section 4.22 Margin Stock.* No Member of the Borrower is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of any amount advanced by the Bank hereunder will be used to purchase or carry any such margin stock or extend credit to others for the purpose of purchasing or carrying any such margin stock.

## **ARTICLE FIVE COVENANTS**

For so long as the Letter of Credit is in effect or any Bank Obligations remains outstanding or unperformed, the Borrower will, or will cause the Borrower to, perform and observe or cause to be performed and observed the following covenants:

*Section 5.1 Notices.*

(i) *Notice of Default.* The Borrower shall provide to the Bank immediately, but in no event later than five (5) Business Days, after any officer of the Borrower obtains knowledge thereof, notice in writing (which shall include telecopy, tested telex or other electronic telecommunication) or by telephone, promptly confirmed in writing, of the occurrence of any Event of Default or any Potential Default hereunder by the Borrower, the details thereof and the action which the Borrower or the Borrower is taking or proposes to take with respect thereto.

(ii) *Litigation.* The Borrower shall provide to the Bank promptly, but in no event later than ten (10) Business Days, after any officer of the Borrower obtains knowledge thereof, written notice (which shall include telecopy, tested telex or other electronic telecommunication) of all actions, suits and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, pending or threatened against the Borrower which if adversely determined with respect to the Borrower would have a Material Adverse Effect on the Borrower or the Borrower's ability to conduct its business or to perform its obligations hereunder or under any of the Related Documents to which it is a party.

(iii) *ERISA.* As soon as possible and, in any event, within 10 Business Days after the Borrower or any Subsidiary of the Borrower or any ERISA Affiliate knows or has reason to know any of the following, the Borrower shall deliver to the Bank a certificate of the chief financial officer of the Borrower setting forth details as to such occurrence and such action, if any, which the Borrower or such Subsidiary or such ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given to or filed with or by any the Borrower, any such Subsidiary, the ERISA Affiliate, the PBGC, a Plan participant or the Plan administrator with respect thereto: (A) that a Reportable Event has occurred, (B) that an accumulated funding deficiency has been incurred or an application may be or has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard (including any required installment payments) or an extension of any amortization period under Section 412 of the Code with respect to a Plan, (C) that a Plan has been or may be terminated, reorganized, partitioned or declared insolvent under Title W of ERISA, (D) that a Plan has an Unfunded Current Liability giving rise to a lien under ERISA or the Code, (E) that proceedings may be or have been instituted to terminate a Plan, (F) that a proceeding has been instituted pursuant to Section 515 of ERISA to collect a delinquent contribution to a Plan, or (G) that the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate will or may incur any liability (including any contingent or secondary liability) to or on account of the termination of or withdrawal from a Plan under Sections 4062, 4063, 4064, 4068, 4069, 4201 or 4204 of ERISA or with respect to a Plan under Section 4971 or 4975 of the Code or Sections 409 or 502 (i) or 502 (1) of ERISA.

(iv) *Other Notices.* The Borrower shall, promptly upon obtaining notice or knowledge thereof, furnish, or cause to be furnished, to the Bank (i) notice of the failure by the Remarketing Agent to perform any of its obligations under the related Remarketing Agreement, (ii) copies of any other communications delivered to owners of the Bonds or any national or state information repository with respect to the Bonds, (iii) copies of any notice, certification, demand or other writing or communication given by the Remarketing Agent or the Trustee to the Borrower or by the Borrower to the Remarketing Agent or the Trustee under or in connection with any of the Related Documents, (iv) notice of any proposed Liquidity Facility pursuant to Section 317 of the Loan and Trust Agreement, and (v) such further financial and other information with respect to the Borrower as the Bank may reasonably request from time to time.

*Section 5.2 Financial Reporting Requirements.* The Borrower shall post (with email notification to the Bank at the email address of the Bank specified in Section 7.11 hereof) on the

website of Digital Assurance Certification, L.L.C. or its successors (“DAC”), or, if the Borrower no longer uses the information dissemination services of DAC, make available to the Bank in such other manner as shall be acceptable to the Bank, each of following:

(i) *Annual Financial Statements.* As soon as available and in any event within 150 days after the end of each fiscal year of the Borrower, an audited combined balance sheet of the Borrower as of the end of such fiscal year and the related audited combined statements of unrestricted revenues, expenses and other changes in net unrestricted assets, changes in net assets and cash flows for such fiscal year, setting forth in each case in comparative form the figures from the previous fiscal year, fairly presented in conformity with generally accepted accounting principles (except as identified in the footnotes to the audited financial statements), consistently applied, all audited by PricewaterhouseCoopers, LLP or any other independent public accountants of nationally recognized standing acceptable to the Bank.

(ii) *Budget.* As soon as available and in any event within 150 days after the end of each fiscal year of the Borrower, a copy of the operating budget of the Borrower for the next succeeding Fiscal Year.

(iii) *Admissions Statistics.* As soon as available and in any event within 150 days after the end of each fiscal year of the Borrower, annual admissions statistics (consisting of applications, acceptances and matriculations) of the Borrower.

(iv) *Other Information.* Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the Borrower as the Bank may from time to time reasonably request.

Each of the financial statements furnished to the Bank pursuant to clause (i) of this Section 5.1(b) shall be accompanied by a written certificate in the form of Exhibit A hereto signed by the chief financial officer or other appropriate officer of the Borrower.

*Section 5.3 Inspection.* The Borrower shall upon reasonable notice permit any Person designated by the Bank in writing to visit any of the properties of the Borrower, to examine the corporate books and financial records of the Borrower and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Borrower with the principal officers of the Borrower and its independent public accountants, all at such reasonable time and as often as the Bank may reasonably request.

*Section 5.4 Further Assurances.* The Borrower shall, upon the request of the Bank, and shall cause each of its Subsidiaries to, from time to time, execute and deliver and, if necessary, file, register and record such further financing statements, amendments, confirmation statements and other documents and instruments and take such further action as may be reasonably necessary to effectuate the provisions of this Agreement and the Related Documents to which it is a party. The Borrower shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal or state fees and other similar fees, duties, imports, assessments and charges arising out

of or in connection with the execution and delivery of this Agreement, the Related Documents to which it is a party and such instruments of further assurance.

*Section 5.5 Compliance With Laws.* The Borrower shall comply in all material respects with all laws, rules and regulations (including, without limitation, any laws relating to the protection of persons or the environment or ERISA and the rules and regulations thereunder), and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject; *provided, however*, that the Borrower may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the Borrower's power and authority to execute this Agreement, to perform its obligations and pay all amounts payable by it hereunder, or the Borrower's power and authority to execute and deliver the Related Documents and to perform its respective obligations thereunder.

*Section 5.6 Incorporation of and Compliance with Covenants.* All covenants of the Borrower contained within the Related Documents to which it is a party on the Date of Issuance other than this Agreement (as subsequently amended, if the Bank has given its prior written consent to such amendment) are hereby incorporated herein by this reference as if fully set forth at this point and are made for the benefit of the Bank. The Borrower shall comply with such covenants without taking into account any amendment thereto or waiver thereof or consent to the departure therefrom unless such amendment, consent or waiver is consented to in writing by the Bank.

*Section 5.7 Amendments.* Notwithstanding anything in any Related Document or any other document or instrument to the contrary, so long as the Letter of Credit is in effect or any Obligation hereunder remains outstanding or unperformed no Related Document shall be amended or modified without the prior written consent of the Bank.

*Section 5.8 Official Statement.* The Borrower shall not permit the marketing of any Bonds pursuant to the Official Statement or other offering document unless the Bank shall have approved in writing of the description of the Bank contained in such document. Upon specific request of the Borrower therefor in each instance, the Bank agrees to provide such information with respect to the Bank as may be reasonably requested by the Borrower and required to enable the Issuer or the Borrower to comply with applicable disclosure requirements for the Official Statement.

*Section 5.9 Keeping Books and Records.* The Borrower shall maintain proper books of record and account in which full, true, and correct entries in conformity with generally accepted accounting principles shall be made of all dealings and transactions in relation to its business and activities.

*Section 5.10 Taxes.* The Borrower will pay promptly all lawful taxes, governmental charges and assessments at any time levied or assessed and due upon or against it or its Property, except for instance of noncompliance that (a) are being contested in good faith by appropriate proceedings being diligently pursued, or (b) would not have, individually or in the aggregate, a Material Adverse Effect.

*Section 5.11 Voluntary Redemption.* Without the prior written consent of the Bank, the Borrower shall not optionally cause the redemption of any Bonds (other than Bank Bonds) issued under the Loan and Trust Agreement prior to redeeming Bank Bonds in full or if, after giving effect to such redemption, there would be any amounts payable to the Bank or a Bank Assignee hereunder or in respect of Bank Bonds that shall not have been paid in full.

*Section 5.12 Maintenance of Properties.* The Borrower will cause all its respective Properties used or useful in the conduct of its business to be maintained and kept in good condition, repair, and working order, ordinary wear and tear and obsolescence excepted, and supplied with all necessary equipment. The Borrower will make or cause to be made all necessary repairs, renewals, replacements, betterments, and improvements thereof, all as in the judgment of such Person may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

*Section 5.13 Related Obligations.* The Borrower shall (i) promptly pay all amounts payable by it hereunder and under the Related Documents according to the terms hereof or thereof and shall duly perform each of its obligations under this Agreement and the Related Documents to which it is a party and (ii) use reasonable efforts to cause the Trustee and the Remarketing Agent, at all times to comply with the terms of the Related Documents to which they are a party, in each case in this clause (ii) to the extent the Borrower has the contractual or legal right to cause such compliance and to the extent that such compliance is material to the interests of the Bank in connection with this Agreement.

*Section 5.14 Conversions.* The Borrower shall not permit a conversion of any Bonds to a rate other than a Covered Rate without the prior written consent of the Bank if, after giving effect to such conversion, there would be any amounts payable to the Bank or a Bank Bondowner hereunder or in respect of Bank Bonds that shall not have been paid in full.

*Section 5.15 Preservation of Existence, Etc.* The Borrower shall preserve and maintain its existence, rights and privileges as a nonprofit corporation in the State.

*Section 5.16 Conversion from a Covered Rate.* If the Bank does not agree to extend the Bank Purchase Period prior to any Stated Expiration Date, the Borrower covenants and agrees that if a Liquidity Facility (or a firm commitment to issue a Liquidity Facility prior to the Stated Expiration Date) has not been obtained by the Borrower within 30 days prior to such Stated Expiration Date, the Borrower shall, upon request of the Bank, forthwith use its best efforts (taking into account prevailing market conditions) to convert all of the Bonds to other than a Covered Rate by such Stated Expiration Date in accordance with the Loan and Trust Agreement.

*Section 5.17 Appointment of Successors.* The Borrower shall not, without the prior written consent of the Bank, cause the appointment of a successor Remarketing Agent. If the Remarketing Agent fails to remarket any Bank Bonds for 60 days, then the Borrower agrees, at the written request of the Bank, to use best efforts to cause the Remarketing Agent to be replaced with a Remarketing Agent reasonably satisfactory to the Bank.

*Section 5.18 Corporate Existence, Accreditation.* The Borrower will do or cause to be done all things necessary (a) to preserve and keep in full force and effect their respective

corporate existences, rights (charter and statutory), and franchises and (b) to obtain and preserve all permits and licenses required to conduct their businesses, accreditation by New England Association of Schools and Colleges, Inc. or any equivalent body of its Properties eligible for such accreditation, and qualification as a provider of educational services of all of its Properties eligible for such qualification unless the failure to obtain such license, permit or accreditation will not have a Material Adverse Effect; provided that the Borrower may merge or consolidate with any other Member of the Borrower or sell or convey all or substantially all of its assets to any other Member of the Borrower; provided, however, that no Member of the Borrower may merge or consolidate with any other Member of the Borrower, or sell or convey all or substantially all of its assets to any other Member of the Borrower, if such merger, consolidation or conveyance would, immediately after giving effect thereto, result in an Event of Default or Potential Default hereunder.

*Section 5.19 Reserved.*

*Section 5.20 Environmental Matters.*

(a) *Compliance with Environmental Laws.* The Borrower shall, and shall cause each of its Subsidiaries to, comply with all Environmental Laws applicable to the ownership or use of any real property owned or leased by the Borrower or any Subsidiary, and shall use reasonable efforts to cause any tenants and other persons occupying such real property to comply with all such Environmental Laws, shall immediately pay or cause to be paid all costs and expenses incurred in such compliance, and shall keep or cause to be kept all such real property free and clear of any liens imposed pursuant to such Environmental Laws.

(b) *Presence of Hazardous Materials.* Neither the Borrower nor any Subsidiary of the Borrower shall generate, use, treat, store or Release, or knowingly permit the generation, use, treatment, storage or Release of Hazardous Materials on any real property owned or leased by the Borrower or any Subsidiary of the Borrower or any property adjoining thereto or in the vicinity thereof, or transport or permit the transportation of Hazardous Materials to or from any real property owned or leased by the Borrower or any Subsidiary of the Borrower except for Hazardous Materials used or stored at particular properties in compliance with all applicable Environmental Laws in reasonable quantities required in connection with the normal operation and maintenance of such properties.

(c) *Notice of Environmental Matters.* The Borrower shall, and shall cause each of its Subsidiaries to, promptly advise the Bank in writing of any of the following:

(i) any pending or threatened Environmental Claim against the Borrower or any Subsidiary of the Borrower or any real property owned or leased by the Borrower or any Subsidiary of the Borrower;

(ii) any condition or occurrence on any real property owned or leased by the Borrower or any Subsidiary of the Borrower or any property adjoining thereto or in the vicinity thereof that (A) results in material noncompliance by the Borrower or any Subsidiary of the Borrower with any applicable Environmental Law, or (B) could reasonably be anticipated to form the basis of an Environmental Claim against the

Borrower or any Subsidiary of the Borrower or any real property owned or leased by the Borrower or any Subsidiary of the Borrower;

(iii) any condition or occurrence, known to the Borrower, on any real property owned or leased by the Borrower or any Subsidiary of the Borrower or any property adjoining or in the vicinity thereof that could reasonably be anticipated to cause such real property to be subject to any restrictions on the ownership, occupancy, use, or transferability thereof under any Environmental Law; and

(iv) the taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Materials on any real property owned or leased by the Borrower or any Subsidiary of the Borrower.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence, or removal or remedial action and the action which the Borrower or any Subsidiary of the Borrower proposes to take in response thereto. In addition, the Borrower shall, and shall cause each of its Subsidiaries to, provide the Bank with copies of all communications with any government or governmental agency relating to violations of Environmental Laws by the Borrower or any Subsidiary and such information regarding Environmental Claims as the Bank may reasonably request.

*Section 5.21 Maintenance of Tax-Exempt Status.* The Borrower shall not take any action or fail to take any action with respect to investment of proceeds of the Series A Bonds or in any other respect that will result in the Series A Bonds being considered “arbitrage bonds” within the meaning of the Code or otherwise adversely affect the exclusion of interest on any Series A Bond from gross income for federal income tax purposes.

*Section 5.22 Maintenance of Insurance.* The Borrower shall maintain insurance which is of such type and in such amounts or in excess of such amounts as are customarily carried by and insures against such risks as are customarily insured against by entities of like size, business and character to the Borrower.

*Section 5.23 Reserved.*

*Section 5.24 Maintenance of Underlying/Unenhanced Ratings.* The Borrower shall at all times maintain minimum long-term underlying/unenhanced ratings on the Bonds of “A3” from Moody’s and/or “A-“ from S&P, as applicable.

*Section 5.25 Reserved.*

*Section 5.26 Reserved.*

*Section 5.27 Minimum Expendable Net Assets Ratio.* The Borrower covenants that the Borrower will maintain a Minimum Expendable Net Assets Ratio for the immediately preceding twelve (12) months of 0.65 to 1.0 or greater on the last day of each Fiscal Year based on the audited financial statements provided to the Bank.

*Section 5.28 Liens.* The Borrower will not create, incur or permit to exist any Lien on any Property within the Core Campus, unless such Lien is granted to the Bank.

**ARTICLE SIX  
DEFAULTS AND REMEDIES**

*Section 6.1 Events of Default.* If any of the following events shall occur, each such event shall be an “Event of Default”:

(a) any principal or interest due on the Bonds is not paid by the Issuer when due; or

(b) any representation or warranty made by the Borrower under or in connection with this Agreement or any of the Related Documents or in any certificate, document, instrument, opinion or financial or other statement contemplated by or made or delivered pursuant to or in connection with this Agreement or with any of the other Related Documents shall prove to be untrue in any material respect on the date as of which it was made or deemed made; or

(c) nonpayment of any amounts payable under Section 2.5 hereof or of any other fees, or any other amount when due hereunder (together with interest thereon at a rate equal to the Default Rate) within ten (10) Business Days after the Borrower has received written notice (which shall include telecopy, tested telex or other electronic telecommunication) from the Bank that the same were not paid when due; or

(d) the Borrower denies that it has any or further liability or obligation under this Agreement or any Related Document or a final and non-appealable order of a court or a final and non-appealable finding of a governmental agency having jurisdiction is entered to the effect that any payment provision of this Agreement or any Related Document is not valid and binding on the Borrower under applicable law; or

(e) the breach by the Borrower of any of the terms or provisions of Section 5.7, 5.8, 5.15, 5.16, 5.18(a), 5.22 or 5.24 hereof; or

(f) the breach by the Borrower of any of the other terms or provisions of this Agreement or of any of Related Documents which is not remedied within thirty (30) days after written notice (which shall include telecopy, tested telex or other electronic telecommunication) thereof shall have been received by the Borrower from the Bank; *provided that*, if the Borrower uses best efforts to cure such breach and is unable to remedy such breach, the Borrower shall have an additional thirty (30) days before such breach shall constitute an “Event of Default”; or

(g) any Related Document or any material term thereof shall terminate or cease to be of full force and effect, other than as a result of any redemption in full of the Bonds or provision for such redemption in full in accordance with the Loan and Trust Agreement; or

(h) [Reserved]

(i) [Reserved]

(j) a proceeding is instituted in a court having jurisdiction in the premises seeking an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution in respect to the Borrower or for any substantial part of its property under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) and such proceeding is not terminated for a period of sixty (60) consecutive days or such court enters an order granting the relief sought in such proceeding or the Borrower shall institute or take any corporate action for the purpose of instituting any such proceeding; or the Borrower shall become insolvent or generally unable to pay its debts as they mature, shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of the Borrower or for any substantial part of its property, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts or claims as they become due, or shall take any corporate action in furtherance of any of the foregoing; or

(k) (i) there shall exist an accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the Code, whether or not waived, with respect to any Plan (other than a Multi-employer Plan) which results or could reasonably be expected to result in a Material Adverse Effect; (ii) there shall occur a Reportable Event with respect to any Plan (other than a Multi-employer Plan) which results or could reasonably be expected to result in a Material Adverse Effect; (iii) any liability to the PBGC shall be incurred by the Borrower with respect to any Plan (other than a Multi-employer Plan) which results or could reasonably be expected to result in a Material Adverse Effect; or (iv) the Borrower shall incur any withdrawal liability under Title IV of ERISA with respect to any Multi-employer Plan which results or could reasonably be expected to result in a Material Adverse Effect; or

(l) one or more non-interlocutory judgments, orders or decrees shall be entered against the Borrower involving in the aggregate (existing at any one time for the Borrower) a liability (not fully covered by independent third-party insurance) as to any single or related series of transactions, incidents or conditions, of \$1,000,000 or more, and the same shall remain unsatisfied following the entry of a final, nonappealable judgment for a period of sixty (60) days after the entry thereof; or

(m) any non-monetary judgment, order or decree shall be rendered against the Borrower which results, or could reasonably be expected to result, in a Material Adverse Effect, and there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(n) (i) the Borrower (A) fails to make any payment in respect of any Material Debt when due (whether at scheduled maturity, by required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto on the date of such failure; or (B) shall default in the due performance or observance by it of any term, covenant or agreement contained in, or any other event shall occur or condition exist under, any agreement or instrument relating to any Material Debt, the effect of such default, event or condition is to cause, or to permit the holder or

holders of such Material Debt or beneficiary or beneficiaries of such Material Debt (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, such Material Debt to be declared to be due and payable prior to its stated maturity, or to become payable or cash collateral in respect thereof to be demanded, or (ii) any Material Debt of the Borrower shall be declared to be due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof.

*Section 6.2 Remedies.* Upon the occurrence of any Event of Default, the Bank, may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

- (a) (i) give Notice of Default of the occurrence of any Event of Default to the Trustee, which Notice of Default shall state that it is a Notice of Default under Section 6.2(a)(i) of the Reimbursement Agreement and direct the Trustee to cause an acceleration of the Bonds pursuant to Section 601(a)(iv) of the Loan and Trust Agreement, thereby causing the Letter of Credit to expire fifteen (15) days thereafter; and thereupon, by written notice (which shall include telecopy, tested telex or other electronic telecommunication) to the Borrower require that the Borrower immediately pay to the Trustee in immediately available funds for deposit in the Credit Facility Fund (as defined in the Loan and Trust Agreement) an amount equal to the Available Amount (such amounts to be held by the Trustee as collateral security for the Bank Obligations), *provided, however*, that in the case of an Event of Default described in Section 6.1(m) hereof, such deposit obligations shall automatically become immediately due and payable without any notice (unless the coming due of such obligations is waived by the Bank in writing); and/or (ii) by written notice (which shall include telecopy, tested telex or other electronic telecommunication) to the Borrower, declare all Bank Obligations to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, *provided* that upon the occurrence of an Event of Default under Section 6.1(j) hereof such acceleration of the Bank Obligations shall automatically occur (unless such automatic acceleration is waived by the Bank in writing); or
- (b) pursue any rights and remedies it may have under the Related Documents relating to the Bonds; or
- (c) pursue any other action available at law or in equity.

## **ARTICLE SEVEN MISCELLANEOUS**

*Section 7.1 No Deductions; Increased Costs.* (a) Except as otherwise required by law, each payment by the Borrower to the Bank under this Agreement or any other Related Document shall be made without setoff or counterclaim and without withholding for or on account of any present or future taxes (other than overall net income, franchise and other taxes of similar import on the recipient imposed by any jurisdiction having control of such recipient) imposed by or within the jurisdiction in which the Borrower is domiciled, any jurisdiction from which the Borrower makes any payment hereunder, or (in each case) any political subdivision or taxing authority thereof or therein. If any such withholding is so required, the Borrower shall make the

withholding, pay the amount withheld to the appropriate Governmental Authority before penalties attach thereto or interest accrues thereon and forthwith pay such additional amount as may be necessary to ensure that the net amount actually received by the Bank free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which the Bank would have received had such withholding not been made. If the Bank pays any amount in respect of any such taxes, penalties or interest, the Borrower shall reimburse the Bank for that payment on demand in the currency in which such payment was made. If the Borrower pays any such taxes, penalties or interest, the Borrower shall deliver official tax receipts evidencing that payment or certified copies thereof to the Bank on or before the thirtieth (30th) day after payment.

(b) If the Code or any newly adopted law, treaty, regulation, guideline or directive, or any change in any, law, treaty, regulation, guideline or directive or any new or modified interpretation of any of the foregoing by any authority or agency charged with the administration or interpretation thereof or any central bank or other fiscal, monetary or other authority having jurisdiction over the Bank or the transactions contemplated by this Agreement (whether or not having the force of law) shall:

(i) limit the deductibility of interest on funds obtained by any Bank to pay any of its liabilities or subject the Bank to any tax, duty, charge, deduction or withholding on or with respect to payments relating to the Bonds, the Letter of Credit or this Agreement, or any amount paid or to be paid by the Bank as the issuer of the Letter of Credit (other than any tax measured by or based upon the overall net income of the Bank imposed by any jurisdiction having control over the Bank);

(ii) impose, modify, require, make or deem applicable to the Bank any reserve requirement, capital requirement, special deposit requirement, insurance assessment or similar requirement against any assets held by, deposits with or for the account of, or loans, letters of credit or commitments by, an office of the Bank;

(iii) change the basis of taxation of payments due the Bank under this Agreement or the Bonds (other than by a change in taxation of the overall net income of the Bank);

(iv) cause or deem letters of credit to be assets held by the Bank and/or as deposits on its books; or

(v) impose upon the Bank any other condition with respect to any amount paid or payable to or by the Bank or with respect to this Agreement or any of the other Related Documents;

and the result of any of the foregoing is to increase the cost to the Bank of making any payment or maintaining the Letter of Credit, or to reduce the amount of any payment (whether of principal, interest or otherwise) receivable by the Bank, or to reduce the rate of return on the capital of any the Bank or to require any the Bank to make any payment on or calculated by reference to the gross amount of any sum received by it, in each case by an amount which the Bank in its reasonable judgment deems material, then:

(1) the Bank shall promptly notify the Borrower, in writing of such event;

(2) the Bank shall promptly deliver to the Borrower, a certificate stating the change which has occurred or the reserve requirements or other costs or conditions which have been imposed on the Bank or the request, direction or requirement with which it has complied, together with the date thereof, the amount of such increased cost, reduction or payment and a reasonably detailed description of the way in which such amount has been calculated, and the Bank's determination of such amounts, absent fraud or manifest error, shall be conclusive; and

(3) the Borrower shall pay to the Bank, from time to time as specified by the Bank, such an amount or amounts as will compensate the Bank for such additional cost, reduction or payment.

The protection of this Section 7.1(b) shall be available to the Bank regardless of any possible contention of invalidity or inapplicability of the law, regulation or condition which has been imposed; *provided, however*, that if it shall be later determined by the Bank that any amount so paid by the Borrower pursuant to this Section 7.1(b) is in excess of the amount payable under the provisions hereof, the Bank shall refund such excess amount to the Borrower.

*Section 7.2 Reserved.*

*Section 7.3 Indemnity.* The Borrower agrees to indemnify and hold the Bank and its respective officers, directors and employees (collectively, the "*Indemnified Parties*") harmless from and against, and to pay on demand, any and all claims, damages, losses, liabilities, costs and expenses whatsoever which such Indemnified Parties may incur or suffer by reason of or in connection with the execution and delivery of this Agreement or the Letter of Credit, or any other documents which may be delivered in connection with the Letter of Credit or this Agreement or the reoffering of the Bonds (other than losses arising out of disclosure information furnished by the Bank in connection with the reoffering of the Bonds), or in connection with any payment under the Letter of Credit, including, without limitation, the reasonable fees and expenses of counsel for the Bank with respect thereto and with respect to advising the Bank as to its rights and responsibilities under this Agreement and the Letter of Credit and all reasonable fees and expenses, if any, in connection with the enforcement or defense of the rights of the Bank in connection with this Agreement, the Letter of Credit or any of the Related Documents, or the collection of any monies due under this Agreement or such other documents which may be delivered in connection with this Agreement, the Letter of Credit or any of the Related Documents; except, only if, and to the extent that any such claim, damage, loss, liability, cost or expense shall be caused by such Indemnified Party's gross negligence or willful misconduct. Promptly after receipt by an Indemnified Party of notice of the commencement, or threatened commencement, of any action subject to the indemnities contained in this Section, such Indemnified Party shall promptly notify the Borrower thereof, *provided* that failure to give such notice shall not relieve the Borrower from any liability to any Indemnified Party hereunder unless the failure to give such notice shall have materially prejudiced the Borrower. The obligations of the Borrower under this Section 7.3 shall survive payment of all Bank Obligations owed under this Agreement and the expiration of the Letter of Credit.

*Section 7.4 Liability of the Bank.* The Borrower assumes all risks of the acts or omissions of the Trustee, or any agent of the Trustee, and any transferee beneficiary of the Letter of Credit with respect to its use of the Letter of Credit. Neither the Bank nor any of its officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit or for any acts or omissions of the Trustee, any agent of the Trustee and any transferee beneficiary in connection therewith; (b) the validity or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the related Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit; *provided, however,* that the Borrower shall have a claim against the Bank, and the Bank shall be liable to the Borrower, to the extent of any direct compensatory, as opposed to consequential, damages suffered by the Borrower which the Borrower proves were caused by the Bank's gross negligence or willful misconduct. The Bank is hereby expressly authorized and directed to honor any demand for payment which is made under the Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between or among the Borrower, the Trustee, any transferee beneficiary of the Letter of Credit or any other Person or the respective rights, duties or liabilities of any of them, or whether any facts or occurrences represented in any of the documents presented under the Letter of Credit are true and correct.

*Section 7.5 Participants.* The Bank shall have the right to grant participations in the Letter of Credit to one or more other banking institutions, and such participants shall be entitled to the benefits of this Agreement, including, without limitation, Sections 7.1, 7.3 and 7.12 hereof, to the same extent as if they were a direct party hereto; provided, however, that no such participation by any such participant shall in any way affect the obligations of the Bank under the Letter of Credit; and provided further that no such participant shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Bank not granted a participation to such participant.

*Section 7.6 Survival of this Agreement.* All covenants, agreements, representations and warranties made in this Agreement shall survive the issuance by the Bank of the Letter of Credit and shall continue in full force and effect so long as the Letter of Credit shall be unexpired or any Bank Obligations shall be outstanding and unpaid. The obligation of the Borrower to reimburse the Bank or any participant pursuant to Section 7.6 hereof pursuant to Sections 7.1, 7.3 and 7.12 hereof shall survive the payment of the Bonds and termination of this Agreement.

*Section 7.7 Modification of this Agreement.* No amendment, modification or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Bank and the Borrower and no amendment, modification or waiver of any provision of the Letter of Credit, and no consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in the same, similar or other circumstances.

*Section 7.8 Waiver of Rights by the Bank.* No course of dealing or failure or delay on the part of the Bank in exercising any right, power or privilege hereunder or under the Letter of Credit or this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right or privilege. The rights of the Bank under the Letter of Credit and the rights of the Bank under this Agreement are cumulative and not exclusive of any rights or remedies which the Bank would otherwise have.

*Section 7.9 Severability.* In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

*Section 7.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.* (a) This Agreement shall be governed by and construed in accordance with, the law of the Commonwealth of Massachusetts and applicable Laws of the United States of America.

(b) The Borrower irrevocably (i) agrees that any suit, action or other legal proceeding arising out of or relating to this Agreement or such other documents which may be delivered in connection with this Agreement may be brought in a court of record in the Commonwealth of Massachusetts or in the Courts of the United States of America located in the Commonwealth of Massachusetts, (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding, and (iii) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The Borrower irrevocably consents to the service of any and all process of any such suit, action or proceeding by mailing of copies of such process to the Borrower at its address provided in Section 7.10 hereof. The Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. All mailings under this Section 7.17(a) shall be by certified mail, return receipt requested.

(c) Nothing in this Section 7.10 shall affect the right of the Bank to serve legal process in any other manner permitted by law or affect the right of the Bank to bring any suit, action or proceeding against the Borrower or its property in the courts of any other jurisdictions.

(d) With respect to any suit, actions or proceedings relating to this Agreement, to the fullest extent permitted by applicable law, each party to this Agreement waives any right it may have to trial by jury.

*Section 7.11 Notices.* All notices hereunder shall be given by United States certified or registered mail or by telecommunication device capable of creating a written record of such notice and its receipt (which shall include telecopy, tested telex or other electronic telecommunication). Notices hereunder shall be effective when received and shall be addressed

as follows, or to such other addresses as are specified in writing from time to time by a party to the other parties hereto:

If to the Bank with respect to drawings, to:

TD Banknorth, National Association  
Health Care & Not-For-Profit Group  
370 Main Street  
Worcester, Massachusetts 01608  
Attention: Aubrey S. Theall  
Telephone No.: 508-368-6575  
Telecopy No.: 508-368-6521  
Reference: Worcester Polytechnic Institute

Wire instructions for the Bank with respect to payments:

TD Banknorth Massachusetts  
New York, New York  
ABA No. 211370545  
Acct No: 0559025119  
Attention: Patricia A. Shick  
Reference: Mass. HEFA Commercial Loan

If to the Borrower, to

Worcester Polytechnic Institute  
100 Institute Road  
Worcester, Massachusetts 01609  
Attention: Jeffery Solomon, Executive Vice President and CFO  
Tel: 508-831-5288  
Fax: 508-831-5064

If to the Trustee, to

Deutsche Bank and Trust Company Americas  
60 Wall Street, 27<sup>th</sup> Floor  
New York, New York 10005  
Attention: Trust & Securities Services (Municipal Group)  
Tel: 212-250-2679  
Fax: 212-797-8618

If to the Issuer:

Massachusetts Development Finance Agency  
160 Federal Street, 7<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Attention: Executive Vice President  
Tel: 617-330-2058  
Fax: 617-330-2001

*Section 7.12 Successors and Assigns.* Whenever in this Agreement the Bank is referred to, such reference shall be deemed to include the successors and assigns of the Bank and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement shall inure to the benefit of such successors and assigns. The rights and duties of the Borrower hereunder, however, may not be assigned or transferred, except as specifically

provided in this Agreement or with the prior written consent of the Bank, and all obligations of the Borrower hereunder shall continue in full force and effect notwithstanding any assignment by the Borrower of any of its rights or obligations under any of the Related Documents or any entering into, or consent by the Borrower to, any supplement or amendment to any of the Related Documents relating to the Bonds.

*Section 7.13 Taxes and Expenses.* The Borrower will promptly pay (i) the reasonable fees and expenses of counsel to the Bank incurred in connection with the preparation, execution and delivery of this Agreement, the Letter of Credit and the other Related Documents, (ii) the reasonable fees and disbursements of counsel to the Bank with respect to advising the Bank as to the rights and responsibilities under this Agreement after the occurrence of an Event of Default, and (iii) all reasonable costs and expenses, if any, in connection with the enforcement of this Agreement and any other documents which may be delivered in connection herewith or therewith, including in each case the fees and disbursements of counsel to the Bank. In addition, the Borrowers shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of this Agreement and the security contemplated by the Related Documents and any related documents and agrees to hold the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees. In addition, the Borrower agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Bank in enforcing any obligations or in collecting any payments due from the Borrower hereunder by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings.

*Section 7.14 USA PATRIOT Act.* The Bank hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Bank to identify the Borrower in accordance with the Patriot Act. The Borrower shall promptly provide such information upon request by the Bank.

*Section 7.15 Headings.* The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

*Section 7.16 Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute an original but all taken together to constitute one instrument.

*Section 7.17 Entire Agreement.* This Agreement constitutes the entire understanding of the parties with respect to the subject matter thereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

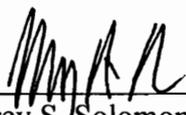
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**IN WITNESS WHEREOF**, the parties hereto, by their officers thereunto to duly authorized, have executed and delivered this Agreement, effective as of the day and year first above written.

**TD BANKNORTH, NATIONAL  
ASSOCIATION,**

By:   
Name: Aubrey S. Theall  
Title: Vice President

**WORCESTER POLYTECHNIC  
INSTITUTE,**

By:   
Name: Jeffrey S. Solomon  
Title: Executive Vice President

**EXHIBIT A**

**COMPLIANCE CERTIFICATE-FINANCIAL STATEMENTS**

This Compliance Certificate is furnished to TD Banknorth, National Association (the "Bank"), pursuant to that certain Reimbursement Agreement, dated as of April 1, 2008, between the Borrower and the Bank (the "Agreement"). Unless otherwise defined herein, the terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected \_\_\_\_\_ of Worcester Polytechnic Institute;

2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, internal controls sufficient to ensure compliance by the Borrower with the terms of the Agreement during the accounting period covered by the attached financial statements;

3. I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Potential Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below;

4. The financial statements required by Section 5.2 of the Agreement and being furnished to you concurrently with this Compliance Certificate are, to the best of my knowledge, true, correct and complete as of the dates and for the periods covered thereby; and

5. The Attachment hereto sets forth financial data and computations evidencing the Borrower's compliance with certain covenants of the Agreement, all of which data and computations are, to the best of my knowledge, true, complete and correct and have been made in accordance with the relevant Sections of the Agreement.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, are taking, or propose to take with respect to each such condition or event:

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The foregoing certifications, together with the computations set forth in the Attachment hereto and the financial statements delivered with this Compliance Certificate in support hereof, are made and delivered this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**WORCESTER POLYTECHNIC  
INSTITUTE,**

By: \_\_\_\_\_  
Name:  
Title:

**ATTACHMENT TO COMPLIANCE CERTIFICATE**

Compliance Calculations for Agreement

Dated as of April 1, 2008

Calculations as of

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**MINIMUM EXPENDABLE NET ASSETS RATIO (SECTION 5.27 OF THE AGREEMENT)**